

Meeting of the Central Valley Flood Protection Board
January 25, 2013

Carol Miller, Yuba County
Enforcement Staff Reconsideration Petition Rebuttal

Board Enforcement Staff has prepared the following statements in response to the reconsideration petition submitted by Mrs. Carol Miller on letters dated December 13, 2012 and January 2, 2013 (See Attachment A, Exhibits 1 and 2, respectively). Mrs. Miller owns a property located at 5676 Riverside Drive, Marysville California. Mrs. Miller was granted a hearing by the Central Valley Flood Protection Board (CVFPB), which was held on November 15, 2012. The CVFPB voted unanimously to adopt staff's recommendation which is memorialized in Resolution No. 2012-05 (See Attachment B).

Argument #1:

“...There is relevant and substantial evidence, which could not have reasonably been produced previously 5/11/2007 Certified Survey and 10/25/2008 Deed to TRLIA, contains err of law no Eminent Domain letter or hearing before a hearing of Encroachment.” (Miller letter dated 12/13/2012, second paragraph)

CVFPB Enforcement staff Rebuttal:

The “2007 Certified Survey” referenced in Ms. Miller’s letter is not a certified survey, but rather is an exhibit (“Exhibit B”) that was prepared for TRLIA’s easement acquisition for ingress and egress for a portion of land on the waterside of the levee obtained from Mr. Henry P. Smith via a grant deed (Document No. 2008R-019354 recorded on December 29, 2008). Contrary to Mrs. Miller’s claims, there was no eminent domain proceedings in obtaining the above identified grant deed. The easement acquisition for the property on the waterside has no effect to the State property or the subdivision adjacent to State parcel on the landside. See Figure 1 below for additional clarification. Furthermore, CVFPB staff asked Mr. Kevin Heeney to review Ms. Miller’s letters and he has prepared a response memo which is attached as Attachment C.

Portion of land obtained by TRLIA via grant Deed (Doc 2008R-019354 recorded on 12/29/2008)

Parcel owned by Henry P. Smith (APN 020-010-018 prior to recording Doc 2008R-019354)

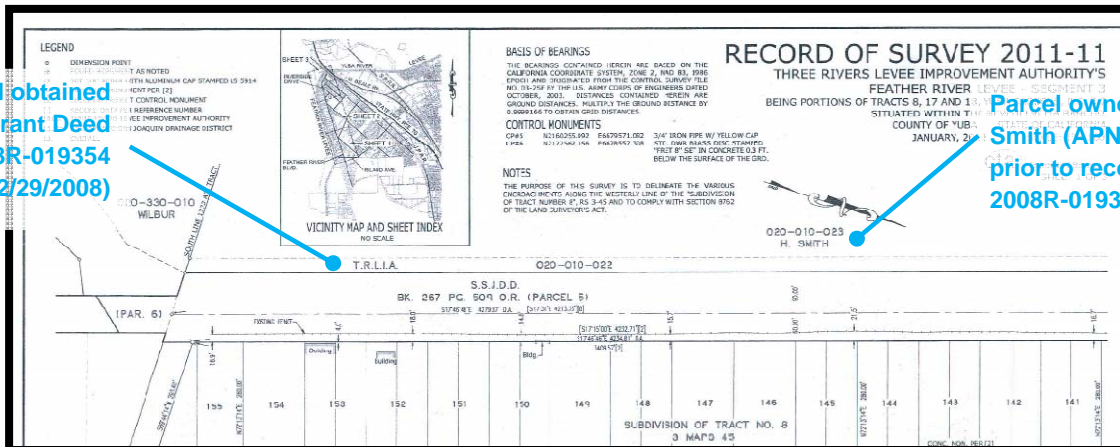


Figure 1 - Record of Survey 2011-11 prepared by CTA page 1 of 3 (Book 93 Page 36 OR)

Argument #2:

“August 5, 2011 received an Encroachment Violation Letter, August 2011 meeting for Encroachment Violation Staff told me they own a portion of my parcel, I was told December 2, 2011 by the Honorable Board that the State of California owns a portion of my parcel APN 020171001000. The 2007 Survey and 2008 Deed of TRLIA new evidence and documentation was not presented to me at the December 2, 2011 CVFPB meeting or November 15 CVFPB meeting. Staff omitted these documents from all reports to me.” (Miller letter dated 12/13/2012, fourth paragraph)

CVFPB Enforcement staff Rebuttal:

The Encroachment Violation Notice issued on August 5, 2011 informed Mrs. Miller that private encroachments were identified and located within State property. At the December 2, 2011 CVFPB meeting, the CVFPB found that private encroachments existed within State property. Neither CVFPB nor staff has made any statements as claimed by Mrs. Miller alleging that the State owns private property. The existing fences parallel to the levee thought to represent the property boundary, were found to be located within State property and did not match the property boundary as defined in prior recorded deeds and maps, as shown on the Record of Survey 2011-11 prepared by CTA. The “5/11/2007 Certified Survey and 10/25/2008 Deed to TRLIA” referenced by Mrs. Miller were not included as part of the Enforcement hearings for the landside corridor construction because they were not relevant as explained under “Argument 1” and in Mr. Heeney’s memo (Attachment C).

Argument #3:

“An Article in the Appeal Democrat, Marysville local paper, dated 12/1/2012 asking the County of Yuba, County Assessor about reimbursement for the property taxes he stated there very well could be a justification for reimbursement and the Assessors Office will have to take this on a case by case basis. This will mean my property will be reassessed, my parcel acres will change from 0.4242 Acres to ? And I will lose my Fruit and Walnut vegetation.” (Miller letter dated 12/13/2012, page 2 of 12, second paragraph).

CVFPB Enforcement staff Rebuttal:

Mrs. Miller’s parcel, referenced by APN 020-171-001, has not and will not change in size from that which is shown on the Yuba County Assessor’s record documents. The parcel is 66-ft wide by 280-ft deep, which is approximately 18,480 square feet or 0.4242 acres (as shown on CTA ROS 2011-11, page 2, Lot 141 of the Yuba Gardens Tract 8 Subdivision). The article referenced in Mrs. Miller’s letter is attached as Attachment D. Per the article, when Yuba County Assessor Bruce Stottlemeyer was asked about property owners paying taxes on property they own, his response was as follows:

“We estimate the value of land by its dimensions as listed on the map”

No documents have been submitted to prove that taxes were paid for property outside of what was shown on the original Yuba Gardens Subdivision map as APN 020-171-001, reflected on the property deed and further verified by CTA's Record of Survey 2011-11.

At Mrs. Miller's property, the new fence and corridor will be constructed within State property, 8-feet away from the border of Mrs. Miller's property and the State's right-of-way. Behind Mrs. Miller's property, the only vegetation impacted by the construction of the corridor is the existing elderberry shrubs. See Figure 2 below. TRLIA has been in coordination with Department of Fish and Game and US Army Corps of Engineers to properly transplant the existing elderberry shrubs within the limits of the corridor.

