

Meeting of the Central Valley Flood Protection Board
March 2, 2012
Staff Report – Encroachment Permit Hearing
Three Rivers Levee Improvement Authority Fence Relocation
Yuba County

1.0 – ITEM

Consider approval of Resolution No. 2011-31 (Attachment A) granting authorization of protested Permit No. 18690 (Attachment B) to install chain link fencing, K-rails, and a maintenance road on State of California property adjacent to the Feather River east levee in West Linda, CA for the purpose of preventing unauthorized access to the levee.

2.0 – APPLICANT

Three Rivers Levee Improvement Authority (TRLIA)

3.0 – LOCATION

The project is located along Feather River Boulevard and Riverside Avenue in West Linda, California, 1.2 miles south of Marysville, California, at the confluence of the Yuba and Feather Rivers (Yuba County, see Attachment C).

4.0 – DESCRIPTION

The applicant proposes to construct a 1.1 mile levee maintenance corridor for the Feather River levee on State of California property. The proposed work includes minor grading to provide a 20-ft wide landside levee toe maintenance road, a 6-foot-high chain link fence, placement of K-Rails adjacent to the new fence, and installation of two gates at the crown of the levee.

5.0 – PROJECT ANALYSIS

5.1 – Project Background

TRLIA is completing a \$400 million levee improvement program to increase the level of flood protection for Linda, Arboga, Olivehurst and Plumas Lake. The proposed project is part of TRLIA's Feather River Phase 4, Segment 3 levee improvements. To achieve the increase in flood protection level, TRLIA is working to provide a 20-foot wide maintenance corridor in accordance with the Department of Water Resources (DWR) Interim Levee Design Criteria. During the preparation of a recent survey, TRLIA discovered that in this area, the land covering the levee and the required 20-foot wide access corridor is owned by the State. The Survey also discovered existing fences, vegetation, and other structures were on State-owned land and the required 20-ft wide corridor. The work under this permit at this time does not include any work or disturbance, during or after construction, within 100 feet of existing elderberry plants in order to comply with the U.S. Fish and Wildlife Service Conservation Guidelines. Any work or disturbance inside the 100 foot buffer area will require an amendment to the permit to ensure compliance with all State and Federal environmental regulations.

5.2 – Project Actions and Timeline to Date

In early May 2011, private encroachments located on State-owned land were identified and required to be removed to provide a 20-ft wide corridor. Board records do not contain the required Board permits for any of the fences, structures, or vegetation within the State's property. On July 29, 2011 TRLIA sent letters to all landowners notifying them of the encroachments located within State-owned land and TRLIA's plan to install a new fence at the State's right-of-way. On August 22, 2011, TRLIA held a community meeting in Olivehurst, California which was attended by many of the residents, Board staff, MBK Engineers, RD 784, Yuba County and local representatives. See Attachment D, Exhibit B for a summary on the questions and answers from the community meeting. On August 5, 2011 a total of 51 Notices of Violation (NOV) were issued to the property owners where unauthorized encroachments were identified (Enforcement Action No. 2011-243 through 2011-296).

On August 23, 2011, TRLIA submitted an encroachment application to place the proposed fence at the State of California property line. On October 3, 2011 adjacent landowners were notified of the proposed project. Board staff received six protest letters in response to the project notification. See Section 5.7 for details on the Protest letters.

On December 2, 2011, Board hearings were held for Enforcement Actions No. 2011-243 through 2011-296. During the hearing, the Board directed TRLIA to work with Staff and the landowners to find an equitable solution that would address concerns raised by the landowners at the hearings. On January 10, 2012, TRLIA held another community meeting in Olivehurst, California that West Linda residents, Board Staff, and RD 784

attended. The two options discussed were 1) placing the proposed fence at the twenty-foot boundary of the operation and maintenance corridor, or 2) placing the proposed fence at the State of California property line while permitting the existing permanent structures to remain. The local preferred option is to locate the State fence along the edge of the twenty-foot-wide levee toe patrol road instead of on the State's property line.

On January 26, 2012, the Board reopened the enforcement hearings. The decisions made that day were vacated to provide a 10-day staff report notification requirement. This permit and the enforcement hearings were continued for a future meeting. On March 2, 2012, the Board is scheduled to hear the continuation of enforcement hearings, followed by this protested permit application.

5.3 – Hydraulic Analysis

A hydraulic analysis for this application is not required as the work is limited to the crown and landside of the levee.

5.4 – Geotechnical Analysis

A geotechnical analysis for this application is not required as the work is limited to minor earthwork to provide for an accessible corridor at the landside toe of the levee. Levee penetrations will be limited to the installation of the gate posts. Earthwork will be completed in accordance with conditions set in Permit No. 18690 (Attachment B) and CCR Title 23 Division 1.

5.5 – Drainage Analysis

This area has historical localized flooding problems during the wet season. To prevent flooding of the proposed levee access road and to prevent additional ponding issues on adjacent properties, a stormwater management system including the installation of any drainage mechanisms that tie into existing detention and pumping facilities would effectively alleviate the seasonal drainage issue.

5.6 – Real Estate

CTA Engineering & Surveying ("CTA") prepared a Record of Survey dated June 2011 that delineates the property boundaries of the parcels adjacent to the Feather River East levee and Yuba River South levee (see Attachment E, Exhibit A). This map has been recorded with the Yuba County Recorder's office. There are a total of 58 properties that would be impacted by the proposed project. 51 out of the 58 properties

are adjacent to land owned in fee by the State of California under the Sacramento-San Joaquin Drainage District (SSJDD), listed as Parcel 5 per Book 267 Page 509 of the Yuba County Official Records recorded on December 12, 1958.

At the north end of the project limit (north of Lot 120), the State property rights change from complete ownership to a 40' wide easement (Book 53 Page 293, Yuba County Official Records). TRLIA is in negotiations with these landowners to acquire additional land rights for the completion of the twenty-foot-wide corridor. The construction of the fence at this location will be completed once the necessary property rights are obtained.

5.7 – Protest

Board staff received six protest letters for the proposed project and acknowledgment letters were sent. See Attachment D, Exhibit A for copies of both the acknowledgment and protest letters. The arguments made on these letters are summarized as follows:

Argument 1: The methods used for the development of the survey map completed by CTA are inaccurate and therefore the parcel boundaries shown on the map are incorrect.

Board Staff Response: As discussed in Section 5.6, the property boundaries shown on the survey map prepared by CTA were certified by a licensed surveyor using record documents, existing monumentation, field verification and confirmation from Yuba County Surveyor's office. In addition, CTA submitted a memorandum summarizing the basis for the survey map (see Attachment E, Exhibit B). Board staff is confident that the survey map was prepared using the best available information, including proper due-diligence, verification of record documents, field measurements, and done in accordance with applicable professional codes.

Argument 2: The existing location of the fence has remained the same prior to the State purchasing the land from the Railway Company. Given the length of time the fence existed, can the landowners claim prescriptive rights?

Board Staff Response: Pursuant to Civil Code Section 1007 "*no possession by any person, firm or corporation no matter how long continued of any land, water right, easement, or other property whatsoever dedicated to a public use by a public utility, or dedicated to or owned by the state or any public entity, shall ever ripen into any title, interest or right against the owner thereof.*" The property was purchased by the State for \$5,440 on December 12, 1958 from the Sacramento Northern Railway, and in accordance with Civil Code Section 1007 above, no adjacent landowner can acquire prescriptive rights to land owned by the State.

Furthermore, pursuant to Public Utilities Code Sections 211 and 216, a public utility includes a railroad performing a service for, or delivering a commodity to, the public or any portion thereof for which any compensation or payment whatsoever. Therefore the Railway Company is a public utility and in accordance with Civil Code Section 1007, no prescriptive rights against a public entity can be obtained.

Argument 3: Will the landowners be compensated for the loss of use of the land and/or the property taxes paid by the landowners for the portion of the land in question?

Board Staff Response: The portion of land where the encroachments exist is owned by the Board and any encroachments within that land are not entitled to compensation. In addition, TRLIA verified with Yuba County Assessor's office that the parcel map for the properties adjacent to the levee are the same dimensions as shown on the recorded subdivision map and are reflected on the survey map prepared by CTA.

Argument 4: Will the drainage for the landowners worsen due to the proposed project?

Board Staff Response: Following approval of the permit, the applicant will submit final engineering plans to Board staff to ensure the project does not worsen drainage for adjacent properties. Condition 29 of the permit requires that the project, including grading earthwork, does not increase water runoff onto other properties, and requires a stormwater management plan to prevent flooding of the patrol road or neighboring parcels. This stormwater management plan drainage features may tie into the existing stormwater pumping canal south of the project or other suitable community drainage infrastructure.

In addition to these specific arguments made in the letters Staff received, the community expressed its concerns at the community meeting that TRLIA hosted on August 22, 2011, and through e-mail correspondence with TRLIA. The arguments and answers are included in Attachment D, Exhibits B and C.

5.8 – Project Benefits

The project has the following benefits associated with its completion:

- Provides for an accessible 20-foot wide corridor at the toe of the levee for maintenance and flood fight patrol as required by Federal and State regulations.
- Prevents unauthorized access to the levee while also protecting private property from trespassers.

- Prevents the illegal driving of off-road vehicles on the levee slopes, which has been cited by the United States Army Corps of Engineers and the State of California as damaging the levee.

6.0 – AGENCY COMMENTS AND ENDORSEMENTS

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

- The U.S. Army Corps of Engineers (USACE) has issued a comment letter confirming that the Corps has no objection to the project. The letter is incorporated into this permit as Attachment B, Exhibit A.
- Reclamation District 784 has endorsed the authorization of these encroachments with conditions on September 6, 2011. See Attachment B, Exhibit B.

7.0 – PROPOSED CEQA FINDINGS

Board staff has prepared the following CEQA determination:

The Board has determined that the project is categorically exempt from CEQA under a Class 1 Categorical Exemption (CEQA Guidelines Section 15301) covering existing facilities, including addition of safety and health protection devices; Class 2 Categorical Exemption (CEQA Guidelines Section 15302) covering the replacement of existing structures and facilities where the new structure will be located on the same site with the same purpose as the prior structures and facilities; Class 3 Categorical Exemption (CEQA Guidelines Section 15303) covering the new construction of small structures; and under a Class 4 Categorical Exemption (CEQA Guidelines Section 15304) covering minor alterations to land, including grading on slopes of less than 10 percent. As revised by the Permittee, the project does not involve any unusual circumstances that could lead to a significant effect on the environment.

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 will make its decision based on the evidence in the permit application and attachments, this staff report, and any other relevant evidence presented by any individual or group including the submitted protest letters and testimony made at the hearing.

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 Code (CCR Title 23 Division 1) have been applied to the review of this permit.

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

The work covered under this permit is an overall improvement to the existing flood control system as it provides an accessible path for Operations, Maintenance and emergency patrols. The proposed project also prevents erosion of the levee from illegal off-roading activity. The proposed project has no negative impacts on the State Plan of Flood Control.

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

The proposed project is an improvement to the flood control facilities by providing an accessible path and area for future levee improvements, if necessary to increase the level of flood protection.

9.0 – STAFF RECOMMENDATION

For the reasons stated on this staff report, Staff recommends that the Board authorize TRLIA's proposed project to install the fence, K-rails, and a maintenance road within the maintenance corridor boundary by adopting Resolution No. 2011-31, which constitutes the Board's written findings and decision in the matter of Permit No.18690. The Resolution contains the Board's CEQA findings, Findings of Fact, approval of Permit No. 18690, and an order to direct the Executive Officer to take necessary actions to

prepare and execute the permit and file a Notice of Exemption (NOE) with the State Clearinghouse.

10.0 – LIST OF ATTACHMENTS

- A. Resolution No. 2011-31
- B. Draft Permit 18690
 - Exhibit A – U.S. Army Corps of Engineers 208.10 Review letter
 - Exhibit B – RD 784 Letter of Endorsement with Conditions
 - Exhibit C – U.S. Fish & Wildlife Service Conservation Guidelines
- C. Location Map and application Information submitted by Applicant
- D. Communication
 - Exhibit A – Six Protest and acknowledgment letters for Application No. 18690
 - Exhibit B – TRLIA August 22, 2011 Community Meeting Q&A
 - Exhibit C – TRLIA Memo “Responses to Mr. Heckers’ Questions cited in February 4, 2012 e-mail” dated February 7, 2012
- E. Easement Information
 - Exhibit A – Record of Survey prepared by CTA Engineering dated June 2011
 - Exhibit B – Memo prepared by CTA Engineering dated October 31, 2011

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| Report Completed by: | Alison Tang |
| Environmental Review: | James Herota, Andrea Mauro |
| Document Review: | Curt Taras, Len Marino, and Debbie Smith |

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2011-31

FINDINGS AND DECISION AUTHORIZING ISSUANCE OF
ENCROACHMENT PERMIT NO. 18690
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
FENCE RELOCATION PROJECT
FEATHER RIVER, YUBA COUNTY

WHEREAS, Three Rivers Levee Improvement Authority (TRLIA) is the owner of the project known as the Feather River Segment 3 Levee Improvements located in West Linda, CA; and

WHEREAS, the project is located along Feather River Boulevard and Riverside Avenue in West Linda, California, 1.2 miles south of Marysville, California, at the confluence of the Yuba and Feather Rivers; and

WHEREAS, the applicant proposes to install approximately 1.1 miles of chain link fence at least 6 feet high adjacent to the levee on the landside, on State of California property. The proposed work includes minor grading to provide a 20-ft wide maintenance corridor from the landside toe of the levee, placement of K-Rails adjacent to the new fence, and installation of 2 gates at the crown of the levee; and

WHEREAS, during the survey preparation for TRLIA's Feather River Phase 4, Segment 3 levee improvements project, it was discovered that there were unpermitted private encroachments on State-owned land and within the required twenty-foot-wide maintenance corridor; and

WHEREAS, TRLIA notified the encroachment owners of its plan to install a new fence along the State's levee right-of-way and hosted a local community meeting to discuss. Board Enforcement Staff issued 51 Notices of Violation to the property owners of the unauthorized encroachments on State land; and

WHEREAS, TRLIA submitted an encroachment application to construct a levee maintenance corridor and fence along the Feather River and Board Staff received six protest letters in response to the proposed project, which are detailed in Section 5.6 of the Staff Report; and

WHEREAS, on December 2, 2011 at a public enforcement hearing, the Board determined by a majority vote that private encroachments exist on State owned property, and directed staff to return with a proposal to clear a twenty foot wide levee toe maintenance corridor while minimizing the impact to adjoining private parcel owners; and

WHEREAS, in January 2012, TRLIA held a local community meeting and determined the local preferred option was to locate the State fence along the edge of the twenty-foot-wide operation and maintenance corridor; and

WHEREAS, on January 26, 2012, the Board continued the enforcement hearings. The decisions made that day were vacated, and all the enforcement hearings were continued for a future meeting.

