

**Meeting of the Central Valley Flood Protection Board
January 28, 2011**

Staff Report

**Three Rivers Levee Improvement Authority
Elderberry Shrubs Transplantation - Anderson Mitigation Site – Yuba County**

1.0 – ITEM

Consider approval of Permit No. 18642 (Attachment B).

2.0 – APPLICANT

Three Rivers Levee Improvement Authority.

3.0 – LOCATION

The proposed project is located within the existing Anderson Mitigation Site along the overflow area of the left bank levee of the Feather River approximately six miles south of the City of Marysville and the confluence of the Feather and Yuba Rivers, in Yuba County (Attachments A and C).

4.0 – DESCRIPTION

The project consists of transplanting 34 impacted elderberry shrubs from the applicant's Upper Yuba Levee Improvement Project (UYLIP) and additional elderberry seedlings within the 14-acre northern portion of the existing Anderson Mitigation Site. The proposed UYLIP mitigation area also includes approximately 10 acres on the southern portion for compensation and crediting of the required planting of elderberry seedlings and associated native species (Attachment C).

5.0 – PROJECT ANALYSIS

Refer to Attachments D1, D2, and D3 for Planting Plans for dormant season and non-dormant season, respectively.

5.1 – Project Background

The Three Rivers Levee Improvement Authority has received permission from the Board (Permit No. 18577BD) to strengthen and modify the south levees of the Yuba River from Simpson Lane to Yuba Goldfields, pending a 33 U.S.C Section 408 approval by the U. S. Army Corps of Engineers. The Upper Yuba Levee Improvement Project will impact 34 elderberry shrubs requiring mitigation. The proposed mitigation is to transplant the impacted elderberry shrubs and plant additional elderberry seedlings and associated plant species to the existing Anderson Mitigation Site. This approach was agreed to by the U. S. Fish and Wildlife Service in their Biological Opinion dated August 16, 2010 issued for the UYLIP. TRLIA has requested the Board to allow the transplantation of these impacted shrubs and additional elderberry seedlings and associated species in a letter dated February 22, 2010.

The Anderson Mitigation Site is a 75-acre mitigation site established by the Corps and the Board in 1996 to mitigate for significant adverse environmental impacts resulting from the construction of the Marysville/Yuba City Area Levee Reconstruction Project. This mitigation site is considered a functional unit of the levee reconstruction project. It was intended to provide for mitigation for project-related adverse effects to riparian woodland, riparian scrub, and emergent marsh habitats (22 acres), and habitat losses for the Federally-listed threatened Valley Elderberry Longhorn Beetle (53 acres).

During the construction of the Maryville/Yuba City Area Levee Reconstruction Project, work at a portion of the south levee of the Yuba River, referred to as the “patrol road” was removed from the project. The removal of this portion of the project resulted in a substantial reduction in adverse environmental effects and therefore the amount of compensatory mitigation required. However, because much of the mitigation construction work has already been accomplished and little savings would have been achieved by modifying the construction contract, the Board and the Corps decided to construct the entire mitigation site as originally planned. Thus, there is extra capacity for elderberry mitigation at the site where TRLIA can utilize for the UYLIP mitigation.

The State sponsor for the Marysville/Yuba City Area Levee Reconstruction Project was the CVFPB and the local sponsors included RD 784, LD 1, LD 9, RD 10, Marysville Levee Commission, Yuba County Water Agency, and the West Feather River Levee Reconstruction Agency. Under the Local Project Cooperation Agreement, the Anderson Mitigation Site is to be operated and maintained by the local sponsors. The local sponsors are currently negotiating an agreement in which RD 784 will be charged with the operation and maintenance of this site. The site is located within the jurisdiction of RD 784.

5.2 – Project Design Review

TRLIA is proposing to utilize approximately 24 acres of the Anderson Mitigation Site, consisting of a north area (14 acres) and a south area (10 acres), for its UYLIP mitigation (Attachment C). The 34 elderberry shrubs will be transplanted within the north area of the existing mitigation site. If transplanting occurs during the dormant season (November 1-February 15), 22 additional elderberry seedlings will be planted in the north area. If transplanting is delayed until after the dormant season, an additional 1,318 elderberry seedlings would have to be planted in the north area. The existing elderberry shrubs and associated species present in the south area will be credited to TRLIA for the required compensation. TRLIA will maintain the south area to ensure survival of existing elderberry shrubs and associated native species to comply with the compensation requirement of the U.S. Fish and Wildlife Service's Conservation Guidelines for the Valley Elderberry Longhorn Beetle.

Board staff has reviewed the following documents, provided by the applicant, in preparation of this staff report:

- Planting Plan
- USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle
- USFWS Biological Opinion dated August 16, 2010
- UYLIP Initial Study/Mitigated Negative Declaration, February 2010
- Feather River Setback Levee Hydraulic Analysis
- O&M Manual- Anderson Mitigation Site
- Maintenance Agreement between TRLIA and RD 784

Planting Plan

The 34 impacted elderberry shrubs will be transplanted according to the guidelines outlined in the Conservation Guidelines for the Valley Elderberry Longhorn Beetle (USFWS, 1999). The shrubs will be transplanted within an approximately 1.4-acre area designated within the 14-acre north area of the Anderson Mitigation Site. The transplant area consists of 35 plots that provide 1,800 square feet for each of the 34 transplanted elderberry shrubs. One open plot is provided within the transplant area to be used for additional elderberry transplants or additional seedlings/cuttings if needed (Attachments D1 and D2).

As mentioned above, if transplanting occurs during the dormant season (November 1-February 15), 22 additional elderberry seedlings will be planted in the north area. If transplanting is delayed until after the dormant season, an additional 1,318 elderberry seedlings would have to be planted in the north area. Since associated species already existed at the site, no additional associated species are required to be planted in any of the two transplantation seasons. TRLIA also will receive credit for the existing elderberry shrubs present in the south area (Attachment D3).

TRLIA is contracting with Restoration Resources to monitor and maintain the UYLIP elderberry mitigation area for three years. After three years, RD 784 will maintain the mitigation area in accordance with the Maintenance Agreement between the RD 784 and TRLIA (Attachment G). RD 784 is currently maintaining the existing Anderson Mitigation Site.

Operation and Maintenance

The operation and maintenance of the existing Anderson Mitigation Site is the responsibility of the local sponsors of the Marysville/Yuba City Area Levee Reconstruction Project, which includes RD 784 (Attachment F). As previously stated, the local sponsors are currently negotiating an agreement in which RD 784 will be charged with the operation and maintenance of the mitigation site. In addition, TRLIA has executed a Maintenance Agreement with RD 784 in which TRLIA will pay \$5,000 to RD 784 for operation and maintenance of the UYLIP mitigation areas (Exhibit A of Attachment B).

License

Section 19 of Title 23 of the California Code of Regulations requires that any encroachment constructed or maintained upon lands owned by the Sacramento and San Joaquin Drainage District be permitted by a proper and revocable license, lease, easement, or agreement between the owner of the encroachment and the district, and upon payment to the district of its expenses and adequate rental or compensation. The applicant has negotiated a license with the SSJDD for the use of the district's land. A partially-executed license is attached as Attachment E. The license is to be executed contemporaneously with the issuance of the encroachment permit. The applicant is considering entering into a long-term joint use agreement with SSJDD in the future. The long-term joint use agreement will ensure that TRLIA can continue to use the land without threat of having a license revoked, except to the extent permitted in the agreement.

5.3 – Hydraulic Analysis

The Anderson Mitigation Site is located within the floodway of the new setback levee (Feather River Segment 2) constructed by TRLIA. TRLIA conducted a hydraulic analysis for the setback levee project using hydraulic vegetation parameters for the existing mitigation area. The proposal would add 34 transplanted shrubs and 22 additional seedlings into a small area that is already heavily wooded. The only hydraulic parameter that would change would be the hydraulic roughness (n-value) and this would increase by maybe 2 or 3 percent over a small area of the site. The slight increase in vegetation cover from the proposed plantings are so small with respect to the existing vegetation cover, no change to the hydraulic vegetation parameters would be warranted. No separate hydraulic evaluation was done for the proposed additional plantings at the Anderson Mitigation Site because it is intuitive that this would not cause any hydraulic impact.

5.4 – Geotechnical Analysis

The proposed planting project is not expected to have any geotechnical impacts related to the integrity of project levees and the floodway.

5.5 – Project Benefits

The project has the following benefits associated with its completion:

- Make use of the extra capacity of an established mitigation site,
- Preserve and enhance habitat for endangered species,
- Cost savings. The transplantation of the impacted elderberry shrubs to the Anderson Mitigation Site will cost approximately \$200,000 during the dormant season. It will cost approximately \$680,000 to transplant the impacted elderberry shrubs to an offsite location. Transplanting during the non-dormant season costs a lot more.

6.0 – AGENCY COMMENTS AND ENDORSEMENTS

The comments and endorsements associated with this project, from all pertinent agencies are shown below:

- A favorable U.S. Army Corps of Engineers (Corps) 208.10 letter is expected to be received prior to the January 28, 2011 meeting and will be incorporated to Permit No. 18642 as Exhibit A.
- Reclamation District 784 has endorsed the project with conditions which are incorporated by reference as Exhibit B in the draft Permit No. 18642.

7.0 – PROPOSED CEQA FINDINGS

Board staff has prepared the following CEQA Findings:

The Board, as a Responsible Agency under CEQA, has reviewed the Initial Study, Mitigated Negative Declaration (IS/MND) (State Clearinghouse No: 2010022039, February 2010) and Mitigation Monitoring and Reporting Plan (MMRP) for the Upper Yuba Levee Improvement Project prepared by the lead agency, Three Rivers Levee Improvement Authority. These documents including project design, elderberry shrub mitigation, and Three Rivers Levee Improvement Authority resolutions may be viewed or downloaded from the Central Valley Flood Protection Board website at <http://www.cvfpb.ca.gov/meetings/2011/01-28-2011.cfm> under a link for this agenda item. The documents are also available for review in hard copy at the Board and Three Rivers Levee Improvement Authority offices.