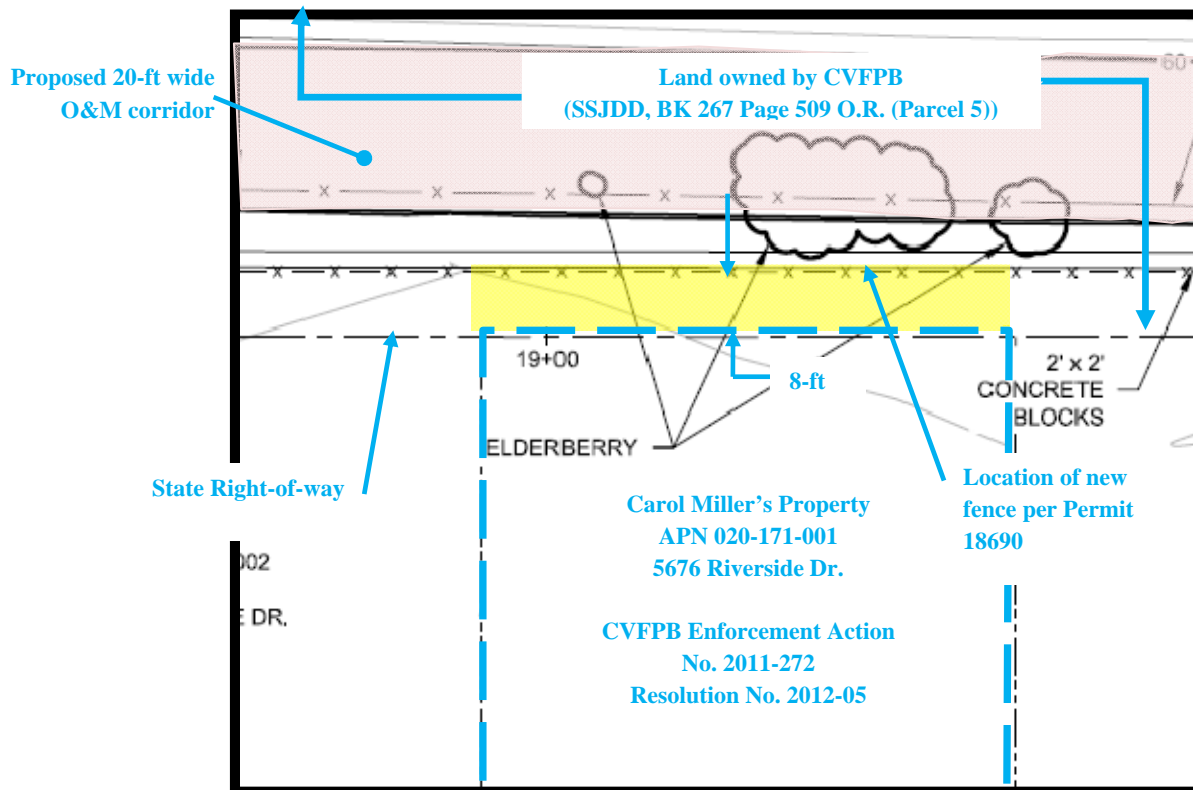


Figure 2- Drainage plan prepared by GEI

ENFORCEMENT STAFF RECOMMENDATION

After review of the record and the petition, Enforcement staff recommends the CVFPB deny the petition upon finding that the decision memorialized under Resolution No. 2012-05 was proper.

ATTACHMENTS

- A. Reconsideration Petition
 - Exhibit A: Carol Miller Reconsideration Petition letter dated December 13, 2012
 - Exhibit B: Carol Miller Reconsideration Petition letter dated January 2, 2013
- B. CVFPB adopted Resolution No. 2012-05 signed November 16, 2012
- C. CTA Memo Response dated January 8, 2013
- D. Marysville Appeal Democrat Article dated December 1, 2012 by Ben Van der Meer

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Central Valley Flood Control Board
3310 El Camino Avenue Room 151
Sacramento, CA 95821

Re: Petition for Reconsideration of Enforcement Action 2011-272 TRLIA Order Removal of A Private Fence on State Land Adjacent to the Feather River East Levee in West Linda CA (Yuba County)

Dear Honorable Board, Ms. Calisco, Engineer, Water Resources

My name is Carol Miller etal, owner of property located at 5676 Riverside Dr., Olivehurst CA 95961. Pursuant to California Code of Regulations Title 23, Section 23, this correspondence shall serve as my formal petition for reconsideration of the Central Valley Flood Protection Board's November 15, 2012 order of removal of existing fence, grant revocable license and rescind notice of violation Action 2011-272.

The Honorable Board November 15 2012 made a decision of Encroachment Violation removing the Fence and to Issue Encroachment permit based on Staff reports, if the new evidence and documents were presented in a Staff Report an additional Survey would not have been needed. For the following reasons, there is relevant and substantial evidence, which could not have reasonably been produced previously 5/11/2007 Certified Survey and 10/25/2008 Deed to TRLIA, contains err of law no Eminent Domain letter or hearing before a hearing of Encroachment. The following evidence was not disclosed by Staff: A portion of my parcel APN 020171001000 is made part of APN 020010022000 this parcel is made part of 9/25/2008 Deed of TRLIA APN 020010018000. APN 020010022000 is a hidden item attached to 2008 Deed of TRLIA. APN 020010022000 recorded as Eminent Domain and not recorded as a separate record in the Yuba County Recorders Office this resulted in an abuse of discretion and prevented me from having a fair hearing, these documents were not made available by Staff. These documents along with the documents of the January 26 2012 CVFPB meeting would have proved that a portion of my property is not owned by the State. At a minimum, the November 15, 2012 decision should be vacated and a hearing for Eminent Domain scheduled to allow me to present the new evidence and documents attached in full.

I was not aware of an Eminent Domain Hearing ever being held, did not received a letter of an Eminent Domain hearing to respond to within 15 days and did not receive paperwork for Eminent Domain. Water Code Section 22456-22458 and California Code of Civil Procedure beginning at Section 1245.10 for Eminent Domain, the August 5 letter of Encroachment does not include Eminent Domain as part of the Encroachment Violation.

Through thorough extensive research and questioning the County of Yuba Assessors Office furnished the APN020010022000 Document Number 2008R-019354 recorded under APN 020010018000 new evidence and documents attached, Exhibits A through E. Included with this documentation is 5/11/2007 Survey by Kevin Heeney and 9/25/2008 Deed of TRLIA, this Deed was written from the 5/11 Survey and includes a portion of my parcel APN 020171001000 that is attached to this Deed of TRLIA, no Eminent Domain filed with this Deed. I was not notified by Staff that in 2007 or 2008 that a portion of my parcel was being included in this documentation. I did not receive a letter of Eminent Domain by Staff or Negotiating Party for an opportunity to agree or disagree to Eminent Domain or negotiate a portion of my parcel with Staff or through Negotiations or at an Eminent Domain Hearing in 2007 or 2008 California Water Code 22456-22458 and California Code of Civil Procedure beginning with Section 1245.210. August 5, 2011 received an Encroachment Violation Letter, August 2011 meeting for Encroachment Violation Staff told me they own a portion of my parcel, I was told December 2, 2011 by the Honorable Board that the State of California owns a portion of my parcel APN 020171001000. The 2007 Survey and 2008 Deed of TRLIA new evidence and documentation was not presented to me at the December 2, 2011 CVFPB meeting or November 15 CVFPB meeting. Staff omitted these documents from all reports to me.

The letter from Staff August 5 2011 States Encroachment Violation located on State Property California Code and CCR title 23 Waters, Division 1, Section 19, District Lands and the CVFCB meeting December 2 was an Encroachment Evidentiary Hearing without any indication of Eminent Domain State Code which states as follows:

No encroachment may be constructed or maintained upon lands owned in fee by Sacramento and San Joaquin Drainage District, except when expressly permitted by a proper and revocable license, lease, easement or agreement executed between the owner of the encroachment and the district, and upon payment to the district of its expenses and adequate rental or compensation therefore.


This Survey Proves that SSJDD did not and does not own a portion of my property. This Survey is not in the reports to CVFPB or any reports to me: 5/11/2007 Certified Survey by Kevin Heeney attached as part of Deed of TRLIA (Staff) is substantial, Exhibit C Part B Page 3 of 7: Survey states Property line Toe of Levee, Point of Beginning, N89 degrees 56 minutes 58 seconds East to N72 degrees 6 minutes 2 seconds East, monuments, with straight Line of Survey at S17 degrees 53 minutes 58 seconds East using Mount Diablo Meridian. The S17 degrees 53' 58" East is consistent with the S17 degrees 31 minutes East specified on all evidence located in the Central Valley Flood Protection Board website Meeting of January 26, 2012 Item 8c Carol Miller, Ref: 1907 Railroad Survey, 1909 Northern Electric Deed, 1939 Survey Yuba Gardens Subdivision Tract 8 and 1958 SSJDD Deed, Reference and page numbers are listed below. The transcript of Meeting of December 2, 2011 Kevin Heeney failed to report his 2007 Survey. Also, A statement was made December 2, 2011 meeting that my property Encroaches 1 1/2ft onto State Property. This raises the questions: Why did I receive and Encroachment Notice? Why did Kevin Heeney Survey my parcel when this Survey exists and this Survey state the Property Line Landward Toe of Levee? Why is TRLIA taking approx 7 1/2ft or more portion of my parcel when 1 1/2FT was stated at the December 2 meeting, without negotiation? Why was a portion of my property included in this Deed when Survey states Property Line Toe of Levee, West Line of APN 020010022000, and Recorded as Eminent Domain?

An Article in the Appeal Democrat, Marysville local paper, dated 12/1/2012 asking the County of Yuba, County Assessor about reimbursement for the property taxes he stated there very well could be a justification for reimbursement and the Assessors Office will have to take this on a case by case basis. This will mean my property will be reassessed, my parcel acres will change from .4242 Acres to ? And I will lose my Fruit and Walnut vegetation.

