

**Meeting of the Central Valley Flood Protection Board  
July 25, 2014**

**Staff Report**

**Programmatic Permit for The Rivers Development  
City of West Sacramento, Yolo County**

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**1.0 – ITEM**

Consider approval of Draft Permit No. 18934  
(Attachment B)

**2.0 – APPLICANT**

Oakstone Investments, LLC

**3.0 – LOCATION**

The project is located just upstream and across the river from the confluence of the American River with the Sacramento River along River Crest Drive within the City of West Sacramento. (Sacramento River, Yolo County, See Attachment A)

**4.0 – PROJECT DESCRIPTION**

The applicant is requesting a programmatic permit that establishes consistent dwelling setbacks, a uniform maximum building footprint, construction limitations, and CVFPB easement recordation for 36-lots in The Rivers residential development adjacent to the waterside levee crown of the right (south) bank levee of the Sacramento River. The Rivers development (Originally known as the Lighthouse Marina) was initially approved under Permit No.14389 with the infrastructure for 51 single residential lots being approved under Permit No.14389-A.

**5.0 - AUTHORITY OF THE BOARD**

California Water Code § 8534, 8590 – 8610.5, and 8700 - 8710

## California Code of Regulations, Title 23 (Title 23)

- § 6, Need for a Permit
  - (b) Permits may be required by the board for existing structures that predate permitting or where it is necessary to establish the conditions normally imposed by permitting...
- § 13, Evidentiary Hearings
  - (a) Except where approval of permits has been delegated to the Executive Officer pursuant to section 5, an evidentiary hearing shall be held for any matter that requires the issuance of a permit.
- § 120, Levees
  - (a)(5) The applicant shall provide the board with a permanent easement granting the Sacramento and San Joaquin Drainage District all flood control rights upon, over, and across the property to be occupied by the proposed flood control works....

**6.0 – BACKGROUND**

In January of 1987 a Temporary Encroachment Permit (No. 14389) was issued to Lighthouse Marina LTD that approved, in concept, to construct a 270-acre development on the right (south) bank of the Sacramento River in the City of West Sacramento (City). This project included, among other things, the River Bend development which included the construction of 51 residential lots on the waterside of the levee. The proposed marina, apartments, hotel, and retail commercial center were never constructed. From 2002 to 2005, 11 homes were permitted and constructed by individual property owners on 11 of the 51 residential lots. Below is a list of permits that have been issued by the Board specific to the Lighthouse Marina Development:

- **14389 – January 5, 1987:** A Temporary Permit was issued to Lighthouse Marina LTD. to construct a 270-acre development consisting of a large marina, single-family residential units, high rise apartments, a hotel complex, and a retail commercial center. The Corps of Engineers issued a “no-objection” letter to the project.
- **14389-A – August 18, 1989:** Permit issued to Lighthouse Marina LTD. to construct Phase 1A of the project consisting of 51 single family lots, installation of sewer and domestic water service, and the placement of bank revetment. The Corps of Engineers issued three “no-objection” letters for Phase 1A of the project due to plan changes.

- **15378 – February 26, 1990:** Permit issued to Hazama-Gumi to install secondary and primary electrical, street light, cable TV, telephone services, and a natural gas line in a common trench parallel to the waterside slope within the modified right bank levee of the Sacramento River for the Lighthouse Project. A hearing was held before the Board on January 19, 1990 requesting a variance to allow parallel piping within the modified levee. The Board voted to approve the variance. The Corps of Engineers issued a “no-objection” letter to the project.
- **15494 – September 14, 1990:** Permit issued to Lighthouse Marina LTD to reconstruct two existing marinas, dredge approximately 18,500 cubic yards, install 54 concrete pipes, and construct two gangways, 101 floating boat docks, a manager’s office, and parking areas. The Corps of Engineers issued a no-objection letter to the project.
- **15793 – February 4, 1992:** Permit issued to Lighthouse Marina LTD to landscape and install an irrigation system in the Lighthouse Marina and the Riverbend Development Area. The Corps of Engineers issued a no-objection letter to the project.
- **16120 – September 8, 1993:** Permit issued to Lighthouse Marina and Riverbend Development to construct three temporary chain-link fences with pipe gates on the right bank levee. The Corps of Engineers issued a no-objection letter to the project.
- **16120 (Revised) – June 30, 1995:** Permit issued to Lighthouse Marina and Riverbend Development to authorize two gated chain-link fences across the levee, one gated chain-link fence across the landside levee access ramp, and a temporary chain-link fence along the waterside shoulder of the right bank levee.
- **16151 – April 6, 1994:** Permit was issued to Lighthouse Marina and Riverbend Development to plant native riparian vegetation on the left bank overflow area of the Sacramento River. The Corps of Engineers issued a no-objection letter to the project.

## **7.0 – PROJECT ANALYSIS**

In 2012, the applicant, Oakstone Investments, LLC (Oakstone), acquired the remaining assets of the Riverbend development (now called The Rivers). Oakstone is proposing to simplify the subsequent permitting of the remaining 36-lots through the proposed programmatic permit No. 18934. The goal is to ensure that there is no conflict between the anticipated new residential structures, ongoing operation and maintenance of the levee, and any future levee improvements in the area. The proposed programmatic permit will:

1. establish consistent setback conditions (front- and back-yard) for all 36-lots;
2. acquire all necessary CVFPB easements (Sacramento San Joaquin Drainage District) in a single transaction of property dedication by Oakstone for all 36-lots;
3. establish key, consistent requirements for landscaping, decking, and other exterior encroachments; and
4. establish a uniform maximum building footprint in which all new residential construction must conform.

Oakstone has developed Supplemental Design Guidelines (guidelines) that will establish consistent building requirements and acceptable building footprints for future homes (See attachment C). The guidelines are for informational purposes only and will be provided to all potential buyers. Encroachment permit applications will still be required for any proposed work within the 36-lots. Board staff has reviewed the guidelines and they are consistent with Title 23 standards.

Construction of the original 51 residential lots required the placement of engineered fill on the waterside of the existing levee and widening of the levee crown to accommodate the construction of River Crest Drive. These modifications to the levee necessitated the need for additional Board (Sacramento-SanJoaquin Drainage District) easements to ensure maintenance and emergency access rights. Oakstone proposes to dedicate two easements to the CVFPB that would encompass the front 25 feet of each of the remaining levee lots, the entire width of the River Crest Drive, and the two Homeowners Association (HOA) open space parcels immediately south of River Crest Drive. A Slope Control Easement would encompass the rear 25 feet of each of the remaining levee lots and the three HOA open space parcels immediately north of the levee lots (See Attachment D).

To inform future home owners of the potential issues associated with living on a levee Oakstone will; 1) record a deed restriction that is crafted to meet permit requirements, and 2) implement a disclosure and notice statement that will run with the land, to be signed by each homeowner, in conjunction with the sale of levee lots. Oakstone has made drafts of both the proposed deed restriction and the proposed notice statement (See Attachment E).

The Rivers is located on a project levee that is maintained by DWR's Sacramento Maintenance Yard. To help ensure that encroachments are not constructed without proper review and authorization The Rivers Homeowners Association (HOA) will monitor work activities in the area and inform homeowners of the need to acquire an encroachment permit for any work. Oakstone, as a controlling vote on the HOA, will amend the HOA charter documents to ensure that the HOA has the necessary authority and resources to perform encroachment management (See Attachment F). This will help ensure that the City is not placed at risk by owners that ignore the encroachment permitting process. Oakstone is coordinating with the City so that the HOA enforcement language is similar to other enforcement language that is being used by the City. The revised HOA charter documents will be provided to all subsequent permit applications for The Rivers development.

## **8.0 – AGENCY COMMENTS AND ENDORSEMENTS**

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

- The Department of Water Resources Sacramento Maintenance Yard – State Maintenance Area 4 - has endorsed the application with no conditions.
- The U.S. Army Corps of Engineers draft 208.10 comment letter has been received for this application. The USACE District Engineer has no objection to the project, subject to conditions. The final letter will be incorporated into the permit as Exhibit B.

## **9.0 – CEQA ANALYSIS**

Board staff has prepared the following CEQA findings:

The Board determined that the project is statutory exempt from CEQA under CEQA Guidelines Section 15269 covering ministerial projects.

## **10.0 – 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 evidence presented by any individual or group.

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

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

3. Effects of the decision on the entire State Plan of Flood Control, and consistency of the proposed project with the Central Valley Flood Protection Plan as adopted by Board Resolution 2012-25 on June 29, 2012:

There will be no adverse effect to the entire State Plan of Flood Control as the Lighthouse Marina Project was authorized in 1987. Permit No. 18934 authorizes a process but no work.

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

There will be no effects of reasonable projected future events.

### **11.0 – STAFF RECOMMENDATION**

Staff recommends that the Board approve Permit No. 18934 and direct the Executive Officer to take the necessary actions to prepare and execute the permit and related documents and to file a Notice of Exemption with the State Clearinghouse.

### **12.0 – LIST OF ATTACHMENTS**

- A. Location Maps and Photos
- B. Draft Permit No. 18934
- C. Supplemental Design Guidelines
- D. SSJDD Easement Graphic
- E. Draft Deed restrictions
- F. Draft HOA Charter Documents

Design Review:

Gary W. Lemon P.E.

Environmental Review:

Andrea Buckley

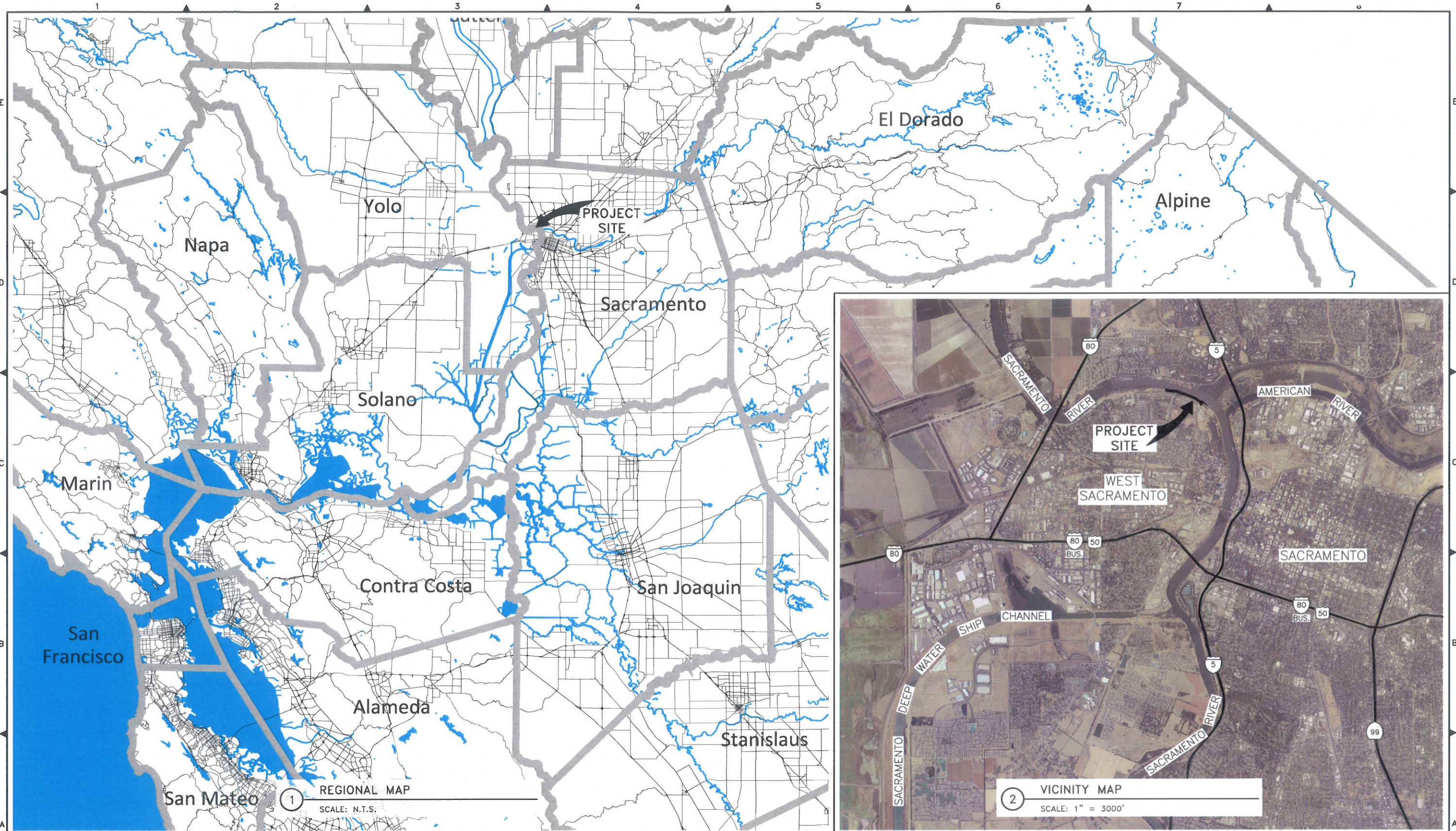
Document Review:

