Meeting of the Central Valley Flood Protection Board
September 23, 2011

Staff Report – Resolution No. 11-27

Findings, Variance and Encroachment Permit for a Residential Dwelling, Garage and Appurtenances within the Kaweah River Designated Floodway, Tulare County

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1.0 - ITEM

In accordance with the Board's decision rendered at the August 26, 2011 Board meeting for Hearing 9A, Permit Application No. 18670 this item has been prepared for the Board to consider approval of Resolution No. 11-27 (Attachment A) to authorize:

a. Findings granting an exception to Title 23, Article 5, Section 107(g) to allow a year-round residential dwelling to be constructed within the Kaweah River Designated Floodway;

b. Findings granting a variance to Title 23, Article 8, Section 113(b)(1) of the Board's standards to allow the construction of a year-round residential dwelling within an adopted plan of flood control;

c. Encroachment Permit No. 18670 (Attachment B) approving construction of a residence and appurtenances within the Kaweah River Designated Floodway

2.0 - APPLICANT

Martin T. & Ellen K. Burnham
650 West El Repetto Drive
Monterey Park, CA 91754-5344

3.0 - LOCATION

The proposed project site is located within the Kaweah River Designated Floodway on the left (east) bank of the North Fork of the Kaweah River at 42490 Kaweah River Drive (APN: 067-160-039 and portion of 067-120-010) in Tulare County. The 6.91 acre site is just upstream of the confluence of the North and Middle forks of the Kaweah River, approximately one mile upstream from the town of Three Rivers, and about five miles upstream from Terminus Dam at Lake Kaweah (Figure 1A).

Most of the subject property (Figure 1B, light green shading) including the residence and garage is located within the Board's designated floodway with the exception of an approximate 10,200 square feet portion at the northeast corner. The designated

floodway boundaries are depicted by purple lines on Figure 1B. The designated floodway was adopted by the Board on October 18, 1974, for the purpose of limiting encroachments and development in an area delineated (by best available scientific methods at the time of adoption) as necessary to convey the safe passage of a design flood of 100-year average frequency.

The proposed residence and garage are also located inside of the Federal Emergency Management Agency (FEMA) Zone X designation, but outside of FEMA's Zone AE designation as depicted on FEMA's Flood Insurance Rate Map No. 06107C0709E of June 16, 2009. The Zone X boundaries are depicted by green lines on Figure 1B.

FEMA's online Flood Insurance Rate Map Tutorial at http://www.fema.gov/media/fhm/firm/ot_firm.htm defines Zone X as areas outside the 100-year floodplain, areas of 100-year sheet flow flooding with average depths less than one foot, areas of 100-year stream flooding where the contributing drainage area is less than one square mile, or areas protected from the 100-year flood by levees.

The tutorial defines Zone AE is a "Special Flood Hazard Area" that corresponds to the 100-year floodplain determined by a flood insurance study by detailed methods. Mandatory flood insurance purchase requirements apply.

Figure 1A. Vicinity Map, Source: Google Earth Pro

Figure 1B. Aerial view of property at 42490 Kaweah River Drive. Parcel boundary (light green shading) Designated Floodway boundaries (purple) and FEMA boundaries (green) are shown. Source: Google Earth Pro.

4.0 – PROJECT DESCRIPTION

The applicant proposes to construct a 4,500-square-foot residence and adjacent 1,280-square-foot garage/shop with appurtenances including but not limited to driveway, underground utilities, septic system, water well, fire suppression and propane tanks.

A 12-foot wide driveway is also proposed to provide access to the dwelling and garage from Kaweah River Drive. Finished driveway elevation will be set equivalent to existing ground elevation. Additional onsite appurtenances will include a septic system, water well, fire suppression and water tanks. The fire suppression and propane tanks will be located outside of the designated floodway, and will be connected to the dwelling by underground lines. Local electric and communications utilities will be connected to the site by underground lines.

5.0 - BACKGROUND

A hearing was conducted by the Central Valley Flood Protection Board on August 26, 2011, Agenda Item 9A) for the Board to consider the applicant's request for a variance to the Board's standards to construct a proposed residence in the Kaweah River Designated Floodway.

5.1 – Staff Recommendation

Board staff presented a Staff Report (Attachment C) detailing the reasons for recommending that the variance request be denied. Attachment C is also available for download in its entirety from the Board's website at http://cvfpb.ca.gov/meetings/2011/82611Item9A_Staff_Report_w_attachments.pdf.

5.2 – Applicant Testimony

The applicant testified that the designated floodway is not representative of the actual floodplain, that the FEMA floodplain represents the best available scientific delineation of the true floodplain, and that the finished floor elevation of the residence will be constructed more than five feet above the FEMA 100-year floodplain, and more than one foot above the FEMA 500-year floodplain.

The testimony also stated that the proposed location of the residence would not impede flood flows, and that the foundation could be constructed deeper than the twelve inches shown on the plans to survive any river scour anticipated to occur by Board staff engineers.

5.3 – Board Decision

By vote of five to two the Board approved the proposed project and made findings with respect to Title 23 Sections 107(g) and 113(b)(1) as described in Sections 7.1 and 7.2 below. The Board further directed staff to make CEQA determinations (Section 7.3 below), to prepare a draft permit (Attachment A), and to prepare a resolution (Attachment B) for adoption at the September 2011 Board meeting.

6.0 – OUTSIDE AGENCY COMMENTS:

The Tulare County Resources Management Agency approved a flood variance (Draft Permit Exhibit A) for this application with several conditions.

The U.S. Army Corps of Engineers confirmed that the proposed project location does not affect a federally constructed project (Draft Permit Exhibit B).

7.0 – BOARD FINDINGS, DETERMINATIONS AND CONSIDERATIONS

7.1 – Title 23, Article 5, Section 107, Permitted Uses in Designated Floodways

Section 107 begins with *"The following uses may be permitted in the designated floodway so long as alone or cumulatively, in the judgment of the board, they will not unduly impede the free flow of water in the floodway or jeopardize public safety:"*

Paragraph (g) reads *"Structures that are designed to have a minimum effect upon the flow of water and are firmly anchored to prevent the structure from flotation, provided that normally no structures for human habitation will be permitted."*

The Board made the following findings to grant an exception to Section 107 (g):

a) normally no structures for human habitation are permitted under Section 107(g),
b) the proposed project will not unduly impede flood flows, can be firmly anchored to prevent flotation, and will not jeopardize public safety,
c) the proposed structures will have a minimum effect on the flow of water,
d) the preponderance of evidence indicates that the boundaries of the designated floodway at this location do not accurately represent the flows or inundation that would actually occur, and that the 100-year FEMA floodplain boundaries represent the best available representation of the floodway,
e) designated floodways were developed to coincide with expected topographic extents of flood inundation, but that at this particular location topographic features define the limits of flood inundation which are not consistent with the designated floodway boundary.