It is unclear if I need to notify any "interested parties" I received the August 5, 2011 Encroachment Violation as an Individual Person. Please advise me if I need to contact any interested parties. Should the Board request that additional parties receive this petition I will do so promptly.

In sum, the above Actions by Staff, the new evidence and supporting documentation attached, the new evidence and documentation prove that Sacramento-San Joaquin Drainage District did not and does not own a portion of my parcel, not being notified of the 5/11/2007 Survey and 9/25/2008 Deed, that a portion of my parcel is attached to documentation that was recorded as Eminent Domain and I did not receive a letter of Eminent Domain in 2007 or 2008 and did not have of any negotiations of Eminent Domain with Staff or other responsible party as specified by the State of California Water Codes 22456-22458 and the California Code of Civil Procedure beginning at Section 1245.10. I respectfully request that the November 15 Encroachment Violation removal of fence and Issuing of Permits be vacated and a hearing scheduled to present the new evidence and documentation in full.

Sincerely,



Carol Miller
935 North Grand Ave
San Pedro, CA 90731
Pjc77@netzero.com

References: January 26, 2012 Central Valley Flood Board Meeting evidence and page numbers

1907 Northern Electric Railway Survey page 68 Attachment H Exhibit A, 1909 Northern Electric Railway Deed page 41 Attachment D, 1939 Survey of Yuba Gardens Subdivision Tract 8 page 41 Attachment F, 1958 Indenture Sacramento-San Joaquin Drainage District page 55 (Parcel 5) Attachment H.

Exhibit A Deed of Henry P. Smith: 1/23/1975 Deed original parcel APN 0200100017 sold to TRLIA 9/25/2008 Tract 18 Yuba Gardens Subdivision on the Water Side of the Levee. Exhibit B: stating the exact location of APN 020010017 the original parcel purchased by TRLIA located on the water side of the Levee. In Book of Deeds 608 page 1.

AND WHEN RECORDED MAIL TO

NAME Henry P. Smith
ADDRESS Henry P. Smith
2440 Aborn St.
CITY & STATE Marysville, Calif

Title Order No. _____ Escrow No. 51701

WESTERN TITLE INSURANCE CO.
RECORDED IN OFFICIAL RECORDS OF
YUBA COUNTY, CALIFORNIA
AT 3:30 P.M. PAST 12 M.
JAN 23 1975
HARLAN COUNTY RECORDER 311

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO

NAME above
ADDRESS _____
CITY & STATE _____

Documentary transfer tax \$.....
 Computed on full value of property conveyed, or
 Computed on full value less liens and encumbrances
remaining thereon at time of sale.

H. P. Smith
Signature of donor or agent donating tax - See name

Individual Grant Deed

WESTERN TITLE FORM NO. 504

FOR VALUE RECEIVED, **DIDAR SINGH BAINS and SANTI MARIY BAINS, his wife**

GRANT.....to **HENRY P. SMITH and ROSEMARY C. SMITH, his wife, as their Community Property**

all that real property situated in the unincorporated area of the
County of Yuba State of California, described as follows:

Tract 18, as shown upon that certain map entitled, "Yuba Gardens," filed for record in the office of the County Recorder of said Yuba County in Volume 3 of Maps, page 2; said Tract 18 being also all that portion of Lots 1, 2, 3 and 4 of the Partition of the 1373 acre tract, as shown upon a map of record in Volume 12 of Deeds, page 569, Yuba County Records, lying Westerly of the Southwesterly line of the right of way of Sacramento Northern Railway.

Dated January 8, 1976

Didar Singh Bains
Didar Singh Bains

Santi Marie Bains
Santi Marie Bains

STATE OF CALIFORNIA }
County of Yuba }
On Jan. 12, 1976, before me, the undersigned,
a Notary Public, in and for said State, personally appeared
Didar Singh Bains and Santi Marie Bains
known to me to be the persons, whose name is set
subscribed to the within instrument, and acknowledged to me that
they executed the same.

FOR NOTARY SEAL OR STAMP

RECORDED IN OFFICIAL RECORDS OF
YUBA COUNTY, CALIFORNIA
JAN 23 1975
HARLAN COUNTY RECORDER

BOOK 608 PAGE 1

MAIL TAX STATEMENTS AS DIRECTED ABOVE

Exhibit B: Location of Original APN 0200100017000 Location on Water Side of Levee. Yellow Portion was attached as Eminent Domain to 9/25/2008 Deed of TRLIA.

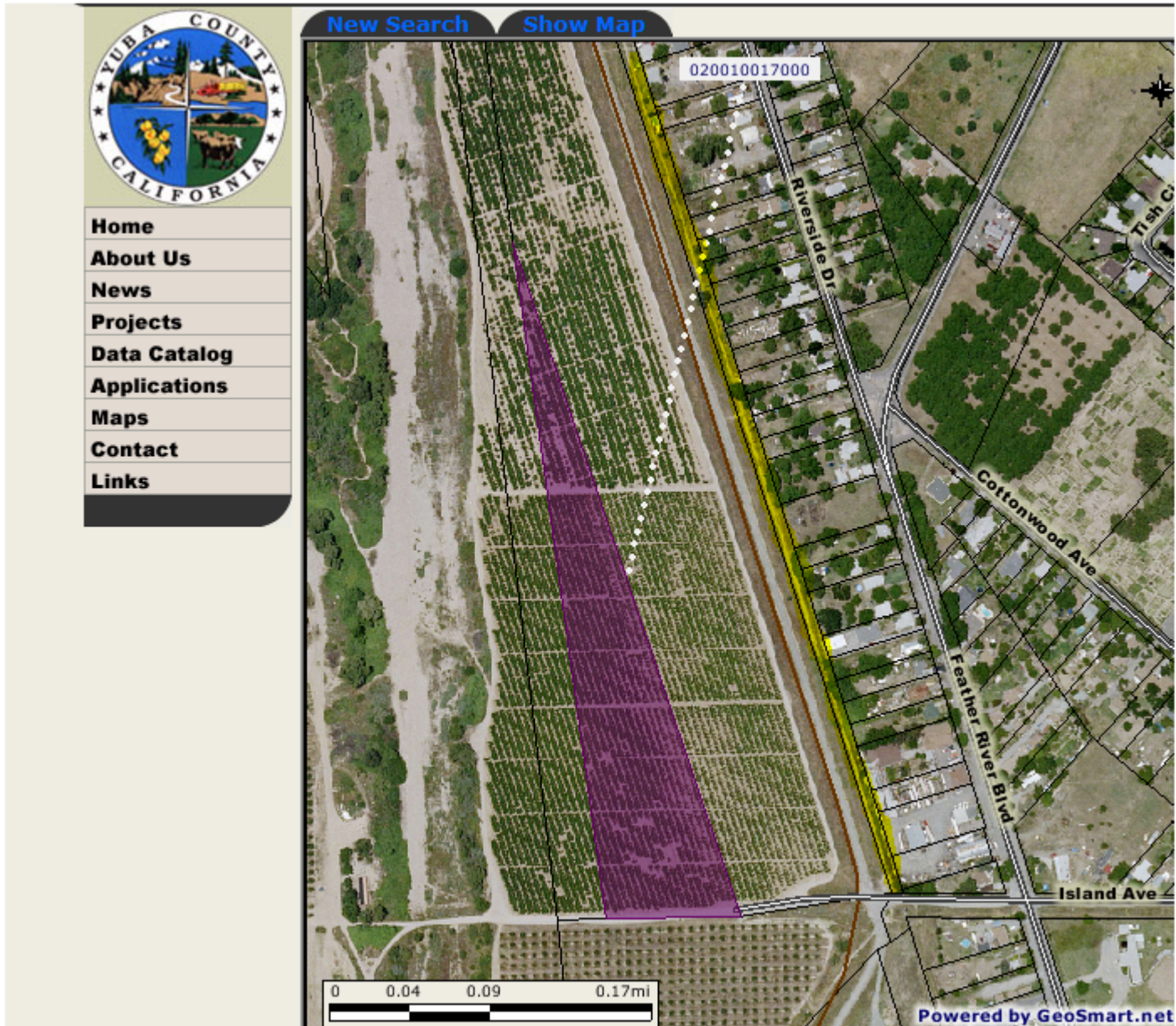


Exhibit C Page 1 of 7 Deed of TRLIA: 9/25/2008 Deed of TRLIA Yuba County Assessors Office recorded this Deed 12/29/2008 as portion of APN 02010018000 Document Number 2008R-019354. Deed was written from the 5/11/2007 Survey with a complete description of the property purchased and attached the Strip of Land as part of 2.28 Acres Eminent Domain recorded as APN 020010022000 Document Number 2008R-01935.