Mitra Emami P.E., Len Marino P.E., Chief Counsel Leslie Gallagher

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FILE SPEC: C:\Users\volmoas\appdata\local\temp\AcPublish\_59444\Exn\_Regional\_Map.dwg  
PLOT DATE: Dec 20, 2013 - 10:29am







FILE SPEC: c:\Users\vedmaas\appdata\local\temp\AcPublish\_3708\Exh\_Site Map.dwg  
PLOT DATE: Feb 14, 2014 - 9:41am

<b>K S N</b> INC.	<b>KJELDTSEN SINNOCK NEUDECK</b> Civil Engineers and Land Surveyors	711 N. Pershing Avenue Stockton, CA 95203 (209) 946-0268	Scale <b>1" = 120'</b>  Original Drawing Scale 0 1/2" 1" 		<b>THE RIVERS LEVEE LOTS</b>  <b>SITE MAP</b>	<b>EXHIBIT 1</b>
		1355 Halyard Drive, Suite 180 West Sacramento, CA 95691 (916) 403-5900 www.ksninc.com				<b>PAGE 1</b>



**DRAFT**

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

**PERMIT NO. 18934 BD**

**This Permit is issued to:**

Oakstone Investments, LLC  
1508 Eureka Road, Suite 140  
Roseville, California 95661

This is a programmatic permit that establishes consistent dwelling setbacks, a uniform maximum building footprint, construction limitations, and CVFPB easement recordation for 36-lots in The Rivers residential development adjacent to the waterside levee crown of the right (west) bank levee of the Sacramento River. The Rivers development (Originally known as the Lighthouse Marina) was initially approved under Permit No.14389 with the infrastructure for 51 single residential lots being approved under Permit No.14389-A. The project is located just upstream and across the river from the confluence of the American River with the Sacramento River along River Crest Drive within the City of West Sacramento (Section 26, 27, T9N, R4E, MDB&M, Sacramento Maintenance Yard, Sacramento River, Yolo 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. 18934 BD**

**THIRTEEN:** This permit does not authorize any work or construction. Any new structures, dwellings, or landscaping within the Project Works to include the floodway, the levee section, the waterside engineered fill, or within 15 feet of the landward levee toe will require an encroachment permit from the Central Valley Flood Protection Board (CVFPB).

**FOURTEEN:** Within one year from the issuance of this permit the applicant shall remove all unauthorized encroachments that currently exist on levee lots 49, 50, and 51 or submit an encroachment permit application(s) to request authorization of the encroachments. Encroachments that are found to be non-conforming, as determined by Board staff, shall be removed from the project works at the applicant's expense.

**FIFTEEN:** The permittee shall provide the Central Valley Flood Protection Board with a permanent easement granting the Sacramento and San Joaquin Drainage District flood control rights upon, over, and across the 36-levee lots as shown on Exhibit 1 of the submitted application.

**SIXTEEN:** The permittee is responsible for all liability associated with the maintenance of the landside levee slope and the waterside slope of the engineered fill, 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 Central Valley Flood Protection Board and the Department of Water Resources shall not be held liable for any damages to the permitted encroachment(s) resulting from flood fight, operation, maintenance, inspection, or emergency repair.

NINETEEN: The permittee shall be responsible for the repair of any damages to the project levee and other flood control facilities due to the maintenance of the landside levee slope and/or the waterside slope of the engineered fill.

TWENTY: The permittee shall maintain the landside levee slope and the waterside slope of the engineered fill, and in the manner required and as requested by the authorized representative of the Department of Water Resources or any other agency responsible for maintenance.

TWENTY-ONE: This permit is not valid until the applicant establishes a special reserve account, acceptable to the Central Valley Flood Protection Board, in the amount of \$50,000 that is available to The Rivers Home Owners Association (HOA) and the Department of Water Resources' Division of Flood Management for the purpose of removing any unauthorized encroachments from the Project Works if not done so by the parcel owner when requested to do so by the HOA, the Central Valley Flood Protection Board, the Department of Water Resources, or any other agency responsible for maintenance.

TWENTY-TWO: The letter from the Department of the Army (U.S. Army Corps of Engineers, Sacramento District) dated July XX, 2014 is attached to this permit as Exhibit A in reference to this project.

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

REPLY TO  
ATTENTION OF

Flood Protection and Navigation Section (18934)

Leslie M. Gallagher, Acting Executive Officer  
Central Valley Flood Protection Board  
3310 El Camino Avenue, Room 151  
Sacramento, California 95821

Dear Ms. Gallagher:

We have reviewed a permit application by Oakstone Investment, LLC (application number 18934). This is a request for a programmatic permit that establishes consistent dwelling setbacks, a uniform maximum building footprint, construction limitations, and CVFPB easement recording for 36-lots in The Rivers residential development adjacent to the waterside levee crown of the right (west) bank levee of the Sacramento River. The Rivers development (originally known as the Lighthouse Marina) was initially approved under Permit No.14389 with the infrastructure for 51 single residential lots being approved under Permit No.14389-A. The project is located on the right bank of the Sacramento River along River Crest Drive, in the City of West Sacramento, at 38.602765°N 121.522323°W NAD83, in Yolo County, California.

The District Engineer has no objection to approval of this application by your Board from a flood control standpoint, provided that conditions in our letter for permit application #14389, dated June 7, 1989, are followed.

Because application 18934 is for a programmatic permit, a Section 10 or Section 404 statement is not provided. Please advise individual applicants to contact the U.S. Army Corps of Engineers, Sacramento District, Regulatory Division, 1325 J Street, Room 1350, Sacramento, California 95814, telephone (916) 557-5250, for a Section 10 or Section 404 determination.

A copy of this letter is being furnished to Mr. Don Rasmussen, Chief, Flood Project Integrity and Inspection Branch, 3310 El Camino Avenue, Suite 200, Sacramento, CA 95821.

Sincerely,

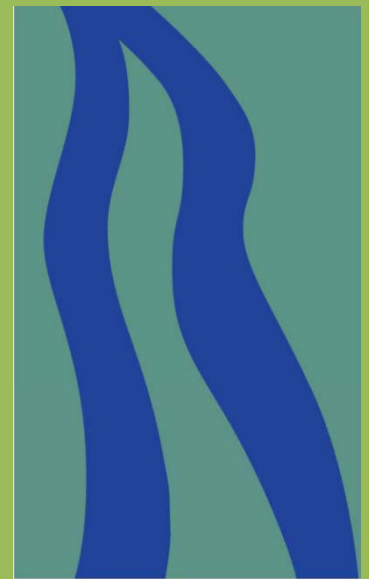
Rick L. Poeppelman, P.E.  
Chief, Engineering Division

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# THE RIVERS

## Supplemental Design Guidelines



## LEVEE LOTS

DRAFT

February 14, 2014

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## **SECTION 1. INTRODUCTION**

### **1. PURPOSE AND INTENT**

The Rivers is a master planned community located in West Sacramento, California. Currently, Residential Design Guidelines exist to establish the procedures and evaluation criteria for future residential construction within the Rivers development. The purpose of this document, the Supplemental Design Guidelines, is to establish additional procedures and evaluation criteria for construction on the lots located along River Crest Drive, commonly referred to as the Riverfront Lots or the Levee Lots. The Supplemental Design Guidelines are not intended to supersede the Residential Design Guidelines; rather, the Supplemental Design Guidelines describe additional requirements associated with the Levee Lots as a result of these lots being located on the waterside of, and adjacent to, the right (south) bank Project Levee of the Sacramento River Flood Control Project.

### **2. RESPONSIBILITY OF REVIEW**

It is the homeowner's and/or builder's responsibility to conform to any and all applicable public agency codes, ordinances, or other requirements that may be applicable to project development. The Design Review Committee does not assume responsibility for plan review of such local codes or ordinances. The Design Review Committee's sole purpose in plan review is to ensure that each project meets the intent of the design criteria contained herein. All projects within The Rivers require review and approval by the Design Review Committee prior to submittal to the City of West Sacramento, the Central Valley Flood Protection Board, or other applicable public agencies.

## **SECTION 2. PROJECT DESCRIPTION**

### **1. OVERVIEW**

The Levee Lots consist of 36 low-density, single family residential lots along the Sacramento River and are consistent with the RA land use category as described in the PD-29 Land Use Regulations. A site map of the Levee Lots is shown in Figure 1.

**Figure 1. Site Map of Levee Lots**



*Source: Kjeldsen, Sinnock and Neudeck, Inc.*

### **2. PROJECT LEVEE AND CENTRAL VALLEY FLOOD PROTECTION BOARD JURISDICTION**

The levee along the right (south) bank of the Sacramento River is located directly underneath River Crest Drive. This levee is known as a Federal Project Levee and is under the jurisdiction of a State agency, the Central Valley Flood Protection Board (CVFPB). Pursuant to Title 23 of the California Code of Regulations, the CVFPB has the responsibility of regulating encroachments that may affect any flood control systems under its jurisdiction. Development of any of the Levee Lots constitutes an encroachment and therefore requires an encroachment permit from the CVFPB prior to construction.

### **3. DESCRIPTION OF CENTRAL VALLEY FLOOD PROTECTION BOARD EASEMENTS**

The Central Valley Flood Protection Board (CVFPB) maintains two easements across the Levee Lots for purposes of flood protection as described below.

#### **CVFPB Levee Easement**

As stated earlier, the levee along the west bank of the Sacramento River is located directly underneath River Crest Drive. The Levee Easement associated with the levee encompasses the entire width of River Crest Drive, a portion of the open space on the south side of River Crest Drive, and a portion of the front yard of each Levee Lot.

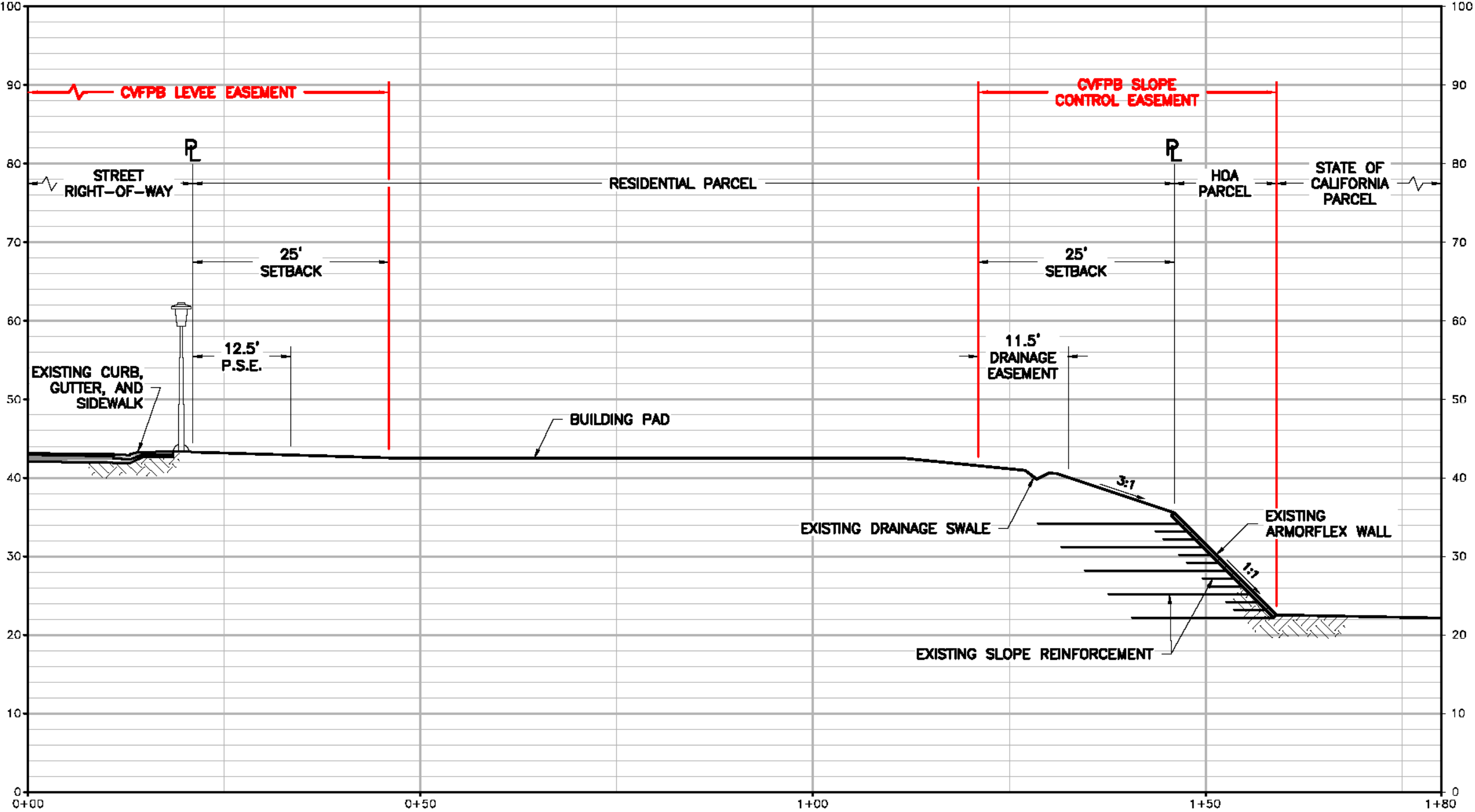
#### **CVFPB Slope Control Easement**

The other easement is the Slope Control Easement. The purpose of the Slope Control Easement is to ensure the maintainability of the slope at the back yard of each of the Levee Lots. The Homeowners Association (HOA) owns a parcel located directly behind each Levee Lots. The CVFPB Slope Control Easement includes the HOA parcel.