WHEREAS, the Board is scheduled to hear the continuation of the requested Enforcement Hearings on the same date but prior to the hearing on this permit application; and

WHEREAS, CTA Engineering & Surveying prepared a Record of Survey dated June 2011 that delineates the property boundaries of the parcels adjacent to the Feather River East levee and Yuba River South levee, and is recorded with the Yuba County Recorder's office.

WHEREAS, Reclamation District 784 has endorsed the authorization of the proposed project with conditions; and

WHEREAS, the Central Valley Flood Protection Board has conducted a hearing on Encroachment Permit No. 18690 and has reviewed the application, the Report of its staff, the documents and correspondence in its file, and given the applicant the right to testify and present evidence on their behalf;

NOW, THEREFORE, BE IT RESOLVED THAT,

Findings of Fact

1. The Central Valley Flood Protection Board hereby adopts as findings the facts set forth in the Staff Report.
2. The Board has reviewed all Attachments listed in the Staff Report.

CEQA Findings

3. The Board has determined that the project is categorically exempt from CEQA under a Class 1 Categorical Exemption (CEQA Guidelines Section 15301) covering existing facilities, including addition of safety and health protection devices; Class 2 Categorical Exemption (CEQA Guidelines Section 15302) covering the replacement of existing structures and facilities where the new structure will be located on the same site with the same purpose as the prior structures and facilities; Class 3 Categorical Exemption (CEQA Guidelines Section 15303) covering the new construction of small structures; and under a Class 4 Categorical Exemption (CEQA Guidelines Section 15304) covering minor alterations to land, including grading on slopes of less than 10 percent. As revised by the Permittee, the project does not involve any unusual circumstances that could lead to a significant effect on the environment.

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

Findings pursuant to Water Code section 8610.5

5. **Evidence Admitted into the Record.** The Board has considered all the evidence presented in this matter, including previous Board permits (ABO), past and present Staff Reports 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, 3310 El Camino Avenue, Room 151, Sacramento, California 95821.

6. **Best Available Science.** The accepted industry standards for the work proposed under this permit as regulated by Code (CCR Title 23 Division 1) have been applied to the review of this permit.
7. **Effects on State Plan of Flood Control.** The work covered under this permit is an overall improvement to the existing flood control system as it provides an accessible path for Operations, Maintenance and emergency patrols. The proposed project also prevents erosion of the levee from illegal off-roading activity. The proposed project has no negative impacts on the State Plan of Flood Control.
8. **Effects of Reasonably Projected Future Events.** The proposed project is an improvement to the flood control facilities by providing an accessible path and area for future levee improvements, if necessary to increase the level of flood protection.

Other Findings/Conclusions regarding Issuance of the Permit

9. This resolution shall constitute the written decision of the Central Valley Flood Protection Board in the matter of Encroachment Permit No. 18690.

Approval of Encroachment Permit No. 18690

10. Based on the foregoing, the Central Valley Flood Protection Board hereby approves the issuance of Encroachment Permit No. 18690 as revised and as conditioned to install approximately 1.1 miles of chain link fence at least 6 feet high adjacent to the levee on the landside, on State of California property, including minor grading to provide a 20-ft wide maintenance corridor from the landside toe of the levee, placement of K-Rails adjacent to the new fence, and installation of two gates at the crown of the Feather River east levee in West Linda, CA.

11. The Central Valley Flood Protection Board directs the Executive Officer to take the necessary actions to prepare and execute the permit and related documents and file a Notice of Exemption with the State Clearinghouse.

PASSED AND ADOPTED by vote of the Board on _____, 2012.

Benjamin F. Carter
President

Secretary

DRAFT

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

PERMIT NO. 18690 BD

This Permit is issued to:

Three Rivers Levee Improvement Authority
1114 Yuba Street, Suite 218
Marysville, California 95901

To install chain link fencing, K-rails, and a maintenance road on State of California property, adjacent to the Feather River East Levee and Yuba River South Levee. Works are located in RD 784 along the east levee of the Feather River, Unit 2 from LM 0.0 to 0.94 and the south levee of the Yuba River, Unit 1, LM 2.1 to 2.2 (Section 25, T15N, 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. 18690 BD

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

FOURTEEN: 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.

FIFTEEN: Upon completion of the project, the permittee shall submit as-builts to: Department of Water Resources, Flood Project Inspection Section, 3310 El Camino Avenue, Suite 256, Sacramento, California 95821.

SIXTEEN: 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.

SEVENTEEN: 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.

EIGHTEEN: The permitted encroachment(s) shall not interfere with operation and maintenance of the flood control project. If the permitted encroachment(s) are determined by any agency responsible for operation or maintenance of the flood control project to interfere, the permittee shall be required, at permittee's cost and expense, to modify or remove the permitted encroachment(s) under direction of the Central Valley Flood Protection Board or Department of Water Resources. If the permittee does not comply, the Central Valley Flood Protection Board may modify or remove the encroachment(s) at the permittee's expense.

NINETEEN: Permittee acknowledges the presence of elderberry shrubs which could serve as Valley Elderberry Longhorn Beetle habitat in the vicinity of this project. Permittee has structured the project so as not to include any work within 100 feet of existing elderberry plants in compliance with the U.S. Fish and Wildlife Service Conservation Guidelines dated 9 July 1999 (attached to this permit as Exhibit C) until such time as the Permittee consults with U.S. Fish and Wildlife Service to establish acceptable protocols to be used in protecting possible habitat during this project. Permittee shall provide copies of the protocols to be implemented by Permittee within the 100-foot buffer zone to Board staff as part of an application to amend this permit. Until such time and associated approved permit amendment, Permittee may not disturb the area within the 100-foot buffer zone. Prior to construction, Permittee shall submit for CVFPB Executive Officer approval construction plans and related documents showing the 100-foot buffer zone (protected during and after construction, and demonstrating compliance with the other items on page 3 of the Guidelines (Ex. C).

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

TWENTY-ONE: The proposed gate shall be installed perpendicular to the centerline of the levee.

TWENTY-TWO: The proposed fence crossing the levee crown shall have a minimum opening width of 14 feet or a suitable gate of equal width shall be installed on the levee crown.

TWENTY-THREE: The proposed fence and gate within the levee section shall be constructed in accordance with Title 23 Section 126 and submitted fence details.

TWENTY-FOUR: Any lock on the gate must be accessible to maintenance and inspection personnel and must not be casehardened.

TWENTY-FIVE: The fence parallel with the levee shall be located twenty (20) feet from the levee toe as indicated on submitted plans prepared by CTA Engineering & Surveying.

TWENTY-SIX: Excavations in the levee section for fence posts and footings shall be a maximum of 3-feet deep, cleaned of all loose soil, and backfilled with concrete cast against firm undisturbed earth.

TWENTY-SEVEN: Prior to placement of fill against the levee slope and within the corridor area at the toe of the levee, all surface vegetation shall be removed to a depth of 6 inches. Organic soil and roots larger than 1-1/2 inches in diameter shall be removed to a depth of 3 feet.

TWENTY-EIGHT: Permittee shall ensure that the project has adequate stormwater management so

that the maintenance road is passable during wet weather, and that the project does not worsen existing drainage problems in the area. Central Valley Flood Protection Board staff has determined that such stormwater conveyance standard can be achieved through minor grading surface drainage features with slopes of less than 10 percent and/or pipes and culverts adjacent to or under the existing maintenance road. More significant grading and pipes/culverts are not authorized by this permit, and would require permittee to amend the permit and to comply with State regulations, including the California Environmental Quality Act. Final plans shall be subject to Central Valley Flood Protection Board staff review and satisfaction of this condition before project construction may begin.

TWENTY-NINE: Any excavations made in the levee section or within 10 feet of the levee toes shall be backfilled in 4- to 6-inch layers with impervious material with 20 percent or more passing the No. 200 sieve, a plasticity index of 8 or more, and a liquid limit of less than 50 and free of lumps or stones exceeding 3 inches in greatest dimension, vegetative matter, or other unsatisfactory material. Backfill material shall be compacted in 4- to 6-inch layers to a minimum of 90 percent relative compaction as measured by ASTM Method D1557-91.

THIRTY: The patrol road shall be surfaced with a minimum of 6 inches of compacted, Class 2, aggregate base (Caltrans Specification 26-1.02A).

THIRTY-ONE: The levee section shall be restored to at least the same condition that existed prior to commencement of work.

THIRTY-TWO: The maintenance corridor area and adjacent to the patrol road at the levee toe shall be cleared of trees and brush and maintained free of woody vegetation.

THIRTY-THREE: 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-FOUR: 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-FIVE: The permittee shall comply with all conditions set forth in the letter from the Department of the Army dated January 18, 2012, which is attached to this permit as Exhibit A and is incorporated by reference.

THIRTY-SIX: The permittee shall comply with all conditions set forth by Reclamation District 784, which is attached to this permit as Exhibit B and is incorporated by reference.



REPLY TO
ATTENTION OF

ITEM 4E: APPLICATION NO. 18690
ATTACHMENT B, EXHIBIT A

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

Flood Protection and Navigation Section (18690)

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

JAN 18 2012

Dear Mr. Punia:

We have reviewed a permit application by Three Rivers Levee Improvement Authority (TRLIA) (application number 18690). This project includes installing a 6 foot high chain link fence and K-rails parallel to the landside toe of the left bank levee of the Feather and Yuba Rivers. Work also includes minor grading along the landside toe of the levee. The project is located south of Marysville, west of Highway 70 along the Feather River East Levee and Yuba River South Levee, starting at 39.1272°N 121.5878°W NAD 83 and ending at 39.1126°N 121.5836°W NAD83 Yuba County, California.

The District Engineer has no objection to approval of this application by your Board from a flood control standpoint, subject to the following conditions:

- a. That the proposed work shall not be performed during the flood season of November 1 to April 15, unless otherwise approved in writing by your Board.
- b. That the proposed work shall not interfere with the integrity or hydraulic capacity of the flood damage reduction project; easement access; or maintenance, inspection, and flood fighting procedures.
- c. All cleared vegetation shall be properly grubbed and the levee embankment returned to existing lines and grade.
- d. That the fence and K-rails shall be located outside the limits of the project right-of-way or at least 15 feet landward of the levee toe.

Based on the information provided, no Section 10 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,

for Rick L. Poeppelman, P.E.
Chief, Engineering Division

Reclamation District No. 784 has the following conditions to be included on the Central Valley Flood Protection Board Encroachment Permit for installation of chain link fence and k-rail adjacent to the Feather River Levee Unit 2 Levee Mile 0.0 to 1.0. The conditions are as follows:

- All improvements shall meet or exceed Central Valley Flood Protection Board Title 23, Department of Water Resources, FEMA, and U.S Army Corps of Engineers Standards and requirements current and any future modifications of the standards.
- The facilities shall be setback a minimum of twenty (20) feet from levee toe to allow construction of operation and maintenance road. The twenty (20) feet shall be from levee toe to the edge of the k-rail in accordance with the drawings. The would result in the property line being a minimum of twenty two and one-half (22½) feet from the land side toe of levee.
- All work endorsed by this permit shall be in accordance with the submitted drawings and specifications. No further work, other than approved by this permit, shall be done in the area without prior endorsement of Reclamation District No. 784.
- The encroachment permit shall include a provision that the permittee shall be required to remove or alter all or any part of the herein permitted project 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 or successor does not comply, RD 784, USACE, and/or the CVFPB may remove or modify the herein permitted project at the permittee's expense.
- The permitted encroachment(s) shall not interfere with operation and maintenance of the flood control project. If the permitted encroachment(s) are determined by any agency responsible for operation and maintenance of the flood control project to interfere, the permittee shall be required, at permittee's or successor's sole cost and expense, to modify or remove the permitted encroachment(s).
- If the project or any portion thereof, is to be abandoned in the future, the permittee or successor shall abandon the project, at the permittee's or successor's sole cost and expense.
- A set of As-Built Mylar plans and specifications shall be provided to Reclamation District No. 784 upon completion of the work.
- A copy of the final Central Valley Flood Protection Board Permit shall be provided to Reclamation District No. 784 prior to any work.
- Reclamation District No. 784 shall be notified five (5) working days prior to any construction activities.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825

Conservation Guidelines for the
Valley Elderberry Longhorn Beetle
9 July 1999

The following guidelines have been issued by the U.S. Fish and Wildlife Service (Service) to assist Federal agencies and non-federal project applicants needing incidental take authorization through a section 7 consultation or a section 10(a)(1)(B) permit in developing measures to avoid and minimize adverse effects on the valley elderberry longhorn beetle. The Service will revise these guidelines as needed in the future. The most recently issued version of these guidelines should be used in developing all projects and habitat restoration plans. The survey and monitoring procedures described below are designed to avoid any adverse effects to the valley elderberry longhorn beetle. Thus a recovery permit is not needed to survey for the beetle or its habitat or to monitor conservation areas. If you are interested in a recovery permit for research purposes please call the Service's Regional Office at (503) 231-2063.

Background Information

The valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), was listed as a threatened species on August 8, 1980 (Federal Register 45: 52803-52807). This animal is fully protected under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The valley elderberry longhorn beetle (beetle) is completely dependent on its host plant, elderberry (*Sambucus* species), which is a common component of the remaining riparian forests and adjacent upland habitats of California's Central Valley. Use of the elderberry by the beetle, a wood borer, is rarely apparent. Frequently, the only exterior evidence of the elderberry's use by the beetle is an exit hole created by the larva just prior to the pupal stage. The life cycle takes one or two years to complete. The animal spends most of its life in the larval stage, living within the stems of an elderberry plant. Adult emergence is from late March through June, about the same time the elderberry produces flowers. The adult stage is short-lived. Further information on the life history, ecology, behavior, and distribution of the beetle can be found in a report by Barr (1991) and the recovery plan for the beetle (USFWS 1984).

Conservation Guidelines for the Valley Elderberry Longhorn Beetle

Surveys

Proposed project sites within the range of the valley elderberry longhorn beetle should be surveyed for the presence of the beetle and its elderberry host plant by a qualified biologist. The beetle's range extends throughout California's Central Valley and associated foothills from about the 3,000-foot elevation contour on the east and the watershed of the Central Valley on the west (Figure 1). All or portions of 31 counties are included: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Mariposa, Merced, Napa, Nevada, Placer, Sacramento, San Benito, San Joaquin, San Luis Obispo, Shasta, Solano, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, Yuba.

If elderberry plants with one or more stems measuring 1.0 inch or greater in diameter at ground level occur on or adjacent to the proposed project site, or are otherwise located where they may be directly or indirectly affected by the proposed action, minimization measures which include planting replacement habitat (conservation planting) are required (Table 1).

All elderberry shrubs with one or more stems measuring 1.0 inch or greater in diameter at ground level that occur on or adjacent to a proposed project site must be thoroughly searched for beetle exit holes (external evidence of beetle presence). In addition, all elderberry stems one inch or greater in diameter at ground level must be tallied by diameter size class (Table 1). As outlined in Table 1, the numbers of elderberry seedlings/cuttings and associated riparian native trees/shrubs to be planted as replacement habitat are determined by stem size class of affected elderberry shrubs, presence or absence of exit holes, and whether a proposed project lies in a riparian or non-riparian area.