2008R-019354

FUT
1/5

WHEN RECORDED RETURN TO:
Bender Rosenthal, Inc.
4400 Auburn Boulevard, Suite 102
Sacramento, CA 95841

TERRY A. HANSEN
YUBA COUNTY RECORDER
MARYSVILLE, CA
RECORDED ON
12/29/2008 10:30AM
REC FEE: 5 0.00
PAGE 1 OF 5
DEPUTY INITIALS: SG

NO FEE DOCUMENT
Per Government Code 6103

R&T 11922; Government agency acquiring title

Project: Three Rivers Levee Improvement
APN: 020-010-018 PTN

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, HENRY P. SMITH, A SINGLE MAN, grant(s) to the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, a joint powers authority composed of Yuba County and Reclamation District 784, all that real property, or interest therein, in the City of Marysville, County of Yuba, State of California, described in Exhibits "A" and "B" attached hereto and made a part hereof.

5-

RESERVING to the Grantor herein, an Easement for ingress & egress over and along the westerly twenty feet (20") of that certain thirty-foot (30") strip of land conveyed herein and described in the Exhibit "A" and "B" referenced above.

Dated: 9-25-08

Henry P. Smith
Henry P. Smith

Exhibit C Page 2 of 7: Deed of TRLIA 9/25/2008 Deed of TRLIA.

Exhibit 'A'

2/5

~~APN 020-010-017~~
Portion APN 020-010-018
LEGAL DESCRIPTION
FEE TITLE ACQUISITION

All that Real property situated in the County of Yuba, State of California, being a portion of Real property conveyed by deed to Henry P. and Rosemary C. Smith, Recorded in Book 608, Page 1, Official Records of said County, hereinafter referred to as "Smith" property, being a portion of Tract 18, as shown upon that certain map entitled, "Yuba Gardens" filed in Volume 3 of Maps at Page 2, lying within a portion of Lots 1, 2, 3 and 4 of the Partition of the 1373 acre tract, as shown upon a map of record in Volume 12 of Deeds, Page 569, Yuba County Records, situated in Sections 25 and 36, Township 15 North, Range 3 East of the Mount Diablo Base and Meridian, being more particularly described as follows:

Beginning at the Southeast corner of said "Smith property"; thence along the South line of said "Smith property North 89°56'58" West 31.53 feet to a point which is 30.00 feet Westerly of when measured at right angles to the East line of said "Smith property"; thence Northerly 30.00 feet Westerly of and parallel with said East line North 17°53'58" West 3300.00 feet; thence North 72°05'02" East 30.00 feet to the East line of said "Smith property"; thence along said East line South 17°53'58" East 3309.72 feet to the **Point of Beginning**; containing an area of 99,146 Square Feet or 2.28 acres, more or less.

See Exhibit B attached hereto and made a part of this description.

End of description

The Basis of Bearings for this description is the California Coordinate System Zone 2.

This description has been prepared by me or under my direct supervision.

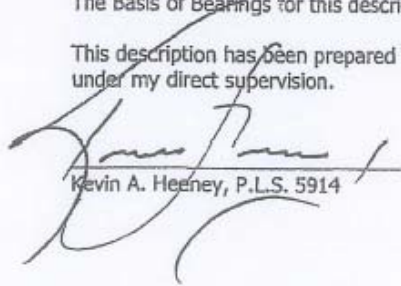
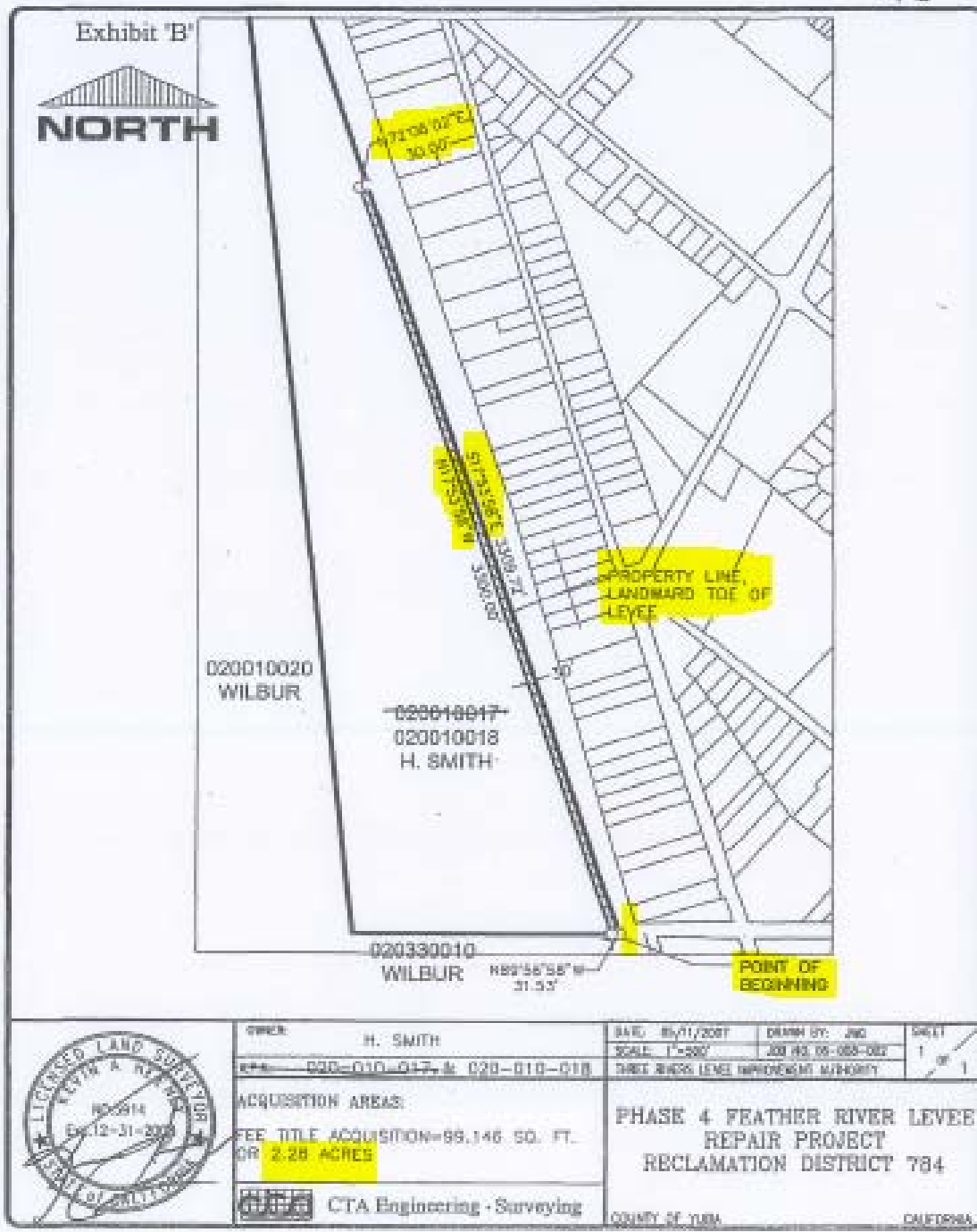

Kevin A. Heeney, P.L.S. 5914



Exhibit C Part B Page 3 of 7 Deed of TRLIA: 9/25/2008 Deed of TRLIA, 5/11/2007 Survey by Kevin Heeney

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| | | | |
|---|--|--------------------|------------------|
| OWNER: H. SMITH | DATE: 05/11/2007 | DRAWN BY: JAC | SHEET: 1 OF 1 |
| PARCELS: 020-010-017, & 020-010-018 | SCALE: 1"=50' | JOB NO. 06-085-082 | |
| ACQUISITION AREAS: FEE TITLE ACQUISITION=99,146 SQ. FT. OR 2.28 ACRES | DIRECT REPAIR LEVEE IMPROVEMENT AUTHORITY | | |
| CTA Engineering - Surveying | PHASE 4 FEATHER RIVER LEVEE REPAIR PROJECT RECLAMATION DISTRICT 784 COUNTY OF YUBA CALIFORNIA | | |