A typical lot section view that depicts the two CVFPB easements is shown in Figure 1.

Any and all improvements to the Levee Lots and within either of the two CVFPB easements will require the approval of the CVFPB and the issuance of an encroachment permit prior to the commencement of work. The application process for a CVFPB encroachment permit is described in further detail later in this document.

Figure 2. Typical Lot Section View - CVFPB Easements



Source: Kjeldsen, Sinnock and Neudeck, Inc.

## **SECTION 3. LEVEE LOTS SUPPLEMENTAL DESIGN CRITERIA**

### **1. OVERVIEW**

Since the impacts of encroachments vary based upon proximity to the various components of the flood protection system, each of the Levee Lots has been divided into zones. Zone 1 consists of the front 25 feet of each lot within the CVFPB Levee Easement. Zone 2 is the middle portion of the lot between the two Central Valley Flood Protection Board (CVFPB) easements but still subject to current Title 23 regulations. Zones 3, 4, and 5 consist of the rear 25 feet of each lot within the CVFPB Slope Control Easement. More specifically, Zone 4 consists of the existing drainage swale, and Zone 5 consists of the 3:1 sloped area between the drainage swale and the top of the existing Armorflex wall. Zone 6 is outside of the homeowner's parcel and consists of the Homeowners Association (HOA) parcel including the Armorflex wall. A summary of zones is shown in Figure 3.

As noted earlier, these Supplemental Design Guidelines are not intended to supersede the existing Residential Design Guidelines; rather, the Supplemental Design Guidelines describe any *additional* requirements associated with the Levee Lots as a result of these lots being located on the waterside of, and adjacent to, the right (south) bank Project Levee of the Sacramento River Flood Control Project. Therefore, the existing Residential Design Guidelines and these Supplemental Design Guidelines shall be used in conjunction to form the evaluation criteria for future residential construction along the Levee Lots within the Rivers.

### **2. BUILDING SETBACKS**

Building setbacks for the Levee Lots within the Rivers development shall be as follows:

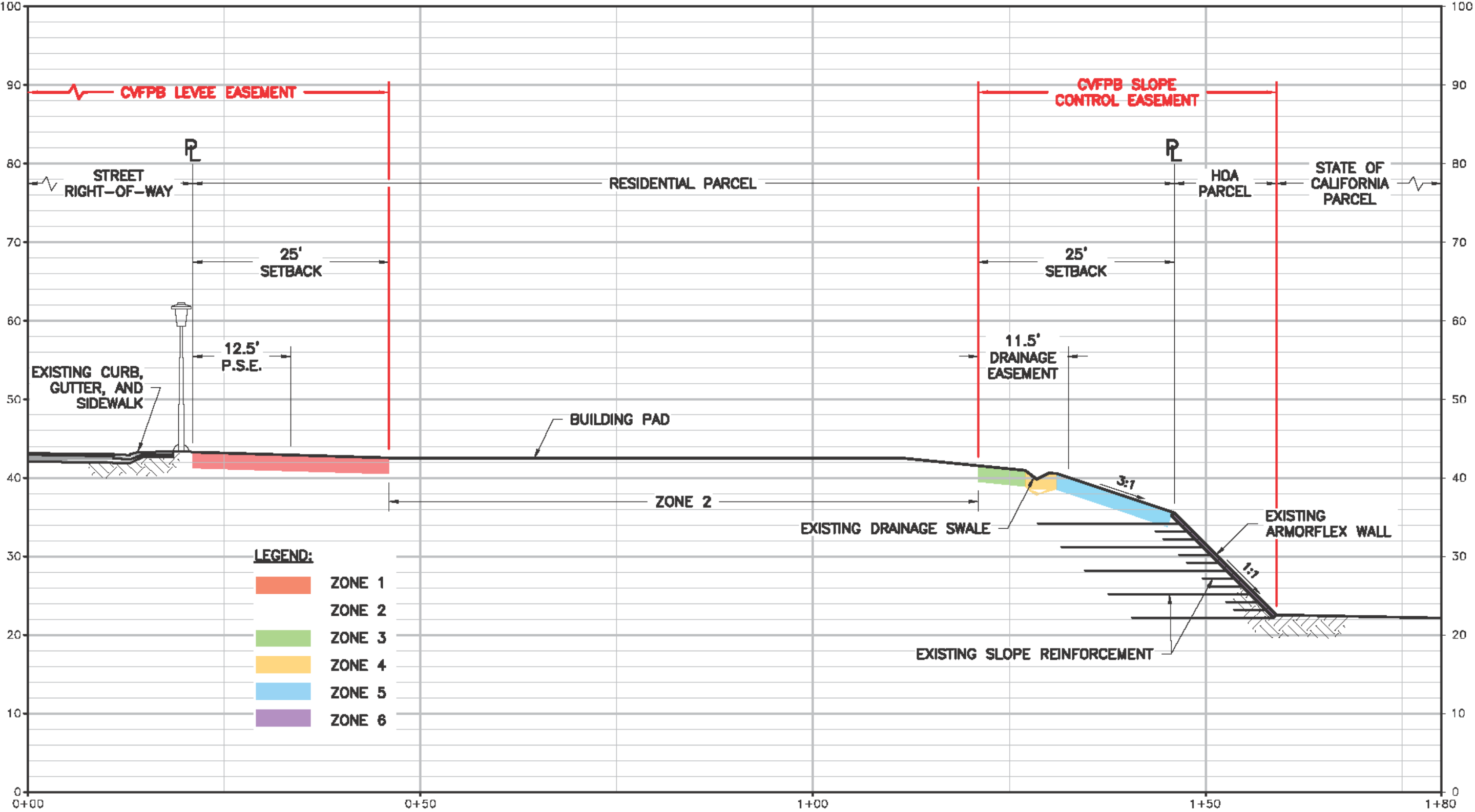
- The front yard building setback shall be 25 feet minimum, as shown in Figures 2 and 3.
- The rear yard building setback shall be 25 feet minimum, as shown in Figures 2 and 3.

Side yard building setbacks shall remain as specified in the existing Residential Design Guidelines.

### **3. FENCING REQUIREMENTS**

Existing fencing requirements are detailed in Section 7 of the existing Residential Design Guidelines. For the convenience of the reader, an excerpt regarding existing fencing requirements is located in Appendix B of these Supplemental Design Guidelines. Any additional fences or screen walls are **not** allowed in either the front yard or rear yard of the Levee Lots.

Figure 3. Typical Lot Section View - Zones



Source: Kjeldsen, Sinnock and Neudeck, Inc.



#### 4. CRITERIA BY ZONE

The additional criteria for CVFPB approved construction on the Levee Lots, as categorized by Zone, are as follows:

##### Zone 1

- No additional restrictions apply.

##### Zone 2

- No additional restrictions apply.

##### Zone 3

- Existing grades shall not be altered, and proper drainage shall be maintained to prevent ponding of water.
- Decks are allowed provided that they are supported on cast-in-drilled-hole (CIDH) piers. The CIDH piers shall be designed such that no vertical or lateral support may be derived from soil within 12 vertical feet of the existing surface elevation.
- All other structural improvements are **not** allowed, and no structural loads may be imposed upon the ground surface. Structural improvements include, but are not limited to: dwellings, buildings, outdoor kitchens, pools, spas, shade structures, gazebos, canopies, etc.
- Other hardscapes are allowed such as walkways, patios, raised planter boxes (24" maximum), mowcurbs, stepping stones, etc.
- Mature tree height shall be 50 feet maximum. Fruit, nut, and shallow rooted trees that may impact the drainage swale are not allowed. All tree branches at mature height need 12 feet of minimum clearance from ground surface. The height of all planting material (i.e. shrubs, groundcovers, and turf) shall be 3.5 feet maximum. A planting palette is located in Appendix A, and it describes the different planting choices for trees, shrubs, and groundcovers. Permanent irrigation systems shall be PVC Schedule 40 or equivalent and shall be buried no deeper than 8 inches. Anchored drip irrigation systems are preferred. A visible irrigation shut-off valve is required.

##### Zone 4

- No changes shall be made to the functionality of the existing drainage swale. No improvements shall interfere with the ability to perform inspections and cleaning of the drainage swale to maintain the intended drainage. Drainage swale shall be lined with 6 inch maximum size cobbles for its entire length. Landscaping immediately adjacent to, over, or inside of the drainage swale is **not** allowed.

- Structural improvements are **not** allowed, and no structural loads may be imposed upon the ground surface. Structural improvements include, but are not limited to: dwellings, buildings, outdoor kitchens, pools, spas, shade structures, gazebos, canopies, etc.
- Only bridged pedestrian access connections between Zones 3 and 5 are allowed. Bridged connections are to be 4 feet wide maximum. Multiple pedestrian access connections are allowed with 16 feet minimum separation. Bridged connections shall be supported on CIDH piers. The CIDH piers shall be designed such that no vertical or lateral support may be derived from soil within 3 vertical feet of the existing surface elevation.

### Zone 5

- Existing grades shall not be altered, and proper drainage shall be maintained to prevent ponding of water.
- Decks are allowed provided that they are supported on CIDH piers. The CIDH piers shall be designed such that no vertical or lateral support may be derived from soil within 12 vertical feet of the existing surface elevation.
- All other structural improvements are **not** allowed, and no structural loads may be imposed upon the ground surface. Structural improvements include, but are not limited to: dwellings, buildings, outdoor kitchens, pools, spas, shade structures, gazebos, canopies, etc.
- Certain lightweight surface hardscapes are allowed such as mowcurbs and stepping stones.
- Landscaping may consist of only groundcovers and turf. Trees and shrubs are **not** allowed. Height of all planting material (i.e. groundcovers and turf) shall be 1 foot maximum. A planting palette is located in Appendix A, and it describes the different planting choices for groundcovers. Permanent irrigation systems shall be PVC Schedule 40 or equivalent and shall be buried no deeper than 8 inches. Anchored drip irrigation systems are preferred. A visible irrigation shut-off valve is required.