7.2 – Title 23, Article 8, Section 113(b)(1)

Section 113 (b) and (1) read *"(b) Dwellings and structures within an adopted plan of flood control must comply with the following requirements: (1) New dwellings, with the exception of dwellings for seasonal occupancy (nonflood season), are not permitted except as provided in subdivisions (d) and (e) of this section".* Subdivisions (d) and (e) do not apply to this application.

The Board's decision included approval of a variance to Section 113 (b)(1) to allow a permanent dwelling to be built within an adopted plan of flood control (Board designated floodways are an adopted plan of flood control).

The Board found that with respect to Section 113(b)(1) the proposed project will not result in any adverse impacts to public safety or to the designated floodway (a Board-adopted plan of flood control).

7.3 – California Environmental Quality Act (CEQA) Determinations:

Board staff prepared the following CEQA determinations:

Tulare County, as lead agency under CEQA, determined that the project (Burnham – Flood Variance No. PFV 10-01 (ZA)) was categorically exempt on March 9, 2011 under Class 3 (CEQA Guidelines Section 15303) covering construction of small, new structures and facilities and conversion of the use of small existing structures; Class 4 (CEQA Guidelines Section 15304) covering minor alterations to land; Class 5 (CEQA Guidelines Section 15305) covering minor alterations in land use limitations, such as variances and encroachment permits, that do not result in changes in land use or density; and under General Rule Exemption, Section 15061(b)(3) pertaining to determining whether a project is exempt from CEQA.

The Board, acting as a responsible agency under CEQA, has reviewed the Tulare County determination and has independently determined that the project is exempt from CEQA under Class 3 (CEQA Guidelines Section 15303) covering construction of small, new structures and facilities and conversion of the use of small existing structures; Class 4 (CEQA Guidelines Section 15304) covering minor alterations to land; Class 5 (CEQA Guidelines Section 15305) covering minor alterations in land use limitations, such as variances and encroachment permits, that do not result in changes in land use or density.

7.4 – Water Code Section 8610.5 Considerations

The Board has considered the following:

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 decision is based on the evidence in the encroachment permit application and all supporting documentation submitted by the applicant, this report, Staff Reports, attachments, exhibits and staff presentations made at or provided for the August 26 (Attachment C) and September 23, 2011 Board meetings, all testimony given at the August 26, 2011 Board meeting, CEQA determinations and the Tulare County Resource Management Agency flood variance granted to the applicant April 7, 2011.

    - The Board has also considered all letters and other correspondence received by the Board and in the Board's files and related to this matter.

2. The best available science 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 application.

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

- The Board's findings and decision on this proposal reflect a determination that the proposed dwelling, garage and appurtenances will have no significant adverse effects on the entire State Plan of Flood Control.

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

- It is reasonable to expect that this dwelling site may be subjected to floodwaters of varying depth and velocity in the future, therefore the home should be flood proofed and anchored to protect against water traveling at velocities up to 12 feet per second (8 mph).

8.0 - List of Attachments

A. Resolution No. 11-27
B. Draft Permit No. 18670
   Exhibit A, Tulare County Resources Management Agency
   Exhibit B, Corps Letter
C. Staff Report, August 26, 2011 Agenda Item 9A (separate file)

CEQA Findings: Andrea Mauro, James Herota
Document Review: Len Marino RCE, Chief Engineer

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 11-27

BOARD FINDINGS, VARIANCE AND DECISION AUTHORIZING ISSUANCE OF ENCROACHMENT PERMIT NO. 18670, MARTIN T. AND ELLEN K. BURNHAM RESIDENTIAL DWELLING, GARAGE AND APPURTENANCES KAWEAH RIVER DESIGNATED FLOODWAY, TULARE COUNTY

WHEREAS, Mr. and Mrs. Martin Burnham (applicant) are owners of the property described as Tulare County Assessor's Parcel No. 067-160-039 and portion of 067-120-010 located in Section 13, Township 17 South, Range 28 East, Mount Diablo Base and Meridian; and

WHEREAS, the property is located at 42490 Kaweah River Drive in Three Rivers, on the east (left) bank levee of the North Fork of the Kaweah River within the Kaweah River Designated Floodway; and

WHEREAS, the Kaweah River Designated Floodway was adopted by the Board on October 18, 1974, for the purpose of limiting encroachments and development in an area delineated (by best available scientific methods at the time of adoption) as necessary to convey the safe passage of a design flood of 100-year average frequency; and

WHEREAS, the property is located at 42490 Kaweah River Drive in Three Rivers, on the east (left) bank levee of the North Fork of the Kaweah River within the Kaweah River Designated Floodway; and

WHEREAS, the applicant proposes to construct a year-round 4,500 square-foot residential dwelling, adjacent 1,280 square-foot garage/shop, a 12-foot wide driveway, and onsite appurtenances including a septic system, water well, fire suppression and water tanks, and underground connections to local public utilities; and

WHEREAS, the location of the proposed residential dwelling and garage are within the Federal Emergency Management Agency (FEMA) Zone X designation, which is defined as outside the 100-year floodplain, or where areas of 100-year flooding with average depths of less than one foot may occur; and

WHEREAS, CCR Title 23, Article 5, Section 107 begins with *"The following uses may be permitted in the designated floodway so long as alone or cumulatively, in the judgment of the board, they will not unduly impede the free flow of water in the floodway or jeopardize public safety:"*, and paragraph (g) reads *"Structures that are designed to have a minimum effect upon the flow of water and are firmly anchored to prevent the structure from flotation, provided that normally no structures for human habitation will be permitted."*; and

WHEREAS, CCR Title 23, Article 8, Section 113 (b) and (1) read *(b) Dwellings and structures within an adopted plan of flood control must comply with the following requirements: (1) New dwellings, with the exception of dwellings for seasonal occupancy (nonflood season), are not permitted except as provided in subdivisions (d) and (e) of this section"*. Subdivisions (d) and (e) do not apply to this application; and

WHEREAS, the Central Valley Flood Protection Board conducted an evidentiary hearing on August 26, 2011 to consider the applicant's request for a variance to CCR Title 23, Article 8, Section 113(b)(1) of the Board's standards to approve Encroachment Permit Application No. 18670; and

WHEREAS, the Board reviewed the application, the Report of its staff, the documents and correspondence in its file, and considered the presentation of its staff and a recommendation to deny the application; and

WHEREAS, the Board considered the applicant's testimony and evidence in support of the application; and

WHEREAS, the Tulare County Resources Management Agency approved a flood variance for the proposed project on April 7, 2011; and

WHEREAS, the U.S. Army Corps of Engineers confirmed on August 5, 2011 that the proposed project location does not affect a federally constructed project.