M:\03-085-082\018\018\018.dwg, APPX-013-018\H SMITH PL. 01110307 020103.dwg

Exhibit C Page 4 of 7 Deed of TRLIA: 9/25/2008 Deed of TRLIA Acknowledgment.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

4/5

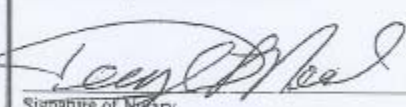

| | | | |
|---|--|---|--|
| STATE OF <u>CALIFORNIA</u>) | | -----OPTIONAL SECTION----- | |
| COUNTY OF <u>Yuba</u>) | | CAPACITY CLAIMED BY SIGNER | |
| On <u>9/25/08</u> before me, <u>DERYL L. NEAL</u> , Notary Public, <small>date name of notary officer</small> | | Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document. | |
| personally appeared <u>Henry P. Smith</u> <small>name(s) of signers</small> | | <input checked="" type="checkbox"/> INDIVIDUAL | |
| | | <input type="checkbox"/> CORPORATE OFFICER(S) | |
| | | Title(s) | |
| | | <input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED | |
| | | <input type="checkbox"/> GENERAL | |
| | | <input type="checkbox"/> ATTORNEY-IN-FACT | |
| | | <input type="checkbox"/> TRUSTEE(S) | |
| | | <input type="checkbox"/> GUARDIAN/CONSERVATOR | |
| | | <input type="checkbox"/> OTHER: | |
| who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. | | | |
| I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. | | | |
| WITNESS my hand and official seal. | | | |
|  Signature of Notary | | | |
|  | | SIGNER IS REPRESENTING: Name of Person(s) or entity(ies) | |
| | | | |
| | | | |
| OPTIONAL SECTIONS: | | TITLE OR TYPE OF DOCUMENT: _____ | |
| DATA REQUESTED HERE IS NOT REQUIRED BY LAW. | | NUMBER OF PAGES _____ DATE _____ | |
| | | SIGNER(S) OTHER THAN NAMED ABOVE _____ | |

Exhibit C Page 5 of 7 Deed of TRLIA: 9/25/2008 Deed of TRLIA, Certificate of Acceptance.

07/5

CERTIFICATE OF ACCEPTANCE
Three Rivers Levee Improvement Authority

This is to certify that the interest in real property conveyed by the Grant Deed dated September 25, 2008, from Henry P. Smith, to Three Rivers Levee Improvement Authority, a joint powers authority composed of Yuba County and Reclamation District 784, is hereby accepted by order of the Three Rivers Levee Improvement Authority on _____, (or by the undersigned officer or agent on behalf of the Three Rivers Levee Improvement Authority pursuant to authority conferred by Board of Directors of said Authority in **Resolution Number 07-01** adopted on February 26, 2007.) and the grantee consents to recordation thereof by its duly authorized officer.

Dated 10-21-08

By Paul J. Guenne ¹⁰⁻²¹⁻⁰⁸
Director

Exhibit C Page 6 of 7 Deed of TRLIA: Strip of Land (Pink parcel) is APN 020010022000 Land Side of Levee, parcel APN 020171001000 portion of my parcel is located inside this Strip of Land Property Line starting at the West Toe of the Levee to the East. Parcel APN 020010022000 is an attachment to 9/25/2008 Deed of TRLIA APN 020010018000 Description Parcel starting at Top of and Water Side of Levee Document 2008R-019354 portion of Tract 18 Y G. 2.28 Acres.



Exhibit C Page 7 of 7 Deed of TRLIA: 10/25/2008 Deed of TRLIA stating Document 2008R-01935 description is for Exhibit C page 6 of 7.

Assessor OK.
PATTY
PUR. 12/29/2008
TAM DON # GOVT AGENCY
Doc 2008R019354 - Clerk recorder
Dan Mierzwa

Exhibit D: Close view and Description of APN 020010022000 parcel added to 9/25/2008 Deed of TRLIA part of 2.28 Acres.

YUBA COUNTY CALIFORNIA

[New Search](#) [Show Map](#)

020010022000

Riverside Dr

| Attributes for PARCEL LINES | |
|-----------------------------|-----------------------------------|
| Lot Information | |
| APN | 020010022000 |
| Lot Description | PT TR 18 YUBA GARDENS |
| Acres | 2.28 |
| Zone | AE-40 |
| Tax Rate Area | 064341 |
| Landuse | THREE RIVERS LEVEE IMPR AUTHORITY |
| Address Information | |
| Site Address | |
| Site City State | |
| Value Information | |
| Land Value | \$0.00 |
| Structure Value | \$0.00 |
| Grow Value | \$0.00 |
| Mobile Home Value | \$0.00 |

0 0.01 0.02 0.03mi

Powered by GeoSmart.net

Exhibit E: Close View of APN 02010022000 Eminent Domain attached as part of 9/25/2008 Deed of TRLIA



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**ATTACHMENT A
EXHIBIT B
AGENDA ITEM 7C**

January 2, 2013

Central Valley Flood Protection Board
3310 El Camino Ave Room 151
Sacramento, CA 95821

Dear Honorable Board Members

Attn: Len Marino, Chief Engineer
Ms Calisco, Engineer Water Resources

~~Re: Petition for Reconsideration of Enforcement Action 2011-272 TRLIA Order Removal of A Private Fence on State Land Adjacent to the Feather River East Levee in West Linda CA (Yuba County)~~

My name is Carol Miller, owner of property located at 5676 Riverside Dr Olivehurst CA 95961. Pursuant to California Code of Regulations Title 23 Section 23 this is a follow-up to my letter of December 13, 2012 Petition for Reconsideration of Enforcement Action 2011-272 Removal of a Private Fence. The following is the reasons the State of California does not own any portion of my property.

The fact that CCR Water Code Section 250 the department shall not commence any such proceedings unless the project for which the property is being acquired has been authorized and funds are available therefore and California Civil Code of Procedures 1240.670 and 1240.680 were not followed, there was not any negotiation for any portion of my property. I am requesting that Eminent Domain proceedings be followed and a hearing scheduled to negotiate for any portion of my property and to present all evidence.

In 2007 and 2008 there were no Court Papers filed for Eminent Domain or notification sent of Eminent Domain proceedings. The 2007 Certified Survey substantiates the evidence presented in the scheduled meeting of January 26, 2012 Central Valley Flood Protection Board Meeting. The 2007 Survey substantiates that the boundary line is marked 60ft from the Center Line of the Levee on the Land Side. All borrow rights are South of Island Road and can be verified with the 1907 Northern Electric Railway Survey Legend.

Verifying the facts that 2.28 Acres were purchased on the water side of the Levee from Henry Smith, Exhibit A, , Exhibit B should not have been submitted to the County of Yuba to add APN 02001002200 as part of the property belonging to TRLIA or the State of California without negotiation, all evidence submitted proves that this is not the case and that the State is trying to take this property as Eminent Domain. The article in the Appeal Democrat is verifying that the State is trying to take all property along the Levee, on the Land Side, by Eminent Domain without following the State Codes and Regulations. All evidence presented to the Honorable Board states that Sacramento San Joaquin Drainage District does not own any property past the 60ft from the Center Line of the Levee.

The article in the Appeal Democrat is suggesting that the Grand Jury be involved with this matter because of reimbursement of property taxes and the 2007 Certified Survey that verified the location of the Boundary Line in all evidence presented at the Jan 26 Board Meeting.

Kevin Heeney neglected to specify at the December 12, 2011 meeting that he had surveyed the Levee from the Center Line, water side and land side, or he would have specified at the December 12 meeting that the boundary line was established 60ft from the Center Line of the Levee on the land side of the Levee in 2007. For quick reference of Dec. 12 statement by Kevin Heeney see Exhibit C below.

In Summary, the California Civil Procedure and Water Codes were not followed, all evidence from 1907 through 2007 establishes the boundary line on the land side of the Levee and the 2007 Certified Survey was not submitted for evidence; I respectfully request that the November 15, 2012 Encroachment violation removal of fence and issuing of permits be vacated and a hearing scheduled for the opportunity to present the new evidence and documentation in full.