### Zone 6

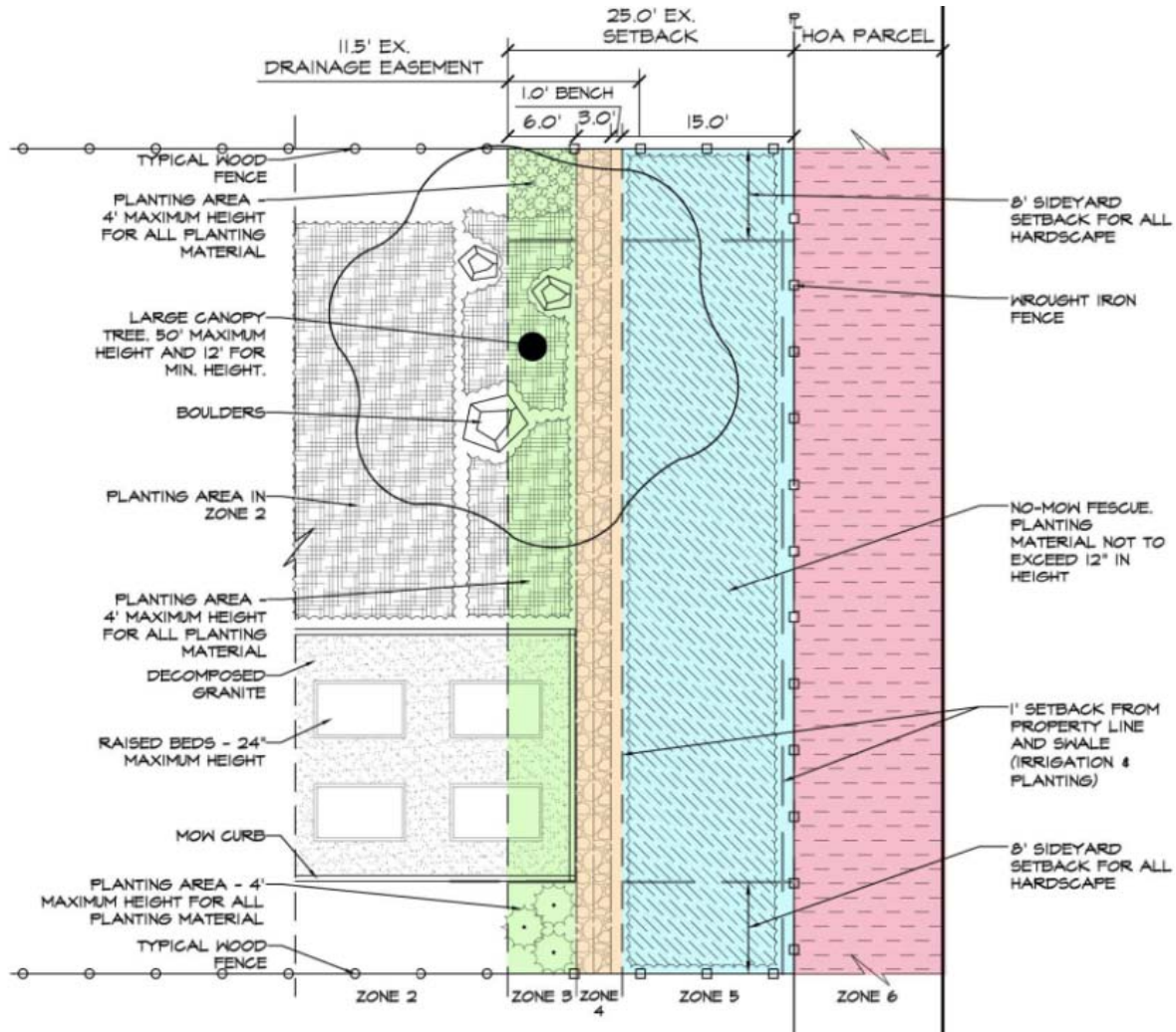
- Zone 6 consists of an HOA parcel and is **not** part of the homeowner's property.

As stated earlier, any and all improvements to the Levee Lots, including within either of the two CVFPB easements, will require the prior approval of the CVFPB and the issuance of an encroachment permit. The application process for a CVFPB encroachment permit is described in further detail later in this document

## 5. CONCEPTUAL BACKYARD LANDSCAPING

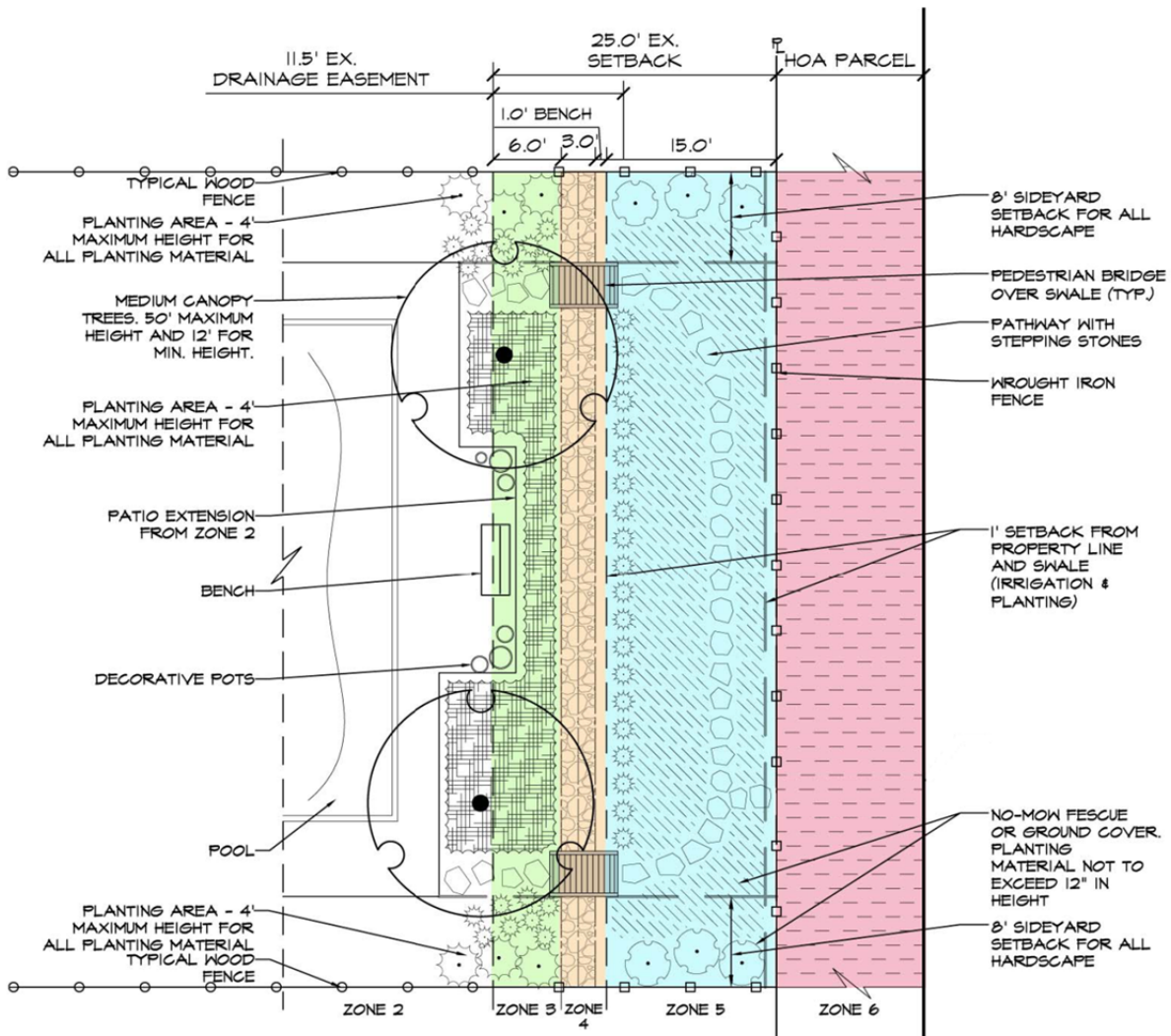
Typical examples of conceptual backyard landscaping that would be acceptable within these Supplemental Design Guidelines are indicated in Figure 4, Figure 5, and Figure 6.

Figure 4, Typical Conceptual Backyard Landscaping - Layout No. 1



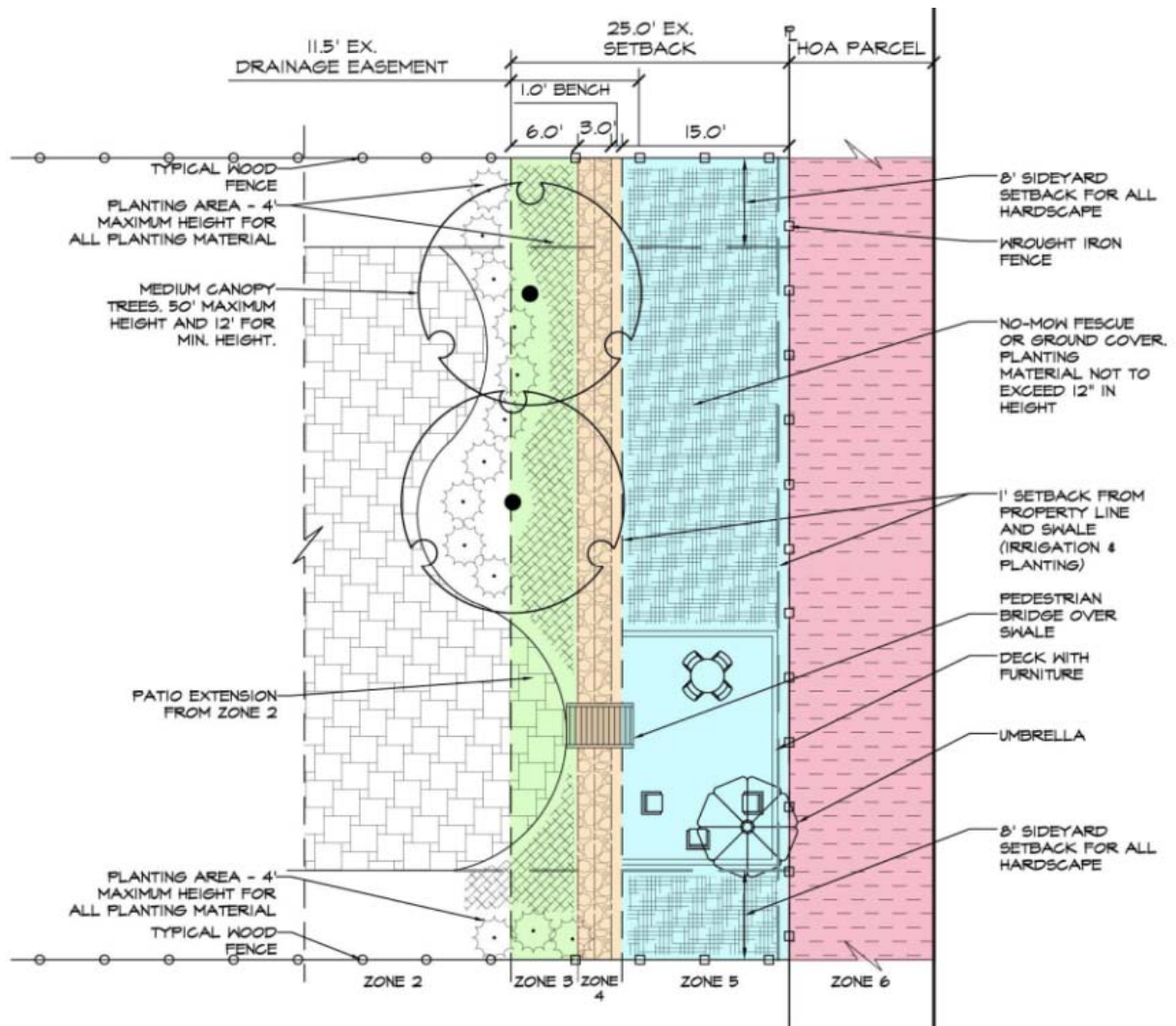
Source: Cunningham Engineering

Figure 5, Typical Conceptual Backyard Landscaping - Layout No. 2



Source: Cunningham Engineering

Figure 6, Typical Conceptual Backyard Landscaping - Layout No. 3



Source: Cunningham Engineering

## **SECTION 4. CENTRAL VALLEY FLOOD PROTECTION BOARD**

### **ENCROACHMENT PERMIT PROCESS**

#### **1. OVERVIEW**

All projects within The Rivers development require review and approval by the Design Review Committee as described in the Residential Design Guidelines prior to submittal to the City of West Sacramento and/or other applicable public agencies. In addition, the property owner must apply for an encroachment permit with the Central Valley Flood Protection Board (CVFPB) prior to any construction. The CVFPB permitting process is described in further detail below.

#### **2. SUBMITTAL REQUIREMENTS**

A full Encroachment Permit Application package consists of the following:

- Four copies of the completed Application (DWR Form 3615)
- Four copies of required drawings
- One copy of Environmental Questionnaire (DWR Form 3615a)

Two hard copy sets of the above with an electronic copy of all submitted forms and documents is acceptable as well. The information provided herein is current as of the date of adoption of these guidelines. The users of these guidelines are advised to determine whether submittal requirements and standards for CVFPB permits have changed since the adoption of these guidelines.