NOW, THEREFORE, BE IT RESOLVED THAT,

Findings of Fact:

1. The Board has reviewed the Staff Reports of August 26 and September 23, 2011 and all attachments and exhibits.

2. The Central Valley Flood Protection Board hereby adopts as findings the facts set forth in the September 23, 2011 Staff Report.

3. The Board hereby adopts the following findings to grant an exception to Title 23, Article 5, Section 107(g):

    a. Normally no structures for human habitation are permitted under Section 107(g).
    b. The proposed project will not unduly impede flood flows, can be firmly anchored to prevent flotation, and will not jeopardize public safety.
    c. The proposed structures will have a minimum effect on the flow of water.
    d. The preponderance of evidence indicates that the boundaries of the designated floodway at this location do not accurately represent the flows or inundation that would actually occur, and that the 100-year FEMA floodplain boundaries represent the best available representation of the floodway.

e. Designated floodways were developed to coincide with expected topographic extents of flood inundation, but that at this particular location topographic features define the limits of flood inundation which are not consistent with the designated floodway boundary.

4. The Board hereby adopts the following finding to grant a variance to Title 23, Article 8, Section 113(b)(1):

   a. The proposed project will not result in any adverse impacts to public safety or to the designated floodway (a Board-adopted plan of flood control).

California Environmental Quality Act (CEQA) Determinations

5. Tulare County, as lead agency under CEQA, determined that the project (Burnham – Flood Variance No. PFV 10-01 (ZA)) was categorically exempt on March 9, 2011 under Class 3 (CEQA Guidelines Section 15303) covering construction of small, new structures and facilities and conversion of the use of small existing structures; Class 4 (CEQA Guidelines Section 15304) covering minor alterations to land; Class 5 (CEQA Guidelines Section 15305) covering minor alterations in land use limitations, such as variances and encroachment permits, that do not result in changes in land use or density; and under General Rule Exemption, Section 15061(b)(3) pertaining to determining whether a project is exempt from CEQA.

   The Board, acting as a responsible agency under CEQA, has reviewed the Tulare County determination and has independently determined that the project is exempt from CEQA under Class 3 (CEQA Guidelines Section 15303) covering construction of small, new structures and facilities and conversion of the use of small existing structures; Class 4 (CEQA Guidelines Section 15304) covering minor alterations to land; Class 5 (CEQA Guidelines Section 15305) covering minor alterations in land use limitations, such as variances and encroachment permits, that do not result in changes in land use or density.

6. **Custodian of Record**. The custodian of the CEQA record is Executive Officer Jay Punia at the Central Valley Flood Protection Board, 3310 El Camino Avenue, Room 151, Sacramento, California 95821.

Considerations Pursuant to Water Code Section 8610.5

7. **Evidence Admitted into the Record**. The Board has considered all the evidence presented in this matter, including the encroachment permit application and all supporting documentation provided by the applicant, Staff Reports, attachments, exhibits and staff presentations made at or provided for the August 26 and September 23, 2011 Board Meetings, all testimony given at the August 26, 2011 hearing, CEQA determinations and the Tulare County Resource Management Agency flood variance granted to the applicant April 7, 2011.

The Board has also considered all letters and other correspondence received by the Board and in the Board's files and related to this matter. The custodian of the files is Executive Officer Jay Punia at the Central Valley Flood Protection Board, 3310 El Camino Avenue, Room 151, Sacramento, California 95821.

8. **Best Available Science**. In making its findings the Board has used the best available science relating to the scientific and technical issues presented by all parties. The accepted industry standards for the work proposed under this application as regulated by Title 23 have been applied to the review of this application. The Board determined that application of the Federal Emergency Management Agency's (FEMA) floodplain delineation methodology was considered to be the best available science to determine the extent of the floodplain at this location.

9. **Effects on State Plan of Flood Control**. The Board's findings and decision on this proposal reflect a determination that the proposed dwelling, garage and appurtenances will have no significant adverse effects on the entire State Plan of Flood Control.

10. **Effects of Reasonably Projected Future Events, included but not limited to changes in hydrology, climate, and development within the affected watershed**. It is reasonable to expect that this dwelling site may be subjected to floodwaters of varying depth and velocity in the future, therefore the home should be flood proofed and anchored to protect against water traveling at velocities up to 12 feet per second (8 mph). The applicant acknowledges that the proposed dwelling site is within the Federal Emergency Management Agency (FEMA) Zone X designation. Zone X applies to areas within the FEMA 100-year floodplain where sheet flooding with average depths of less than one foot may be anticipated.

Other Findings/Conclusions Regarding Issuance of the Permit

11. This resolution shall constitute the written decision of the Central Valley Flood Protection Board in the matter of Application No. 18670.

Approval of Encroachment Permit No. 18670

12. Based on the foregoing, the Central Valley Flood Protection Board hereby approves the issuance of Encroachment Permit No. 18670 to authorize construction of a year-round 4,500 square-foot residential dwelling, adjacent 1,280 square-foot garage/shop, a 12-foot wide driveway, and onsite appurtenances including a septic system, fire suppression and water tanks, and underground connections to local public utilities.

13. The Central Valley Flood Protection Board directs the Executive Officer to take the necessary actions to finalize and execute the permit and related documents.