Elderberry plants with no stems measuring 1.0 inch or greater in diameter at ground level are unlikely to be habitat for the beetle because of their small size and/or immaturity. Therefore, no minimization measures are required for removal of elderberry plants with no stems measuring 1.0 inch or greater in diameter at ground level with no exit holes. Surveys are valid for a period of two years.

Avoid and Protect Habitat Whenever Possible

Project sites that do not contain beetle habitat are preferred. If suitable habitat for the beetle occurs on the project site, or within close proximity where beetles will be affected by the project, these areas must be designated as avoidance areas and must be protected from disturbance during the construction and operation of the project. When possible, projects should be designed such that avoidance areas are connected with adjacent habitat to prevent fragmentation and isolation of beetle populations. Any beetle habitat that cannot be avoided as described below should be considered impacted and appropriate minimization measures should be proposed as described below.

Conservation Guidelines for the Valley Elderberry Longhorn Beetle

Avoidance: Establishment and Maintenance of a Buffer Zone

Complete avoidance (i.e., no adverse effects) may be assumed when a 100-foot (or wider) buffer is established and maintained around elderberry plants containing stems measuring 1.0 inch or greater in diameter at ground level. Firebreaks may not be included in the buffer zone. In buffer areas construction-related disturbance should be minimized, and any damaged area should be promptly restored following construction. The Service must be consulted before any disturbances within the buffer area are considered. In addition, the Service must be provided with a map identifying the avoidance area and written details describing avoidance measures.

Protective Measures

1. Fence and flag all areas to be avoided during construction activities. In areas where encroachment on the 100-foot buffer has been approved by the Service, provide a minimum setback of at least 20 feet from the dripline of each elderberry plant.
2. Brief contractors on the need to avoid damaging the elderberry plants and the possible penalties for not complying with these requirements.
3. Erect signs every 50 feet along the edge of the avoidance area with the following information: "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, as amended. Violators are subject to prosecution, fines, and imprisonment." The signs should be clearly readable from a distance of 20 feet, and must be maintained for the duration of construction.
4. Instruct work crews about the status of the beetle and the need to protect its elderberry host plant.

Restoration and Maintenance

1. Restore any damage done to the buffer area (area within 100 feet of elderberry plants) during construction. Provide erosion control and re-vegetate with appropriate native plants.
2. Buffer areas must continue to be protected after construction from adverse effects of the project. Measures such as fencing, signs, weeding, and trash removal are usually appropriate.
3. No insecticides, herbicides, fertilizers, or other chemicals that might harm the beetle or its host plant should be used in the buffer areas, or within 100 feet of any elderberry plant with one or more stems measuring 1.0 inch or greater in diameter at ground level.

Conservation Guidelines for the Valley Elderberry Longhorn Beetle

4. The applicant must provide a written description of how the buffer areas are to be restored, protected, and maintained after construction is completed.
5. Mowing of grasses/ground cover may occur from July through April to reduce fire hazard. No mowing should occur within five (5) feet of elderberry plant stems. Mowing must be done in a manner that avoids damaging plants (e.g., stripping away bark through careless use of mowing/trimming equipment).

Transplant Elderberry Plants That Cannot Be Avoided

Elderberry plants must be transplanted if they can not be avoided by the proposed project. All elderberry plants with one or more stems measuring 1.0 inch or greater in diameter at ground level must be transplanted to a conservation area (see below). At the Service's discretion, a plant that is unlikely to survive transplantation because of poor condition or location, or a plant that would be extremely difficult to move because of access problems, may be exempted from transplantation. In cases where transplantation is not possible the minimization ratios in Table 1 may be increased to offset the additional habitat loss.

Trimming of elderberry plants (e.g., pruning along roadways, bike paths, or trails) with one or more stems 1.0 inch or greater in diameter at ground level, may result in take of beetles. Therefore, trimming is subject to appropriate minimization measures as outlined in Table 1.

1. Monitor. A qualified biologist (monitor) must be on-site for the duration of the transplanting of the elderberry plants to insure that no unauthorized take of the valley elderberry longhorn beetle occurs. If unauthorized take occurs, the monitor must have the authority to stop work until corrective measures have been completed. The monitor must immediately report any unauthorized take of the beetle or its habitat to the Service and to the California Department of Fish and Game.
2. Timing. Transplant elderberry plants when the plants are dormant, approximately November through the first two weeks in February, after they have lost their leaves. Transplanting during the non-growing season will reduce shock to the plant and increase transplantation success.
3. Transplanting Procedure.
 - a. Cut the plant back 3 to 6 feet from the ground or to 50 percent of its height (whichever is taller) by removing branches and stems above this height. The trunk and all stems measuring 1.0 inch or greater in diameter at ground level should be replanted. Any leaves remaining on the plant should be removed.

Conservation Guidelines for the Valley Elderberry Longhorn Beetle

- b. Excavate a hole of adequate size to receive the transplant.
- c. Excavate the plant using a Vemeer spade, backhoe, front end loader, or other suitable equipment, taking as much of the root ball as possible, and replant immediately at the conservation area. Move the plant only by the root ball. If the plant is to be moved and transplanted off site, secure the root ball with wire and wrap it with burlap. Dampen the burlap with water, as necessary, to keep the root ball wet. Do not let the roots dry out. Care should be taken to ensure that the soil is not dislodged from around the roots of the transplant. If the site receiving the transplant does not have adequate soil moisture, pre-wet the soil a day or two before transplantation.
- d. The planting area must be at least 1,800 square feet for each elderberry transplant. The root ball should be planted so that its top is level with the existing ground. Compact the soil sufficiently so that settlement does not occur. As many as five (5) additional elderberry plantings (cuttings or seedlings) and up to five (5) associated native species plantings (see below) may also be planted within the 1,800 square foot area with the transplant. The transplant and each new planting should have its own watering basin measuring at least three (3) feet in diameter. Watering basins should have a continuous berm measuring approximately eight (8) inches wide at the base and six (6) inches high.
- e. Saturate the soil with water. Do not use fertilizers or other supplements or paint the tips of stems with pruning substances, as the effects of these compounds on the beetle are unknown.
- f. Monitor to ascertain if additional watering is necessary. If the soil is sandy and well-drained, plants may need to be watered weekly or twice monthly. If the soil is clayey and poorly-drained, it may not be necessary to water after the initial saturation. However, most transplants require watering through the first summer. A drip watering system and timer is ideal. However, in situations where this is not possible, a water truck or other apparatus may be used.

Plant Additional Seedlings or Cuttings

Each elderberry stem measuring 1.0 inch or greater in diameter at ground level that is adversely affected (i.e., transplanted or destroyed) must be replaced, in the conservation area, with elderberry seedlings or cuttings at a ratio ranging from 1:1 to 8:1 (new plantings to affected stems). Minimization ratios are listed and explained in Table 1. Stock of either seedlings or cuttings should be obtained from local sources. Cuttings may be obtained from the plants to be transplanted if the project site is in the vicinity of the conservation area. If the Service determines that the elderberry plants on the proposed project site are unsuitable candidates for

Conservation Guidelines for the Valley Elderberry Longhorn Beetle

transplanting, the Service may allow the applicant to plant seedlings or cuttings at higher than the stated ratios in Table 1 for each elderberry plant that cannot be transplanted.

Plant Associated Native Species

Studies have found that the beetle is more abundant in dense native plant communities with a mature overstory and a mixed understory. Therefore, a mix of native plants associated with the elderberry plants at the project site or similar sites will be planted at ratios ranging from 1:1 to 2:1 [native tree/plant species to each elderberry seedling or cutting (see Table 1)]. These native plantings must be monitored with the same survival criteria used for the elderberry seedlings (see below). Stock of saplings, cuttings, and seedlings should be obtained from local sources. If the parent stock is obtained from a distance greater than one mile from the conservation area, approval by the Service of the native plant donor sites must be obtained prior to initiation of the revegetation work. Planting or seeding the conservation area with native herbaceous species is encouraged. Establishing native grasses and forbs may discourage unwanted non-native species from becoming established or persisting at the conservation area. Only stock from local sources should be used.

Examples

Example 1

The project will adversely affect beetle habitat on a vacant lot on the land side of a river levee. This levee now separates beetle habitat on the vacant lot from extant Great Valley Mixed Riparian Forest (Holland 1986) adjacent to the river. However, it is clear that the beetle habitat located on the vacant lot was part of a more extensive mixed riparian forest ecosystem extending farther from the river's edge prior to agricultural development and levee construction. Therefore, the beetle habitat on site is considered riparian. A total of two elderberry plants with at least one stem measuring 1.0 inch or greater in diameter at ground level will be affected by the proposed action. The two plants have a total of 15 stems measuring over 1.0 inch. No exit holes were found on either plant. Ten of the stems are between 1.0 and 3.0 inches in diameter and five of the stems are greater than 5.0 inches in diameter. The conservation area is suited for riparian forest habitat. Associated natives adjacent to the conservation area are box elder (*Acer negundo californica*), walnut (*Juglans californica* var. *hindsii*), sycamore (*Platanus racemosa*), cottonwood (*Populus fremontii*), willow (*Salix gooddingii* and *S. laevigata*), white alder (*Alnus rhombifolia*), ash (*Fraxinus latifolia*), button willow (*Cephalanthus occidentalis*), and wild grape (*Vitis californica*).

Conservation Guidelines for the Valley Elderberry Longhorn Beetle

Minimization (based on ratios in Table 1):

- Transplant the two elderberry plants that will be affected to the conservation area.
- Plant 40 elderberry rooted cuttings (10 affected stems compensated at 2:1 ratio and 5 affected stems compensated at 4:1 ratio, cuttings planted:stems affected)
- Plant 40 associated native species (ratio of associated natives to elderberry plantings is 1:1 in areas with no exit holes):
 - 5 saplings each of box elder, sycamore, and cottonwood
 - 5 willow seedlings
 - 5 white alder seedlings
 - 5 saplings each of walnut and ash
 - 3 California button willow
 - 2 wild grape vines
 - Total: 40 associated native species
- Total area required is a minimum of 1,800 sq. ft. for one to five elderberry seedlings and up to 5 associated natives. Since, a total of 80 plants must be planted (40 elderberries and 40 associated natives), a total of 0.33 acre (14,400 square feet) will be required for conservation plantings. The conservation area will be seeded and planted with native grasses and forbs, and closely monitored and maintained throughout the monitoring period.

Example 2

The project will adversely affect beetle habitat in Blue Oak Woodland (Holland 1986). One elderberry plant with at least one stem measuring 1.0 inch or greater in diameter at ground level will be affected by the proposed action. The plant has a total of 10 stems measuring over 1.0 inch. Exit holes were found on the plant. Five of the stems are between 1.0 and 3.0 inches in diameter and five of the stems are between 3.0 and 5.0 inches in diameter. The conservation area is suited for elderberry savanna (non-riparian habitat). Associated natives adjacent to the conservation area are willow (*Salix* species), blue oak (*Quercus douglasii*), interior live oak (*Q. wislizenii*), sycamore, poison oak (*Toxicodendron diversilobum*), and wild grape.

Minimization (based on ratios in Table 1):

- Transplant the one elderberry plant that will be affected to the conservation area.
- Plant 30 elderberry seedlings (5 affected stems compensated at 2:1 ratio and 5 affected stems compensated at 4:1 ratio, cuttings planted:stems affected)

Conservation Guidelines for the Valley Elderberry Longhorn Beetle

- Plant 60 associated native species (ratio of associated natives to elderberry plantings is 2:1 in areas with exit holes):

20 saplings of blue oak, 20 saplings of sycamore, and 20 saplings of willow, and seed and plant with a mixture of native grasses and forbs

- Total area required is a minimum of 1,800 sq. ft. for one to five elderberry seedlings and up to 5 associated natives. Since, a total of 90 plants must be planted (30 elderberries and 60 associated natives), a total of 0.37 acre (16,200 square feet) will be required for conservation plantings. The conservation area will be seeded and planted with native grasses and forbs, and closely monitored and maintained throughout the monitoring period.

Conservation Area—Provide Habitat for the Beetle in Perpetuity

The conservation area is distinct from the avoidance area (though the two may adjoin), and serves to receive and protect the transplanted elderberry plants and the elderberry and other native plantings. The Service may accept proposals for off-site conservation areas where appropriate.

1. Size. The conservation area must provide at least 1,800 square feet for each transplanted elderberry plant. As many as 10 conservation plantings (i.e., elderberry cuttings or seedlings and/or associated native plants) may be planted within the 1800 square foot area with each transplanted elderberry. An additional 1,800 square feet shall be provided for every additional 10 conservation plants. Each planting should have its own watering basin measuring approximately three feet in diameter. Watering basins should be constructed with a continuous berm measuring approximately eight inches wide at the base and six inches high.

The planting density specified above is primarily for riparian forest habitats or other habitats with naturally dense cover. If the conservation area is an open habitat (i.e., elderberry savanna, oak woodland) more area may be needed for the required plantings. Contact the Service for assistance if the above planting recommendations are not appropriate for the proposed conservation area.

No area to be maintained as a firebreak may be counted as conservation area. Like the avoidance area, the conservation area should connect with adjacent habitat wherever possible, to prevent isolation of beetle populations.

Depending on adjacent land use, a buffer area may also be needed between the conservation area and the adjacent lands. For example, herbicides and pesticides are

Conservation Guidelines for the Valley Elderberry Longhorn Beetle

often used on orchards or vineyards. These chemicals may drift or runoff onto the conservation area if an adequate buffer area is not provided.

2. Long-Term Protection. The conservation area must be protected in perpetuity as habitat for the valley elderberry longhorn beetle. A conservation easement or deed restrictions to protect the conservation area must be arranged. Conservation areas may be transferred to a resource agency or appropriate private organization for long-term management. The Service must be provided with a map and written details identifying the conservation area; and the applicant must receive approval from the Service that the conservation area is acceptable prior to initiating the conservation program. A true, recorded copy of the deed transfer, conservation easement, or deed restrictions protecting the conservation area in perpetuity must be provided to the Service before project implementation.

Adequate funds must be provided to ensure that the conservation area is managed in perpetuity. The applicant must dedicate an endowment fund for this purpose, and designate the party or entity that will be responsible for long-term management of the conservation area. The Service must be provided with written documentation that funding and management of the conservation area (items 3-8 above) will be provided in perpetuity.