Further information regarding each item listed above is as follows:

#### **CVFPB Encroachment Permit Application**

The Application (DWR Form 3615) shall be completed by the applicant, or their agent, and must contain the following information:

1. A concise and accurate description of the proposed project, being sure to include all items that are to be covered under the issued permit.
2. Project location: please provide as much information as you can and include the address, county, section, township, range, latitude and longitude, stream impacted (include river mile), levee mile, designated floodway, and the assessor's parcel number (APN number) where the project is located.
3. The name, address, telephone number, and e-mail address of the applicant or land owner who is requesting the encroachment permit.
4. The name, address, telephone number, and e-mail address of the applicant's representative if applicable.

5. An endorsement of the proposed project from the local maintaining agency (LMA). In the case of The Rivers subdivision, the LMA is a State maintenance area that is responsible for levee maintenance. Special conditions may be added to the permit at the request of the agency. If the maintaining agency delays or declines to endorse the application, it may be submitted to the Board without endorsement with a written explanation as to why the application was not endorsed by the maintaining agency. The LMA for The Rivers subdivision is:  
State Maintenance Area 4  
Sacramento Maintenance Yard  
1450 River Bank Road  
West Sacramento, CA 95605  
(916) 375-6000
6. A list of all current property owners, with addresses, that are adjacent to the parcel where the proposed project will be constructed.
7. If an environmental determination has been made for the proposed work, include the name and address of the Lead Agency responsible for preparing environmental documentation regarding the proposed project as required by the California Environmental Quality Act of 1970. The environmental questionnaire provided by the Board must be completed and submitted as part of your application.
8. Note when the proposed project is tentatively scheduled for construction and if there are any funding constraints (e.g. grant time limits). Keep in mind that the review and permitting process can take several months to complete.
9. Include all exhibits pertinent to your proposed project. In general, application submittals should include all of the items listed.

You should include with your Application any additional information that you feel would be helpful for Board staff to use in evaluating your proposed project or use.

The Application must be signed and dated by the applicant/land owner.

In order to assist the Levee Lots' property owners, a partially completed copy of the Application (DWR Form 3615) is located in Appendix C. The individual property owner shall complete the balance of the Application prior to submittal.

## Drawings

The following drawing information is required for Board staff to evaluate the work described in the application. Additional information may be required depending upon the nature of the project.

1. A title block on each sheet identifying the proposed activity, including the name of the applicant, number of the sheet, total number of sheets in the set, and date the drawing was prepared.



2. The name of the stream, river mile, scale, north arrow, vertical datum reference, and other information as required.
3. The exact location of the proposed project in relation to identifiable landmarks.
4. Plan elevation views of the proposed project or use showing the proximity of the proposed project or use in relation to existing facilities, property lines, levees, streams, etc.
5. Drawings of levee cross sections or profiles indicating the elevations of levee crowns, toes, low-water surface, and design flood plane. These drawings should include horizontal and vertical scales and must be referenced to known vertical datum.

The following format shall be used for all drawings:

1. Prepare the drawings on 11-by-17-inch sheets, when possible.
2. Allow a 1-inch binding margin on the top side of each sheet.
3. Electronic information can be in PDF, JPEG, or other similar format.

### **Environmental Questionnaire**

In order to assist the Levee Lots' property owners, a completed copy of the Environmental Questionnaire (DWR Form 3615a) is located in Appendix D.

The completed Application package may be mailed or delivered in person to:

Central Valley Flood Protection Board  
Attention: Floodway Protection Section  
3310 El Camino Avenue, Room 151  
Sacramento, CA 95821

Upon receipt of an Application, an initial review is made to determine if the Application is complete enough to begin processing. If the Application is found to be acceptable, a letter will be sent to the applicant within 10-days acknowledging receipt of the Application. If the Application is found to be incomplete, it will be returned to the applicant, or the applicant will be sent an "incomplete letter" that will list what information is missing from the Application. If the missing information is not submitted within a reasonable amount of time, the application process will be stopped.

Following the initial review the Application will be assigned to staff for a more thorough review. If the Application is found to be complete, it will be assigned an Application number and a letter will be sent to the applicant within 30-days with a project description that should be reviewed by the applicant or the applicant's representative to ensure it is accurate and lists all items that are to be reviewed and subsequently permitted. Letters will also be sent to all property owners that are adjacent to the proposed project.



### 3. REVIEW AND APPROVAL PROCESS

Encroachment Permit Applications are reviewed by CVFPB staff. Staff members are assigned to review each application to determine completeness and compliance with the California Water Code, section 8710, and Title 23 of the California Code of Regulations (CCR), sections 1 through 193. The review process includes both a technical review and an environmental review of the potential impacts of the proposed project or use.

A copy of the Application is also sent to the U.S. Army Corps of Engineers (USACE) for review and comment. The USACE requires a minimum of 60 days to complete its review. The USACE concludes its review with a recommended denial or a “no-objection” letter to the project. A CVFPB Encroachment Permit cannot be issued until the CVFPB receives a “no-objection” letter from the USACE.

Each approved Application is subject to 12 general conditions. A number of special conditions may be added to the approved permit depending upon the nature of the proposed construction activity.

Applications fall into one of two categories. Those Applications that are considered by the Board at monthly CVFPB Meetings are referred to as Board Permits (BD). Other Applications that are identified as delegated authority applications, referred to as Executive Officer Permits (EO), do not go before the Board. The determination is made depending on the type of encroachment(s) that are being proposed. EO delegated Applications are processed the same manner as the BD Permits except that the EO Permits are placed on the CVFPB website for 30 days. The time required to process both types of permits is very similar, requiring three to four months to complete the process. The applicant and all interested parties are notified of the scheduled Board Meeting for BD Permits and may appear and present their views to the Board for its consideration.

After an Application has been approved by the CVFPB, any requests for revisions to the proposed or completed project, which have not been approved by the CVFPB, must be submitted in writing to the CVFPB for approval. Depending on the request, a letter of authorization may be issued by the Chief Engineer of a new Encroachment Permit Application will be required for the work that was not included in the original permit. Revised Applications are processed in the same manner as new Applications.

You must notify the CVFPB and the Department of Water Resources’ (DWR) Flood Inspection Section, which provides inspection services on behalf of the CVFPB, at least ten days before construction begins by:

1. Calling the CVFPB at (916) 574-0609 to record intent to begin construction and to notify DWR’s Inspection Section to set up the pre-construction meeting with the DWR inspector for your area, and

2. By mailing the pre-addressed start card furnished by the CVFPB when the permit is issued. If you need to get in touch with your Inspector for some reason, the card will contain the current address and telephone number of DWR's Flood Inspection Section.

The beginning of any work described in the permit constitutes acceptance by the applicant / land owner that work will be done in compliance with the general and special conditions listed in the permit.

Inquiries about application and permitting procedures may be made to the CVFPB via:

- E-mail at [cvfpbquestions@water.ca.gov](mailto:cvfpbquestions@water.ca.gov)
- In writing - sent to:  
Central Valley Flood Protection Board  
Attention: Permitting Section  
3310 El Camino Avenue, Room 151  
Sacramento, California 95821
- Fax at (916) 574-0682
- Phone at (916) 574-0609

## **APPENDIX A – PLANTING PALETTE**

## Trees (Zone 3)

Botanical Name	Common Name	Size
Acer p. 'Bloodgood'	Bloodgood Japanese Maple	15 gal / 24" box
Acer r. 'Red Sunset'	Red Sunset Maple	15 gal / 24" box
Betula nigra	River Birch	15 gal / 24" box
Lagerstroemia i. 'Cherokee'	Cherokee Crape Myrtle	15 gal / 24" box
Lagerstroemia i. 'Muskogee'	Lavender Crape Myrtle	15 gal / 24" box
Lagerstroemia i. 'Tuscarora'	Pink Crape Myrtle	15 gal / 24" box
Magnolia soulangeana	Saucer Magnolia	15 gal / 24" box
Magnolia stellata	Star Magnolia	15 gal / 24" box

## Shrubs (Zone 3)

Botanical Name	Common Name	Size
Arbutus u. 'Octoberfest'	Strawberry Tree	5 gal / 15 gal
Buddleja d. 'Black Knight'	Butterfly Bush	5 gal / 15 gal
Buxus j. 'Green Beaty'	Japanese Boxwood	5 gal / 15 gal
Camellia sp.	Yuletide Camellia	5 gal / 15 gal
Cercis chinensis	Chinese Redbud	5 gal / 15 gal
Cistus salvifolius	Sageleaf Rockrose	1 gal / 5 gal
Cistus x. purpureus	Orchid Rockrose	1 gal / 5 gal
Cotoneaster d. 'Lowfast'	Bearberry Cotoneaster	1 gal / 5 gal
Cotoneaster horizontalis	Rock Cotoneaster	5 gal / 15 gal
Cotoneaster parneyi	Parneyi Cotoneaster	5 gal / 15 gal
Dodonaea v. 'purpurea'	Purple Hopseed Bush	5 gal / 15 gal
Escallonia 'Fradesii'	Frades Escallonia	5 gal / 15 gal
Hebe 'Lake'	Veronica Lake Myrtle	5 gal / 15 gal
Lavandula 'Hidcote'	English Lavender	1 gal / 5 gal
Lavandula a. 'Munstead'	English Lavender	1 gal / 5 gal
Lavandula a. 'Twickel Purple'	English Lavender	1 gal / 5 gal
Myoporum parvifolium	Myoporum	1 gal / 5 gal
Myrtus c. compacta	Dwarf Myrtle	5 gal / 15 gal
Muhlenbergia rigens	Deergrass	1 gal / 5 gal
Nandina domestica	Heavenly Bamboo	5 gal / 15 gal
Phormium t. 'Jack Sprat'	New Zealand Flax	1 gal / 5 gal
Photinia fraseri	Photinia	5 gal / 15 gal
Podocarpus macrophyllus	Yew Pine	5 gal / 15 gal
Pennisetum setaceum 'Rubrum'	Purple Fountain Grass	5 gal / 15 gal
Pyracantha k. 'Santa Cruz'	Firethorn	5 gal / 15 gal
Raphiolepis i. 'Ballerina'	Indian Hawthorn	5 gal / 15 gal
Raphiolepis i. 'Jack Evans'	Indian Hawthorn	5 gal / 15 gal
Raphiolepis i. 'Spring Rapture'	Indian Hawthorne	5 gal / 15 gal
Rosmarinus o. 'Collingwood Ingram'	Rosemary	1 gal / 5 gal
Salvia clelandii	Cleveland Sage	1 gal / 5 gal
Tulbaghia violacea	Society Garlic	1 gal / 5 gal

**PLANTING PALETTE****Groundcovers (Zones 3 & 5)**

<b>Botanical Name</b>	<b>Common Name</b>	<b>Size</b>
Agapanthus 'Queen Anne'	Lily of the Nile	1 gal / 5 gal
Coreopsis 'Moonbeam'	Moonbeam Coreopsis	1 gal / 5 gal
Cotoneaster 'Lowfast'	Lowfast Cotoneaster	1 gal / 5 gal
Dietes bicolor	African Iris	1 gal / 5 gal
Echinacea purpurea	Purple Coneflower	1 gal / 5 gal
Erigeron Karvinskianus	Fleabane	1 gal / 5 gal
Hemerocallis 'Evergreen Yellow'	Daylily	1 gal / 5 gal
Hemerocallis h. 'Magnum Red'	Red Daylily	1 gal / 5 gal
Hemerocallis h. 'Orange'	Orange Daylily	1 gal / 5 gal
Hemerocallis h. 'Peachy Keen'	Peach Daylily	1 gal / 5 gal
Hemerocallis 'Stella d'or'	Yellow Daylily	1 gal / 5 gal
Iris douglasiana	Douglas Iris	1 gal / 5 gal
Iris pseudacornus	Yellow Flag	1 gal / 5 gal
Iris sibirica	Siberian Iris	1 gal / 5 gal
Lantana montevidensis	Trailing Lantana	1 gal / 5 gal
Narcissus 'Christmas Valley'	Double Daffodil	Bulb
Narcissus 'Early Splendor'	Tazetta Hybrid Daffodil	Bulb
Narcissus 'King Alfred'	King Alfred Daffodil	Bulb
Narcissus 'King Alfred'	Common Yellow Trumpet Daffodil	Bulb
Narcissus 'Peace Pipe'	White / Yellow Trumpet Daffodil	Bulb
Nassella tenuissima	Mexican Feather Grass	1 gal / 5 gal
Nephrolepis cordifolia	Sword Fern	1 gal / 5 gal
Rosemarinus o. 'Huntington Blue'	Rosemary	1 gal / 5 gal
Rosemarinus o. 'Huntington Carpet'	Spreading Rosemary	1 gal / 5 gal
Trachelospermum jasminoides	Star Jasmine	1 gal / 5 gal

# **APPENDIX B – EXCERPT FROM RESIDENTIAL DESIGN GUIDELINES**

## **Section 7.8 – Walls and Fences**

11/11/2013

*Excerpt from:*

*The Rivers  
Residential Design Guidelines*

Section 7.8 Walls and Fences

7.8.2.2 Riverfront Lots

Side yard fences on Riverfront lots shall be the “Lighthouse” wall terminating with a pilaster at the landward side of the drainage easement. The fence at rear property lines of riverfront lots shall be painted (Powdercoat standard RAL6007) wrought iron with a wrought iron return to the pilasters on the side property lines.