Sincerely,

ATTACHMENT A
EXHIBIT B January 2, 2013
AGENDA ITEM 7C

Carol Miller
935 North Grand Ave
San Pedro, CA 90731
310-519-3831

Exhibit A Page 1 of 2:

The screenshot shows a web-based GIS application interface. On the left is a navigation menu with the following items: Home, About Us, News, Projects, Data Catalog, Applications, Maps, Contact, and Links. The main area displays an aerial map of agricultural land. A parcel with APN 020010017000 is highlighted in purple. The popup window titled "Attributes for PARCEL LINES" contains the following data:

| Attributes for PARCEL LINES | |
|-----------------------------|------------------|
| Lot Information | |
| APN | 020010017000 |
| Lot Description | PTN TRACT 18 Y G |
| Acres | 7.35 |
| Zone | AE-40 |
| Tax Rate Area | 064003 |
| Landuse | PEACHES |
| Address Information | |
| Site Address | |
| Site City State | |
| Value Information | |
| Land Value | \$11,679.00 |
| Structure Value | \$0.00 |
| Grow Value | \$0.00 |
| Mobile Home Value | \$0.00 |

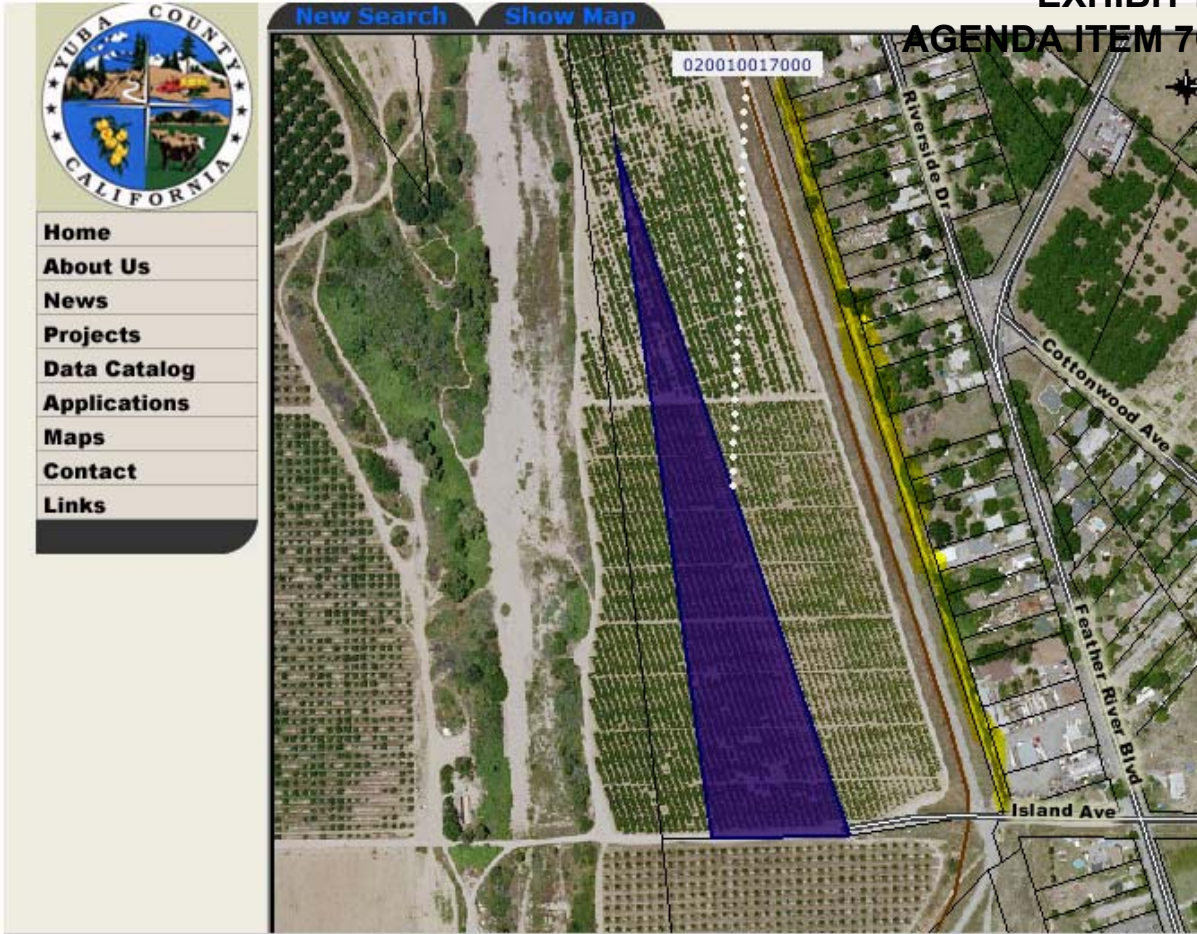


Exhibit B:

| Attributes for PARCEL LINES | |
|-----------------------------|-----------------------------------|
| Lot Information | |
| APN | 020010022000 |
| Lot Description | PT TR 18 YUBA GARDENS |
| Acres | 2.28 |
| Zone | AE-40 |
| Tax Rate Area | 064341 |
| Landuse | THREE RIVERS LEVEE IMPR AUTHORITY |
| Address Information | |
| Site Address | |
| Site City State | |
| Value Information | |
| Land Value | \$0.00 |
| Structure Value | \$0.00 |
| Grow Value | \$0.00 |
| Mobile Home Value | \$0.00 |

13 MR. HEENEY: President Carter and members of the
 14 Board. Kevin Heeney with CTA Engineering and Surveying.

15 CTA has been involved with a lot of the mapping
 16 and surveying work throughout the TRLIA projects, and have
 17 been involved for over five years now.

18 Our initial work was to develop base maps for
 19 potential acquisitions and any other development plans
 20 that needed to go with the improvements to the levee. As
 21 we started looking at the access corridor issues, we
 22 discovered these encroachments that were identified as
 23 being on the State property.

24 In our initial base mapping work, we had looked
 25 at the subdivision map that these properties are part of.

1 And it found that that map called for monuments within the
 2 subdivision that were originally set. We made a search
 3 for those monuments, and unfortunately none of the
 4 original monuments were found. But other monuments that
 5 marked lot corners and street right-of-way were found, and
 6 that was the basis for our analysis.

7 After we discovered these encroachments, we went
 8 back again to confirm that the block that these lots fall
 9 within was in fact - we had surveyed it - in its proper
 10 location and that that block itself fit within the
 11 subdivision properly.

12 There were other parcel maps and surveys that
 13 have been recorded. We reviewed all of those. And I
 14 believe out of the maps that we had, there was at least
 15 five that we found the monuments that those surveyors set.

AGENDA ITEM 7C

16 | All of those still gave the same answer that we had.

17 | We then took our analysis and went and met with
18 | the County Surveyor's Office and discussed the issue with
19 | them. We inquired about any unknown surveys or anything
20 | that their office may have. They didn't have anything.

21 | They did provide us copies of some old railway
22 | right-of-way maps. And what that showed us was that the
23 | deed that the State had, the railroad right-of-way maps,
24 | and the common boundary of this subdivision all conformed
25 | with one another. They were a common boundary.

19 | The review of the County Surveyor's Office had no
20 | change whatsoever to any of our analysis.

21 | So that's kind of a background of how we
22 | established it. And I'll also be available for questions.

23 | PRESIDENT CARTER: Thank you.

24 | STAFF ENGINEER CALISO: Now, we'll move on into
25 | the agency comments.