The Three Rivers Levee Improvement Authority determined that the project would not have a significant effect on the environment and adopted Resolution 2010-01 on April 20, 2010. Board staff finds that although the proposed project could have a potentially significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. The project proponent has incorporated mandatory mitigation measures into the project plans to avoid identified impacts or to mitigate such impacts to a point where no significant impacts will occur. These mitigation measures are included in the project proponent's MMRP and address impacts to air quality, biological resources, cultural resources and geology, hazardous materials, hydrology, noise, and transportation. The description of the mitigation measures are further described in the adopted MMRP.

8.0 – SECTION 8610.5 CONSIDERATIONS

1. Evidence that the Board admits into its record from any party, State or local public agency, or nongovernmental organization with expertise in flood or flood plain management:

The Board has considered all the evidence presented in this matter, including the permit application, this Staff Report and attachments. The Board has also considered all letters and other correspondence received by the Board and in the Board's files related to this matter.

The custodian of the file is Executive Officer Jay Punia at the Central Valley Flood Protection Board.

2. The best available science that related to the scientific issues presented by the executive officer, legal counsel, the Department or other parties that raise credible scientific issues.

The accepted industry standards for the work proposed under this permit as regulated by Title 23 have been applied to the review of this permit.

3. Effects of the decision on the entire State Plan of Flood Control:

This project does not have significant impacts on the State Plan of Flood Control, as the project does not impair the structural or hydraulic functions of the system.

4. Effects of reasonable projected future events, including, but not limited to, changes in hydrology, climate, and development within the applicable watershed:

There are no other foreseeable projected future events that would impact this project.

9.0 – STAFF RECOMMENDATION

Staff recommends that the Board:

- a. approve Permit No. 18642 (Attachment B) conditioned upon receipt of a favorable Corps 208.10 letter;
- b. approve the Board's CEQA Findings;
- c. direct the Executive Officer to take necessary actions to prepare and execute the permit and related documents; and
- d. direct the Executive Officer to prepare and file a Notice of Determination with the State Clearinghouse.
- e. delegate to the Executive Officer the authority to execute a long-term joint use agreement with the applicant in the future.

10.0 – LIST OF ATTACHMENTS

1. Attachment A - Location Map
2. Attachment B - Draft Permit No. 18642
 - Exhibit A: Maintenance Agreement between TRLIA and RD 784
 - Exhibit B: Corps 208.10 Letter (expected prior to 01/28/2011 Meeting)
 - Exhibit C: RD 784 Special Conditions for Permit No. 18642
3. Attachment C - Project Map
4. Attachment D1 - Planting Plan (dormant season)
5. Attachment D2 - Planting Plan (non-dormant season)
6. Attachment D3 - Existing Elderberry Shrubs in the South Area
7. Attachment E - Partially-executed Sacramento and San Joaquin Drainage District License
8. Attachment F - O&M Manual – Anderson Mitigation

Technical Review:	Dan S. Fua, P.E.
Environmental Review:	Andrea Mauro, E.S.
Permit Writer:	Nancy Moricz, P. E.
Real Estate Review:	Jeremy Goldberg, Attorney Allie Lopez

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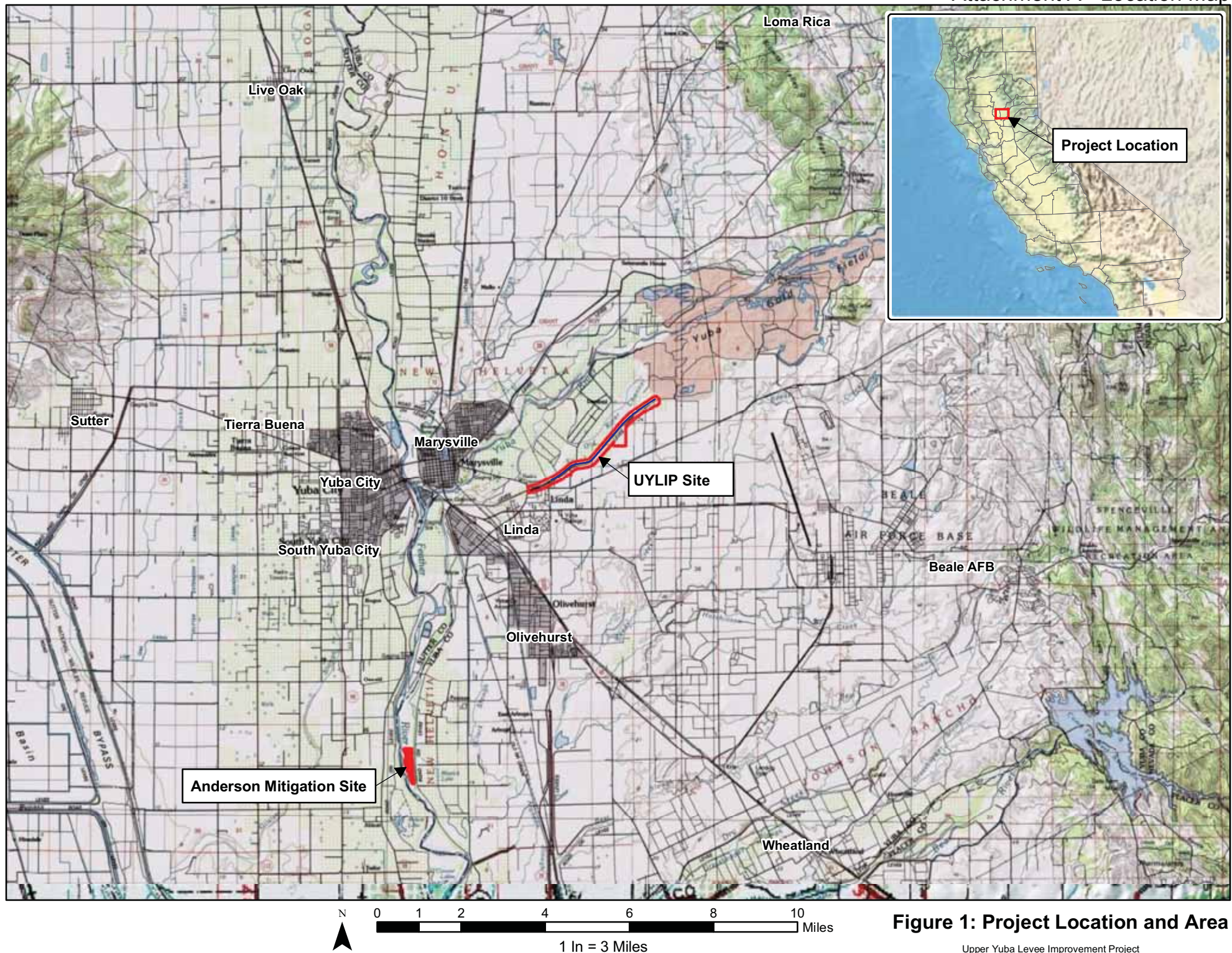


Figure 1: Project Location and Area

Upper Yuba Levee Improvement Project

DRAFT

STATE OF CALIFORNIA
THE RESOURCES AGENCY
THE CENTRAL VALLEY FLOOD PROTECTION BOARD

PERMIT NO. 18642 BD

This Permit is issued to:

Three Rivers Levee Improvement Authority
114 Yuba Street, Suite 218
Marysville, California 95901

To transplant approximately 34 elderberry shrubs, additional elderberry seedlings, and associated species within the 14-acre northern portion and 10-acre southern portion of the existing Anderson Mitigation Site, located on the overflow area of the left (east) bank levee of the Feather River. The project is located south of Marysville and west of Anderson Avenue (Section 23, T14N, R3E, MDB&M, Reclamation District 784, Feather River, Yuba County).

NOTE: Special Conditions have been incorporated herein which may place limitations on and/or require modification of your proposed project as described above.

(SEAL)

Dated: _____

Executive Officer

GENERAL CONDITIONS:

ONE: This permit is issued under the provisions of Sections 8700 – 8723 of the Water Code.

TWO: Only work described in the subject application is authorized hereby.

THREE: This permit does not grant a right to use or construct works on land owned by the Sacramento and San Joaquin Drainage District or on any other land.

FOUR: The approved work shall be accomplished under the direction and supervision of the State Department of Water Resources, and the permittee shall conform to all requirements of the Department and The Central Valley Flood Protection Board.

FIVE: Unless the work herein contemplated shall have been commenced within one year after issuance of this permit, the Board reserves the right to change any conditions in this permit as may be consistent with current flood control standards and policies of The Central Valley Flood Protection Board.

SIX: This permit shall remain in effect until revoked. In the event any conditions in this permit are not complied with, it may be revoked on 15 days' notice.

SEVEN: It is understood and agreed to by the permittee that the start of any work under this permit shall constitute an acceptance of the conditions in this permit and an agreement to perform work in accordance therewith.

EIGHT: This permit does not establish any precedent with respect to any other application received by The Central Valley Flood Protection Board.

NINE: The permittee shall, when required by law, secure the written order or consent from all other public agencies having jurisdiction.

TEN: The permittee is responsible for all personal liability and property damage which may arise out of failure on the permittee's part to perform the obligations under this permit. If any claim of liability is made against the State of California, or any departments thereof, the United States of America, a local district or other maintaining agencies and the officers, agents or employees thereof, the permittee shall defend and shall hold each of them harmless from each claim.

ELEVEN: The permittee shall exercise reasonable care to operate and maintain any work authorized herein to preclude injury to or damage to any works necessary to any plan of flood control adopted by the Board or the Legislature, or interfere with the successful execution, functioning or operation of any plan of flood control adopted by the Board or the Legislature.