A maximum of one (1) 3’ wide gate, matching the iron fence, shall be permitted on yards fronting the river.



## **APPENDIX C – DWR FORM 3615**

Application for a Central Valley Flood Protection Board  
Encroachment Permit

**APPLICATION FOR A CENTRAL VALLEY FLOOD PROTECTION BOARD  
ENCROACHMENT PERMIT****Application No.** \_\_\_\_\_  
(For Office Use Only)

1. Description of proposed work being specific to include all items that will be covered under the issued permit.

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2. Project Location: \_\_\_\_\_ County, in Section \_\_\_\_\_  
(N) (E)  
Township: \_\_\_\_\_ (S), Range: \_\_\_\_\_ (W), M. D. B. & M.  
Latitude: \_\_\_\_\_ Longitude: \_\_\_\_\_  
Stream : \_\_\_\_\_ , Levee : \_\_\_\_\_ Designated Floodway: \_\_\_\_\_  
APN: \_\_\_\_\_

3. \_\_\_\_\_ of \_\_\_\_\_  
Name of Applicant / Land Owner Address  
\_\_\_\_\_  
City State Zip Code Telephone Number  
\_\_\_\_\_  
E-mail

4. \_\_\_\_\_ of \_\_\_\_\_  
Name of Applicant's Representative Company  
\_\_\_\_\_  
City State Zip Code Telephone Number  
\_\_\_\_\_  
E-mail

5. Endorsement of the proposed project from the Local Maintaining Agency (LMA):

We, the Trustees of \_\_\_\_\_ approve this plan, subject to the following conditions:  
Name of LMA☐ Conditions listed on back of this form ☐ Conditions Attached ☐ No Conditions\_\_\_\_\_  
Trustee Date\_\_\_\_\_  
Trustee Date\_\_\_\_\_  
Trustee Date\_\_\_\_\_  
Trustee Date

# **APPLICATION FOR A CENTRAL VALLEY FLOOD PROTECTION BOARD ENCROACHMENT PERMIT**

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

Name	Address	Zip Code

7. Has an environmental determination been made of the proposed work under the California Environmental Quality Act of 1970? ☐ Yes ☐ No ☐ Pending

If yes or pending, give the name and address of the lead agency and State Clearinghouse Number:

\_\_\_\_\_

\_\_\_\_\_

SCH No. \_\_\_\_\_

8. When is the project scheduled for construction? \_\_\_\_\_

9. Please check exhibits accompanying this application.

- A. ☐ Regional and vicinity maps showing the location of the proposed work.
- B. ☐ Drawings showing plan view(s) of the proposed work to include map scale.
- C. ☐ Drawings showing the cross section dimensions and elevations (vertical datum?) of levees, berms, stream banks, flood plain,
- D. ☐ Drawings showing the profile elevations (vertical datum?) of levees, berms, flood plain, low flow, etc.
- E. ☐ A minimum of four photographs depicting the project site.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

Include any additional information:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **APPENDIX D – DWR FORM 3615A**

Environmental Assessment Questionnaire for Applications for  
Central Valley Flood Protection Board Encroachment Permits

## ENVIRONMENTAL ASSESSMENT QUESTIONNAIRE FOR APPLICATIONS FOR CENTRAL VALLEY FLOOD PROTECTION BOARD ENCROACHMENT PERMITS

This environmental assessment questionnaire must be completed for all Central Valley Flood Protection Board applications. Please provide an explanation where requested. Incomplete answers may result in delays in processing permit applications. Failure to complete the questionnaire may result in rejection of the application.

1. Has an environmental assessment or initial study been made or is one being made by a local or State permitting agency in accordance with the California Environmental Quality Act? ☐ Yes ☐ No

If yes, identify the Lead Agency, type of document prepared or which will be prepared, and the State Clearinghouse Number:

2. Will the project require certification, authorization or issuance of a permit by any local, State or federal environmental control agency? ☐ Yes ☐ No

List all other governmental permits or approvals necessary for this project or use, including U.S. Army Corps of Engineer' 404 and Section 10 permits, State Water Quality Certification, Department of Fish and Game 1600 agreement, etc. Attach copies of all applicable permits.

3. Give the name and address of the owner of the property on which the project or use is located. Please submit a copy of your current Title Report (Grant Deed), if your proposed project includes a private residence.

4. Will the project or use require issuance of a variance or conditional use permit by a city or county?

☐ Yes ☐ No

Explain:

5. Is the project or use currently operating under an existing use permit issued by a local agency?

☐ Yes ☐ No

Explain:

ENVIRONMENTAL ASSESSMENT QUESTIONNAIRE FOR APPLICATIONS  
FOR CENTRAL VALLEY FLOOD PROTECTION BOARD ENCROACHMENT PERMITS

6. Describe all types of vegetation growing on the project site, including trees, brush, grass, etc.
7. Describe what type of wildlife or fish may use the project site or adjoining areas for habitat, food source, nesting sites, source of water, etc.
8. Has the Department of Fish and Game, U.S. Fish and Wildlife Service, or National Marine Fisheries Service been consulted relative to the existence of, or impacts to, threatened or endangered species on or near the project site?
- ☐ Yes      ☐ No
- Explain:
9. Will the project or use significantly change present uses of the project area?
- ☐ Yes      ☐ No
- Explain:
10. Will the project result in changes to scenic views or existing recreational opportunities?
- ☐ Yes      ☐ No
- Explain:
11. Will the project result in the discharge of silt or other materials into a body of water?
- ☐ Yes      ☐ No
- Explain:



ENVIRONMENTAL ASSESSMENT QUESTIONNAIRE FOR APPLICATIONS  
FOR CENTRAL VALLEY FLOOD PROTECTION BOARD ENCROACHMENT PERMITS

12. Will the project involve the application, use, or disposal of hazardous materials? ☐ Yes ☐ No

If yes, list the types of materials, proposed use, and disposal plan. Provide copies of all applicable hazardous material handling plans.

13. Will construction activities or the completed project generate significant amounts of noise?

☐ Yes ☐ No

Explain:

14. Will construction activities or the completed project generate significant amounts of dust, ash, smoke, fumes, or odors?

☐ Yes ☐ No

Explain:

15. Will the project activities or uses involve the burning of brush, trees, or construction materials, etc?

☐ Yes ☐ No

Explain, and identify safety and air pollution control measures:

16. Will the project affect existing agricultural uses or result in the loss of existing agricultural lands?

☐ Yes ☐ No

Explain:

ENVIRONMENTAL ASSESSMENT QUESTIONNAIRE FOR APPLICATIONS  
FOR CENTRAL VALLEY FLOOD PROTECTION BOARD ENCROACHMENT PERMITS

17. Have any other projects similar to the proposed project been planned or completed in the same general area as the proposed project?

☐ Yes      ☐ No

Explain and identify any other similar projects:

18. Will the project have the potential to encourage, facilitate, or allow additional or new growth or development?

☐ Yes      ☐ No

Explain:

19. Will materials be excavated from the floodplain? ☐ Yes   ☐ No   If yes, please answer the remaining questions.

**THE REMAINING QUESTIONS MUST ONLY BE ANSWERED IF THE ANSWER TO QUESTION  
NO. 19 WAS "YES". IF THE ANSWER TO QUESTION NO. 19 WAS "NO", YOU DO NOT  
NEED TO COMPLETE THE REMAINING QUESTIONS.**

- A. What is the volume of material to be excavated?

Annually \_\_\_\_\_ Total \_\_\_\_\_

- B. What types of materials will be excavated?

- C. Will the project site include processing and stockpiling of material on site?

☐ Yes   ☐ No

Explain:

- D. What method and equipment will be used to excavate material?



ENVIRONMENTAL ASSESSMENT QUESTIONNAIRE FOR APPLICATIONS  
FOR CENTRAL VALLEY FLOOD PROTECTION BOARD ENCROACHMENT PERMITS

E. What is the water source for the project?

F. How will waste materials wash water, debris, and sediment be disposed of?

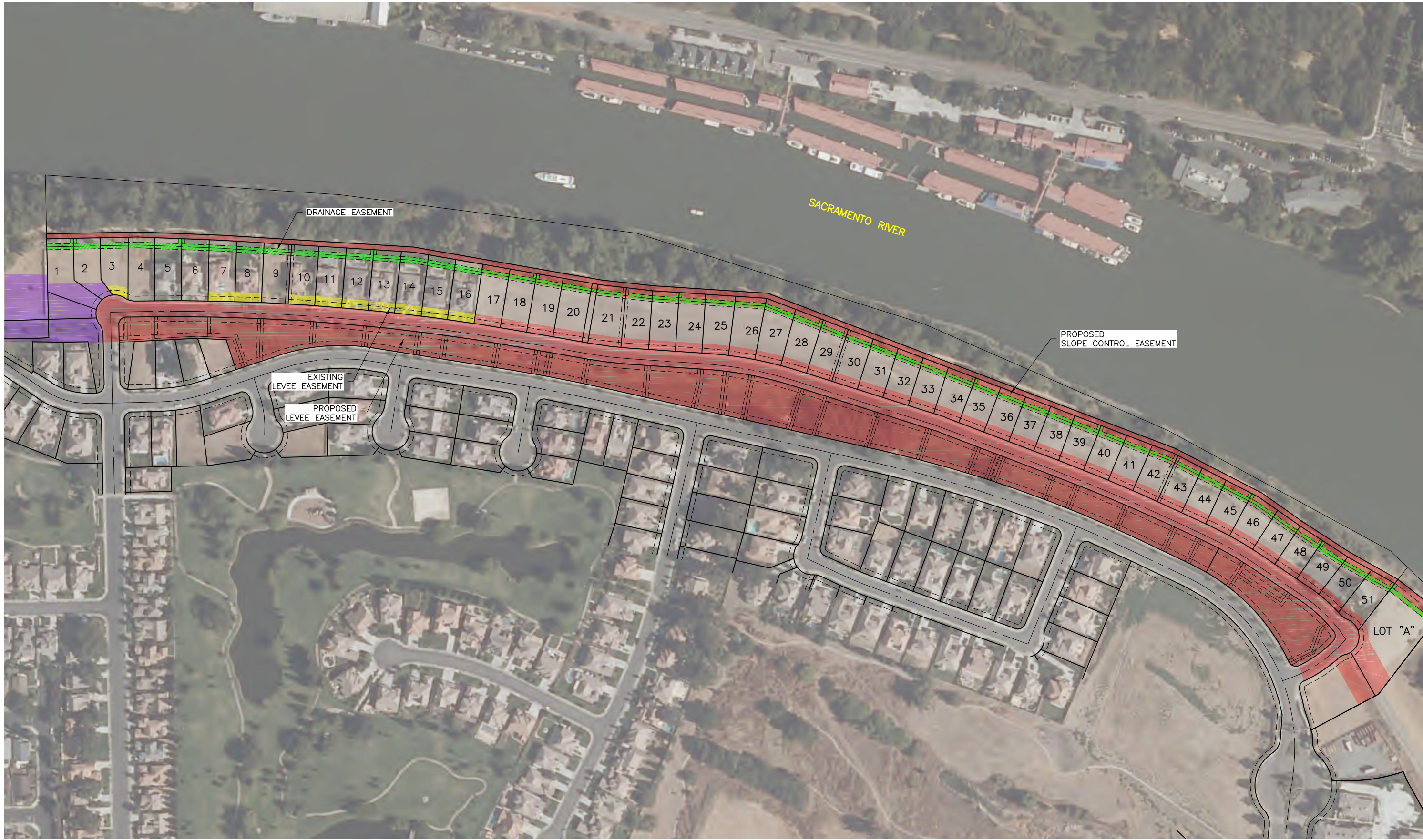
G. What is the proposed end land use for the project site?