PASSED AND ADOPTED by vote of the Board on _____, 2011

_____
Benjamin F. Carter
President

_____
Francis ("Butch") Hodgkins
Secretary

Attachment B

DRAFT

STATE OF CALIFORNIA
THE RESOURCES AGENCY

THE CENTRAL VALLEY FLOOD PROTECTION BOARD

PERMIT NO. 18670 BD

This Permit is issued to:

Martin T. & Ellen K. Burnham
650 West El Repetto Drive
Monterey Park, California 91754-5344

In accordance with a Board-approved variance, construct a 50-ft. by 80-ft. residence and a 40-ft. by 40-ft. garage/shop, with residential home appurtenances, on land within the Kaweah River Designated Floodway, in the unincorporated area of Tulare County known as Three Rivers, California 93271. Approximately 500 feet east of the North Fork Drive and Kaweah River Drive intersection at 42490 Kaweah River Drive in Three Rivers (Section 13, T17S, R28E, MDB&M, Kaweah River, Tulare 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

DWR 3784 (Rev. 9/85)

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. 18670 BD

THIRTEEN: This permit is not valid until the enclosed Agreement Establishing a Covenant Running with the Land has been signed, notarized, and returned to the Central Valley Flood Protection Board.

FOURTEEN: No further work shall be done in the Kaweah River Designated Floodway without prior written approval of the Central Valley Flood Protection Board.

FIFTEEN: The permittee shall maintain the herein 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.

SIXTEEN: The permittee may be required, at permittee's cost and expense, to remove or alter all or any part of the herein permitted structure(s) if removal or alteration 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 or modify the herein permitted structure(s) at the permittee's expense.

SEVENTEEN: The permittee is responsible for all liability associated with construction, operation, and maintenance of the permitted facilities and 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 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: If the herein permitted structure, 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.

NINETEEN: The permittee shall comply with the Tulare County's Flood Variance dated April 7, 2011, which is attached to this permit as Exhibit A and is incorporated by reference.

TWENTY: The letter from the Department of the Army dated August 5, 2011 is attached to this permit as Exhibit B in reference to this project.

TWENTY-ONE: No construction work of any kind shall be done during the flood season from November 1 to July 15 without prior approval of the Central Valley Flood Protection Board.

TWENTY-TWO: The Central Valley Flood Protection Board, Department of Water Resources 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-THREE: Levees or like obstructions shall not be constructed along the riverbank or within the overflow area.

TWENTY-FOUR: Cleared trees and brush 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 July 15.

TWENTY-FIVE: The dwelling and improvements shall be floodproofed in a manner approved by the Central Valley Flood Protection Board. Before starting construction, the method of floodproofing shall be submitted to and approved by the Central Valley Flood Protection Board.

TWENTY-SIX: Dwellings, structures, and mobile homes shall not be allowed within 14 feet of the top of a revetted riverbank and 30 feet of the top of an unrevetted riverbank.

TWENTY-SEVEN: The proposed structure shall be securely anchored and floodproofed and the finished floor elevation of the proposed structure shall be a minimum of 2 feet above 850.50 feet, NGV Datum 1929.

TWENTY-EIGHT: The permittee acknowledges that the proposed dwelling is located within the Kaweah River Designated Floodway and is subject to periodic flooding.

TWENTY-NINE: If damage to the herein permitted dwelling within the Kaweah River Designated Floodway exceeds 50 percent of its market value within a 10-year period, the dwelling cannot be rebuilt or replaced without approval of the Central Valley Flood Protection Board. If the dwelling is not repaired or replaced, the remaining portion must be completely removed from the floodway prior to the next flood season.

THIRTY: The dwelling shall be properly anchored to prevent floatation into the floodway in the event of high water.

THIRTY-ONE: The foundation footings supporting the dwelling shall have a depth of embedment of at least 24 inches and anticipate scour erosion.

THIRTY-TWO: 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.

THIRTY-THREE: The permittee shall assume all responsibility for the protection, relocation, or removal of the permitted project works if required by the Central Valley Flood Protection Board.

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

The Central Valley Flood Protection Board
c/o Department of Water Resources
Real Estate Branch
1416 Ninth Street, Room 425
Sacramento, CA 95814

--- SPACE ABOVE IS FOR RECORDER'S USE ---
No fee shall be charged by the recorder for services rendered to the State (Government Code Section 7383).

AGREEMENT ESTABLISHING A COVENANT RUNNING WITH THE LAND

This AGREEMENT is made and entered into this _____ (Day) day of _____ (Month), _____ (Year), by and between Martin T. & Ellen K. Burnham, hereinafter referred to as "OWNER(S)", and 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 the "BOARD", for valuable consideration, the receipt and adequacy of which are hereby acknowledged.

1. This AGREEMENT applies to residential and commercial structures, related improvements, and real property, hereinafter referred to as "OWNER'S PROPERTY", acquired by OWNER(S) by grant deed recorded _____ (Date), as Document Number _____ (Number), Official Records of Tulare County.

2. These covenants and equitable servitudes shall bind the OWNER(S), any successors, executors, heirs, administrators, and assigns. It is the express intent of OWNER(S) and the BOARD that these covenants and equitable servitudes touch and concern and that the burdens run with the OWNER'S PROPERTY and inure to the benefit of and be binding on their successors, executors, heirs, administrators, and assigns.

3. OWNER(S) acknowledge that OWNER'S PROPERTY or a portion thereof is located within an adopted plan of flood control and subject to California Code of Regulations, Title 23, Division 1, hereinafter referred to as the "REGULATIONS".

4. OWNER(S), being fully aware that there is a risk that improvements on the OWNER'S PROPERTY may sustain flood damage and may cause flood damage elsewhere, agrees for OWNER(S), any successors, executors, heirs, administrators, and assigns to comply with all terms of this AGREEMENT and all conditions of the BOARD'S Permit No. 18670 BD, attached as Exhibit A, and any future changes therein, as on file with The Central Valley Flood Protection Board at 3310 El Camino Avenue, Sacramento, California, and any BOARD permit governing improvements to which improvements made pursuant to Permit No. 18670 BD are physically attached, and to the REGULATIONS.

5. OWNER(S) agrees for OWNER(S), any successors, executors, heirs, administrators, and assigns to release, hold harmless, defend, and indemnify the State of California, its agencies, officers, employees and agents from any and all claims, costs, expenses, and liability for any damages from flood, river, or reservoir operation to OWNER'S PROPERTY and any and all claims, costs, expenses, and liability caused by or contributed to by OWNER(S) improvements or by OWNER(S) failure to comply with the terms and conditions of the BOARD'S Permit No. 18670 BD and any future changes therein, as on file with The Central Valley Flood Protection Board at 3310 El Camino Avenue, Sacramento, California, or any BOARD permit governing improvements to which improvements made pursuant to Permit No. 18670 BD are attached, or for failure to comply with the REGULATIONS.