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STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2012-05

FINDINGS AND DECISION REGARDING ENFORCEMENT HEARING FOR
CAROL MILLER, 5676 RIVERSIDE DRIVE, OLIVEHURST, CA
FEATHER RIVER, YUBA COUNTY

WHEREAS, Three Rivers Levee Improvement Authority (TRLIA) is completing a \$400 million levee improvement program to increase the level of flood protection for Linda, Arboga, Olivehurst and Plumas Lake; and

WHEREAS, as part of these improvements, TRLIA is required to provide a 20-foot landside Operations and Maintenance (O&M) corridor in accordance with the Department of Water Resources (DWR) Urban Levee Design criteria; and

WHEREAS, during the preparation of a survey, TRLIA discovered that in this area, the land covering the levee and required 20-foot wide O&M corridor was owned by the Central Valley Flood Protection Board (CVFPB) through the Sacramento San Joaquin Drainage District (SSJDD); and

WHEREAS, vegetation, fences and other existing structures were located within the area required for the O&M corridor. CVFPB records indicate that there are no permits for any of the structures, fences or private improvements within State property; and

WHEREAS, Water Code Sections 8534, 8708, 8709 and 8710 were considered by staff in the analysis of the enforcement action; and

WHEREAS, California Code of Regulations, Title 23 Sections 6(a), 4(a)(4), 19, 20(a) and 23 were also considered by staff in the analysis of the enforcement action; and

WHEREAS, on August 5, 2011 a total of 51 notices of violation (NOV) were issued to property owners adjacent to the Feather River East levee in West Linda, CA. This resolution only addresses the NOV 2011-272 issued to Carol Miller who owns Parcel 020-171-001 (5676 Riverside Drive, Olivehurst, CA); and

WHEREAS, on August 25, 2011, CVFPB staff received a hearing request from respondent; and

WHEREAS, on December 2, 2011, the CVFPB held a public hearing for Susan Legrand regarding the removal of unauthorized levee encroachments located on State-owned property along the Feather River Levee in West Linda, CA. The CVFPB determined by a majority vote that private encroachments exist on State owned property and directed staff to return with a proposal to clear a 20-foot wide levee toe maintenance corridor while minimizing the impact to adjoining private parcel owners. The CVFPB also requested staff to investigate a real estate

**ATTACHMENT B
AGENDA ITEM 7C**

solution that would allow the adjoining property owners continued use of the State land beyond the 20-foot maintenance corridor; and

WHEREAS, on January 11, 2012, the Record of Survey (2011-11) prepared by CTA Engineering and Surveying has been recorded at the Yuba County recorder's office; and

WHEREAS, on January 26, 2012, the CVFPB held public hearings in Marysville for the continued enforcement actions. CVFPB staff recommended option 1 presented at the January 10, 2012 community meeting. The CVFPB voted 7-0 in favor of CVFPB's staff recommended alternative. This decision was later vacated because the staff report distribution did not meet CVFPB's 10-day notification requirement; and

WHEREAS, on March 2, 2012, CVFPB held public hearings in Marysville for continued enforcement actions. CVFPB voted to continue the enforcement hearings to a future date to provide sufficient notification to the Respondents due to CVFPB regulations change. In addition, Ms. Vasquez was granted a separate hearing; and

WHEREAS, Permit No. 18690 was approved 7-0 with several conditions including drainage and mitigation for existing elderberries; and

WHEREAS, CVFPB hired ATKINS to perform an independent review of CTA's survey and all documents submitted by respondents. ATKINS found that CTA's survey accurately represents the State-owned property boundary; and

WHEREAS, As directed by CVFPB on March 2, 2012 and following several meetings between TRLIA and CVFPB staff, the maintenance corridor is proposed to be placed between 1-8 feet away from the SSJDD right-of-way. The 8-foot setback will be maintained where it is feasible with the proposed drainage features. There are no permanent structures on State-owned land that are affected by the proposed solution at the Respondent's property. Surface drainage from the levee and corridor will be drained via gravity flow, concrete-lined v-ditch and a culvert under Island Avenue; and

WHEREAS, the real estate proposal is to issue a conditional easement to the Respondent to allow the use and maintenance of State lands outside and landward of the 20-foot O&M corridor until there is a need for a public purpose. The easement will be recorded at Yuba County Recorder's office, run with the title of the land, making it transferable. The easement will be prepared, executed and recorded by TRLIA at no cost to the Respondent; and

WHEREAS, CVFPB staff, ATKINS, TRLIA, CTA and legal counsel have exercised professional due-diligence in review of all pertinent documents and staff is confident that the proposed alternative remains appropriate and is the best compromise; and

WHEREAS, the CVFPB has conducted an enforcement hearing for unauthorized encroachments in West Linda, CA and has reviewed the staff report, the documents and correspondence in its file, and given the Respondent the right to testify and present evidence on her behalf;

NOW, THEREFORE, BE IT RESOLVED THAT,

Findings of Fact

1. The Central Valley Flood Protection Board hereby adopts as findings the facts set forth in the Staff Report, evidence presented at the hearing and any other documents in the CVFPB's files.
2. The CVFPB has reviewed all Attachments listed in the Staff Report.

CEQA Findings

3. The CVFPB, acting as the CEQA lead agency, has determined the enforcement action is categorically exempt in accordance with CEQA Guidelines Section 15321 under Class 21 which covers actions of regulatory agencies to enforce standards.
4. **Custodian of Record.** The custodian of the CEQA record for the CVFPB is its Executive Officer, Jay Punia, at the CVFPB Offices at 3310 El Camino Avenue, Room 151, Sacramento, California 95821.

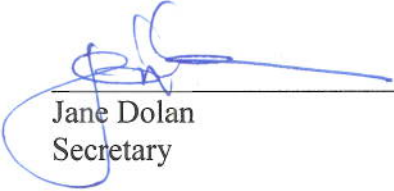
Approval of Resolution No. 2012-05

5. For the reasons stated on the staff report, staff recommends the CVFPB adopt Resolution No. 2012-05 to:
 - a. Order the respondent to remove all private fences and miscellaneous obstructions on State land within 60 days. If the respondent fails to do so, authorize removal of private fences and miscellaneous obstructions on State land subject to Permit No. 18690, including reasonable access to the State property to allow for the relocation of existing elderberries.
 - b. Authorize the CVFPB to, within 60 days, enter into a conditional easement with Carol Miller for the use and maintenance of a portion of State land adjoining the Feather River East levee.
 - c. In the event the Respondent refuses to sign the conditional easement, the new fence will be constructed at the SSJDD right of way.
 - d. Rescind the notice of violation (2011-272) subject to voluntary compliance with this resolution.
 - e. In the event the Respondents refuse to sign the conditional easement, the new fence will be constructed at the SSJDD right-of-way.
 - f. Direct staff to file a Notice of Exemption with the State Clearinghouse.
 - g. Direct Executive Officer to execute a conditional easement subject to review and concurrence from CVFPB President.

**ATTACHMENT B
AGENDA ITEM 7C**

PASSED AND ADOPTED by vote of the CVFPB on November 16, 2012.

William H. Edgar
~~Bill~~ Edgar
President


Jane Dolan
Secretary

Project Memo

To: Angeles Caliso, Central Valley Flood Protection Board
T.R.L.I.A. TAC Team

From: Kevin A. Heeney

Date: January 8, 2013

Re: Response to Carol Miller letters dated 12/13/2012 and 01/02/2013

Ms. Millers claims and assumptions are once again incorrect as it relates to our surveying work. I will attempt to respond to each claim relating to the survey from each letter.

December 13, 2012 letter, second paragraph:

"A portion of my parcel APN 020171001000 is made a part of APN 020010022000..."

This statement is not true. Ms. Miller is unfortunately relying on a GIS map (her Exhibit B, page 5 of 13 in her letter as well as pages 11, 12 and 13) prepared by the County of Yuba. GIS mapping is not a survey. It is a tool to assist in planning, emergency response and other governmental services. I've attached a full size plot of the image Ms. Miller captured on page 5 of her letter. Please note the disclaimer at the bottom that is applied to each printed copy by the County.

"APN 020010022000 is a hidden item attached to 2008 Deed of TRLIA"

The deed Ms. Miller references (Doc. No.2008R-019354) was a grant deed from a Mr. Henry Smith to TRLIA for a strip of land on the West or water side of the levee. It has absolutely nothing to do with Ms. Miller's property or any properties on the East or land side of the levee. She consistently refers to the exhibit plat that was attached as part of this deed as a "Certified Survey". That is incorrect. While it may be based upon much of the surveying we have done throughout the area, it is merely an exhibit to assist those reading the deed description to identify the extent and location of the acquisition.

"APN 020010022000 recorded as Eminent Domain"

While I was not a party to the negotiations with Mr. Smith, it appears as though TRLIA acquired the property through a grant deed executed by Mr. Smith and not by Final Order of Condemnation which would be the normal occurrence in an Eminent Domain case.

December 13, 2012 letter, paragraph four:

"this Deed was written from the 5/11 survey and includes a portion of my parcel..."

This statement is not true. The deed clearly identifies the land acquired as being a portion of the land deeded to Henry P. and Rosemary C. Smith (Book 608, Page 1, Official Records)

December 13, 2012 letter, paragraph 6:

"the transcript of Meeting of December 2, 2011 Kevin Heeney failed to report his 2007 Survey"

My testimony indicated that we had been doing survey and mapping work on the TRLIA projects for over 5 years and again, the "2007 Survey" is nothing more than an exhibit to a deed.