3. Weed Control. Weeds and other plants that are not native to the conservation area must be removed at least once a year, or at the discretion of the Service and the California Department of Fish and Game. Mechanical means should be used; herbicides are prohibited unless approved by the Service.
4. Pesticide and Toxicant Control. Measures must be taken to insure that no pesticides, herbicides, fertilizers, or other chemical agents enter the conservation area. No spraying of these agents must be done within one 100 feet of the area, or if they have the potential to drift, flow, or be washed into the area in the opinion of biologists or law enforcement personnel from the Service or the California Department of Fish and Game.
5. Litter Control. No dumping of trash or other material may occur within the conservation area. Any trash or other foreign material found deposited within the conservation area must be removed within 10 working days of discovery.
6. Fencing. Permanent fencing must be placed completely around the conservation area to prevent unauthorized entry by off-road vehicles, equestrians, and other parties that might damage or destroy the habitat of the beetle, unless approved by the Service. The applicant must receive written approval from the Service that the fencing is acceptable prior to initiation of the conservation program. The fence must be maintained in perpetuity, and must be repaired/replaced within 10 working days if it is found to be damaged. Some conservation areas may be made available to the public for appropriate recreational and educational opportunities with written approval from the Service. In

Conservation Guidelines for the Valley Elderberry Longhorn Beetle

these cases appropriate fencing and signs informing the public of the beetle's threatened status and its natural history and ecology should be used and maintained in perpetuity.

7. Signs. A minimum of two prominent signs must be placed and maintained in perpetuity at the conservation area, unless otherwise approved by the Service. The signs should note that the site is habitat of the federally threatened valley elderberry longhorn beetle and, if appropriate, include information on the beetle's natural history and ecology. The signs must be approved by the Service. The signs must be repaired or replaced within 10 working days if they are found to be damaged or destroyed.

Monitoring

The population of valley elderberry longhorn beetles, the general condition of the conservation area, and the condition of the elderberry and associated native plantings in the conservation area must be monitored over a period of either ten (10) consecutive years or for seven (7) years over a 15-year period. The applicant may elect either 10 years of monitoring, with surveys and reports every year; or 15 years of monitoring, with surveys and reports on years 1, 2, 3, 5, 7, 10, and 15. The conservation plan provided by the applicant must state which monitoring schedule will be followed. No change in monitoring schedule will be accepted after the project is initiated. If conservation planting is done in stages (i.e., not all planting is implemented in the same time period), each stage of conservation planting will have a different start date for the required monitoring time.

Surveys. In any survey year, a minimum of two site visits between February 14 and June 30 of each year must be made by a qualified biologist. Surveys must include:

1. A population census of the adult beetles, including the number of beetles observed, their condition, behavior, and their precise locations. Visual counts must be used; mark-recapture or other methods involving handling or harassment must not be used.
2. A census of beetle exit holes in elderberry stems, noting their precise locations and estimated ages.
3. An evaluation of the elderberry plants and associated native plants on the site, and on the conservation area, if disjunct, including the number of plants, their size and condition.
4. An evaluation of the adequacy of the fencing, signs, and weed control efforts in the avoidance and conservation areas.

5. A general assessment of the habitat, including any real or potential threats to the beetle and its host plants, such as erosion, fire, excessive grazing, off-road vehicle use, vandalism, excessive weed growth, etc.

The materials and methods to be used in the monitoring studies must be reviewed and approved by the Service. All appropriate Federal permits must be obtained prior to initiating the field studies.

Reports. A written report, presenting and analyzing the data from the project monitoring, must be prepared by a qualified biologist in each of the years in which a monitoring survey is required. Copies of the report must be submitted by December 31 of the same year to the Service (Chief of Endangered Species, Sacramento Fish and Wildlife Office), and the Department of Fish and Game (Supervisor, Environmental Services, Department of Fish and Game, 1416 Ninth Street, Sacramento, California 95814; and Staff Zoologist, California Natural Diversity Data Base, Department of Fish and Game, 1220 S Street, Sacramento, California 95814). The report must explicitly address the status and progress of the transplanted and planted elderberry and associated native plants and trees, as well as any failings of the conservation plan and the steps taken to correct them. Any observations of beetles or fresh exit holes must be noted. Copies of original field notes, raw data, and photographs of the conservation area must be included with the report. A vicinity map of the site and maps showing where the individual adult beetles and exit holes were observed must be included. For the elderberry and associated native plants, the survival rate, condition, and size of the plants must be analyzed. Real and likely future threats must be addressed along with suggested remedies and preventative measures (e.g. limiting public access, more frequent removal of invasive non-native vegetation, etc.).

A copy of each monitoring report, along with the original field notes, photographs, correspondence, and all other pertinent material, should be deposited at the California Academy of Sciences (Librarian, California Academy of Sciences, Golden Gate Park, San Francisco, CA 94118) by December 31 of the year that monitoring is done and the report is prepared. The Service's Sacramento Fish and Wildlife Office should be provided with a copy of the receipt from the Academy library acknowledging receipt of the material, or the library catalog number assigned to it.

Access. Biologists and law enforcement personnel from the California Department of Fish and Game and the Service must be given complete access to the project site to monitor transplanting activities. Personnel from both these agencies must be given complete access to the project and the conservation area to monitor the beetle and its habitat in perpetuity.

Success Criteria

A minimum survival rate of at least 60 percent of the elderberry plants and 60 percent of the associated native plants must be maintained throughout the monitoring period. Within one year of discovery that survival has dropped below 60 percent, the applicant must replace failed plantings to bring survival above this level. The Service will make any determination as to the

Conservation Guidelines for the Valley Elderberry Longhorn Beetle

applicant's replacement responsibilities arising from circumstances beyond its control, such as plants damaged or killed as a result of severe flooding or vandalism.

Service Contact

These guidelines were prepared by the Endangered Species Division of the Service's Sacramento Fish and Wildlife Office. If you have questions regarding these guidelines or to request a copy of the most recent guidelines, telephone (916) 414-6600, or write to:

U.S. Fish and Wildlife Service
Ecological Services
2800 Cottage Way, W-2605
Sacramento, CA 95825

Conservation Guidelines for the Valley Elderberry Longhorn Beetle



Figure 1: Range of the Valley Elderberry Longhorn Beetle

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Literature Cited

Barr, C. B. 1991. The distribution, habitat, and status of the valley elderberry longhorn beetle *Desmocerus californicus dimorphus*. U.S. Fish and Wildlife Service; Sacramento, California.

Holland, R.F. 1986. Preliminary descriptions of the terrestrial natural communities of California. Unpublished Report. State of California, The Resources Agency, Department of Fish and Game, Natural Heritage Division, Sacramento, California.

USFWS. 1980. Listing the valley elderberry longhorn beetle as a threatened species with critical habitat. Federal Register 45:52803-52807.

USFWS. 1984. Recovery plan for the valley elderberry longhorn beetle. U.S. Fish and Wildlife Service, Endangered Species Program; Portland, Oregon.

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Table 1: Minimization ratios based on location (riparian vs. non-riparian), stem diameter of affected elderberry plants at ground level, and presence or absence of exit holes.

| Location | Stems (maximum diameter at ground level) | Exit Holes on Shrub Y/N (quantify) ¹ | Elderberry Seedling Ratio ² | Associated Native Plant Ratio ³ |
|--------------|--|---|--|--|
| non-riparian | stems > = 1" & = < 3" | No: | 1:1 | 1:1 |
| | | Yes: | 2:1 | 2:1 |
| non-riparian | stems > 3" & < 5" | No: | 2:1 | 1:1 |
| | | Yes: | 4:1 | 2:1 |
| non-riparian | stems >= 5" | No: | 3:1 | 1:1 |
| | | Yes: | 6:1 | 2:1 |
| riparian | stems > = 1" & = < 3" | No: | 2:1 | 1:1 |
| | | Yes: | 4:1 | 2:1 |
| riparian | stems > 3" & < 5" | No: | 3:1 | 1:1 |
| | | Yes: | 6:1 | 2:1 |
| riparian | stems > = 5" | No: | 4:1 | 1:1 |
| | | Yes: | 8:1 | 2:1 |

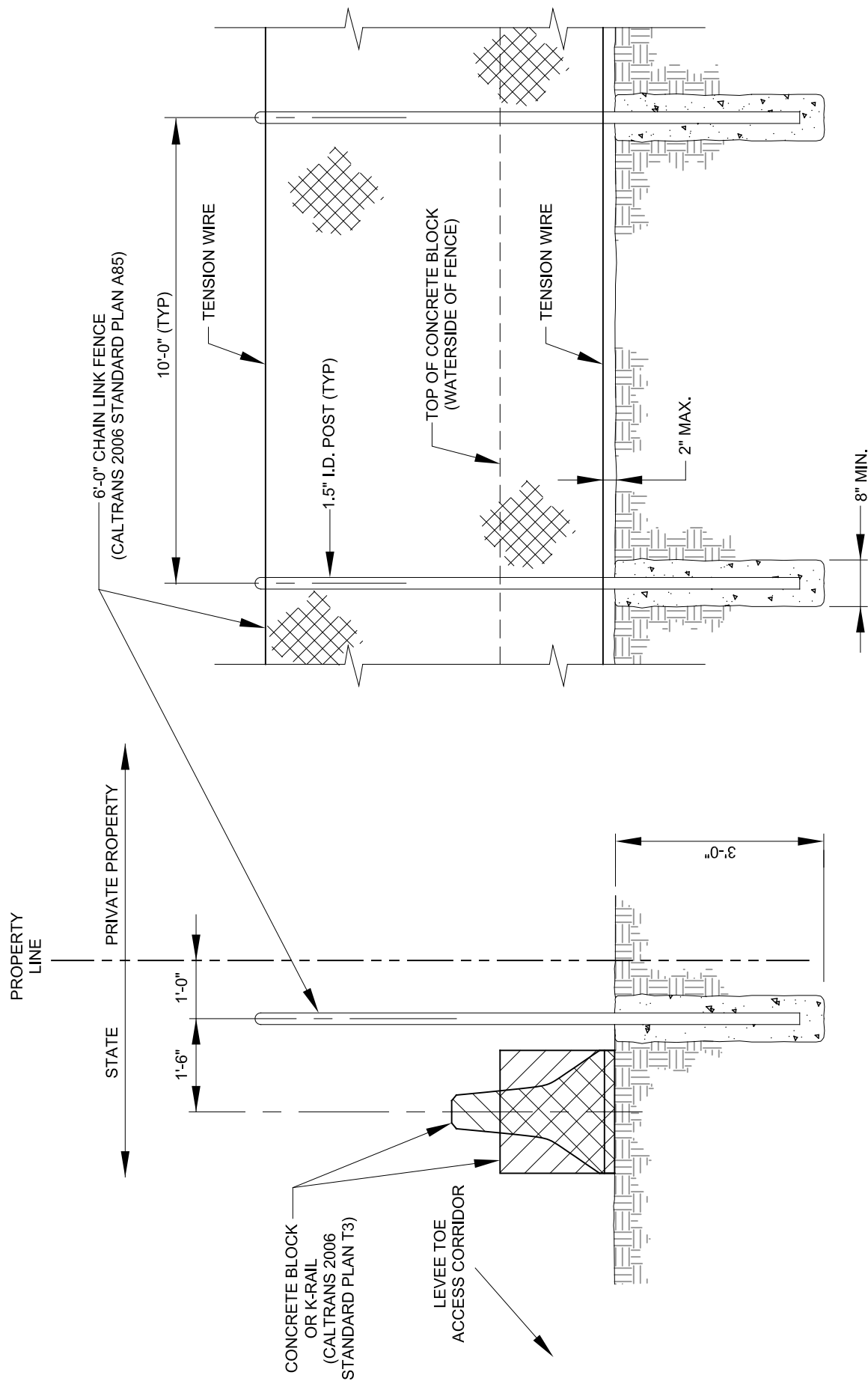
¹ All stems measuring one inch or greater in diameter at ground level on a single shrub are considered occupied when exit holes are present anywhere on the shrub.

² Ratios in the *Elderberry Seedling Ratio* column correspond to the number of cuttings or seedlings to be planted per elderberry stem (one inch or greater in diameter at ground level) affected by a project.


³ Ratios in the *Associated Native Plant Ratio* column correspond to the number of associated native species to be planted per elderberry (seedling or cutting) planted.

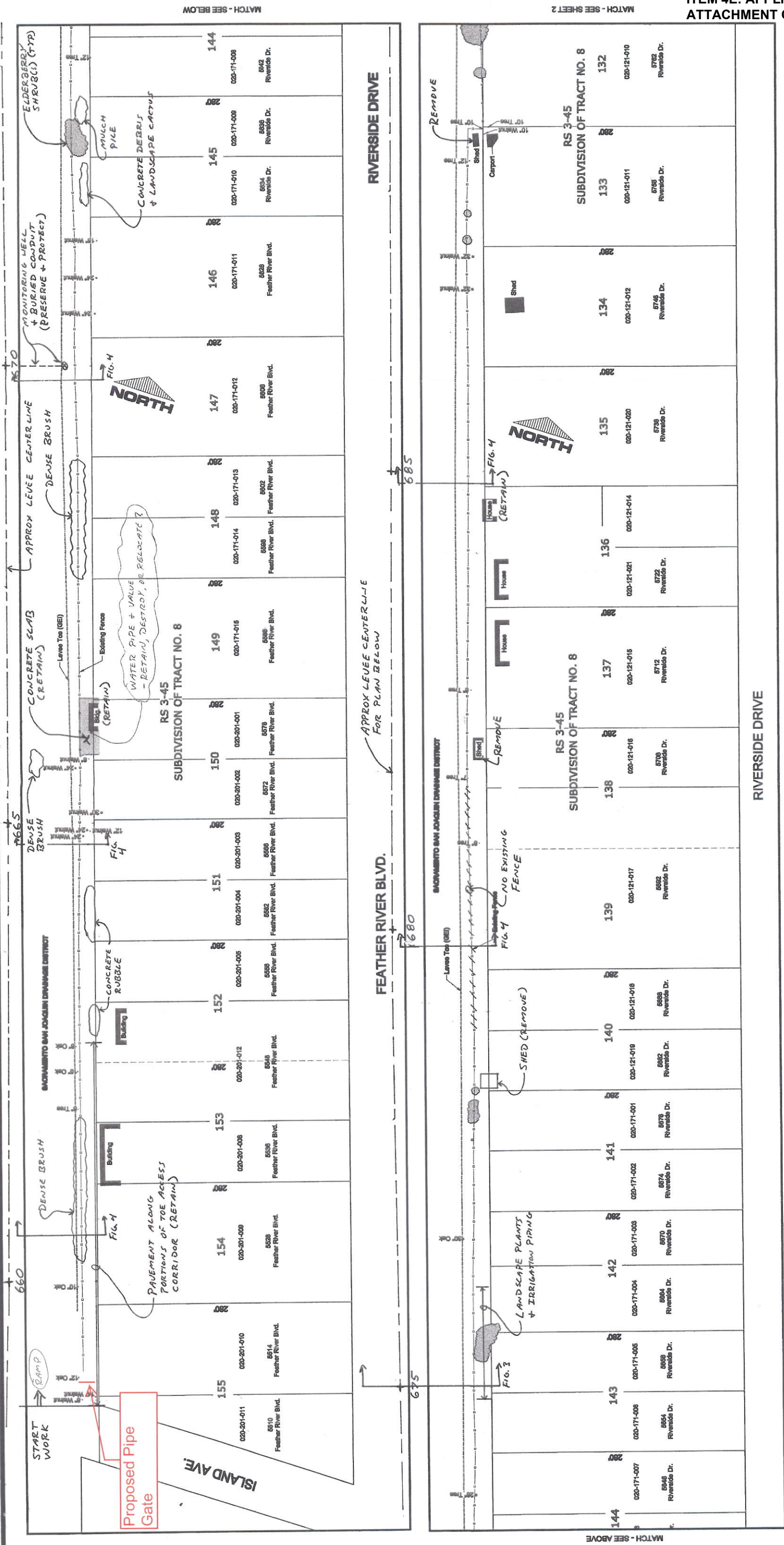


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| <div><div><div>MBKENGINEERS</div><div>1771 Tribute Road, Suite A Sacramento, California 95815 Phone: (916) 456-4400 • Fax: (916) 456-0253</div></div><div>THREE RIVERS LEVEE IMPROVEMENT AUTHORITY</div><div>RD 784 Levee System</div></div> | NO. | DATE | REVISION | SCALE: 1:2,000 | Figure 2a |
| | | | | JOB NO: 5141 | |
| | | | | BY: NWW | |
| | | | | CHK: --- | |
| | | | | DATE: 04/07/2010 | |