6. The BOARD will provide timely notice to the OWNER(S) before changing any condition contained in Permit No. 18670 BD.

7. The BOARD holds title to interest in real property that is benefited by the covenants and equitable servitudes described above. These interests in real property owned by the BOARD constitute a part of the flood control system of the State over which the BOARD exercises authority pursuant to the laws of the State of California, including Water Code Section 8710.

8. This AGREEMENT shall be recorded in the Official Records of Tulare County.

The BOARD hereby accepts the covenants set forth above.

OWNER(S):

SACRAMENTO AND SAN JOAQUIN
DRAINAGE DISTRICT
ACTING BY AND THROUGH
THE STATE OF CALIFORNIA

_____
Signature of Property Owner

_____
Jay S. Punia
Executive Officer

_____
Printed Name of Property Owner

_____
Signature of Property Owner

_____
Printed Name of Property Owner

Exhibit A

RESOURCE MANAGEMENT AGENCY

5961 SOUTH MOONEY BLVD.
VISALIA, CA. 93277
PHONE (559) 624-7000
FAX (559) 730-2653

Britt L. Fussel — Public Works
Jake Raper, Jr. — Planning
Roger Hunt — Development Services & Administrative Services

JAKE RAPER JR., DIRECTOR

April 7, 2011

Martin & Ellen Burnham
650 El Repetto
Monterey Park, CA 91754

Dear Applicant(s):

Your Flood Variance, PFV 10-001 (ZA) was approved by the Zoning Administrator on April 7, 2011. Enclosed is a copy of Zoning Administrator Decision No. 3068 which conditionally approved your application. Please read all of the instructions below to complete the process. The following additional documents are also enclosed:

An Acceptance Form (white) which must be signed by the project applicant, and properly notarized for the County Recorder's Office. **NOTE: THE SIGNATURE ON THE ACCEPTANCE FORM MUST BE THE SAME AS THE NAME WHICH APPEARS IN THE OPENING PARAGRAPH ON THE FIRST PAGE OF THE RESOLUTION.**

Since you have prepaid the County Recorders fees, please return the above completed to my attention at the Resource Management Agency at the above address for processing and recording. Once recorded, a copy of the recorded decision will be returned to you.

The Decision is final 10 days after the date that the Decision document is signed by the Zoning Administrator unless it is appealed to the Board of Supervisors by you or another affected party (if the 10th day falls on a weekend or holiday, the appeal MUST be received the first working day following said weekend or holiday). Please be sure you have read and understand all of the conditions of approval, as periodic inspections to confirm compliance will be performed.

If you have any questions concerning your application or any of the enclosed documents, please contact this office.

Sincerely,

Nick Hahn, Project Planner
Planning Branch
Project Review Division

NH:vq

Don Stivers Land Surveying

Exhibit A

ACCEPTANCE

I/We, Ellen Burnham, do hereby accept the Flood Variance granted by the foregoing decision of the Zoning Administrator and agree that said I/we, my/our heirs, executors, administrators and assigns will well and faithfully observe all of the conditions and qualifications to said Flood Variance as set forth in the foregoing decision of the Zoning Administrator attached thereto, and I/we acknowledge and agree that should I/we, my/our heirs, executors, administrators or assigns, fail to observe any of the said conditions or qualifications to said Flood Variance, the Zoning Administrator or any body or officer designated by law or ordinance may, on its own motion, revoke or modify said Flood Variance pursuant to the procedure established by law or ordinance and said Flood Variance shall thereupon be null and void and of no further effect.

Ellen Burnham

(Signatures)

State of California)

County of Tulare)

On 4-7-11 (date) before me, Sammi Franks (name and title of officer), Notary Public, personally appeared Ellen Burnham (name of person signing) 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.

Sammi Franks

Signature of Notary Public

SAMMI FRANKS
Commission # 1891782
Notary Public - California
Tulare County
My Comm. Expires Jun 4, 2014

Exhibit A

BEFORE THE ZONING ADMINISTRATOR

COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF FLOOD VARIANCE)

DECISION NO. 3068

APPLICATION NO. PFV 10-001 (ZA))

Decision of the Zoning Administrator of the County of Tulare approving a flood variance requested by Ellen Burnham, 650 El Repetto, Monterey Park, CA 91754 (Agent: Don Stivers Land Surveying, 40507 Sierra Drive, Three Rivers, CA 93271) from the Flood Damage Prevention Ordinance 2726, Section 7-27-1000, et seq., to allow the construction a single family residence in the F-1 (Primary Flood Plain) Zone on property located approximately 500 feet east of the intersection of North Fork Drive and Kaweah River Drive, in Three Rivers.

The Zoning Administrator hereby determines the following findings were relevant in evaluating this application:

1. An application for a Flood Variance has been filed pursuant to the regulations contained in Section 7-27-1000 of Ordinance 2726, the Flood Damage Prevention Ordinance.

2. Under Section 7-27-1265 of the Flood Damage Prevention Ordinance, the Zoning Administrator is authorized to approve or deny variance requests for from the provisions of Chapter 27 of Part 7 such as may be in harmony with its general purpose and intent.

3. Staff has given notice of the Zoning Administrator's intention to consider the granting of a Flood Variance as provided in Section7-27-1275 if the County Ordinance Code, and as provided in Section 65905 of the Government Code of the State of California.

4. Staff has performed necessary investigations, prepared a written report and recommended certain conditions of approval, if this application is approved by the Zoning Administrator.

5. A public hearing was conducted on April 7, 2011, in the Commission Meeting Room of the Resource Management Agency Offices in order to receive public testimony on the proposal. Don Stivers (agent) appeared and provided testimony in support of the proposal. No opposition to the proposal was received.

The Zoning Administrator, after considering all of the evidence presented hereby finds that:

1. A showing of good and sufficient cause has been made.

Exhibit A

2. Failure to grant the variance would result in exceptional hardship to the applicant.

   The subject property is affected by special circumstances such as size, shape, topography, and proximity to the Kaweah River which deprive the property owner of privileges enjoyed by other properties in the vicinity and under identical zoning classification. The majority of the site is comprised of F-1 (Primary Flood Plain) Zone which prohibits construction of residences unless a flood variance is approved by the County. The portion of the site zoned for residential development does not contain sufficient area to allow construction of a residence.