TWELVE: Should any of the work not conform to the conditions of this permit, the permittee, upon order of The Central Valley Flood Protection Board, shall in the manner prescribed by the Board be responsible for the cost and expense to remove, alter, relocate, or reconstruct all or any part of the work herein approved.

SPECIAL CONDITIONS FOR PERMIT NO. 18642 BD

THIRTEEN: All work approved by this permit shall be in accordance with the submitted drawings and specifications except as modified by special permit conditions herein. No further work, other than that approved by this permit, shall be done in the area without prior approval of the Central Valley Flood Protection Board.

FOURTEEN: The permittee shall maintain the permitted encroachment(s) and the project works within the utilized area in the manner required and as requested by the authorized representative of the Department of Water Resources or any other agency responsible for maintenance, and in accordance with the Maintenance Agreement between Reclamation District 784 and Three Rivers Levee Improvement Authority, which is attached to this permit as Exhibit A and is incorporated by reference.

FIFTEEN: The permittee shall defend, indemnify, and hold the Central Valley Flood Protection Board and the State of California, including its agencies, departments, boards, commissions, and their respective officers, agents, employees, successors and assigns (collectively, the "State"), safe and harmless, of and from all claims and damages related to the Central Valley Flood Protection Board's approval of this permit, including but not limited to claims filed pursuant to the California Environmental Quality Act. The State expressly reserves the right to supplement or take over its defense, in its sole discretion.

SIXTEEN: The mitigation measures approved by the CEQA lead agency and the permittee are found in its Mitigation and Monitoring Reporting Program (MMRP) adopted by the CEQA lead agency. The permittee shall implement all such mitigation measures.

SEVENTEEN: The permittee is responsible for all liability associated with construction, operation, and maintenance of the permitted encroachments and shall defend and hold the Central Valley Flood Protection Board and the State of California; including its agencies, departments, boards,

commissions, and their respective officers, agents, employees, successors and assigns (collectively, the "State"), safe and harmless, of and from all claims and damages arising from the project undertaken pursuant to this permit, all to the extent allowed by law. The State expressly reserves the right to supplement or take over its defense, in its sole discretion.

EIGHTEEN: The permittee shall be responsible for securing any necessary permits incidental to habitat manipulation and restoration work completed in the flood control project, and will provide any biological surveying, monitoring, and reporting needed to satisfy those permits.

NINETEEN: The permittee agrees to incur all costs for compliance with local, State, and Federal permitting and resolve conflicts between any of the terms and conditions that agencies might impose under the laws and regulations it administers and enforces.

TWENTY: The Central Valley Flood Protection Board, Department of Water Resources, and Reclamation District 784 shall not be held liable for damages to the permitted encroachment(s) resulting from releases of water from reservoirs, flood fight, operation, maintenance, inspection, or emergency repair.

TWENTY-ONE: The permittee shall be responsible for repair of any damages to the project levee and other flood control facilities due to construction, operation, or maintenance of the proposed project.

TWENTY-TWO: Any construction activities, other than those associated with the transplant of the elderberry shrubs and seedlings, shall not be permitted during the flood season from November 1 to April 15 without prior approval of the Central Valley Flood Protection Board.

TWENTY-THREE: The permittee shall provide supervision and inspection services acceptable to the Central Valley Flood Protection Board.

TWENTY-FOUR: Proposed vegetative rows shall be parallel to the direction of the overbank flow and shall not direct the flows toward any levee.

TWENTY-FIVE: The ground surface shall be kept clear of fallen trees, branches, and debris.

TWENTY-SIX: Cleared trees and brush (or prunings therefrom) shall be completely burned or removed from the floodway, and downed trees or brush shall not remain in the floodway during the flood season from November 1 to April 15.

TWENTY-SEVEN: After each period of high water, debris that accumulates at the site shall be completely removed from the floodway.

TWENTY-EIGHT: All debris generated by this project shall be disposed of outside the floodway.

TWENTY-NINE: No new wild rose, grape, blackberries, or other bushy thickets shall be propagated at this site, except for those described within this permit.

THIRTY: The work area shall be restored to the condition that existed prior to start of work.

THIRTY-ONE: Areas where plantings are lost to erosion on the floodplain shall not be replanted.

THIRTY-TWO: The landscaping, appurtenances, and maintenance practices shall conform to standards contained in Section 131 of the Central Valley Flood Protection Board's Regulations.

THIRTY-THREE: If the proposed project result(s) in an adverse hydraulic impact, the permittee shall provide appropriate mitigation measures, to be approved by the Central Valley Flood Protection Board, prior to implementation of mitigation measures.

THIRTY-FOUR: The permittee may be required, at permittee's cost and expense, to remove, alter, relocate, or reconstruct all or any part of the permitted encroachment(s) if removal, alteration, relocation, or reconstruction is necessary as part of or in conjunction with any present or future flood control plan or project or if damaged by any cause. If the permittee does not comply, the Central Valley Flood Protection Board may remove the encroachment(s) at the permittee's expense.

THIRTY-FIVE: If the project, or any portion thereof, is to be abandoned in the future, the permittee or successor shall abandon the project under direction of the Central Valley Flood Protection Board and Department of Water Resources, at the permittee's or successor's cost and expense.

THIRTY-SIX: The permittee shall contact the Department of Water Resources by telephone, (916) 574-0609, and submit the enclosed postcard to schedule a preconstruction conference. Failure to do so at least 10 working days prior to start of work may result in delay of the project.

THIRTY-SEVEN: The permittee should contact the U.S. Army Corps of Engineers, Sacramento District, Regulatory Branch, 1325 J Street, Sacramento, California 95814, telephone (916) 557-5250, as compliance with Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act may be required.

THIRTY-EIGHT: The permittee shall comply with all conditions set forth in the letter from the U.S. Army Corps of Engineers dated XXXXXXXX, which is attached to this permit as Exhibit B and is incorporated by reference.

THIRTY-NINE: The permittee shall comply with all conditions set forth in project endorsement from Reclamation District 784 dated November 2, 2010, which is attached to this permit as Exhibit C and incorporated by reference.

FORTY: This permit shall run with the land and all conditions are binding on permittee's successors and assigns.

FORTY-ONE: No transplantation of elderberry shrubs and associated species shall be conducted until the permittee secures the required license and/or joint use agreement with the Sacramento and San Joaquin Drainage District.

**MAINTENANCE AGREEMENT
BETWEEN RECLAMATION DISTRICT 784
AND
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
FOR THE
ANDERSON MITIGATION SITE**

This Agreement is entered into by and between Reclamation District 784, hereinafter referred to as the "District," and the Three Rivers Levee Improvement Authority, hereinafter referred to as "TRLIA", on this FOURTH day of JANUARY 2011, in view of the following circumstances:

WHEREAS, TRLIA is constructing levee repairs to the South Levee of the Yuba River ("Project") in partnership with the Department of Water Resources as an Early Implementation Program Project ; and

WHEREAS, TRLIA is required under the Endangered Species Act to mitigate for impacts to 34 elderberry shrubs caused by the Project; and

WHEREAS, the Central Valley Flood Protection Board has granted a permit for the construction of the Project under Permit 18577; and

WHEREAS, the Anderson Mitigation Site is an existing mitigation site that was established by the Corps of Engineers and the Department of Water Resources to provide for mitigation for repair projects to the Sacramento River Flood Control Project; and

WHEREAS, the Project is a feature of the Sacramento River Flood Control Project; and

WHEREAS, the District currently maintains the Anderson Mitigation Site for other entities that created the mitigation site; and

WHEREAS, TRLIA wishes to utilize the existing Anderson Mitigation Site for elderberry shrub impacts caused by the Project, and has submitted an application for an encroachment permit from the Central Valley Flood Protection Board; and

WHEREAS, use of the existing Anderson Mitigation Site by TRLIA would add minimal additional maintenance requirements; and

WHEREAS, TRLIA and the District wish to enter into this Agreement in order to ensure long term maintenance of the transplanted elderberry shrubs.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants provided herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by TRLIA and the District, it is hereby agreed as follows:

Exhibit A

1. Terms of Agreement. The District agrees to maintain the TRLIA transplanted elderberry shrubs and additional seedlings on the Anderson Mitigation Site in the same manner as it currently maintains other existing plantings at the Anderson Mitigation Site. The District will continue to follow the existing manual, Mitigation Site Operations and Maintenance Manual, Sacramento River Flood Control Project, Phase II, Marysville-Yuba City Area Levee Reconstruction Project, established by the Corps of Engineers.
2. Compensation. For this additional maintenance TRLIA agrees to pay the District a sum of \$5,000 annually.
3. Obligations of TRLIA. TRLIA or its agents shall perform or cause to be performed all monitoring required for the transplanted shrubs and associated seedlings.
4. Termination of Agreement. This Agreement may be terminated upon written notice of either party.
5. Amendment. This Agreement may not be modified or amended unless agreed to in writing by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

RECLAMATION DISTRICT 784

By 

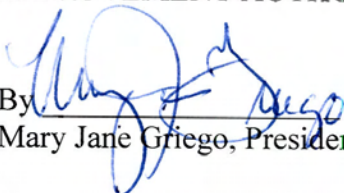
Date 1-14-11

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

By 

Date 1/14/11

THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY

By 
Mary Janie Griego, President

Date 1-14-2011

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

By _____
Scott L. Shapiro, General Counsel

Date _____

1. Terms of Agreement. The District agrees to maintain the TRLIA transplanted elderberry shrubs and additional seedlings on the Anderson Mitigation Site in the same manner as it currently maintains other existing plantings at the Anderson Mitigation Site. The District will continue to follow the existing manual, Mitigation Site Operations and Maintenance Manual, Sacramento River Flood Control Project, Phase II, Marysville-Yuba City Area Levee Reconstruction Project, established by the Corps of Engineers.
2. Compensation. For this additional maintenance TRLIA agrees to pay the District a sum of \$5,000 annually.
3. Obligations of TRLIA. TRLIA or its agents shall perform or cause to be performed all monitoring required for the transplanted shrubs and associated seedlings.
4. Termination of Agreement. This Agreement may be terminated upon written notice of either party.
5. Amendment. This Agreement may not be modified or amended unless agreed to in writing by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

RECLAMATION DISTRICT 784

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

By _____

By _____

Date _____

Date _____

THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

By _____
Mary Jane Griego, President

By Andrea P. Clark for Scott Shapiro
Scott L. Shapiro, General Counsel

Date _____

Date 1-14-11

APPLICATION FOR A RECLAMATION BOARD ENCROACHMENT PERMIT

Application No. 18642

(For Office Use Only)

1. Description of proposed work:

Transplant approximately 34 elderberry shrubs and plant additional associated species into an existing mitigation site (Anderson Site) to mitigate elderberry impacts from the Upper Yuba Levee Improvement Project. See Attachment A for more details. The Three Rivers Levee Improvement Authority (TRLIA) intends to meet the requirements presented in the CVFPB letter of September 16, 2010 in order to utilize this existing mitigation site.