NOT TO SCALE

| | | | |
|--|--|---|--|
| THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 1114 Yuba Street, Suite 218 Marysville, CA 95901 GEI Project 06011-5 | | FEATHER RIVER LEVEE REPAIR Reclamation District No. 784 Yuba County, California | |
|  | | TYPICAL FENCE DETAIL | |
| | | FIGURE 3 | |



LEGEND:

- EXISTING FENCE LINE
TOE OF LEVEE
PROPERTY LINE
EXISTING STRUCTURE
TREE TRUNK
ELDERBERRY BUSH
CONCRETE

APPROX. LEVÉE CENTERLINE

Notes:

1. See Notes on Figure 4
2. FEATURES SHOWN ON PLAN SHEETS ARE BASED ON FIELD RECONNAISSANCE. NOT ALL FEATURES HAVE BEEN IDENTIFIED, AND SOME FEATURES HAVE LIKELY CHANGED. CONTRACTOR SHALL BECOME FAMILIAR WITH SITE CONDITIONS, AND SHALL VERIFY THE EXISTENCE, LOCATION, AND DETAIL OF ALL EXISTING FEATURES.



cta **Engineering & Surveying**
Civil Engineering • Land Surveying • Land Planning
 200 Main St., Suite 200, Chatham, NJ 07826
 908-281-0070 • Fax 908-281-0071 • www.cta-engineers.com

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

LEVEE EXHIBIT MAP

Feather River Segment 3

Encroachments North of Island Ave.

COUNTY OF YUBA

STATE OF CALIFORNIA

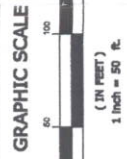
| | | |
|------------------|--------------|--------------|
| DRAWN BY: | DATE: | SHEET |
| | 05/23/2011 | 1 |

| | | | |
|-------------|-----|----------|------------|
| CHECKED BY: | EDB | JOB NO.: | 06-008-005 |
|-------------|-----|----------|------------|



EXISTING FENCE LINE
TOE OF LEVEE
PROPERTY LINE
EXISTING STRUCTURE
TREE TRUNK
ELDERBERRY BUSH
CONCRETE
APPROX. LEVEE C

1. SEE NOTES ON FIGURE 4
2. FEATURES SHOWN ON PLAN SHEETS ARE BASED ON FIELD RECONNAISSANCE. NOT ALL FEATURES HAVE BEEN IDENTIFIED, AND SOME FEATURES HAVE LIKELY CHANGED. CONTRACTOR SHALL BECOME FAMILIAR WITH SITE CONDITIONS, AND SHALL VERIFY THE EXISTENCE, LOCATION, AND DETAIL OF ALL EXISTING FEATURES.



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2001 Laker Circle, Suite 200, CA 94040
708.946.0000 • engineering@cta.com • cta.com

| | | | |
|---|--|---------------------|---------------------|
| THREE RIVERS LEVEE IMPROVEMENT AUTHORITY | | STATE OF CALIFORNIA | |
| LEVEE EXHIBIT MAP | | COUNTY OF YUBA | SHEET |
| Feather River Segment 3 Encroachments North of Island Ave. | | DATE: 05/25/2011 | 2 / 2 |
| | | CHECKED BY: EDB | JOB NO.: 06-008-005 |

NOTES

- 1. FILL SHALL BE GRANULAR FILL, PLACED IN LIFTS NOT EXCEEDING 8-INCHES IN LOOSE THICKNESS, AND COMPACTED TO A RELATIVE COMPACTION OF 97% OF ASTM D698 OR HIGHER.
- 2. PLACE END POSTS AND BUTT CONCRETE BLOCKS / K-RAILS AGAINST HOUSE ON BOTH SIDES (SOUTH AND NORTH).
- 3. CAREFULLY TIE BACK ELDERBERRY SHRUB BRANCHES PRIOR TO REMOVING OLD FENCE AND INSTALLING NEW FENCE. AFTER FENCE AND CONCRETE BLOCK / K-RAIL INSTALLATION CAREFULLY RELEASE TIES AND GENTLY RELEASE BRANCHES TO NATURAL POSITION.
- 4. DO NOT PLACE FILL WITHIN 4-FEET OF ELDERBERRY SHRUB TRUNK.
- 5. UNLESS OTHERWISE NOTED, REMOVE ALL STRUCTURES, DEBRIS, TRASH, TREES, SHRUBS, VEGETATION AND ANY OTHER DELETERIOUS MATERIAL FROM BETWEEN THE PROPERTY BOUNDARY AND LEVEE CROWN.

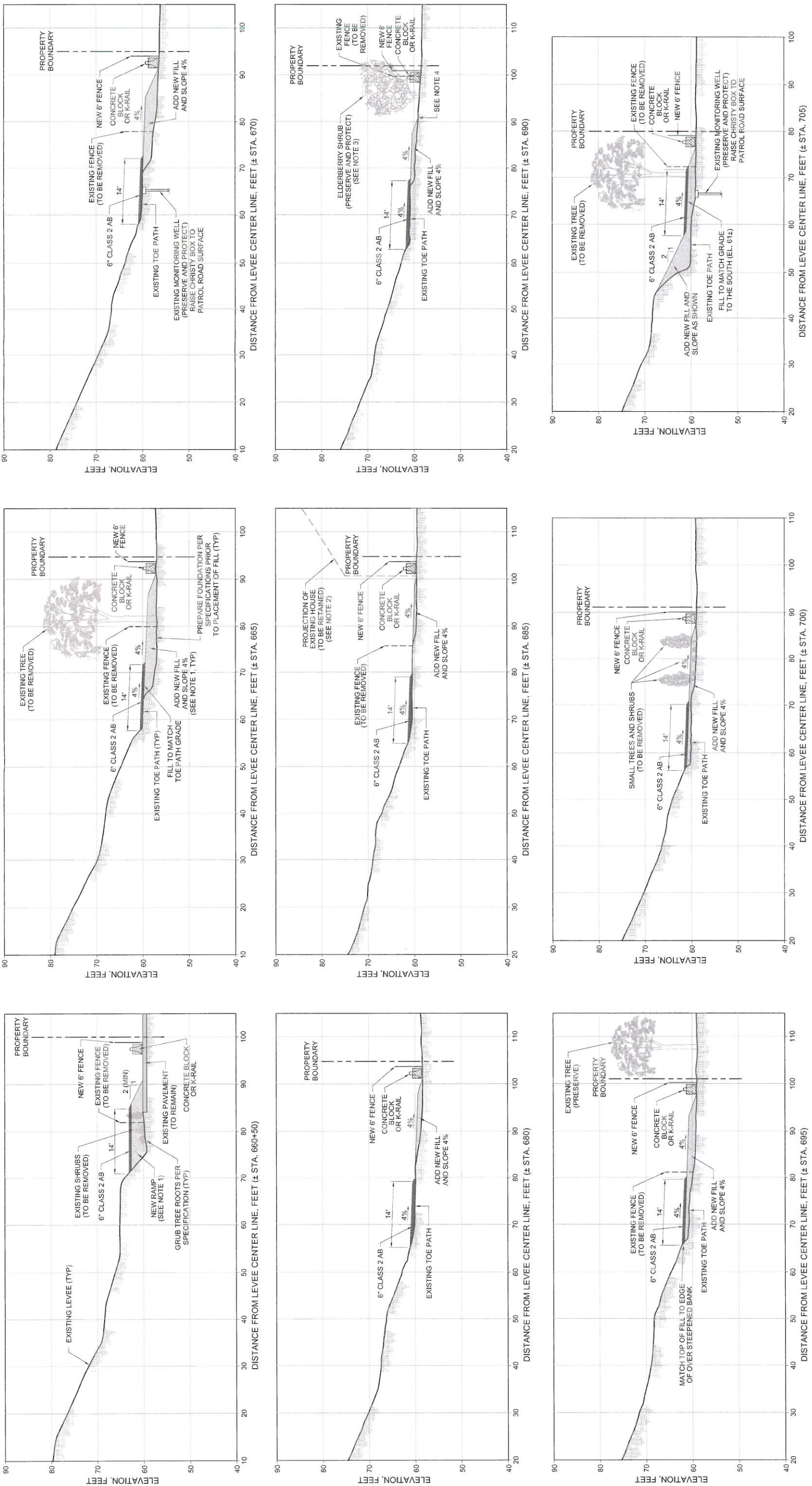


THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY
1114 Yuba Street, Suite 218
Marysville, CA 95901

FEATHER RIVER SETBACK LEVEE
Redemption District No. 784
Yuba County, California

SEGMENT 3 LANDSIDE
TOE ACCESS CORRIDOR -
CROSS SECTIONS

GEI Project 05011-5

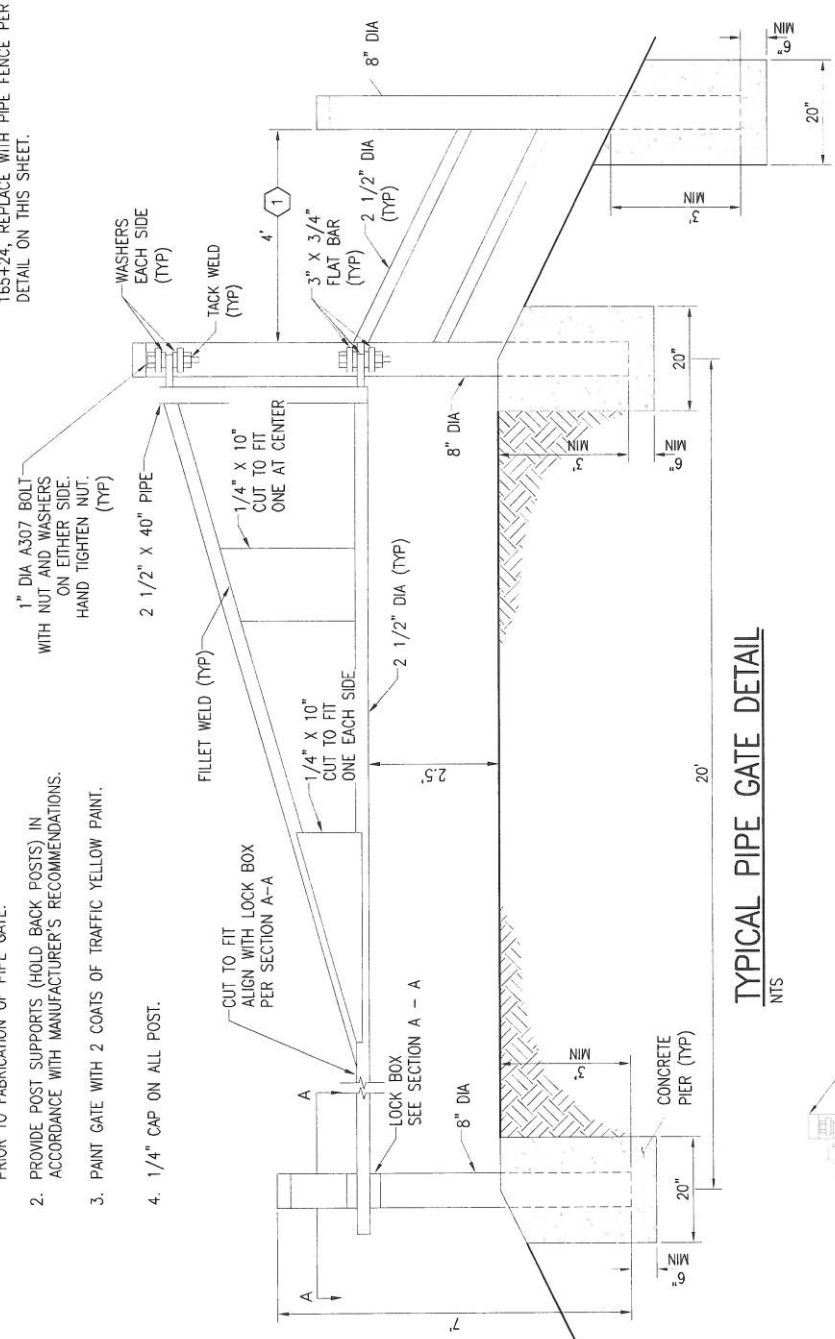


1 2 3 4 5 6 7 8

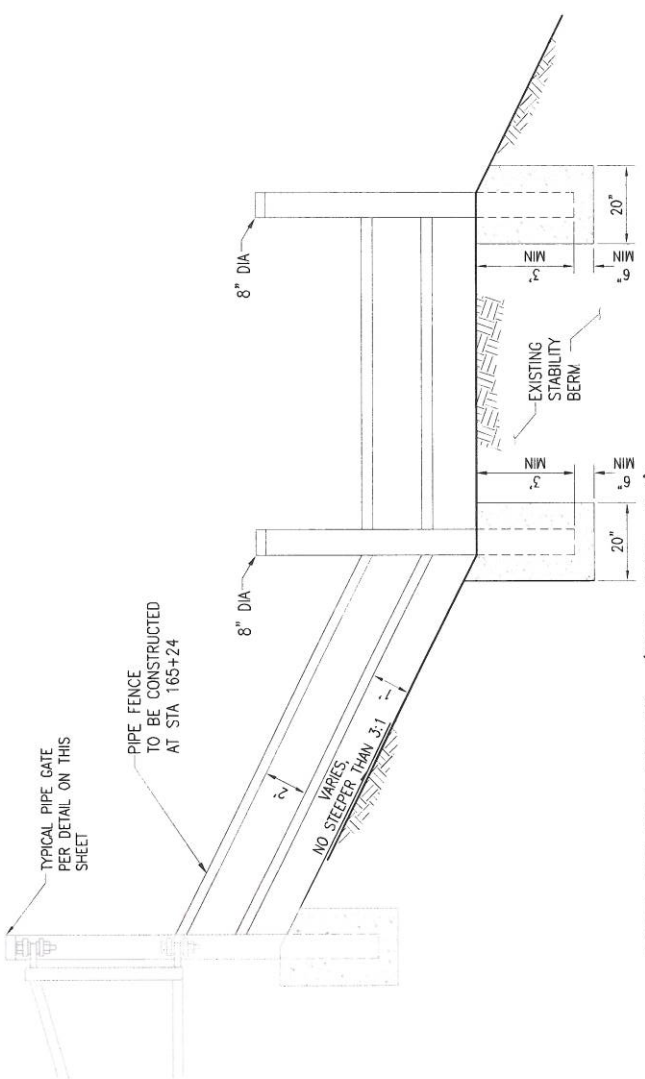
- PIPE GATE NOTES:**
- 1. CONTRACTOR SHALL CONFIRM LAYOUT AND SIDE SLOPES PRIOR TO FABRICATION OF PIPE GATE.
 - 2. PROVIDE POST SUPPORTS (HOLD BACK POSTS) IN ACCORDANCE WITH MANUFACTURER'S RECOMMENDATIONS.
 - 3. PAINT GATE WITH 2 COATS OF TRAFFIC YELLOW PAINT.
 - 4. 1/4" CAP ON ALL POST.