   The existing F-1 Zone designation was applied to the site to coincide with the flood plain boundaries established by the Army Corps of Engineers in 1967. Recent flood control studies by FEMA establish 100 year flood boundary lines not consistent with those established by the Army Corps of Engineers greater than a quarter century ago. The existence of conflicting flood boundary lines and the jurisdiction of multiple agencies present significant challenges for the property owner with regard to coordinating the efforts of all agencies to adopt the most recent scientific and engineering studies that appropriately identify the portions of the site which may be categorized as area of special flood hazard. Therefore, approval of a flood variance is the only feasible method allowing construction of a residence at the site until such time that respective flood designations of the site to reflect the most recent and up to date flood study data.

3. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization to the public or conflict with existing County ordinances.

The Zoning Administrator further finds there is no substantial evidence that the proposed flood variance will have a significant effect on the environment and determines that the project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15303, Class 3 pertaining to installation of small, new equipment and facilities in small structures and conversion of the use of small existing structures; Section 15304, Class 4 pertaining to minor alterations in the condition of the land, such as grading, gardening, and landscaping, that do not affect sensitive resources; Section 15305, Class 5 pertaining to minor alterations to land use limitations such as variances, and encroachment permits, that do not result in changes in land use or density; and under the General Rule Exemption, Section 15061 (b) (3).

Exhibit A

NOW, THEREFORE, BE IT DETERMINED AS FOLLOWS:

The Zoning Administrator of the County of Tulare hereby approves Flood Variance Application No. PFV 10-001 (ZA), subject to the following conditions:

General Condition(s):

1. Development shall be in accordance with the plan(s) as submitted by the applicant and/or as modified by the Zoning Administrator *(see Exhibit "A")*.

2. Regardless of Condition No. 1 above, and in accordance with Section 18 (Minor Modifications-Director's Approval) of the Zoning Ordinance, the Planning Director is authorized to approve minor modifications in the approved plans upon a request by the applicant, or his successors as long as said modifications do not materially affect the determination of the Zoning Administrator. Such modifications shall be noted on the approved plans and shall be initialed by the Planning Director.

3. Any structures built shall conform to the building regulations and the building line setbacks of the Ordinance Code of Tulare County insofar as said regulations and setbacks are applicable to such structures.

4. Any structures built shall conform to Flood Damage Prevention Ordinance requirements and any other requirements as may be determined necessary by the Resource Management Engineering Division. Building requirements for any structures will be determined by the Resource Management Engineering Division prior to the issuance of any building permits.

5. This Flood Variance shall automatically become null and void two (2) years after the date upon which it is granted by the Zoning Administrator, unless the applicant, or his/her successor, has actually commenced the use or variance authorized by the permit within said two year period. This Flood Variance shall automatically expire and become null and void two (2) years after the use for which it was granted is discontinued or abandoned. The Zoning Administrator may grant one or more extensions of said two year time, upon request by the applicant.

6. This Flood Variance will not be effective until ten (10) days after the date upon which it is granted by the Zoning Administrator.

Indemnification:

7. The applicant(s), at their sole cost and expense, shall defend, indemnify and hold harmless the County of Tulare, its agents, legislative body, officers or employees in any legal or administrative action, claim or proceeding concerning approval of Flood Variance No. PFV 10-001 (ZA): or, at its election and in the alternative, shall relinquish such approval. The applicant(s) shall assume the defense of the County in any such legal or administrative action, claim or proceeding with legal counsel paid for in the entirety by the applicant(s), but subject to the County's reasonable approvals. The applicant shall also reimburse the County, its agents, its legislative body, officers or employees for any judgments, amounts paid in the settlements court costs and attorney's fees with the County, its agents, legislative body, officers or employees may be required to pay at court as a result of such action, claim or proceeding. The County may, at its sole discretion, participate at its own expense in the defense of any such action, claim or proceeding, but such participation shall not relieve the applicant(s) of their obligations under this condition.

Environmental Health Services:

9. New sewage disposal systems shall be designed by a Registered Civil Engineer, Registered Environmental Specialist or Registered Engineering Geologist. The specifications and engineering data for said system shall be submitted to the Tulare County Environmental Health Services Division (TCEHSD) for review and approval prior to issuance of a building permit.

10. No sewage disposal system shall be installed within two hundred feet (200') from any reservoir, one hundred feet from any river/year round creek, and fifty feet from any drainage course.

Fire:

11. All new construction, roadways and / or driveways shall comply with the Tulare County Fire Safe Regulations pertaining to driveways, gate entrances, defensible space, addresses identifying buildings, and Fire Safe Standards. All building permit applications shall be reviewed and approved by the Tulare County Fire Department prior to their issuance. All required improvements shall be completed prior to occupancy of the structure and prior to the issuance of occupancy permits.

12. The property owner shall select one of the following as a means of providing fire protection:

a. Install a fire hydrant (system) in compliance with Tulare County Improvement Standards. Copies of improvement plans shall be submitted to the Fire Department and RMA Engineering (3 copies each) for review prior to construction.

b. Install an automatic sprinkler system within each dwelling unit as per standards set forth in NFPA Pamphlet #13D. Two copies of said sprinkler plans shall be submitted to the Tulare County Fire Department for review and approval prior to issuance of building permits.

c. Install a 4,000 gallon fire suppression water storage tank for each building. The locations shall be designated by the Fire Department. The tank shall be equipped with a valved 4-1/2 (National Hose Thread) connection (Also see Tank Standard). Plans for said system shall be reviewed and approved by the Fire Department prior to the start of any construction.

13. An encroachment permit shall be required from the State Reclamation Board for the construction of any type of structure within the Kaweah River designated floodway.

14. If, during any grading or excavation activities of the site, any resources of a historic or archaeological nature are discovered, development shall not continue until the RMA Director certifies that appropriate recovery measures, if deemed necessary, have been completed.

15. Removal or grading around native trees with a trunk of 12 inches or more in diameter measured at three feet above ground surface should not be permitted unless RMA finds that such tree removal or grading is necessary due to desirable circulation alignments or infrastructure requirements.

16. Any native tree as defined above which is proposed for removal must be indicated on or with the Site Plan and a statement shall accompany such site plan explaining why said tree or trees must be removed.

17. Any mature tree within the project area likely provides nesting habitat for songbirds and raptors. If tree removal is unavoidable, it should occur during the non-breeding season (mid-September through January). If construction activities or tree removal must occur during breeding season (February through mid-September) surveys for active nests should be conducted by a qualified biologist no more than 30 days prior to the start of construction. A "no disturbance buffer" of a minimum of 250 feet should be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the

Exhibit A

birds have fledged and are no longer reliant upon the nest or parental care for survival.