2. Location: South of Marysville, Yuba County, in Section Section 23,Township: 14N (N)
(S), Range 3E (W), M. D. B. & M.3. Three Rivers Levee Improvement Authority of 114 Yuba Street, Suite 218
Name of Applicant AddressMarysville
CityCA
State95901
Zip Code530-749-7841
Telephone Number530-749-6990
Fax Number

4. Endorsement: (of Reclamation District)

We, the Trustees of Reclamation District No. 784
Name and District Number

approve this plan, subject to the following conditions:

☐ Conditions listed on back of this form☒ Conditions Attached☐ No ConditionsTrustee Pick BromDate 11-2-10

Trustee _____

Date _____

5. Names and addresses of adjacent property owners sharing a common boundary with the land upon which the contents of this application apply. If additional space is required, list names and addresses on back of the application form or an attached sheet.

See Attachment B

Name

Address

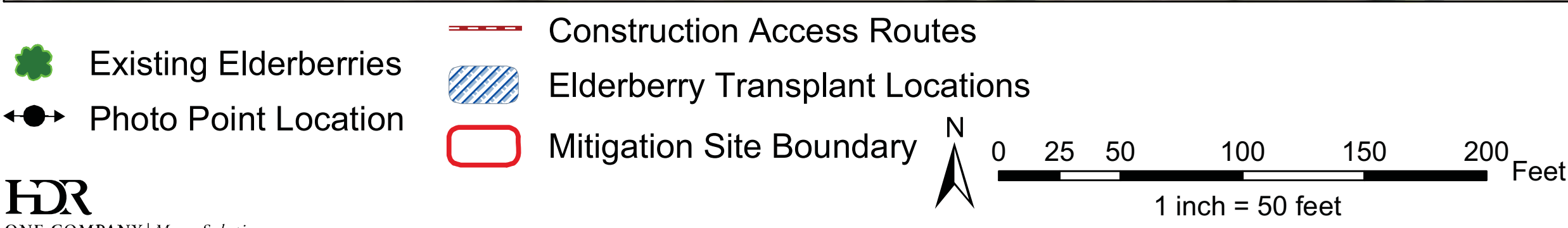
Zip Code

Reclamation District No. 784 has the following conditions to be included on the Central Valley Flood Protection Board Encroachment Permit to transplant approximately 34 elderberry shrubs and plant additional associated species into the existing Anderson Road Mitigation Site to mitigate elderberry impacts from the Upper Yuba Levee Improvement Project:

1. All improvements shall meet Central Valley Flood Protection Board Standards;
2. The proposed project shall not increase, as determined by the U.S. Corps of Engineers and the California Central Valley Flood Protection Board the 1-in-100 and 1-in-200 water surface elevation or the velocity on the east or west bank of the Feather River;
3. Grading or Tree Plantings shall be designed not to direct water towards the existing levee or the diversion levees. Grading shall not affect the hydraulic characteristics of the river in a negative manner;
4. A copy of operation and maintenance manual shall be provided to Reclamation District No. 784 upon completion of the work;
5. A set of As-Built Mylar plans shall be provided to Reclamation District No. 784 upon completion of the work;
6. A copy of the final Central Valley Flood Protection Board Permit shall be provided to Reclamation District No. 784 prior to any work.
7. Reclamation District No. 784 shall be notified five (5) working days prior to any construction activities.
8. Reclamation District No. 784 shall be included in all construction status meetings.
9. Reclamation District No. 784 shall be reimbursed for all costs directly related to proposed work on the Central Valley Flood Protection Board Standards.



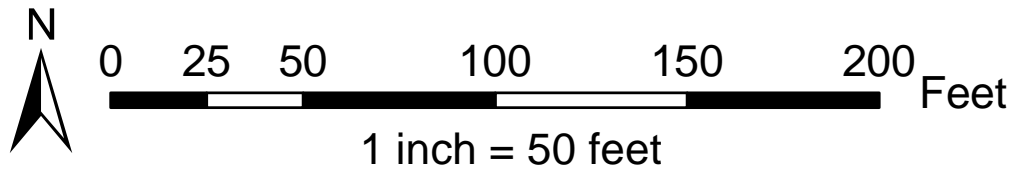
Figure 3: Anderson Mitigation Site and Vicinity
Habitat Map



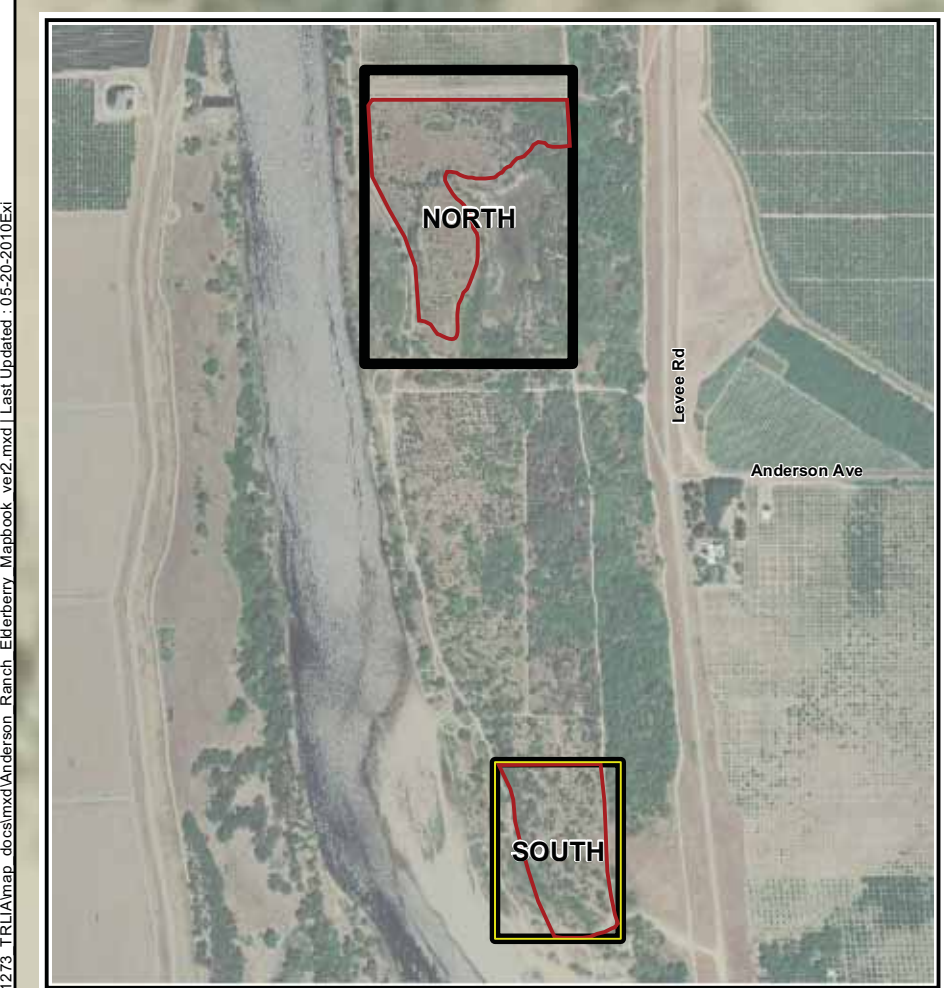
Anderson Mitigation Site
Elderberry Planting Plan NORTH Area
Figure 4



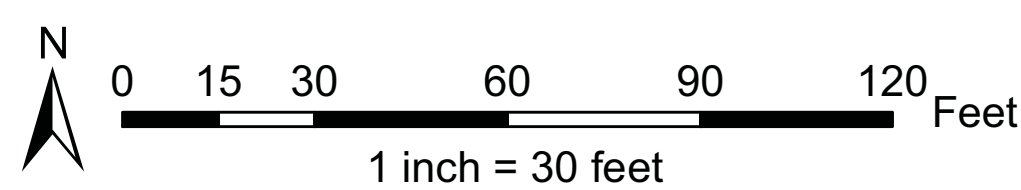
- x Elderberry Seedling Locations
- 100 ft from Roads
- Construction Access Routes
- Elderberry Transplant Area
(# indicates the UYLIP Elderberry Shrub ID)
- T Elderberry Transplant Locations
- Photo Point Locations
- Existing Elderberries
- Mitigation Site Boundary



Anderson Mitigation Site
Elderberry Planting Plan NORTH Area
Figure 4



-  Existing Elderberries
 Photo Point Location
 Construction Access Routes
 Elderberry Transplant Locations
 Mitigation Site Boundary



Anderson Mitigation Site
Elderberry Planting Plan SOUTH Area
Figure 4

Maint. Yard: Reclamation 784
Location: Anderson Mitigation Site
Confluence of the Yuba-Feather
Rivers
Parcel No.: Yuba County APN(s) 1437000100
and 14290001000

State of California
CENTRAL VALLEY FLOOD PROTECTION BOARD

LICENSE

THE SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, acting by and through the Central Valley Flood Protection Board of the State of California, hereinafter referred to as BOARD, licenses revocable, nonexclusive use of State property, hereinafter referred to as PREMISES, at the location and under conditions set forth in Sections 1, 2, and 3 of this License.