KEY NOTE:

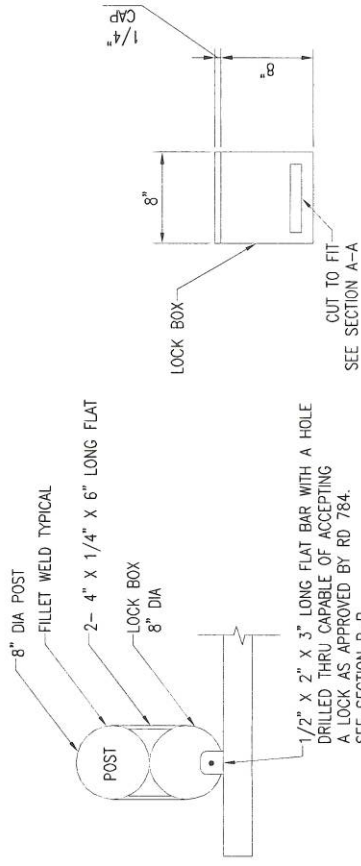
GATE SIDE SUPPORT ONLY REQUIRED FOR LEVEE PIPE GATES LOCATED ON THE LEVEE CROWN OR AT LEVEE RAMPS. AT STA 165+24, REPLACE WITH PIPE FENCE PER DETAIL ON THIS SHEET.



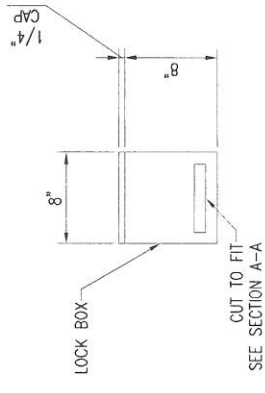
TYPICAL PIPE GATE DETAIL
NTS



PIPE FENCE DETAIL (STA 165+24)
NTS



SECTION A-A
NTS



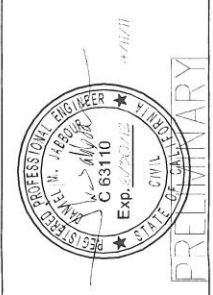
SECTION B-B
NTS



| | |
|-----------------|------------|
| PROJECT MANAGER | J. MACK |
| DESIGNED BY | L. JONES |
| DRAWN BY | R. DOUGLAS |
| CHECKED BY | B. JOHNSON |
| TECHNICAL LEAD | D. JABBOUR |

| | |
|----------------|--------------|
| PROJECT NUMBER | 201064-91273 |
|----------------|--------------|

| ISSUE | DATE | DESCRIPTION |
|-------|------|-------------|
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| | | |
| | | |



Three Rivers Levee Improvement Authority
TRLIA Phase 4
Yuba River South Levee
Upper Yuba Levee Improvement Project
(PLM 2.2 to 6.1 / STA 102+00 to 303+59)

Typical Pipe Gate Details

| | |
|----------|-------------|
| FILENAME | 00C-328.dwg |
| SCALE | NONE |

SHEET
5

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. 151
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0685 FAX: (916) 574-0682



November 2, 2011

Mr. Arnold Craft
5528 Feather River Blvd.
Olivehurst, California 95961

Subject: **Acknowledgement of Receipt of Protest letter**
Permit Application No. 18690
Applicant: Three Rivers Levee Improvement Agency (TRLIA)

Dear Mr. Craft:

The staff of the Central Valley Flood Protection Board (Board) hereby acknowledges the receipt of your letter received on November 1, 2011, as a protester to the subject matter. Application 18690 is scheduled for our Board's December 2nd, 2011 public monthly meeting. Your protest letter will be considered by the Board at this meeting. We will notify you once we have finalized the agenda so you may attend and voice any other concerns. For future reference, you can also find this information on the Board's website at www.cvfpb.ca.gov

If you have any questions, please contact Ms. Angeles Caliso at (916) 574-2386 or via E-mail at acaliso@water.ca.gov.

Sincerely,


Jay S. Punia
Executive Officer

cc: Mr. Paul Brunner
Executive Director
Three Rivers Levee Improvement Authority
1114 Yuba Street, Suite 218
Marysville, California 95901

Mr. Steve Fordice, General Manager
Reclamation District 784
1594 Broadway
Arboga, California 95961

Ms. Robin Brewer
Mr. Ward Tabor
Office of the Chief Counsel
(Department of Water Resources)

To: Angeles Caliso
Central Valley Flood Protection Board
3310 El Camino Ave. Rm 151
Sacramento, CA 95821



Subject: Encroachment Notice

Ms Caliso,

I am writing to request a hearing on the encroachment notice I received in regards to my property. Per yours and Three Rivers Levee Improvement Agency's letter, I am "encroaching" on state owned property. The railroad built the original fence in the late 1940's. The current fence does not deviate from the original fence line.

Per TRLIA, a survey was done on each property. I find it interesting that no surveyors ever came to my home, nor any of my neighbors homes. The claim is that they found "markers" on Riverside Drive, and based the survey on that. Since the early 1950's, this road has changed, added a curve that wasn't there before, and actually became two streets (Feather River Blvd. and Riverside Drive), so I question the accuracy of this survey.

Also, I have never received any type of notice from the county or state claiming "right of way" or "eminent domain" for any land on the backside of my property. If the county/state has done this after Hurricane Katrina as you said, I would have expected to be notified in writing of such a decision, as the land owner involved.

I respectfully request a hearing, so we may discuss this, and other issues regarding this matter.

Sincerely,

Arnold Craft

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. 151
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0685 FAX: (916) 574-0682



October 21, 2011

Mr. Monty Hecker
2984 Ostrom Road
Marysville, California 95901

Subject: **Acknowledgement of Receipt of Protest letter**
Permit Application No. 18690
Applicant: Three Rivers Levee Improvement Agency (TRLIA)

Dear Mr. Hecker:

The staff of the Central Valley Flood Protection Board (Board) hereby acknowledges the receipt of your letter dated October 7, 2011, as a protester to the subject matter. Application 18690 is tentatively scheduled for our Board's December 1st or 2nd, 2011 public monthly meeting. Your protest letter will be considered by the Board at this meeting. We will notify you once we have finalized the agenda so you may attend and voice any other concerns. For future reference, you can also find this information on the Board's website at www.cvfpb.ca.gov

If you have any questions, please contact Ms. Angeles Caliso at (916) 574-2386 or via E-mail at acaliso@water.ca.gov.

Sincerely,


Jay S. Punia
Executive Officer

cc: Mr. Paul Brunner
Executive Director
Three Rivers Levee Improvement Authority
1114 Yuba Street, Suite 218
Marysville, California 95901

Mr. Steve Fordice, General Manager
Reclamation District 784
1594 Broadway
Arboga, California 95961

Ms. Robin Brewer
Mr. Ward Tabor
Office of the Chief Counsel
(Department of Water Resources)

RECEIVED

OCT 11 2011

October 7, 2011

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

Re: Letter date 3 October 2011 Concerning Letter of PROTEST deadline; application number 18690 BD

Central Valley Flood Protection Board,

This letter to inform the board that I am PROTESTING the proposed project as described below.

Description: To install a 6 foot high parallel chain link fence, K-rails, and minor grading to provide a maintenance access along the landside toe of the Feather River East Levee and Yuba River South Levee.

Location: Works are located in RD 784 along the east levee of the Feather River, Unit 2 from LM 0.0 to 0.94 and the south levee of the Yuba River, Unit 1, LM 2.1 to 2.2. Section 25, T15N, R3E, MDB&M (Reclamation District 784, Feather River, Yuba County.)

(1) My name is Monty Hecker, 2984 Ostrom Road, Marysville, CA 95901. Phone number 530-749- 0280 (Work); and 530-682-9520 (Cell). I am the owner of the property located at 5548 Feather River Blvd, Olivehurst, CA 95961.

(2) I object the claim that I am encroaching. I bought this property 6 years ago. The title company found nothing to show any encroachment. The county has been unable or unwilling to provide proof of encroachment. They did come out and do a "survey", but they measured from our front street which has changed over the years, and not from the back where the levee is. So if the street moved, we lose property? They could not identify any markers or points of reference for the measurement of the "encroachment" or to prove the accuracy of the survey.

I also object to the short notice and very accusatory language in the letter notifying us. From the wording of that letter, you'd think I was deliberately trying to take property that was not mine. I have not changed any property lines since I purchased the property and received title.

I have not received an answer as to why this is happening now, without proper notice to landowners, and why only two streets in the area are being affected. There are properties along the levee much closer to the levee than we are. What makes these two streets so important and why can't we be given proof of the encroachment?

Why can't we receive that details of what's happening in writing. IE: how much of my property is effected, what are you removing and what it is being replaced with, and when. Are my buildings going to be affected? Some of my neighbors affected by this have been told by the county that if they protest this, the TRLIA will not put a replacement fence in for them! Is this true?

What is the application you refer to? Who submitted this application? This is all very vague and extremely disconcerting.

(3) This will eliminated a drive through on the back of my property, and significantly lower the fence height creating a security problem on the back side of the property. We currently have a ten foot fence to prevent people jumping over it. This has been a problem in this area along the levee. That is IF you only move the fence. Without a detailed written explanation of what is to be done to my property I cannot be sure of the outcome and its consequences.

Sincerely,



Monty Hecker
Owner

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. 151
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0685 FAX: (916) 574-0682



October 21, 2011

Ms. Carol Miller
2110 Virginia Lane
Olivehurst, California 95961

Subject: **Acknowledgement of Receipt of Protest**
Permit Application No. 18690
Applicant: Three Rivers Levee Improvement Agency (TRLIA)

Dear Ms. Miller:

The staff of the Central Valley Flood Protection Board (Board) hereby acknowledges the receipt of your letter dated October 17, 2011, as a protester to the subject matter. Application 18690 is tentatively scheduled for our Board's December 1st or 2nd, 2011 public monthly meeting. Your protest letter will be considered by the Board at this meeting. We will notify you once we have finalized the agenda so you may attend and voice any other concerns. For future reference, you can also find this information on the Board's website at www.cvfpb.ca.gov

If you have any questions, please contact Ms. Angeles Caliso at (916) 574-2386 or via E-mail at acaliso@water.ca.gov.

Sincerely,

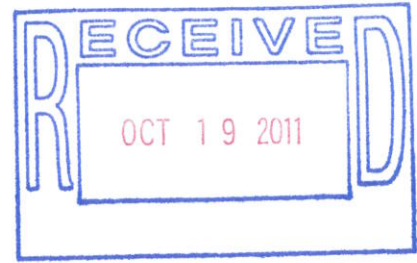
Jay S. Punia
Executive Officer

cc: Mr. Paul Brunner
Executive Director
Three Rivers Levee Improvement Authority
1114 Yuba Street, Suite 218
Marysville, California 95901

Mr. Steve Fordice, General Manager
Reclamation District 784
1594 Broadway
Arboga, California 95961

Ms. Robin Brewer
Mr. Ward Tabor
Office of the Chief Counsel
(Department of Water Resources)

October 17, 2011



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

Attn: Martin Janolo

Subject: PROTEST; Application Number 18690 BD

The land in question is a dry riverbed consisting of sand. When it rains for 2 weeks straight, the rain water goes directly through the sand and there is no water build up. When it rains for more than 2 weeks straight, as in the 1997 flood, the water will build up directly in back of the homes and inundate the homes in this area. If land fill is brought in and that area is leveled out, each time it rains for 2 weeks straight, the homes in that area will be inundated with flood waters.

According to Floyd Communications we are not encroaching on any land. The descriptions of the railway all state a strip of land with so many feet on each side with the located centerline of the railroad itself. This is what was recorded January 7, 1959.

A maintenance road is located at the bottom on each side of the levee for the area of Feather River and Riverside Drive.

Regards,

Carol Miller
2110 Virgilia Lane
Olivehurst, CA 95961

530-742-2179

Cc: Paul Brunner
Three Rivers Levee Improvement Authority
1114 Yuba St Suite 218
Marysville CA 95901

Steve Fordice
Reclamation District 784
1594 Broadway
Arboga CA 95961

Caliso, Angeles

From: Miller Philip [olidar45@yahoo.com]
Sent: Wednesday, October 19, 2011 4:36 PM
To: Caliso, Angeles
Subject: Carol Miller - Protest Letter
Attachments: 10-19-2011 04;30;56PM.PDF

Ms. Caliso,

Letter of PROTEST is attached. What I would like to add to that protest is the facts that the levee will not be repaired, no drainage pipes will be installed and no improvements to be completed to the levee located west of the homes on Riverside Drive or Feather River Blvd.

Please see attached letter of PROTEST

Thank-you for your understanding in this matter,

Carol Miller

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. 151
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0685 FAX: (916) 574-0682



October 21, 2011

Ms. Maria Mendoza
5602 Feather River Blvd.
Olivehurst, California 95961


Subject: **Acknowledgement of Receipt of Protest**
Permit Application No. 18690
Applicant: Three Rivers Levee Improvement Agency (TRLIA)

Dear Ms. Mendoza:

The staff of the Central Valley Flood Protection Board (Board) hereby acknowledges the receipt of your letter dated October 17, 2011, as a protester to the subject matter. Application 18690 is tentatively scheduled for our Board's December 1st or 2nd, 2011 public monthly meeting. Your protest letter will be considered by the Board at this meeting. We will notify you once we have finalized the agenda so you may attend and voice any other concerns. For future reference, you can also find this information on the Board's website at www.cvfpb.ca.gov

If you have any questions, please contact Ms. Angeles Caliso at (916) 574-2386 or via E-mail at acaliso@water.ca.gov.