18. If Kaweah Brodiaea is discovered to exist at the site, the applicant shall fence all areas surrounding the plants. No improvements or development shall occur within these locations or within 100 feet.

19. The applicant shall make all necessary arrangements for the relocation of all overhead and underground public utility facilities that interfere with any improvement work to be performed by the applicant. The applicant shall also make necessary arrangements with the public utility company affected for the cost of relocating such facilities and no portion of relocation cost will be paid by the County.

TULARE COUNTY ZONING ADMINISTRATOR

Benjamin A. Kimball, Zoning Administrator

Date Approved: 4/7/11

Notice of Exemption

ATTACHMENT NO. 2

Exhibit A

To: ☐ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

X County Clerk
County of Tulare
Courthouse, Room 105
221 South Mooney Boulevard
Visalia, California 93291

From: County of Tulare, RMA
Government Plaza
5961 South Mooney Blvd.
Visalia, Ca 93277

Project Title: Flood Variance No. PFV 10-001 (ZA)

Project Location - Specific: APN: 067-160-039; The subject site is located approximately 500 feet east of the intersection of North Fork Drive and Kaweah River Drive, in Three Rivers.

Project Location- Section, Township, Range: Sec. 13, T.17S., R.28E. MDB&M

Description of Nature, Purpose, and Beneficiaries of Project: Variance from Ordinance No. 2726, Section 7-27-1000, et seq., to allow the construction a single family residence and associated improvements in the F-1 (Primary Flood Plain) Zone. Martin & Ellen Burnham requested the variance to allow the construction a single family residence in the F-1 (Primary Flood Plain) Zone on property located approximately 500 feet east of the intersection of North Fork Drive and Kaweah River Drive, in Three Rivers.

Name of Public Agency Approving Project: County of Tulare, Resource Management Agency
Name of Person or Agency Carrying Out Project: Martin & Ellen Burnham, 650 El Repetto, Monterey Park, CA 91754

Exempt Status: (*check one*)

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- X General Rule: CEQA guidelines 15061 (b)(3)
- X Categorical Exemption:
- ☐ Statutory Exemptions:

Reasons why project is exempt: The proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15303, Class 3 pertaining to installation of small, new equipment and facilities in small structures and conversion of the use of small existing structures; Section 15304, Class 4 pertaining to minor alterations in the condition of the land, such as grading, gardening, and landscaping, that do not affect sensitive resources; Section 15305, Class 5 pertaining to minor alterations to land use limitations such as variances, and encroachment permits, that do not result in changes in land use or density; and under the General Rule Exemption, Section 15061 (b) (3). Construction of the residence and associated improvements will be subject to all applicable California Building Codes, Fire Safe Regulations, Flood Prevention Requirements, and conditions of approval to ensure that no adverse impacts to the subject property or surrounding areas will occur. Therefore, it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment.

Lead Agency: County of Tulare Resource Management Agency

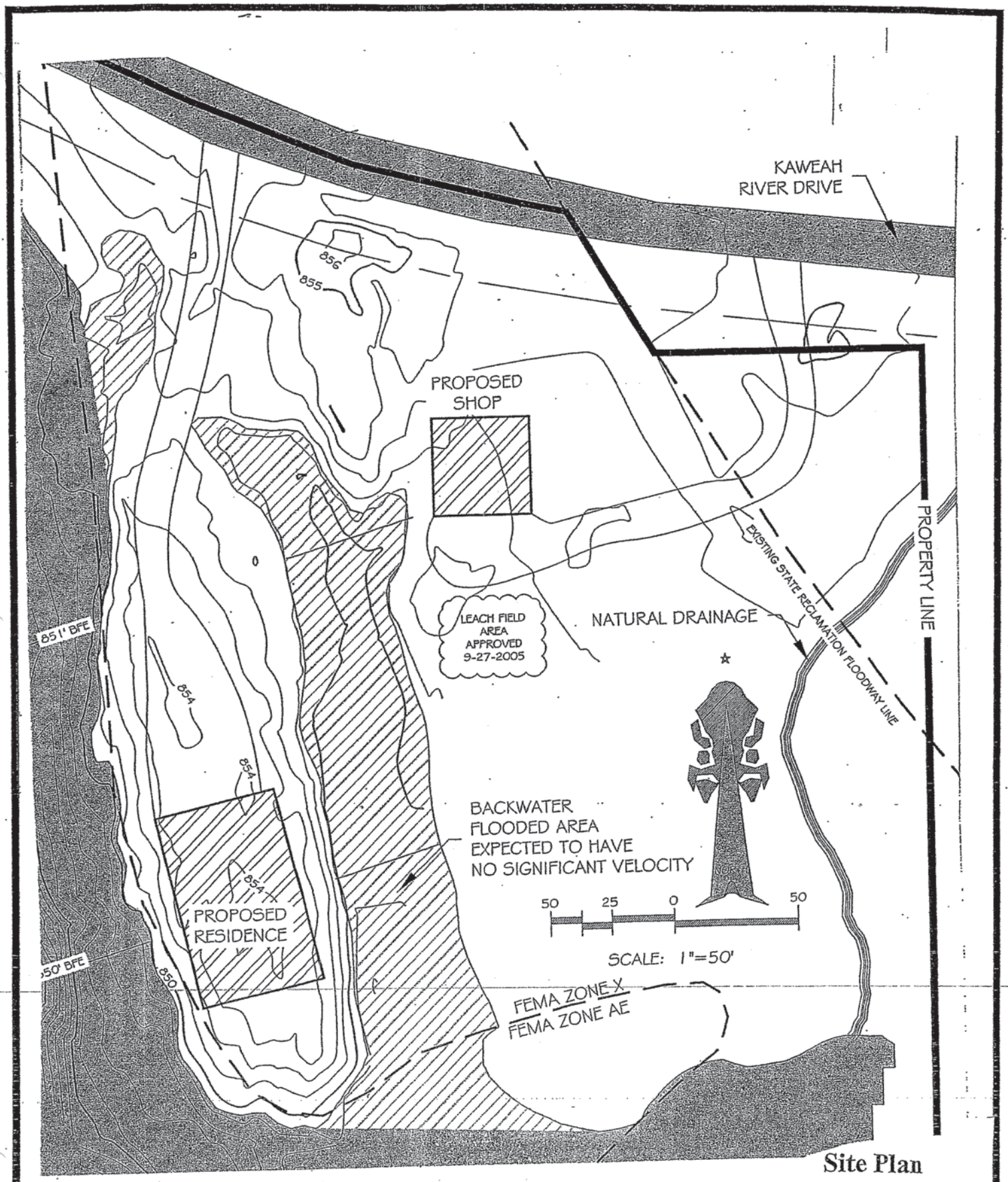
Zoning Administrator: Benjamin A. Kimball Area Code/Telephone: 559-624-7000