December 13, 2012 letter, paragraph 7:

"my parcel acres will change from .4242 Acres to?"

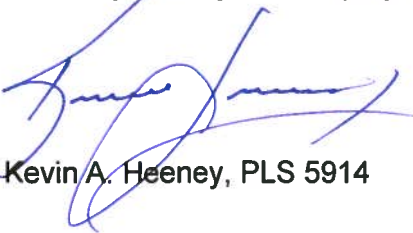
While I cannot speak for the County Assessor, Ms. Miller's property did not change from a surveying standpoint. She still owns a parcel that is 66' by 280', which is 18,480 square feet or 0.4242 acres.

In closing, I have also examined Ms. Miller's January 2, 2013 letter and her email to Angeles Caliso dated January 7, 2013. Her arguments related to the "2007 Survey" are the same as in her prior letter and without merit. As you are aware, our survey work has been through a review by the County Surveyor and a peer review by Mr. Michael E. Bailey, a licensed land surveyor with Atkins North America, Inc. Ms. Miller's reliance on the GIS mapping and her own, continued interpretations of documents is unfortunate. As the GIS disclaimer states, one should not use that information as a substitute for specific advice from a licensed professional.

I would again encourage Ms. Miller to retain the services of a licensed surveyor to review our work and advise her accordingly.

Respectfully submitted,

CTA Engineering & Surveying

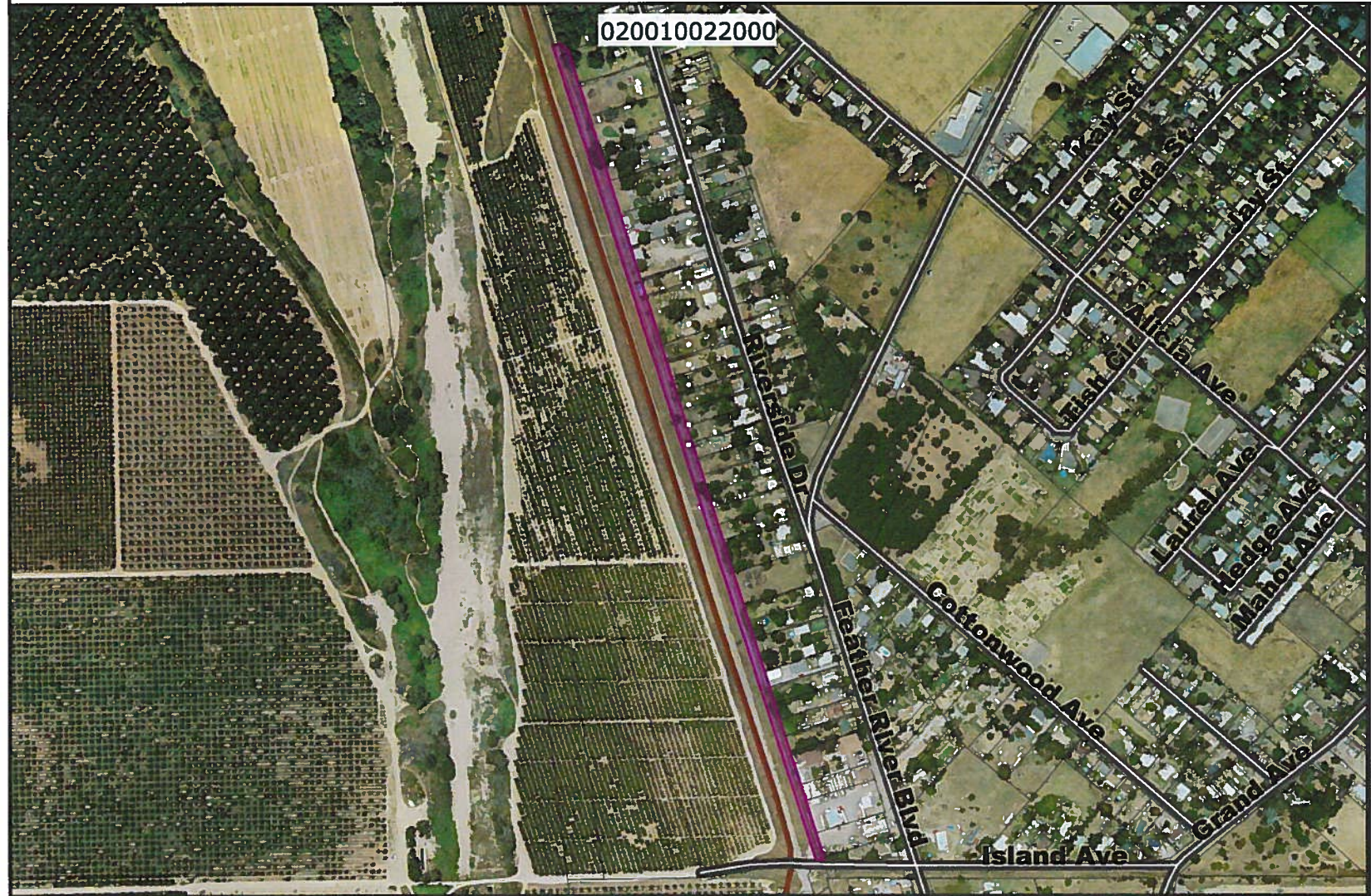


Kevin A. Heeney, PLS 5914



Yuba County GIS Mapping

APN 020010022000



020010022000

- Selected Features
- AIRPORT RUNWAYS
- BRIDGES
- HIGHWAYS
- RAILWAYS
- RESERVOIRS
- MAJOR RIVERS
- CITY BOUNDARY
- CENTERLINES
- LEVEES
- PARCEL LINES
- Central Aerial
- Northern Aerial
- Southern Aerial
- COUNTY BOUNDARY

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**ATTACHMENT D
AGENDA ITEM 7C**

Tax question pops up on Yuba County levee land

[By Ben van der Meer/ADbvandermeer](#)

2012-12-01 23:22:18



After a state board decided about 50 property owners in west Linda were partially on state-owned land needed for a levee maintenance road, a question came up: Were those same property owners paying property taxes, in some cases for decades, when they shouldn't have been?

The answer, from Yuba County Assessor Bruce Stottlemeyer, is ... maybe.

Generally, assessments would be made on what county deeds and maps showed the property lines to be, he said.

"We estimate the value of land by its dimensions as listed on the map," he said.

State flood-control officials, in conjunction with the Three Rivers Levee Improvement Authority, determined otherwise after surveying the area, which encompasses about 50 parcels along Riverside Drive and Feather River Boulevard, east of the Feather River.

What would be harder to determine, Stottlemeyer said, is how much money those assessments brought in. Since Proposition 13 in 1978, assessments are based on the value of the property as defined by the most recent time someone bought it.

That means while some of the 50 or so parcels may be assessed based on a purchase in the 2000s, for example, others had their value last assessed in the late 1970s, and in some properties have not changed hands since the 1940s.

In most cases, the amount of property state officials said the owners mistakenly believed they owned is fairly small in relation to the overall lots, Stottlemeyer said.

"I would just say it's on a case-by-case basis," he said. "There very well could be a justification for adjustment."

At least one property owner said his family plans to press the issue.

Philip Miller, whose family has owned a lot on Riverside since the 1940s, said he and his siblings still contend they're not on state land at all.

TRLIA's survey was of he and his neighbors' parcels but not the state land itself, even though old surveys of the state land — when it was owned by a railroad — suggest a different property line, he said.

Because his family has paid property taxes on the disputed land, he said, they should own it through adverse condemnation. If not, he'll be approaching the assessor, he said.

"We will challenge it," he said of the tax assessment, though he laughed when asked if he thinks his family will receive any reimbursement for taxes already paid. "Probably, those will be donated to the county."

ATTACHMENT D AGENDA ITEM 7C

Stottlemeyer said his office only assesses property, so any decision to actually change tax bills would be up to the county's auditor-controller and/or Board of Supervisors.

Another property owner along the disputed area, Monty Hecker, said he's been told he won't be assessed on the state land, though his private security firm extends onto a portion of it.

"I was fairly content with how it worked out," said Hecker, who, like others, had disputed the state's survey. "You can fight something for so long, but we need to get to a point to have protection back here."

CONTACT Ben van der Meer at bvandermeer@appealdemocrat.com or 749-4786. Find him on Facebook at /ADbvandermeer or on Twitter at @ADbvandermeer.

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