Sincerely,


Jay S. Punia
Executive Officer

cc: Mr. Paul Brunner
Executive Director
Three Rivers Levee Improvement Authority
1114 Yuba Street, Suite 218
Marysville, California 95901

Mr. Steve Fordice, General Manager
Reclamation District 784
1594 Broadway
Arboga, California 95961

Ms. Robin Brewer
Mr. Ward Tabor
Office of the Chief Counsel
(Department of Water Resources)

18690 RECEIVED

OCT 19 2011

d Maria Mendez
5002 Feather River Blvd
Olivehurst CA 95961

d Protest

The fence was not measure right
it was not measure from the toe to my
yard And ~~How~~ How do we know you're not
going to wait my cause it was measure
wrong

10-18-11

Rd - 784
Unit 2 - Lm 0.0 to 0.94
Unit 1 Lm 2.1 - 2.2
Section 25, T15N, R3E MND 38m
Reclamation District 784 Feather River Placer County

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. 151
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0685 FAX: (916) 574-0682



October 21, 2011

Ms. Susan LaGrand
5580 Feather River Blvd.
Olivehurst, California 95961-6612

Subject: **Acknowledgement of Receipt of Protest**
Permit Application No. 18690
Applicant: Three Rivers Levee Improvement Agency (TRLIA)

Dear Ms. LaGrand:

The staff of the Central Valley Flood Protection Board (Board) hereby acknowledges the receipt of your letter dated October 11, 2011, as a protester to the subject matter. Application 18690 is tentatively scheduled for our Board's December 1st or 2nd, 2011 public monthly meeting. Your protest letter will be considered by the Board at this meeting. We will notify you once we have finalized the agenda so you may attend and voice any other concerns. For future reference, you can also find this information on the Board's website at www.cvfpb.ca.gov

If you have any questions, please contact Ms. Angeles Caliso at (916) 574-2386 or via E-mail at acaliso@water.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Jay S. Punia".

Jay S. Punia
Executive Officer

cc: Mr. Paul Brunner
Executive Director
Three Rivers Levee Improvement Authority
1114 Yuba Street, Suite 218
Marysville, California 95901

Mr. Steve Fordice, General Manager
Reclamation District 784
1594 Broadway
Arboga, California 95961

Ms. Robin Brewer
Mr. Ward Tabor
Office of the Chief Counsel
(Department of Water Resources)

Angeles Caliso
Jay S. Punia
Mitra Emami
Central Valley Flood Protection Board
3310 El Camino Ave. Suite 151
Sacramento, Ca. 95821

October 11, 2011



Members, Central Valley Flood Protection Board,

Once again, I am writing to protest the proposed moving of the fence on my property at 5578/5580 Feather River Blvd., West Linda, Ca.

Your latest letter is NOT the hearing we landowners had requested, and I find your justification for what TRLIA has planned unacceptable.

First, telling me that the surveyors your companies hired are "licensed and certified" is not good enough. As I stated previously, a proper survey cannot be completed without stepping foot on the property in question, which this company did not do. I am "licensed and certified" in my job also, but I cannot properly do my job without physical evidence in front of me, and neither can these surveyors. My father was a surveyor, and I know what surveying entails, and what these people did is not it.

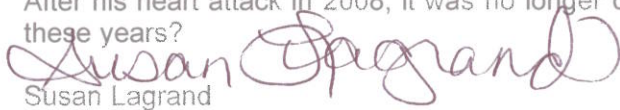
Second, going over "adverse possession" as you did (in a very condescending tone, I might add), was not necessary. For some strange reason, you people think this is the only defense I or anyone else has.

Thirdly, I would like to know why we are the only area that this is being done to? There are so many homes, businesses, etc, that are "encroaching" on levees in the Yuba-Sutter area that I cannot even count them all. I find it interesting that the homes and businesses by Shanghai Bend in Yuba City are being paid for their land that is "encroaching". Why?

If you are going to do things such as this, then treat all people the same.

Lastly, one of the letters sent to me asked how I would be "adversely affected". The fact that I will have to have my shop building shortened by 20 feet will affect me hugely! This will cost me approximately \$10,000 dollars (almost \$9,000 for the contractor, \$500 for a bin from the garbage company, and \$10 an hour to hire a couple of people to help me. Oh, and add to that the hiring of a security guard at night to watch over the building while the back is hanging open.), and over \$18,000 dollars to have it torn down completely. I cannot afford this!! I don't have the money, and would have to borrow it. Add this to the debt I already have, and I may be forced into bankruptcy, all courtesy of TRLIA and the California Board of Water Resources!

In conclusion, if I felt this had to do with flood protection, I wouldn't be quite as upset, but this has nothing to do with upkeep of levees, flood protection, or anything else. This is a money issue, and nothing more. This levee wasn't touched until 1997, after the flood, and the only levee maintenance since has been the goats eating the weeds! My brother actually cleared the weeds on the levee behind our fence, as RD 784 and TRLIA never did it. After his heart attack in 2008, it was no longer done, so if there is so much worry, why have you ignored us all of these years?


Susan Lagrand

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. 151
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0685 FAX: (916) 574-0682



October 21, 2011

Ms. Graciela & Mr. Esteban Fernandez
5738 Riverside Drive
Olivehurst, California 95961

Subject: **Acknowledgement of Receipt of Protest**
Permit Application No. 18690
Applicant: Three Rivers Levee Improvement Agency (TRLIA)

Dear Mr. & Mrs. Fernandez:

The staff of the Central Valley Flood Protection Board (Board) hereby acknowledges the receipt of your letter dated October 18, 2011, as a protester to the subject matter. Application 18690 is tentatively scheduled for our Board's December 1st or 2nd, 2011 public monthly meeting. Your protest letter will be considered by the Board at this meeting. We will notify you once we have finalized the agenda so you may attend and voice any other concerns. For future reference, you can also find this information on the Board's website at www.cvfpb.ca.gov

If you have any questions, please contact Ms. Angeles Caliso at (916) 574-2386 or via E-mail at acaliso@water.ca.gov.

Sincerely,

Jay S. Punia
Executive Officer

cc: Mr. Paul Brunner
Executive Director
Three Rivers Levee Improvement Authority
1114 Yuba Street, Suite 218
Marysville, California 95901

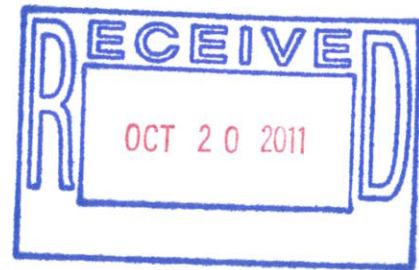
Mr. Steve Fordice, General Manager
Reclamation District 784
1594 Broadway
Arboga, California 95961

Ms. Robin Brewer
Mr. Ward Tabor
Office of the Chief Counsel
(Department of Water Resource)

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

October 17, 2011

FAX# 1-916-574-0682



Application # 18690BD

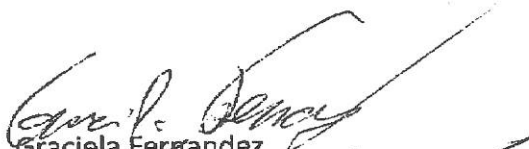
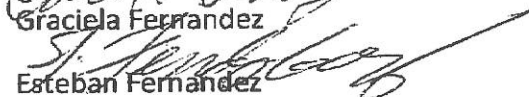
Attn: Martin Janolo

RE: PROTEST To install a 6 ft high chain link fence at the landside Toe of the Feather River East Levee and Yuba River South Levee @ 5738 Riverside Drive, Olivehurst, CA 95961.

This letter is to PROTEST THE STEALING OF OUR LAND. We strongly disagree with the actions of the Central Valley Flood Protection Board. My name is Graciela Fernandez and Esteban Fernandez-Gomez our address is 5738 Riverside Drive, Olivehurst, CA 95961, our telephone # is 530-743-7099.

The stealing of our land will affect us adversely in the following manner. First we use this land as a source of livelihood we raise chickens and goats for additional income to survive. We also grow fruits and vegetables for ourselves. Second the stealing of our land will take away property and money away from my family; money that we were counting on to pass from one generation to another; money that we were counting on to live off in our old age. We have worked for the past 35 years to have some property something that we can call our own. Our property is the only thing of value that we have; and know in a matter of months you come in and steal it from us. Esteban Fernandez-Gomez is disable and was counting on this property to provide some security when he get older and can no longer walk without assistance.

We do not agree with your decision to steal our land; our documents show that we purchase this property in 1975 all the way to where the property line is currently located. Please reconsider your decision to steal our land. Or at the very least pay us market value for the land you want to steal.


Graciela Fernandez

Esteban Fernandez

5738 Riverside Drive
Olivehurst, CA 95961



THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

1114 Yuba Street, Suite 218

Marysville, CA 95901

Office (530) 749-7841 Fax (530) 749-6990

TRLIA Community Meeting – August 22, 2011

Segment 3 Access Corridor

Questions & Answers

Q: How long will it take to remove encroachments and build the new fence?

A: We estimate the project will take two to three months, start to finish.

Q: We own a rental property, and our tenants have a dog. What is the timing between removal of the old fence and construction of the new fence?

A: Construction manager will be working with individual property owners to determine whether or not temporary fencing will be needed during the construction process.

Q: Is TRLIA going to install a new fence that is of the same quality as my existing fence?

A: TRLIA will be installing a 6-foot high chain link fence with concrete blocks on the SSJDD side of the fence, see fence detail. In most cases the installed fence exceeds the quality of the existing fence. If a landowner does not think the proposed fence meets the current quality of their existing fence, TRLIA will discuss with the landowner on a case by case basis.

Q: When did TRLIA conduct the survey of our properties?

A: TRLIA conducted two surveys within the past four months to cross-check data and validate the property lines.

Q: Will the new maintenance road be level with our properties, or higher than our properties?

A: We will grade the existing land to create the new road and remove potholes and bumps, but will not add fill to raise the road.

Q: Will the new maintenance road be paved?

A: No.

Q: Where is the toe of the levee? Are you measuring for the 20 feet from the toe, or from our property?

A: The levee toe is located somewhere beneath the prism of the levee. We are not measuring 20 feet from that location. We are reestablishing existing property lines, and the location of the levee toe has no bearing on the location of property lines.

Q: We would like to remove our fence and salvage the materials, but we don't want to be stuck without a fence in the event someone files a lawsuit and stops the project. What happens if there's a lawsuit?

A: TRLIA would set temporary fencing around the property involved in the suit and complete the other portions of the project. In that case, however, the property owner engaged in the lawsuit

may lose his/her opportunity to have TRLIA pay for the removal of the existing fence and construction of a new fence.

Q: Will the fences be constructed in a way that allows access to the levee at a later time?

A: The intent is to prohibit access to the levee from these areas. However, access to the levee will be available at Island Avenue and other designated places along the levee system.

Q: Have the property sizes and lot lines always been the same?

A: Yes, according to subdivision maps on file with the County, along with title and ownership records. Some of the properties have been subdivided, but the depth of the properties (280 feet) has remained unchanged.

Q: Is this project for levee maintenance?

A: Yes. The maintenance access corridor is needed for levee monitoring, maintenance, and flood fighting.

Q: In 2001, they tore down and put up a new levee behind 5578 Feather River Boulevard. When they rebuilt it, they left a gap in the slurry wall at this location.

A: The Corps of Engineers installed a cutoff wall in this reach of the levee in 1997. TRLIA flattened the waterside slope of the levee to 3 horizontal to 1 vertical in 2008. TRLIA has reviewed the Corps of Engineers' as-built drawings for this 1997 work. The as-built drawings do not show any gap in the cutoff wall. Normal procedure when installing a cutoff wall and encountering an obstruction is to suspend cutoff wall installation, excavate the levee enough to remove the obstruction, rebuild the levee to previous geometry, and then continue cutoff wall installation through the rebuilt levee reach. This is what the as-built drawing show the Corps of Engineers did at this location.

Q: There is a two-level system behind Wal-Mart: the levee, and then another "shelf" below the levee. Is that what you'll do with the maintenance road behind our property?

A: The "shelf" behind Wal-Mart is a 300-foot seepage berm. We are not altering the levee behind your property. Our project reestablishes correct property lines and clears an access corridor for levee maintenance and flood fighting.

Q: Will TRLIA remove the old fence, build the new fence and remove vegetation at its own cost?

A: Yes. Property owners are only responsible for relocating belongings onto their property by September 30.

Q: Will TRLIA stake our property so that we know the location of our lot line?

A: Yes. Property owners who want their lot line staked can contact the TRLIA construction hotline at 530-763-7912.

Q: Will people still be able to run their four-wheelers up and down the levee?

A: TRLIA will establish a line of concrete block behind the new six-foot tall chain link fence to discourage this type of activity.

Q: Who is responsible for maintaining the new fence? Who do we call if there's a hole in it, for example?

A: Reclamation District RD 784 is the responsible agency. Property owners who notice damage to the fence should call 530.742.0520.

Q: When did the property ownership transfer from the railroad to the State? The fence line was already established before the railroad abandoned the property, and before the property was transferred to the State. Doesn't that mean that residential property owners acquired a legal property interest in the land before it was acquired by the State?

A: *The following represents the results of a review of the issue by TRLIA's legal counsel:*

One topic that was discussed at the meeting pertained to the legal theory of adverse possession and how that related to the claim that the fence existed prior to the State acquiring the property from a railroad company. In other words, if the fence existed in its current location for many years prior to the State obtaining ownership, could property owners have obtained a legal right to the property located between the legally described property line and the fence?

A person can obtain prescriptive rights to the property of another so long as the person proves the following elements: (a) open and notorious use; (b) continuous and uninterrupted use; (c) hostile to the true owner; (d) under a claim of right; and (e) for the statutory period of five years. *Twin Peaks Land Co. v. Briggs* (1982) 130 Cal.App.3d 587, 593. To establish fee title by adverse possession, in addition to the above elements, the property owners need to show that they paid all property taxes validly assessed and levied on the property they seek to acquire. Code of Civil Procedure section 325.

One exception to the above rule relates to property owned by a public entity or public utility. Civil Code section 1007 provides in relevant part: "no possession by any person, firm or corporation no matter how long continued of any land, water, water right, easement, or other property whatsoever **dedicated to a public use by a public utility**, or dedicated to or **owned by the state or any public entity**, shall ever ripen into any title, interest or right against the owner thereof." (emphasis added). This statute acts as an absolute ban on acquiring rights to property owned by a public entity or property owned by a public utility that is dedicated to a public use.

The State purchased the property at issue from the Sacramento Northern Railway in 1958. Pursuant to Civil Code section 1007, an adjacent property owner cannot acquire prescriptive rights to land owned by the State.

Prior to 1958, the property was owned by the Sacramento Northern Railway. The section of the Railway that was adjacent to the properties in question was abandoned in 1956. The California Public Utilities Code provides that every railroad performing a service for, or delivering a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received is a public utility. Public Utilities Code sections 211 and 216. Because a railroad is a public utility, an adjacent landowner cannot obtain property rights, through prescription or adverse possession, to land owned by a railroad company that is dedicated to a public use. A railroad right of way is such a public use, and it was not abandoned until 1956. Two years later, the property was sold to the State. Therefore, no property rights could have been acquired prior to the Sacramento Northern Railway deeding the property to the State. This is because a claim for a prescriptive easement or title through adverse possession requires a five year period of use against an owner whose property is subject to acquisition, and only two years passed between railroad abandonment and transfer to the State.