SECTION 1

LICENSEE: Three Rivers Levee Improvement Authority and agents of TRLIA

LICENSEE ADDRESS AND PHONE: c/o Paul Brunner
1114 Yuba Street, Ste 218
Marysville, CA 95901
(530)749-7841

STATE ADDRESS: The Central Valley Flood Protection Board
c/o Department of Water Resources
Division of Engineering
Real Estate Branch
Post Office Box 942836
Sacramento, California 94236-0001

LOCATION: Yuba County. See Section 3 (map)

LICENSED USE: Planting, maintenance and operation of mitigation area

IMPROVEMENTS LICENSED FOR USE:

TERM: Ten years

LICENSE FEE: \$100 annual fee

INSURANCE REQUIRED: _____ yes ☒ no

CONSENT OF TENANT REQUIRED: _____ yes ☒ no

SPECIAL CONDITIONS:

SECTION 2

1. **USE OF PREMISES: LICENSED USE** is to be strictly construed. LICENSEE shall not use or permit use of any part of PREMISES for any purpose or purposes other than the use hereinabove specified. This License is revocable permission, grants no interest in real property to LICENSEE for the use herein licensed, and BOARD does not warrant that the land is capable of being used for the licensed use. This License and the uses licensed hereunder are not assignable.

 LICENSEE shall exercise reasonable care that no damage shall occur to PREMISES and shall not do or permit any act or thing to be done upon the PREMISES which is a nuisance or which may disturb the quiet enjoyment by BOARD or interfere with the operations of BOARD or any tenant of property.

 BOARD makes no warranty or representation as to its title to the area covered by this License. Licensed uses shall be subordinate to all existing easements, covenants, servitudes, licenses and rights of way for canals, ditches, levees, roads, highways, telegraph, telephone and electric power lines, railroads, pipeline and other purposes whether recorded or not and rights of others under any existing oil, gas, mineral lease or other leases or uses affecting the PREMISES or any portion thereof, whether recorded or not.

 LICENSEE agrees to hold BOARD and the State of California harmless for any damage that may occur to the plantings or the mitigation site as a result of any reasonably necessary flood maintenance or flood fighting activities. LICENSEE acknowledges that the premises is subject to an inherent risk of inundation and agrees to hold BOARD and the State of California harmless for any damage to the plantings therefrom.
2. **COMPLIANCE WITH LAW:** LICENSEE shall, at its expense, promptly comply with any and all laws, ordinances, rules, regulations, requirements and orders whatever, present or future, of the national, State, county or municipal government which may in any way apply to the use, maintenance or occupation of or operations on the PREMISES by LICENSEE hereunder.
3. **INDEMNIFICATION:** This License is made upon the express condition that the State of California is to be held harmless from all liability and claims for damages by reason of any injury to any person or persons, including LICENSEE, or property of any kind whatsoever and to whomsoever belonging, including LICENSEE, from any cause or causes related to LICENSEE's use of the premises as herein specified, while LICENSEE is in, upon, or in any way connected with the PREMISES during the term of this License or any occupancy hereunder, except those arising out of the sole negligence of BOARD. LICENSEE agrees to defend, indemnify and save harmless the State of California, its officers, employees, contractors and agents from all liability, loss, cost or obligation on account of or arising out of any such injury or loss, however occurring.
4. **DAMAGE:** In the exercise of the rights herein granted, LICENSEE is responsible for any damage, destruction or loss occurring to the PREMISES or facilities of BOARD, its water contractors, lessees, LICENSEES, permittees or other members of the public. LICENSEE shall indemnify and save harmless BOARD for all such damage, destruction or loss, or at the option of BOARD, LICENSEE shall repair or replace said property to the satisfaction of BOARD.
5. **FUTURE MOVING OF INSTALLATION:** LICENSEE shall at the LICENSEE's sole cost and expense, remove, alter, relocate or reconstruct all or any part of the work herein approved immediately upon the order of BOARD to do so, and in the manner prescribed thereby, should said work or any portion thereof not conform to the provisions of this order, or should said work or any portion thereof be injurious to or damage any works necessary to any plan of BOARD or the Legislature, or should it interfere with the successful execution, functioning or operation of any such plan of flood control, or should such removal, alteration, relocation or reconstruction be necessary under or in conjunction with any present or future flood control plans for the area in which the work herein approved is to be accomplished, and in case applicant delays acting upon any such order of BOARD, BOARD may proceed to perform the required work, and the cost thereof shall be paid by LICENSEE.
6. **MAINTENANCE:** The LICENSEE shall properly maintain any encroachment placed by LICENSEE on BOARD's property.
7. **INSURANCE:** If required by Section 1, LICENSEE shall furnish to BOARD a Certificate of Insurance at the time the License is signed, stating that there is liability insurance presently in effect for LICENSEE

with bodily injury and property damage limits of not less than \$1,000,000 per occurrence. The certificate of insurance will provide:

- a. That the insurer will not cancel the insured's coverage without thirty (30) days' prior written notice to BOARD.
- b. That BOARD, its officers, agents, employees and servants are included as additional named insureds, but only insofar as the operations under this License are concerned.
- c. That BOARD will not be responsible for any premiums or assessments on the policy.
- d. That PREMISES included in this License is covered by the policy.

LICENSEE agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this License. In the event said insurance coverage expires at any time or times during the term of this License, LICENSEE agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the License, or for a period of not less than one (1) year. In the event LICENSEE fails to keep insurance coverage in effect at all times as herein provided, BOARD may, in addition to any other remedies it may have, terminate this License upon the occurrence of such event.

8. **HAZARDOUS MATERIALS:** LICENSEE shall not possess, use or dispose of any hazardous materials or waste on BOARD's property, or cause to be possessed, used or disposed, without the express written consent of BOARD.
9. **TERMINATION:** Either party herein reserves the right to terminate this License upon providing written notice to the other party. This License is revocable by BOARD without cause or fault.
10. **VACATION:** LICENSEE agrees to vacate PREMISES within twenty-four (24) hours in the event of emergency as determined by BOARD.
11. **TERMINATION AND RESTORATION OF THE PREMISES:** Termination of this License in any manner as to all or any part of the PREMISES, shall not relieve LICENSEE from any obligation or liability theretofore accrued hereunder, nor prejudice, or in any way affect the right of BOARD to enforce any right or remedy it may have had before such termination. Upon any such termination, LICENSEE shall within three (3) days remove all of LICENSEE's improvements and personal property from the PREMISES and restore them to a condition satisfactory to BOARD. At its option, BOARD may remove the same and restore the PREMISES, and LICENSEE agrees to reimburse BOARD for the cost thereof upon demand.
12. **DEFAULT, ENFORCEMENT, OR BREACH COSTS:** LICENSEE shall pay, upon demand, all costs and expenses (including attorney's fees in a reasonable amount) incurred by BOARD to enforce any of the covenants, conditions and provisions of this License, or to dispossess LICENSEE, irrespective of whether or not court action shall be brought.
13. **NOTIFICATION:** Any notice or demand by either party to the other in connection with this License shall be deemed to be fully given or made when written and deposited in a sealed envelope in the United States mail, registered or certified and postage prepaid, and addressed to the party to whom given at the address specified in Section 1. Either party may change its address by giving the other party written notice of its new address as herein provided. BOARD may give notice by phone to LICENSEE in emergency situations which may require LICENSEE to vacate PREMISES within twenty-four (24) hours.

SACRAMENTO AND SAN JOAQUIN DRAINAGE
DISTRICT, acting by and through the Central Valley
Flood Protection Board of the State of California

ACCEPTED:

Paul J. Brunner

Licensee EXECUTIVE DIRECTOR

Date: _____

Date: 1-14-2011

APPROVED as to Legal Form and Sufficiency:

Address Three Rivers Levee Improvement Authority
1114 Yuba Street, Suite 218
Marysville, CA. 95901

Legal Counsel for the Central Valley Flood
Protection Board

Phone: 530-749-5679

Date: _____

Consent of Tenant(s)

We as tenant(s) of the land described in this License do hereby consent to the execution of said License for the purposes herein set forth.

Tenant: _____

Address: _____

Not Applicable

Tenant: _____

Address: _____

Not Applicable

SECTION 3 (MAP)



Figure 3: Anderson Mitigation Site and Vicinity
Habitat Map

Don Fisher
2 April 08

Sacramento River Flood Control Project, Phase II
MARYSVILLE – YUBA CITY AREA LEVEE RECONSTRUCTION PROJECT

**MITIGATION SITE
OPERATIONS & MAINTENANCE MANUAL**

Supplement to
STANDARD OPERATIONS AND MAINTENANCE MANUAL
for the
SACRAMENTO RIVER FLOOD CONTROL PROJECT
(Revised May 1955)

Yuba County

for
Vegetation on Mitigation for Sites in
Reclamation Districts 784 & 10
Levee Districts 1 and 9,
Marysville Levee Commission,
and Maintenance Area 7

-----**FINAL DRAFT**-----

MARCH 2008

The HLA Group/Landscape Architects & Planners
1990 Third Street, Suite 500
Sacramento, CA 95814

Sacramento River Flood Control Project Phase II, Marysville – Yuba City Area Levee Reconstruction Project
Mitigation Site Operations & Maintenance Manual
January 2008

Sacramento River Flood Control Project, Phase II
MARYSVILLE – YUBA CITY AREA LEVEE RECONSTRUCTION PROJECT

**MITIGATION SITE
OPERATIONS & MAINTENANCE MANUAL**

Supplement to
STANDARD OPERATIONS AND MAINTENANCE MANUAL
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SACRAMENTO RIVER FLOOD CONTROL PROJECT (Revised May1955)

Reclamation Districts 784 & 10, Levee Districts 1 and 9, Marysville Levee Commission,
and Maintenance Area 7

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LIST OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Number of Sheets / Page</u>
A	Standard Operation and Maintenance Manual for the Sacramento River Flood Control Project (Revised May 1955)	Unattached
B	Vicinity Map	1 Sheet / 13
C	Site Plan	1 Sheet / 14
D	Photo Station Plan	1 Sheet / 15
E	As-Constructed Drawings (Drawings File No. 50-5874)	4 Sheets / 16
F	As-Built Final Report –Project Re-vegetation Summary (Drawing File No. 50-4-5874)	Unattached
G	Biological Opinion	8 Sheets / 22
H	Project Cooperation Agreement, Local Project Cooperation Agreement, & First Supplement to the Local Project Cooperation Agreement	51 Sheets / 31
I	Selected List of Woody Plants	2 Sheets / 83
J	Pest Ratings of Noxious Weed Species & Noxious Weed Seed	7 Sheets / 85
K	Check List – Vegetation of Mitigation Area	1 Sheet / 92
L	Letter of Transfer to, or Acceptance by, The Reclamation Board	Unattached
M	Acronym / Address List	1 Sheet / 112

SUPPLEMENT FORMAT & CONTENT

The organization and format of this exhibit is written to be consistent with the Standard Operations & Maintenance Manual for the Sacramento River Flood Control Project (Revised May 1955), and is intended to provide supplemental information that is not presently addressed.