H. Has a reclamation plan been prepared for this site in accordance with the Surface Mining and Reclamation Act of 1975?

☐ Yes ☐ No If yes, please attach a copy.

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**LEGEND:**

	EXISTING LEVEE EASEMENT
	PENDING LEVEE EASEMENT
	PROPOSED CVFPB LEVEE EASEMENT OR PROPOSED CVFPB SLOPE CONTROL EASEMENT
	DRAINAGE EASEMENT (PROPOSED TO BE QUIT CLAIMED FROM COWS TO HOA)

**K  
S  
N**  
INC.

**KJELDEN  
SINNOCK  
NEUDECK**  
Civil Engineers  
and Land Surveyors

711 N. Pershing Avenue  
Stockton, CA 95203  
(209) 946-0268  
  
1355 Halyard Drive, Suite 180  
West Sacramento, CA 95691  
(916) 403-5900  
[www.ksninc.com](http://www.ksninc.com)

Scale  
**1" = 120'**  
  
Original Drawing Scale  
0 1/2" 1"



**THE RIVERS  
LEVEE LOTS  
PROPOSED EASEMENTS  
OVERALL**

FILE SPEC: c:\Users\vedmaas\appdata\local\temp\AcPublish\_3708\Exh\_Site Map\_Easements.dwg  
PLOT DATE: Feb 14, 2014 - 9:45am



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**Privileged & Confidential  
Attorney Work Product****MEMORANDUM**

To: CLIFTON TAYLOR, RICHLAND/OAKSTONE  
From: SCOTT L. SHAPIRO  
GRAHAM C. ST. MICHEL  
Date: JULY 29, 2013  
Re: **OAKSTONE INVESTMENTS PROPERTY ISSUE**

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**FACTS**

Oakstone Investments, LLC (“Oakstone”) intends to develop residential property located in the City of West Sacramento (“City”). The property is situated on the crown of a levee. The West Sacramento Area Flood Control Agency (“WSAFCA”) proposes to undertake flood control projects on the same levee. Such projects may have negative effects on the developed residential property, including noise, traffic, dust, limitations on access, and similar inconveniences. The City and WSAFCA are concerned that allowing construction of the Oakstone subdivision could bring in new residents who may object to or challenge future flood control projects. The City is interested in exploring options for limiting the ability of future residents to impede flood control projects. The City has suggested requiring either some form of notice to the buyers or deed restrictions that would preclude future residents from challenging the projects under CEQA petitions, nuisance claims, or similar legal actions. In addition, regulatory approvals for new homes are required from the Central Valley Flood Protection Board (“CVFPB”). As the regulatory agency overseeing levee safety for the central valley, the CVFPB is similarly concerned that future home-owners may prove to be a nuisance. This memorandum discusses options.

**SUMMARY OF RECOMMENDED ACTION**

This memorandum concludes that while a deed restriction (restrictive covenant or equitable servitude) would create a more aggressive basis for barring public opposition than would a simple notice statement, there would be a significant risk that a court would find such a covenant unenforceable for reasons of public policy. Oakstone should consider the relative need to pursue the more aggressive option despite the additional litigation risk. If the more aggressive stance is not needed, providing notice to the prospective buyers would appear to be the more conventional and less controversial option.

## **OPTION 1: NOTICE**

### **General Concept**

The first option considered here would be to include notice of the adjacent flood control activities in a recorded instrument such as the individual deeds or a declaration of covenants, conditions and restrictions (“CC&Rs”). The notice could also be included in a public report required by the California Subdivided Lands Act (“SLA”).

The SLA governs the offering and sale or leasing of certain subdivided parcels of real property and other subdivision interests located in California. (Bus. & Prof. Code, §§ 11000-11023.)<sup>1</sup> The law is intended to inform prospective purchasers of essential facts regarding the property at issue. Toward that end, the SLA requires that a person intending to offer subdivided lands for sale or lease must apply for and obtain a public report from the Department of Real Estate. (Id., § 11010(a).) The disclosures in the public report include information about utilities, roads, soil and geologic conditions, title, zoning and use, hazards, on- or off-site conditions which may affect the intended use of the land, and any financial arrangements for completion of the subdivision. (Id., § 11010(b).) A copy of the public report must be delivered to prospective purchasers who must sign a receipt acknowledging that they received and had an opportunity to read the report.

Additionally, many subdivision projects also involve the recording of a “declaration” that is common to all parcels within the subdivision. (See, e.g., Civ. Code, §§1350-1378 [the Davis-Stirling Act, applicable to “Common Interest Developments,” and specifying contents of a declaration at section 1353, subdivision (b)].) Such declarations will include covenants and restrictions, and “[a]ny other matters considered appropriate by the developer.” (Id., § 1353(b).)

### **Examples of Similar Disclosures under the SLA**

Publishing notice of the adjacent flood control activities in either (or some combination of) the public report, declaration, or deeds would be consistent with the SLA and Davis-Stirling Act. For example, the disclosures that must be included in the public report under the SLA include disclosures of conditions comparable to that of the flood control area, including:

Airports – If the property is located within an airport influence area, the following statement (Bus. & Prof. Code, § 11010(b)(13)):

#### **NOTICE OF AIRPORT IN VICINITY**

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with

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<sup>1</sup> The SLA applies to subdivisions which contain five or more lots or parcels. (Bus. & Prof. Code, § 11000.1(a).)

proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

San Francisco Bay Conservation and Development Jurisdiction (Bus. & Prof. Code, § 11010(b)(16)):

NOTICE OF SAN FRANCISCO BAY CONSERVATION AND  
DEVELOPMENT COMMISSION JURISDICTION

This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission. Use and development of property within the commission's jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction.

Farm and Ranch Lands – If the property is presently located within one mile of a parcel of real property designated as “Prime Farmland,” “Farmland of Statewide Importance,” “Unique Farmland,” “Farmland of Local Importance,” or “Grazing Land,” the following statement (Bus. & Prof. Code, § 11010(b)(17)):

NOTICE OF RIGHT TO FARM

This property is located within one mile of a farm or ranch land designated on the current county-level GIS “Important Farmland Map,” issued by the California Department of Conservation, Division of Land Resource Protection. Accordingly, the property may be subject to inconveniences or discomforts resulting from agricultural operations that are a normal and necessary aspect of living in a community with a strong rural character and a healthy agricultural sector. Customary agricultural practices in farm operations may include, but are not limited to, noise, odors, dust, light, insects, the operation of pumps and machinery, the storage and disposal of manure, bee pollination, and the ground or aerial application of fertilizers, pesticides, and herbicides. These agricultural practices may occur at any time during the 24-hour day. Individual sensitivities to those practices can vary from person to person. You may wish to consider the impacts of such agricultural practices before you complete your purchase. Please be advised that you may be barred from obtaining legal remedies against agricultural practices conducted in a manner consistent with proper and accepted customs and standards pursuant to Section 3482.5 of the Civil

Code or any pertinent local ordinance.<sup>2</sup>

**Draft Language for Notice of Flood Control Projects**

Including notice of nearby flood control activities would fit logically within the public report or a recorded declaration of CC&Rs. Because the primary concern is to ensure that prospective purchasers receive actual notice, Oakstone may consider inserting the notice statement in the deeds themselves. The following is an initial proposed draft:

**NOTICE OF FLOOD CONTROL MANAGEMENT AREA**

This property is located on or near a levee within or adjacent to a flood control management area under the jurisdiction of the West Sacramento Area Flood Control Agency (“WSAFCA”) and the Central Valley Flood Protection Board (“CVFPB”). The CVFPB regulates activities on or adjacent to flood control structures and the WSAFCA has and will continue to undertake flood control projects on the flood control management area. Flood control projects may include, but are not limited to, levee construction and maintenance, removing and relocating utility lines, redirecting roadways, and other infrastructure construction and maintenance projects. Such projects are necessary to managing flood risks to the surrounding community. Due to the proximity of this property to the flood control management area and related projects, the property may be subject to annoyances, inconveniences or discomforts associated with the flood control projects. The inconveniences of such projects may include, but are not limited to, noise, odors, dust, the continuous or intermittent operation of pumps and heavy machinery, increases in traffic, and potentially disruptive road construction. Individual sensitivities to these annoyances can vary from person to person. You should consider the impacts of such flood control projects before you complete your purchase and determine whether they are acceptable to you.

**Draft Acknowledgement Receipt**<sup>3</sup>

**DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE  
RECEIVED AND READ THE NOTICE OF FLOOD  
CONTROL MANAGEMENT AREA**

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<sup>2</sup> Section 3482.5 of the Civil Code provides that certain commercial agricultural activities shall not be deemed a nuisance.

<sup>3</sup> If this notice were to be included in a public report rather than a stand-alone notice, buyers would sign a standard acknowledgement statement for the public report.



I received and read the Notice of Flood Control Management Area  
in association with the property known as or located at  
\_\_\_\_\_[address]\_\_\_\_\_.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[date]

### **Issues / Considerations**

1. Mechanics. As noted above, the notice option appears consistent with existing law applicable to subdivisions, and the notice would likely fit under the existing legal framework of the SLA public report or a recorded declaration of CC&Rs. The notice could also be inserted into the individual deeds. The primary goal would seem to be to ensure that prospective buyers have actual – not just constructive – notice of the flood control area. Inserting notice in the deeds would ensure actual notice, and recording the deed would extend that notice to subsequent transferees. Including the notice in a recorded declaration would be helpful to provide notice to subsequent transferees (especially if the deeds do not include the notice but only reference the declaration). Finally, Oakstone could provide buyers with the notice and require them to sign an acknowledgment statement (like the signed statement acknowledging receipt of a public report under the SLA). Copies of signed acknowledgement statements could be provided to the City and/or WSAFCA (though since this would not involve recording of the notice, the notice should probably still be included in a recorded deed or declaration to ensure notice for subsequent transferees).
2. Notice Would Unlikely Provide an Absolute Bar to Legal Challenges. The notice is not drafted as a restrictive covenant or enforceable agreement to not bring legal challenges to flood control projects (that option is discussed below). Accordingly, the notice option would unlikely provide an absolute bar to opposition. On the other hand, the fact that residents received notice of the flood control projects and related impacts would likely be considered a material factor in the outcome of any such legal challenges, particularly nuisance lawsuits. The fact that a plaintiff has “come to the nuisance” is still a factor of importance in considering whether the defendant’s use of property is *unreasonable*, and if so, whether the complainant is entitled to relief. (*E.g., Hellman v. La Cumbre Golf and Country Club* (1992) 6 Cal.App. 4th 1224 [plaintiffs came to the property with the knowledge that it was next to a golf course, which put them on constructive notice that golf balls would be landing on their property; therefore plaintiffs failed to show defendant’s actions were unreasonable.].)

Here, the flood control projects would unlikely to be deemed unreasonable because they are needed to protect the community from flood risks, and the resident-plaintiffs

will have had explicit notice that such projects are nearby. Finally, to the extent the flood control projects are carried out under statutory authority, there would be an absolute defense to a nuisance claim regardless of the notice. (*See* Civ. Code, § 3482 [“Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.”].)

## **OPTION 2: RESTRICTIVE COVENANT / EQUITABLE SERVITUDE**

### **General Concept**

The second option would be to create a restrictive covenant or equitable servitude, intended to “run with the land” (*i.e.*, apply to subsequent transferees), under which parcel owners and their successors would promise not to challenge any nearby flood control projects. The restriction could be included in the deed or a recorded declaration of CC&Rs.

Subdivisions are often built according to a general plan containing restrictions that each owner must abide by for the benefit of all. Ordinarily, a general plan or declaration of restrictions is recorded by the subdivider-grantor for the purpose of insuring the uniform and orderly development and use of the entire tract by all of the original purchasers as well as their successors. The restrictions are imposed upon each parcel within the tract, and are typically used to limit the type of buildings that can be constructed (*e.g.*, height restrictions, setbacks, protecting views) or the type of activity permitted on the property (*e.g.*, limiting commercial uses, prohibiting loud noise after hours, or prohibiting pets).