There were also discussions at the August 22, 2011, meeting about the alleged payment of taxes on the disputed property. The Yuba County Assessor's Parcel Map for this subdivision shows the depths of the lots being the same as what is referenced in the recorded subdivision map. We have not seen any evidence that the Yuba County assessor's office taxed any property owner on the additional property between the existing fence and the property line. Furthermore, even if

**ITEM 4E: APPLICATION NO. 18690
ATTACHMENT D, EXHIBIT B**

taxes were paid, it would not create a property right given that the property at issue was owned by a public utility and then sold to a public entity.

Finally, there have been allegations that the Sacramento Northern Railway constructed the fence at its current location based on an agreement between the property owners and the Railway that the fence line would be the property line. However, TRLIA has not been shown any written agreement between the Railway and the property owners in which the Railway agreed that the fence line constituted the property line. The legal description contained in the grant deed for these properties specifies the precise legal boundary. Regardless of whether the Railway constructed a fence that was set back onto its property, the legally defined property line is what governs.



THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

1114 Yuba Street, Suite 218

Marysville, CA 95901

Office (530) 749-7841 Fax (530) 749-6990

February 7, 2012

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul Brunner, Executive Director

SUBJECT: Responses to Mr. Heckers' Questions cited in February 4, 2012 e-mail

Below are answers/responses by paragraph to Mr. Heckers' questions mentioned in his February 4, 2012 e-mail to me:

Paragraph 1: I realize that our questions are a pain for you. But they are valid and important to the property owners. While you are trying to protect these residents from floods, you need to remember that this project impacts us in other ways. Telling us that a corp of engineers monument that probably had something to do with the levee is not relevant is unbelievable. Anything concerning the levee is relevant to us. Mentioning our concerns as part of a "staff report" is a slap in the face. As the Executive Director you are the person who can help us understand. You said in an earlier email that the surveyors do not work for the Corp. That's true, they work for you, but you Mr Brunner work under the guidance of the corp. The surveyor you sent out, told me they could find nothing on the levee side to assist with they're survey, and so they had to use monuments from the front of our properties. Which has raised a bunch of questions.

Response: This memo provides responses to your questions. TRLIA has and will continue to work with you and other residents. As stated in a prior e-mail, I or TRLIA do not work for the Corps of Engineers. The Corps of Engineers, Ca. Department of Water Resources, Ca. Central Valley Flood Protection Board, and FEMA all provide levee requirements and guidance that we incorporate into the TRLIA levee improvement program.

Paragraph 2: The long and short of it is this. We have questions and concerns. We are not getting answers, so we keep digging. Having the questions answered at your level would be the easiest for all of us. And an answer means more than "the monuments are not relevant to you". The question was what is this monument and what was it's purpose! And the second part of that question was why was your hired surveyor unable to find it!

Response: All indications are that the monument you found was used in prior work on the levee to help build the levee. It is not referenced on any survey maps, so that is why our Surveyor did not identify it. The monument does not relate to the property line. The monument was not placed by TRLIA. Provided again are the comments from Kevin Heeney (TRLIA licensed Surveyor) on this monument:

The newly found monument photographed by the Hecker's attached hereto as Exhibit 'G'

- This monument does not appear, in my professional opinion, to be a record monument relating to any property boundary or corner. I believe it to be a reference or control monument, established some time ago by the Corps of Engineers or one of their contractors. The markings "USA" lead me to believe this to be a federal agency monument. The markings 1+00 would indicate to me a stationing reference to some line, either a control line or centerline of levee. The marking 67' may reference an offset distance. The markings 'C' and '2' are likely some designation number. The monument does not have the markings of any licensed land surveyor or civil engineer, which would be the standard practice and requirement of a property corner marker or reference point.
- While we did not locate this specific monument, I have been told it is near the South end of the encroachment area. We did find another similar monument some 4600 feet North marked the same, but with station markings of 47+00. Again, it is my opinion that these are reference monuments to the levee centerline or some control line previously established.

Paragraph 3: I have emailed you several other questions, concerning, drainage, toe markers, trees, etc that you have not responded to at all. Again, a staff report, coordinated with your hired experts is not an answer. I'm needing answers, not lip service or circling the wagons.

Response: I have offered to meet with you directly to go over the questions, but we jointly have not been able to work out a time. The most recent meeting was going to be on 2-6-2012 at 9:00 in my office, but you asked for a time and meeting location change to accommodate your schedule. I could not make your requested time change. I still plan on meeting with you.

Paragraph 4: At the CVFPB meeting a board member asked about oak trees. You couldn't give an answer so you had your consultant Larry Dacus answer. His answer is in conflict with the Yuba County Planning Dept. Have you even looked into that issue. Did the CVFPB get the correct answer, or could there be issues?

Response: I have personally looked into this issue and talked to the Yuba County Planning Department. Mr. Dacus's response was correct at the CVFPB meeting. The tree does not impact the TRLIA proposed project. I previously provided you my response on this item. Here is my response from before: "Yuba County does not currently have an oak protection ordinance or general tree protection ordinance; however, the updated General Plan calls for adoption and implementation of a tree preservation and mitigation ordinance by 2015. Our contact at the County anticipates the ordinance to be adopted before 2015, but not in the immediate future. "

Paragraph 5: Larry Dacus told my wife that the drainage issues before and after the maintenance road are the property owners problem, leaving us to believe that drainage has not even been considered in the construction plans for the maintenance road. Once again, has drainage been addressed and if so how. There is a brand new pump out just across Island Ave. Is it being considered? Is drainage being addressed at all as you change the landscape behind our property's?

Response: As I said at the January 10, 2012 Community meeting, and the January 26, 2012 CVFPB meeting TRLIA has not yet done the design of the levee toe 20-ft corridor. I have opted to not start the design until we have clear direction from the CVFPB Board on where to place the fence. Once we begin the design we will look at the drainage and determine what TRLIA can do within our levee project to improve the drainage. The TRLIA project will not make the drainage problem worse than today, but may be able to improve it. There may be the opportunity to place a pipe through Island Ave, which would allow flow to the southerly ditch.

Paragraph 6: The toe markers showing where you plan to build the road go from the right side of the road behind my property to the left side of the road several properties down. Why? Is there a real need for this, or is it like my wife has said, we just irritated them to much so they are taking more of our backside.

Response: The levee toe moves farther out towards Island Ave because the levee widens in this location. The widening is caused by the additional berms that have been placed on the landside of levee.

Paragraph 7: We asked for the longitude and latitude measurements of the fence line. My wife was told by Mr. Dacus that if she wanted to pay for someone to get it then maybe there would be an issue to address. You were standing beside Mr Dacus at the time, during a break in 26 Jan 12 CVFPB meeting when he answered her questions about the longitude/latitude and drainage. Did you find those answers acceptable? Would you have if you had been in her place?

Response: During the break at the January 26, 2012 meeting I was engaged in many conversations with several people. I was not involved in the conversation you reference with Mr. Dacus and your wife and do not know what was said or the context of any statements made. As to the latitude and longitude question, I have asked Kevin Heeney (TRLIA licensed Surveyor) to provide his comments, which are provided below:

"A discussion on Latitude and Longitude and the claim that the old surveys and my Record of Survey confirm the property line and the fence line are the same.

- None of the maps, surveys or deeds we have reviewed and used in this effort provide any calls to Latitude or Longitude. They do reference bearings which are completely different. A latitude and longitude would define a specific point on the face of the earth. A bearing describes direction, based on some form of datum. Surveyors for centuries have used various ways to describe or relate bearings such as Compass or Magnetic, or North based on solar observations or Polaris (the North Star). More commonly used methods today are either a Basis of Bearings from a prior survey or by State Plane Coordinates. Exhibit 'E' shows the statement on how the bearings shown on that map were derived, which was a prior survey or map.
- Our survey has been prepared using the control which was established from State Plane Coordinates by the Army Corps of Engineers. That is why on my survey the bearing on the common boundary line is shown as S17°46'46"E. Above that bearing we show [S17°15'00"E]. The bearings and distances shown in brackets on my survey indicate the bearings and measured distances of other surveys.
- The fact that the bearing on the common boundary is different from my survey, the 1939 subdivision (Book 3 of Maps, Page 45) and the 1921 subdivision (Book 3 of Maps, Page 2) does not mean we have three different locations for that line. Rather we have one line, shown on three separate surveys, each based upon a different datum or Basis of Bearings.
- I believe there is some misunderstanding in interpreting my survey. The fact that we show the record bearing from the prior survey [S17°15'00"E] drawn above the fence line symbol does not indicate we believe the fence to be the boundary from the prior survey, only the direction of that common boundary line. We could have chosen to put that label in line with the bearing we show or under the common boundary line. It is merely a drafting decision, which we typically tend to show by stacking record data above our data. My survey does not show a gap between ownership of the State or the adjacent property owners, only a gap between the property line and the existing fence."

Paragraph 8: Frankly, the lack of response to specific questions is hard to understand since you and your board have repeatedly offered to assist the landowners as much as possible as you permanently change the landscape affecting our property.

Response: We are providing you accurate and timely responses to your questions.

Paragraph 8: I am once again asking for answers to clarify these questions from you and the TRLIA board. There is a TRLIA board meeting already scheduled for 7 February @ 15:30. There is nothing on the agenda showing that concerns are still being raised or that any of our letters and emails have been received or addressed.....

Response: This memo provides you answers to your questions. You are welcome to provide comments at the February 7, 2012 TRLIA Board meeting during the public comment portion of the meeting.





PROJECT MEMO

To: Paul Brunner
Larry Dacus

Date: October 31, 2011

Project No.: 06-008-005

Project Name: Three Rivers Levee Improvement Authority
Feather River Levee, Segment 3

Subject: **Survey of Subdivision of Tract No. 8, Yuba Gardens, R.S. 3-45**

The purpose of this memo is to identify the surveying procedures and analysis used in connection with the boundary determination along the Sacramento San Joaquin Drainage District (SSJDD) property adjacent to, and West of the Subdivision of Tract No. 8, Yuba Gardens (Book 3 of Surveys, Page 45), located in Yuba County, California. Our survey has identified substantial encroachments along the common boundary of these properties and a subsequent Record of Survey submitted to the County Surveyor's office identifies these encroachments as well.

All field surveys performed in this area have been based on the initial project control established for the T.R.L.I.A. projects from U.S. Army Corps of Engineers control stations. A combination of GPS (Global Positioning System) and conventional surveying equipment were utilized in the performance of these surveys. Supplemental control points were established within the proximity of this survey and verified against the initial project control.

Prior to dispatching a field crew to this area, a search of available record maps, surveys and documents was performed and copies obtained for their use. Our field personnel located numerous monuments within the Subdivision of Tract No. 8, as shown on prior surveys. Those monuments are indicated on the above mentioned Record of Survey and are further identified herein as follows:

1. 5/8" rebars found along the East side of Feather River Blvd. at the South line of Parcel 3 and North line of Parcel 2, as shown on Parcel Map filed February, 1992 in Book 58 of Surveys, Page 22. It should be noted that these monuments were found to be slightly out of position, lying to the East approximately 0.7 to 0.88'.
2. A 5/8" rebar tagged RCE 16000 found on the East side of Riverside Avenue on the line between Parcels 1 and 2, as shown on the Parcel Map filed January, 1993 in Book 61 of Surveys, Page 2.
3. 1/2" rebars tagged LS 3898, found along the East side of Riverside Avenue at the North and South line of Parcel 2, as shown on the Parcel Map filed June, 1989 in Book 50 of Surveys, Page 26.
4. An iron pipe set in concrete along the East side of Riverside Avenue at the North line of Parcel 1, as shown on the Parcel Map filed June, 1989 in Book 50 of Surveys, Page 26.
5. 1/2" rebars found along the West side of Riverside Avenue at the North and South line of Parcel 2, as shown on the Parcel Map filed December, 2007 in Book 88 of Surveys, Page 26.

6. 1/2" rebar tagged LS3649 found at the Northwest corner of Parcel 2, as shown on the Parcel Map filed December, 2007 in Book 88 of Surveys, Page 26. This corner is on the common boundary with Sacramento San Joaquin Drainage District.
7. Yuba County standard monument well and disk found at the intersection of the centerline of Alicia Avenue and Forest Drive and the intersection of the centerline of Alicia Avenue and Kimerer Drive as shown on the plat of "Tract No. 137" filed December, 1965 in Book 8 of Surveys, Page 16.

In addition to the monuments listed above additional street centerline monuments were located in several locations throughout the Subdivision of Tract No. 8 (RS 3-45).

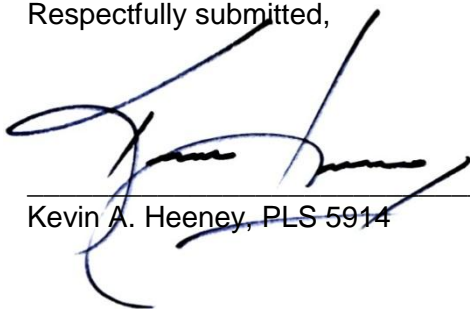
The field locations of these monuments were then reconciled with the record data of the maps listed above and other prior surveys and deeds. The right of way for Feather River Blvd. and Riverside Avenue was established at a width of 80 feet or more, based on the recorded surveys and the located monuments. Our analysis determined that the monuments in the field matched the prior surveys with the minor exception noted in No. 1 above. Once we established the right of way of Feather River Blvd. and Riverside Avenue, we set the Westerly line of Subdivision of Tract No. 8 at a distance of 280 feet West and parallel of the Westerly right of way line, as shown on the final map. This line represents the common boundary between this subdivision and the SSJDD property.

Upon our discovery that this analysis resulted in numerous encroachments, we made a visit to the Yuba County Surveyor's office where we spoke with then County Surveyor, Gary Lippencott and his assistant surveyor, Jeff Olsen. We reviewed our findings with both gentlemen and inquired into any "unrecorded" surveys or corner records they may have in this area. They indicated they had no additional information other than providing us with copies of Railroad Right of Way maps. The railroad maps conformed with the properties described in the deed to SSJDD (Book 267, Page 509, Official Records) and conformed to the common boundary shown on RS 3-45.

Because of the numerous encroachments, we took it upon ourselves to investigate a little further and made a physical location of the Western Pacific railroad tracks along the Easterly side of Subdivision of Tract No. 8. We also tied monuments shown on the Record of Survey along the Western Pacific Railroad and State Highway Route 70 filed March, 2005 in Book 82 of Surveys, Page 23. These additional ties allowed us to check the total distance across Subdivision of Tract No. 8 based on prior surveys and found that this distance checked within approximately 1 foot. We therefore held the monuments found along Feather River Blvd. and Riverside Avenue and established the common boundary 280 feet West of and parallel to the roadways as described above.

The resultant encroachments are predominately old fence lines, sheds and other out buildings. However there were two substantial, permanent structures which encroach approximately 2.5 to 5.0 feet onto the SSJDD property.

Respectfully submitted,


Kevin A. Heeney, PLS 5914