Sacramento River Flood Control Project
MARYSVILLE – YUBA CITY AREA,
PHASE II,
LEVEE RECONSTRUCTION

SECTION 1

INTRODUCTION

- 1-01 AUTHORITY:** The Sacramento River Flood Control Project was originally authorized by the Flood Control Act of 1917. The evaluation of the Sacramento River Flood Control System was authorized by the Energy and Water Development Appropriation Act of 1987 (Public Law 99-591). The evaluation was divided into five phases. The first two phases included the populated Sacramento Urban and Marysville/Yuba City areas. The other three phases include the Mid-Valley, Lower Sacramento, and Upper Valley areas.

The non-Federal sponsor is the State of California acting by and through The Reclamation Board (identified as the “Local Sponsor” in the Project Cooperation Agreement (PCA)) with the United States Army Corp of Engineers (USACE), with participating sponsors consisting of Levee District (LD) 1, LD 9, Marysville Levee Commission (MLC), Reclamation District (RD) 10, RD 784, Yuba County Water Agency (YCWA), West Feather River Levee Reconstruction Agency (WFRRA), Maintenance Areas 3 and 7.

The PCA outlines the non-Federal sponsor obligations and responsibilities for operation and maintenance of the mitigation site. The non-Federal sponsor shall operate and maintain the project area as agreed to with the USACE in the PCA. The Local Project Cooperation Agreement (LPCA) outlines responsibilities and obligations of LD 1, LD 9, MLC, RD 10, RD 784, YCWA, WFRRA, Maintenance Areas 3 and 7, and the California Department of Water Resources (DWR) for the operation and maintenance of the mitigation site. The LPCA between the non-Federal sponsor and the Locals defines the responsibilities and obligations, including that of project operation and maintenance, delegated to the Locals. The PCA and LPCA are included in this Manual as Exhibit H.

- 1-02 PURPOSE OF THIS SUPPLEMENT:** This is a supplement to the Standard Operations and Maintenance Manual for the Sacramento River Flood Control Project (Revised May 1955) (Exhibit A). This supplement is intended to provide information and guidance to maintenance personnel to the mitigation site described herein. This supplement addresses vegetation on mitigation areas, and does not address vegetation on levees. These guidelines are intended to reflect a change in the value and acceptance of certain vegetation within the flood control channel and shall be used in place of the 1955 Standard Operation and Maintenance Manual when managing mitigation sites. The 1955 Standard Operation and Maintenance Manual will continue to provide primary guidance for all public safety issues and decisions.

The organization and format of this Manual is written to be consistent with that of the 1955 Standard Operations and Maintenance Manual. Only necessary supplemental sections not included in the 1955 Manual and any sections including material unique to the mitigation site described herein are included in this Manual. The 1955 Standard Operation and Maintenance Manual will continue to provide primary guidance for all sections not included within this Manual. The following table details this organization.

Organization Schedule			
Paragraph	Subject Title (2003 Supplement Title, if different)	Included?	
		1955 Manual	2003 Supplement
SECTION I - INTRODUCTION			
1-01	Authority	X	X*
1-02	Purpose of this Manual (Purpose of this Supplement)	X	X*
1-03	Location and Description	X	X*
1-04	Protection Provided	X	
1-05	Construction History	X	X*
1-06	Mitigation History and Requirements		X
1-07	Maintenance		X
1-08	Duration of this Project		X
1-09	Previous Documents Relating to This Project		X
SECTION II – LOCAL COOPERATION			
2-01	Federal Requirements	X	X*
2-02	State Legislation	X	X*
SECTION III - GENERAL			
3-01	General Rules and Procedures	X	
3-02	Clarification of Duties	X	
3-03	Duties of Superintendent	X	
3-04	Proposed Improvements of Alterations	X	
3-05(3-05a)	Semi Annual Report (Annual Report)	X	X*
3-06	Coordination with Operation of Public and Private Facilities	X	
3-07	Safety Requirements	X	
3-08	Stream Flow Stages	X	
3-09	Periodic Inspections	X	
3-10(3-10a)	Check Lists	X	X*
3-11(3-11a)	Drawings	X	X*
3-12(3-12a)	Fencing		X
3-13(3-13a)	Road		X
SECTION IV -- LEVEES			
4-01 – 4-05	(None included in 2003 Supplement)	X	
SECTION V – IRRIGATION AND DRAINAGE STRUCTURES			
5-01 – 5-06	(None included in 2003 Supplement)	X	
SECTION VI – CHANNELS			
6-05 – 6-05	(None included in 2003 Supplement)	X	
SECTION VII – MISCELLANUOUS FACILITIES			
7-01 – 7-04	(None included in 2003 Supplement)	X	
SECTION VIII – SUGGESTED METODS OF COMBATING FLOOD CONDITIONS			
8-01 – 8-18	(None included in 2003 Supplement)	X	
SECTION IX – MAINTENANCE OF VEGETATION IN MITIGATION AREA			
9-05	Description		X
9-02	Maintenance of the Mitigation Area		X
9-03	10-Year Endangered Species Monitoring Program		X
9-04	Interference with Existing Utilities		X
9-05	Replacement Due to Natural Occurrences / Acts of God		X

* Section material unique to the mitigation site described herein.

1-03 LOCATION AND DESCRIPTION: The mitigation area described herein totals 34.8 acres and is located on one continuous site. The site is located along the left bank of the Feather River, roughly 6 miles south of the confluence of the Yuba-Feather Rivers. Access to the site is from Anderson Avenue. (Refer to Exhibits B Vicinity Map and C Site Plan). The site is a waterside berm composed of a sandy-loam soil at approximately 15 to 20 feet above normal summer flows, with the possibility to experience seasonal flooding during the winter months.

The purpose of the project is to provide compensatory mitigation for impacts to fish and wildlife resources resulting from the construction of Phase II of the Sacramento River Flood Control Project, Marysville – Yuba City Area, Levee Reconstruction. Two types of mitigation are provided at the site, including impacts to: (1) general fish and wildlife habitat, and (2) endangered species habitat, specifically the Valley Elderberry Longhorn Beetle (VELB).

Refer to Exhibit C, Site Plan, for a description of the boundary limits.

1-05 CONSTRUCTION HISTORY: Construction of Marysville-Yuba City Area Levee Reconstruction Project Mitigation Site along the Feather River was accomplished under contract NO. DACW05-95-C-0093 by Prunuske Chatham, Inc., during the period from 15 June 1995 to 15 March 1999. File No. 50-04-5874 and Specifications No. 9511.

Marysville-Yuba City Area Levee Reconstruction Project Mitigation Site was installed in March 1996 with ongoing contract installation maintenance for three years. The Contractor left the site in March 1999 upon completion of the establishment period. (See Section 1-06 for additional information.)

A contract was issued and completed in the Fall of 2007 to re-grade the maintenance road, prune the vegetation hanging within its boundary, install elderberry avoidance signs, and remove trash and debris from the site.

1-06 MITIGATION HISTORY AND REQUIREMENTS: As part of Sacramento River Flood Control Project, Phase II, Marysville-Yuba City Area Levee Reconstruction Project, about 25 miles of levee reconstruction at various sites along the Feather and Yuba Rivers was proposed to meet the authorized project design requirements. A compensatory mitigation site was located on the project area along the Feather River. This site was intended to provide mitigation for project-related adverse effects to riparian woodland, riparian scrub, and emergent marsh habitats (22.44 acres), and habitat losses for the Federally listed threatened VELB (7,690 elderberry seedlings and 3,076 associated native plants on 53.40 acres).

The contract for the installation of the mitigation was one of the first contracts initiated by the project during construction. While the mitigation contract was underway, work at a portion of site 6 (south levee of the Yuba River “patrol road”) was removed from the project, and other modifications to the type of levee reconstruction work were made in other area. The deletion and modifications resulted in a substantial reduction in adverse environmental effects and therefore the amount of compensatory mitigation required. However, because much of the mitigation construction work had already been accomplished and little savings would have been achieved by modifying the contract, the USACE determined that the most appropriate action was to complete the mitigation contract as originally awarded.

As a result, the project mitigation for non-endangered species mitigation was reduced to 11.16 acres, and VELB mitigation was reduced to 1,890 elderberry seedlings and 756 native plants on

14.21 acres. An 80 percent survival criterion for the VELB mitigation is required after a 10-year monitoring period. Therefore, in 2006, the mitigation site must have 1,512 living elderberry shrubs and 605 associated native plants.