Signature: [signature] Date: 3/9/2011 Title: Zoning Administrator

☐ Signed by Lead Agency
☐ Signed by Applicant

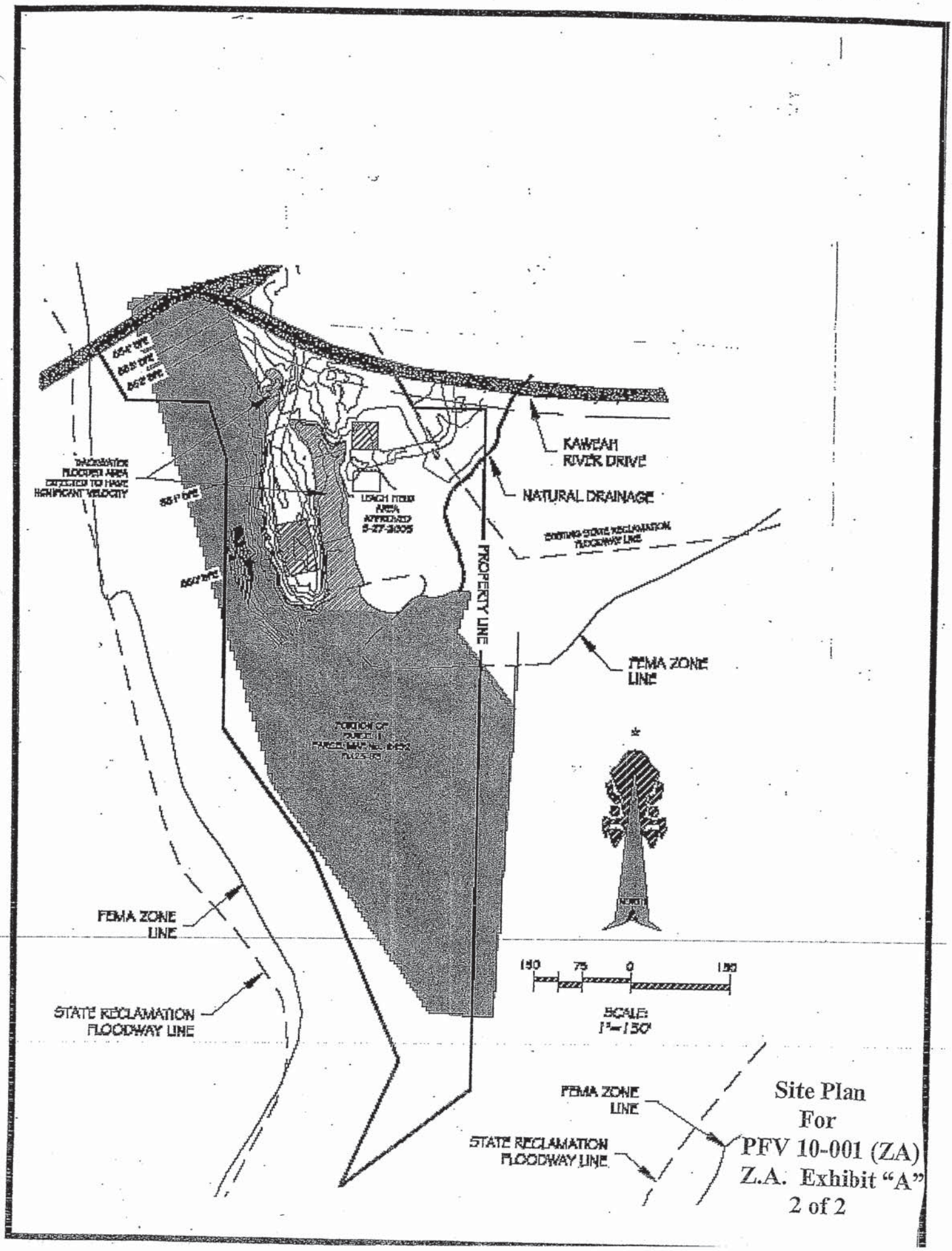
Date received for filing at OPR: _____
Date Sent to the County Clerk: _____

Exhibit A



Site Plan
For
PFV 10-001 (ZA)
Z.A. Exhibit "A"
1 of 2

Exhibit A



Site Plan
For
PFV 10-001 (ZA)
Z.A. Exhibit "A"
2 of 2

Exhibit B

DEPARTMENT OF THE ARMY
U.S. Army Engineer District, Sacramento
Corps of Engineers
1325 J Street
Sacramento, California 95814-2922

REPLY TO
ATTENTION OF

Flood Protection and Navigation Section (18670)

AUG 05 2011

Mr. Jay Punia, Executive Officer
Central Valley Flood Protection Board
3310 El Camino Avenue, Room 151
Sacramento, California 95821

Dear Mr. Punia:

We have reviewed a permit application by Martin T. and Ellen K. Burnham (application number 18670). This project includes constructing a 50 foot by 80 foot residence; a 40 foot by 40 foot garage/shop; and residential home appurtenances including, but not limited to, a septic system, electric, water, and telephone lines, a fire hydrant, and propane and fire suppression tanks on land within the Kaweah River Designated Floodway. The project is located in the unincorporated area of Tulare County known as Three Rivers, 500 feet east of the North Fork Drive and Kaweah River Drive intersection at 36.4495°N 118.9029°W NAD83, Tulare County, California.

The District Engineer has no comments or recommendations regarding flood control because the proposed work does not affect a federally constructed project.

Based upon the information provided, no Section10 or Section 404 permit is needed.

A copy of this letter is being furnished to Mr. Don Rasmussen, Chief, Flood Project Integrity and Inspection Branch, 3310 El Camino Avenue, Suite LL30, Sacramento, CA 95821.

Sincerely,

Meegan G. Nagy, P.E.
Chief, Flood Protection and Navigation Section