The site was walked and GPS locations established to define the project site boundary. These points reflect the habitat acreage encountered to meet the goals above. The project site boundaries as indicated on **Exhibit C, Site Plan**, reflect these acreages and are as follows: Emergent Marsh, 3.2 acres; Scrub Shrub, 6.3 acres; Riparian Woodland, 6.1 acres; and VELB, 15.5 acres.

Subsequent to planting and as part of the delineation of the project site, the mitigation acreage was increased by 3.7 acres due to the addition of a buffer area along the western perimeter of the VELB area. This buffer compensates for the potential impacts to the elderberries that are located within 100 feet of the perimeter maintenance road. Maintenance of this road is required of the non-Federal Local Sponsor to keep it mowed and pruned of all vegetation growth. The buffer zone allows re-grading and pruning so that police, fire and maintenance vehicles can negotiate the road without impediments.

1-07 MAINTENANCE: The non-Federal sponsor is responsible to perform all requirements for the life of the project mitigation. This responsibility began on the first day of April, 2008.

1-08 DURATION OF THIS PROJECT: The life of the project is for fifty (50) years, and began at the completion of the establishment period as defined in **Section 1-05**, in March 1999. The life of the project mitigation is in perpetuity.

1-09 PREVIOUS DOCUMENTS RELATING TO THIS PROJECT:

United States Department of the Interior,
U.S. Fish and Wildlife Service
Biological Opinion Dated January 26, 1993
(1-1-93-F-8)
(Refer to **Exhibit G, Biological Opinion**)

United States Department of the Interior,
U.S. Fish and Wildlife Service
Fish and Wildlife Coordination Act Report Dated February 16, 1993 and supplements

SECTION II

LOCAL COOPERATION

2-01 FEDERAL REQUIREMENTS:

Federal responsibility shall include the following:

- a. Prepare the appropriate environmental documentation (Environmental Assessment (EA) or Environmental Impact Statement (EIS)), when requested by, and in cooperation with, the non-Federal sponsor, and coordinate with the United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service and determine mitigation requirements in consultation with these agencies using the Habitat Evaluation Procedure or other methodology.
- b. Prepare mitigation design, oversee implementation, and ensure that the maintenance of plants has achieved root establishment and obtained other success criteria prior to time of turn-over to non-Federal sponsor.
- c. Ensure that environmental commitments such as riparian mitigation measures and monitoring requirements are successfully accomplished in accordance with NEPA environmental documentation or through other laws (e.g. Endangered Species Act) in joint responsibility with the non-Federal sponsor.
- d. Provide the monitoring and reporting of the VELB and its habitat for the entire 10 years of the 10-year endangered species monitoring program, which is scheduled to be completed in the Fall of 2009.
- e. Ensure that the mitigation site's condition is that which is expected to be maintained by the non-Federal sponsor (free of trash, repair of any vandalism, etc.) at the time of turn-over to the non-Federal sponsor.
- f. Prepare a final mitigation report documenting, both in text and photographically (at permanent photograph stations (locations) as shown on Exhibit D, Photo Location Plan, the existing conditions of the mitigation site and vegetation at time of turn-over to non-Federal sponsor. (Refer to Exhibit F, Project Revegetation Summary).
- g. Provide As-Constructed drawings showing location and layout of project mitigation site. (Refer to Exhibit E, As-Constructed Drawings)
- h. Complete section 7 consultation under the Federal Endangered Species Act for the long-term maintenance of the mitigation site.

2-02 STATE LEGISLATION (NON-FEDERAL REQUIREMENTS):

Non-Federal responsibility shall include the following:

- a. Protect and preserve vegetation on the mitigation site that is managed by the non-Federal sponsor, including both installed mitigation plantings and volunteer native vegetation, throughout the life of the project to meet the project mitigation objectives. Allow vegetation to grow to maturity within mitigation area.

b. Make regular inspections and submit annual reports, including text and a photographic documentation of habitat development. (Refer to Subsection 3-10a and Exhibit K, Check List).

c. Perform all maintenance requirements as stated herein.

d. Over the life of the project mitigation site, replant and replace all vegetation that has died as a direct result of vandalism, public use (accidental damage) and negligent maintenance practices, e.g., herbicide overspray and human induced fire damage to plants. The non-Federal sponsor shall observe standard planting practices and provide all necessary materials to ensure the success of the replacement vegetation.

Damages that result from "Acts of God" shall be defined as *any damages resulting from natural occurrences, such as flood, fire from lightning, wind, or similar events not resulting from the impacts of human or domestic animal*. All 'Acts of God' damage shall be revisited by all concerned agencies and decisions, relative to replanting, made on a case-by-case basis, as outlined in Subsection 9-05.

e. Comply with all applicable laws and regulations.

SECTION III

GENERAL

3-05a REPORTING

a. Periodic Semi-Annual Inspections and Report: Beginning after the turnover to the non-Federal Sponsor in April 2008, periodic semi-annual inspections are to be conducted by the non-Federal sponsor in coordination with the standard levee inspections during Spring and Fall. A checklist to be completed during inspections is provided as Exhibit K. These inspections shall address all significant events that took place during the previous 12 months and must include the following: the checklists, a photographic record of overall conditions (photographed at permanent photograph stations (locations) as shown on Exhibit D, Aerial Photo, a photographic record of specific significant damage, service and maintenance records of all mechanical equipment, proposed corrective measures to deal with deficiencies, and a summary statement of general plant progress for the period of time from the preceding report.

Reporting: The non-Federal sponsor shall prepare an annual report for the mitigation area and submit to the District Engineer of the USACE, to the USFWS, and to the California Department of Fish and Game (F&G) by December 31 of each year. This annual report shall compile information from the Periodic Semi-Annual Inspections noted above.

b. The 10-Year Endangered Species Monitoring was performed through the Corps of Engineers by a consultant and the U.S. Fish and Wildlife Service to be completed in 2009.

3-10a **CHECK LISTS:** A specific checklist form for reporting results of inspections of the mitigation area is contained in this supplement as Exhibit K. This checklist shall be completed during each semi-annual inspection, and included in the annual report. (See paragraph 3-05a.b.).

3-11a **DRAWINGS:** As-built drawings are provided as Exhibit E.

3-12a **FENCING:** The perimeter of the mitigation site is not fenced. There will be no fencing requirement for this site.

3-13a **ROADS:** The perimeter roads shown on Exhibit C, Site Plan, will be maintained for firebreaks and access (see Subsection 9-02k).

SECTION IX

MAINTENANCE OF VEGETATION IN MITIGATION AREA

9-01 DESCRIPTION: This Section addresses maintenance requirements for vegetation and associated items on the mitigation site. Subsection 9-02 defines maintenance, which is required for the life of the mitigation site.

9-02 MAINTENANCE OF THE MITIGATION AREA: Plants that have established themselves will continue to live without any artificial support by maintenance personnel. "Establishment" is defined herein as *"sustained self-sufficiency where the plant is able to sustain growth without additional artificial watering, fertilizing, herbicide spraying, weeding, pruning, cultivation, or other general maintenance practices normally associated with sustaining ornamental vegetation"*. The following items address impacts that shall be addressed by, and are the responsibility of, the non-Federal sponsor in maintaining acceptable mitigation site and plant conditions so that vegetative growth will not be impeded.

a. General Plant Care: The mitigation area is not intended to be maintained to park-like conditions. Greater habitat value is afforded by those conditions that might be unsightly in a park situation, i.e., downed trees, broken branches, un-mowed grass, etc. The habitat is enhanced by the natural diversity of the mitigation site. No removal of vegetation shall occur without prior written approval from the Federal sponsor (refer to Section 9-02I).

b. Tree Preservation: Preserve existing trees in mitigation area. Preservation of existing trees will help achieve the target goal of habitat replacement. The indigenous scenic and ecological values of the mitigation site will benefit.

c. Volunteer Growth: Preserve all native volunteer growth that is consistent with requirements and objectives of mitigation site plans and environmental documentation. The design concept was to develop the upperstory, which when established will provide a conducive environment for most subsequent volunteer natural growth of native vegetation. The upperstory vegetation reduces the air and soil temperature, providing a micro-climate at the understory level that is more conducive to volunteer growth. This design concept encourages, and is dependent upon, this volunteer growth to achieve the objectives of the environmental documentation. Mowing these areas will suppress this growth and is not allowed.

d. Adjacent lands: Ensure that all maintenance practices of adjoining lands maintained or controlled by the non-Federal sponsors do not negatively impact the mitigation site.

e. Noxious Weed Control: General weed control on the mitigation site is not desirable and could cause more destruction to the desirable vegetation than the benefits received by its eradication. However, the non-Federal sponsor will be allowed to control noxious weeds within the guidelines of the State of California, Department of Food and Agriculture, Division of Plant Industry, and terms and conditions of the U.S. Fish and Wildlife Service's Biological Opinion (Exhibit G). Under no circumstances shall herbicides be used or elderberry shrubs be removed or controlled as part of the noxious weed control program without consulting the USFWS. Ensure weed growth is controlled on the firebreaks (perimeter roads, see Section 3-13a) by mowing, which is the preferred method of weed control on the firebreaks. The non-Federal sponsor must notify the DWR, Flood Control Project Branch before taking any action. For additional guidance, refer to Exhibit J, Pest Ratings of Noxious Weed Species and Noxious Weed Seed.

f. Selective Clearing/Pruning: The purpose of the mitigation site is to establish vegetation that will serve as habitat for targeted wildlife species. Therefore, it would be inconsistent with this purpose to remove this vegetation for the sake of thinning it out. Pruning is not allowed, except within the designated 12 feet wide maintenance road boundary and as noted in Subsection 9-03. Tree limbs overhanging firebreaks may require pruning as required in Section 3-13a. Downed woody debris will serve to enhance the habitat value of the mitigation site for certain species. For a guide to growth of general plant characteristics, see Exhibit F, Selected List of Woody Plants. Also refer to Exhibit G, Biological Opinion.

g. Human Impacts: Impacts can occur by both legitimate and non-legitimate uses. All damage as a result of these activities is the responsibility of the non-Federal sponsor. The following categorizes the greatest potential for damage from human impacts and should be policed for the life of the project mitigation by the non-Federal sponsor.

The public's impact on this mitigation site will continue to be potentially disruptive to the vegetation. A management goal of the mitigation site is to insure recreational activities do not adversely impact the habitat. If public use becomes destructive, the non-Federal sponsor shall take corrective measure to replace plants and to ensure their survival and protection from future abuse.

Vandalism damage to signs, fences, and gates are long-term problems, and shall be repaired or replaced by the non-Federal sponsor in a timely fashion. All replaced signs shall be of sheet metal 1'-6" height by 2'-6" wide size. Lettering shall be roughly 1" height Helvetica medium and similar to existing signs. Wording for the Elderberry Avoidance Sign shall be as indicated below:

"This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, or amended. Violators are subject to prosecution, fines, and imprisonment."

Trash is disruptive to plant growth and wildlife. Trash shall be removed from the mitigation site in a timely manner and disposed of per local code requirements. Examples of trash to be removed include items such as household appliances and garbage, furniture, and automotive parts (tires, batteries, etc.).

Though not intended for heavy public access or recreation use, the mitigation site can be accessed by the public for hiking, walking, bird watching, recreational non-motorized biking, hunting, archery, or photographic purposes. Similar "low-impact" uses are permitted. "High-impact" uses, such as motorcycle riding or any other motorized vehicles are not intended uses of the sight. These uses are not permitted and shall be policed by the non-Federal sponsor. If any of these uses are found to threaten the intended purpose of the site to provide compensatory mitigation for impacts to fish and wildlife resources (see Section 1-03) or to threaten public health and safety, the use(s) must be stopped. No additional high-impact uses will be permitted.

h. Wildlife Damage: Beaver, deer, rabbit, and gopher damage is an ongoing threat to the vegetation. Wildlife damage is considered an 'Act of God' and shall be revisited by all concerned agencies, and decisions, relative to replanting, made on a case by case basis. (Refer to Subsection 9-04).

i. Domestic Animal Damage: Damage can be caused by domestic animals, such as cattle, horses, sheep and goats. It is the responsibility of the non-Federal sponsor to monitor the mitigation site to ensure that these animals are not allowed in this mitigation site.

j. Natural Environmental Damage: The greatest potential for damage exists from a variety of natural event that could occur, impacting the mitigation site. These natural processes are inevitable, and could occur at any time during the course of re-establishing the vegetation. However, over time the damage will likely be less, due to the maturity of the vegetation. Storm damage, such as wind throw of trees may increase over time as trees mature. All 'Acts of God' damage (defined in Section 2-02 d) shall be revisited by concerned agencies and decisions, relative to replanting, made on a case-by-case basis. Environmental damage caused by human impacts are events other than 'Acts of God', even though the results could be the same, i.e., a lightning fire versus a cigarette caused fire. (For further information, refer to Subsection 9-04).

(1) Flood & Erosion: Flood damage to the mitigation sites is an ever present problem. Flood damage could be an annual occurrence and shall be documented in the annual report if impacts occur. Damage due to flooding may impact both vegetation and soil stability (by erosion).

(2) Fire & Wind: Lightning fires are a possibility, however, the frequency of these fires is very low. Wind damage occasionally occurs but generally does not result in large scale damage.

k. Firebreaks – Access and Maintenance Roads. The access road extends from the western end of Anderson Lane to the east side of the mitigation site and shall be maintained from the levee to the mitigation site. The maintenance road runs along the perimeter of the mitigation site and includes a post-flood road that has developed on the southern end (See Exhibit C, Site Plan). Both the access road and the maintenance roads shall be considered *Firebreaks*. The firebreak widths shall be maintained at 12-foot width. It is permissible to prune vegetation 3 feet into the site from the edge of the maintenance road. These firebreaks shall be kept clear of vegetative growth at all times and passable by a 2-axel vehicle at all times. Tree limbs shall be pruned so that the air space above firebreak is also kept clear up to a 12 feet height. However, except for along the designated VELB buffer zone no elderberry shrubs shall be removed or pruned without a take permit received from the USFWS. The non-Federal sponsor shall coordinate with, and follow the local fire districts' recommendation for road maintenance and fire prevention.

l. Woody Debris and Felled Trees: Woody debris and felled trees provide nesting sites for cavity nesting birds, cover for wildlife, and increases the wildlife value of the mitigation site. When the debris becomes a fire hazard or other problem in a particular area of the mitigation site, the non-Federal sponsor must contact the USACE prior to any action (removal) for approval and direction.

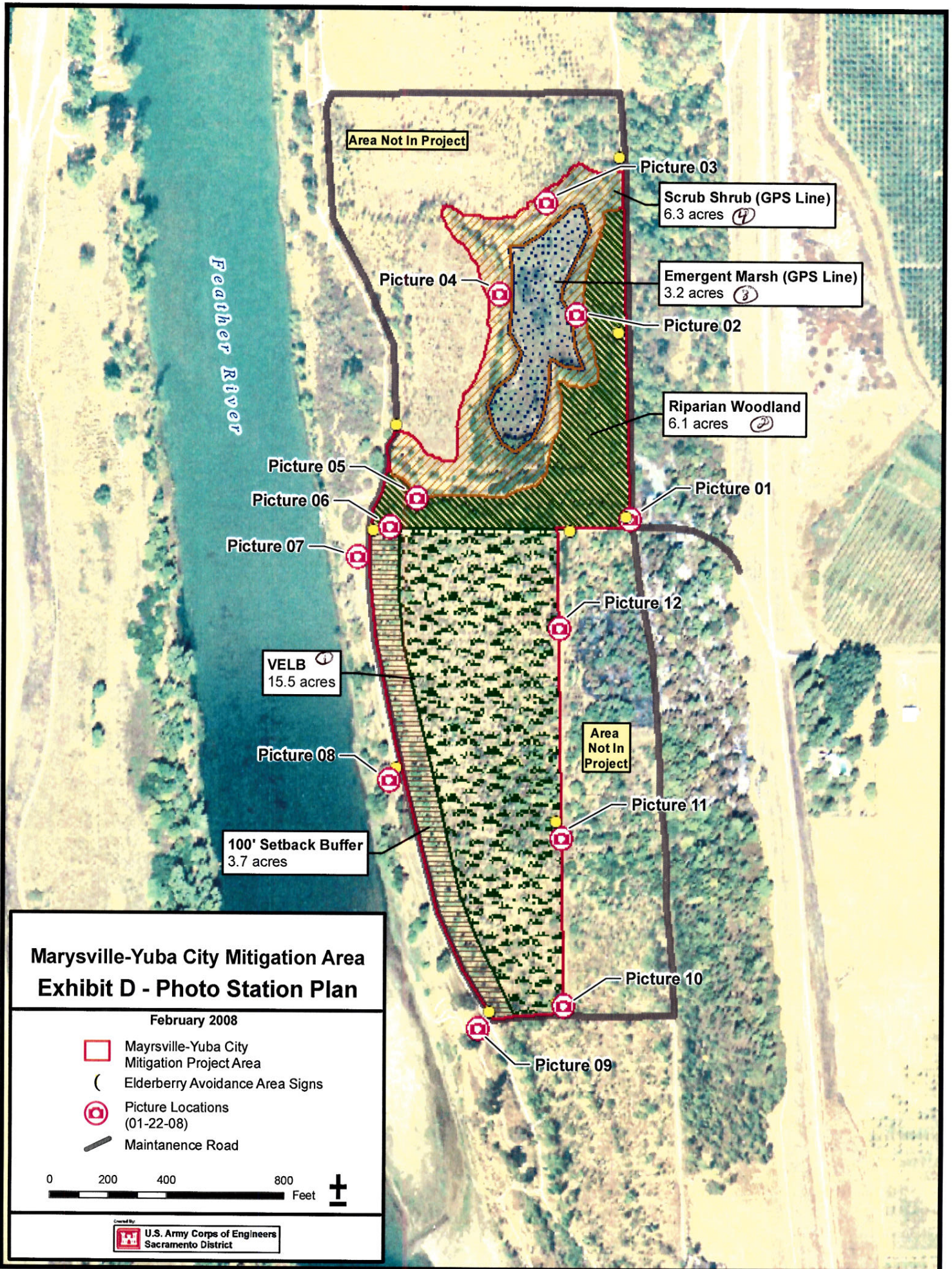
m. Seasonal Wetlands: No special maintenance is required for this area, except to prevent vandalism.

n. Elderberry Avoidance Signs: Signs are at 10 locations around the mitigation area. The signs shall be replaced when damage to them detracts from their intended purpose and they are no longer affective of presenting the notice. Replacement signs shall be the size of the original sign, including the wording and letter heights. The original signs used a metal sheet metal on a metal

post. It is recommended that all replacements be of the same material, however, wood material is acceptable but it is expected to need replaced more often due to vandalism or fire damage.

9-03 INTERFERENCE WITH EXISTING UTILITIES: Existing Power Line on Site. PG&E, the local utility, inspects regularly. They are responsible for pruning only if conflict with power lines is present, or clearing around poles is necessary. Any impacts to the VELB or the Elderberry Shrubs resulting from pruning under power lines is the responsibility of the utility company.

9-04 REPLACEMENT DUE TO NATURAL OCCURRENCES / ACTS OF GOD: Damages that result from "Acts of God" shall be defined as any damages resulting from natural occurrences, such as flood, fire from lightning, wind, or similar events not resulting from the impacts of human or domestic animal. The determination of the ability of the mitigation site to re-establish itself or if it has sustained long-term damage will be the responsibility of the USACE, DWR, F&G, and USFWS, which shall establish a peer review meeting after damage has occurred, in which a process shall be mutually agreed upon to finalize any replacement that will be required, if any.



if specific areas covered in mitigation area.