A covenant is said to run with the land if it binds not only the person who entered into it, but also later owners and assigns who did not personally enter into it. (Civ. Code, § 1460.) In California, only covenants specified by statute run with the land (Civ. Code, § 1461), primarily those described in sections 1462 and 1468. Under section 1462, a covenant that *benefits* the property may run with the land. Covenants that burden property may run with the land only in certain limited circumstances set forth in section 1468. Under section 1468, such covenants may run with the land if they are covenants “to do or refrain from doing some act on his own land, which doing or refraining is expressed to be for the benefit of the land of the covenantee” and:

- (a) the land of the covenantor (to be burdened) and the land of the covenantee (to be benefitted) are particularly described in the written instrument;
- (b) the instrument expressly provides that all successive owners of the land of the covenantor are to be bound by the covenant for the benefit of the land of the covenantee;
- (c) each act required by the covenant must relate to the use, repair, maintenance, or improvement of, or payment of taxes and assessments on, the land described or some part of the land; and
- (d) the instrument containing the covenant is recorded.

(Civ. Code., § 1468.)

Dating back into the 19th century, courts of equity sometimes enforced covenants that, for one reason or another, did not run with the land in law. So arose the separate doctrine of equitable servitudes. California adopted this doctrine and it accumulated its own body of rules. (*E.g.*, *Werner v. Graham* (1919) 181 Cal. 174.) Because of the statutory limits on covenants running with the land, California courts have traditionally analyzed CC&Rs under the doctrine of equitable servitudes. Enforcement of equitable servitudes is an equitable remedy that focuses less on whether the covenant meets technical requirements to run with the land, and more upon the question of whether the assignee took with knowledge of the covenant such that equity would compel enforcement.

The chief requirement for enforcement of an equitable servitude is that the grantee, against whom enforcement is sought, must have had notice of the covenant at the time of the grant. Covenants contained in recorded deeds easily satisfy this requirement, but the restriction need not be contained in the deed in order for subsequent transferees to be on notice.<sup>4</sup> Simply recording a declaration of restrictions does not alone create equitable servitudes, however. Rather, the equitable servitudes “spring into existence” once the first lot within the tract to be restricted has been conveyed subject to the declaration. Generally, CC&Rs (whether deemed covenants or equitable servitudes) are enforceable unless they are unreasonable. Unreasonable restrictions are those that (1) are wholly arbitrary; (2) violate fundamental public policy; or (3) impose a burden on the use of affected land that far outweighs any benefit. (*Nahrstedt v. Lakeside Village Condominium Ass’n, Inc.* (1994) 8 Cal.4th 361, 381-382.)

### **Examples of Similar Covenants**

The covenant or equitable servitude contemplated here – to prevent property owners from challenging nearby flood control projects – appears somewhat unorthodox as compared to the typical restrictions on use of property, and research (case law and internet) did not return any

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<sup>4</sup> In *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal.4th 345, 363, the California Supreme Court adopted a new rule for creating enforceable servitudes or covenants that run with the land. Purchasers are bound by previously recorded CC&Rs even if they are not mentioned in the deed or another document at the time of sale. In *Anderson*, defendant property owners wanted to plant grapes, operate a winery, and keep pet llamas on their property. Plaintiff neighbors sued to stop these activities on the ground that CC&Rs prohibited them. The trial judge granted summary judgment for the defendants, ruling that the CC&Rs were not enforceable as covenants running with the land or as equitable servitudes because they were not mentioned in any deed to defendants’ property. The supreme court reversed and adopted a new rule. If a declaration establishing a common plan for the ownership of property in a subdivision and containing restrictions upon the use of the property as part of the common plan is recorded before the execution of the contract of sale, subsequent purchasers who have constructive notice of the recorded declaration are bound by the common plan. The declaration must describe the property it is to govern and state that it is to bind all purchasers and their successors. The restrictions are then enforceable even if they are not additionally cited in a deed or other document at the time of the sale. (*Anderson*, 12 Cal.4th at 349.) This rule applies equally to covenants and equitable servitudes. (*Id.* at 355.).

specific examples of such covenants in California. There are, however, limited examples of such covenants in other jurisdictions.

1. *Deed Mutes Protest in Ridgefield*, NY Times Article (June 21, 2012) (available at: [http://www.nytimes.com/2012/06/24/realestate/connecticut-in-the-region-deed-mutes-protest-in-ridgefield.html?\\_r=0](http://www.nytimes.com/2012/06/24/realestate/connecticut-in-the-region-deed-mutes-protest-in-ridgefield.html?_r=0)).

In the 1990's, a housing developer was able to get land once zoned for business use rezoned for residential use. Prior to subdividing the property, the developer agreed to add deed restrictions preventing future homeowners from opposing the use of business-zoned land owned by Novo Nordisk. Novo, in exchange, agreed not to oppose the proposed housing development. Now that there is a new commercial use slated to take over the Novo facility, residents are finding that their deeds purport to prevent them from opposing development on the Novo property. The article cites a Connecticut land use lawyer as stating that such mutually accepted restrictions are a common way to work out disputes between property owners, but that some restrictive covenants are more enforceable than others (he declined to offer a specific opinion on this covenant). *We were unable to find any evidence of litigation related to this story.*

2. Agreements not to protest the formation of Local Improvement Districts have been characterized as restrictive covenants running with the land. These agreements are used in Oregon and Washington, and require future residential property owners to waive their rights to protest the formation of Local Improvement Districts formed for the purpose of extending utilities or other improvements to the properties. The agreements are made in consideration for an approval from the local government needed to authorize the residential development. Examples include:
  - No Protest Agreement and Covenant Running With the Land (Pierce County, WA) (<http://wa-piercecounty.civicplus.com/DocumentCenter/View/905>)
  - Irondale/Hadlock Sanitary Sewer System No Protest Agreement/Restrictive Covenant (Jefferson County, WA) ([http://www.co.jefferson.wa.us/commdevelopment/UGA/UGA\\_No\\_Protest\\_Agreement\\_5-11-06.pdf](http://www.co.jefferson.wa.us/commdevelopment/UGA/UGA_No_Protest_Agreement_5-11-06.pdf))
  - Covenant Consenting to Formation of a Local Improvement District (Seattle, WA) ([http://www.seattle.gov/dpd/static/Street%20Improvement%20No%20Protest%20Agreement\\_LatestReleased\\_DPDD017379.pdf](http://www.seattle.gov/dpd/static/Street%20Improvement%20No%20Protest%20Agreement_LatestReleased_DPDD017379.pdf))
  - Restrictive Covenant Non-Remonstrance Agreement (Oregon City, OR) ([http://www.orcity.org/sites/default/files/NonRemon%20Form\\_0.pdf](http://www.orcity.org/sites/default/files/NonRemon%20Form_0.pdf))

3. *Ferrisburgh Realty Investors v. Schumacher* (Vt. 2010) 187 Vt. 309

When Schumacher purchased property from Pierce, Schumacher signed a supplemental agreement stating that Schumacher and his heirs and assigns acknowledge that they have been informed that adjacent lands owned by Pierce may be proposed as a golf driving range and housing development, and that Schumacher and his heirs and assigns “covenant and agree not to oppose the use of said lands for the purpose aforesaid and the reasonable application of pesticides in connection with the use and development of a golf course on lands adjacent.”

Pierce sold the surrounding property to a housing developer. Schumacher attended town planning meetings and opposed the housing development. He also appealed the town’s approval of the project in a case that went to the supreme court of Vermont.

The housing developer sued Schumacher for breach of contract and was allowed to recover damages. Notably, however, the developer was only allowed to recover Pierce’s damages (because Pierce assigned its rights to the claim to the developer). The developer was not allowed to recover its own damages because it was unable to show that it was an intended (*i.e.*, named) third-party beneficiary in the Schumacher-Pierce agreement. The court did not discuss whether the covenant ran with the land, nor did it engage in a substantive discussion about the enforceability of such an agreement (the court just seemed to assume that it was enforceable).

Ultimately, *Schumacher* supports the notion that a covenant not to protest nearby projects may be enforceable under contract law principles. The case does not answer whether such a covenant will run with the land and bind successive owners.

4. *Providence Const. Co. v. Bauer* (Ga. App. 1997) 229 Ga.App. 679

In this case, a developer brought suit to enjoin residents from actively opposing its efforts to rezone a parcel of property adjoining the subdivision. The developer argued that the residents’ protest violated a restrictive covenant between the residents and the developer which was included in the property deeds. The covenant included language informing the grantees of the future uses the developer contemplated (golf course, condos, shopping centers, etc.) and provided that by accepting the deed, each owner covenants and agrees not to oppose any application to amend the zoning ordinances in order to permit such land uses. The residents filed a so-called “anti-SLAPP” lawsuit against the developer, alleging that the developer’s suit violated the state anti-SLAPP statute (which prevents Strategic Litigation Against Public Participation).

The court agreed with the residents and held that “[t]his restrictive covenant is unenforceable as against public policy.” (*Id.* at 681.) The court said that the anti-SLAPP statute declares it the public policy of Georgia “to encourage citizens to exercise their rights of free speech and petition.” (*Ibid.*) The court found the covenant overbroad

because it seeks to prevent residents from opposing future unspecified attempts by the developer to seek rezoning of “any and all contiguous land.” (*Ibid.*) The court also took issue with the fact that the covenant sought to prevent lot purchasers in the development from “exercising their constitutional rights to oppose government action which may affect their neighborhood’s character and the properties’ value.” (*Id.* at 681-682.)

*Bauer* has not been cited outside of Georgia. At least one commentator has suggested that the reasoning of the opinion is unclear and raises additional questions such as whether the covenants would be enforceable against original purchasers as opposed to successors. A notable distinction from our case is that the motivation in *Bauer* was financial, while our motivation (to preclude future suits) would be public safety.

5. *Beacon Hill Civic Ass’n v. Ristorante Toscano, Inc.* (Mass. 1996) 422 Mass. 318

The facts of this case involved an Italian restaurant seeking a license to sell beer and wine. Shortly before the hearing with the licensing board, a neighborhood group approached the restaurant and informed the restaurant that the group would oppose the license application unless the restaurant signed a contract agreeing not to apply for an all alcohol license in the future. The restaurant signed the contract. Nine years later, the restaurant applied for an all alcohol license, and the neighborhood group objected. After the license was granted, the neighborhood group filed suit against the restaurant, claiming breach of contract and seeking damages and injunctive relief.

The court held that the contract violated public policy and could not be enforced. According to the court, “the right to participate in licensing proceedings is created by statute,” and neither party could waive its right to apply for or oppose issuance of a license. (*Id.* at 322.)

**Draft Restrictive Covenant** [See “Attachment A” Below]

**Issues / Considerations**

1. Enforceability – Public Policy / SLAPP Issue. The most significant issue regarding use of a covenant to stymie public opposition to flood control projects is that a court could rule the covenant unenforceable as contrary to public policy. Although research did not yield a California case specifically addressing this issue, the *Bauer* case from Georgia and the *Beacon Hill* case from Massachusetts suggest a problem with attempting to limit public participation where statutory law favors such participation. The *Bauer* case is particularly problematic because the facts are closely analogous. Given these cases and the following considerations involving California authorities, there seems to be a reasonable likelihood that a court would find this covenant unenforceable.

In *Nahrstedt v. Lakeside Village Condominium Ass’n, Inc.* (1994) 8 Cal.4th 361, the plaintiff argued that a covenant against pets violated an implicit guarantee of the privacy

provision in the state Constitution to keep cats or dogs as household pets, and was therefore unenforceable for public policy reasons. The supreme court disagreed, finding no fundamental public policy in favor of allowing pets in a housing project. Specifically, the court found “no federal or state constitutional provision or any California statute that confers a general right to keep household pets in condominiums or other common interest developments.” (*Id.* at 388.) Importantly, however, the court distinguished the right of disabled or elderly persons living in publicly funded housing to own pets, explaining that with respect to those individuals, the “Legislature has declared its intent that, in specified circumstances, these two classes of Californians be allowed to keep pets.” (*Id.* n.12.) Thus, the court suggested that a covenant preventing pet ownership by certain disabled or elderly persons may violate public policy *because of* the statutory provisions creating such a right.

California has an “anti-SLAPP” statute like the Georgia anti-SLAPP statute which provided the reason for not enforcing the covenant in *Bauer*. (Code Civ. Proc., § 425.16.) California’s anti-SLAPP statute seeks to prevent the filing of lawsuits against individuals who try to influence some government action. These so-called Strategic Lawsuits Against Public Participation (SLAPP suits) dissuade public activism such as testifying at public hearings, demonstrating against government actions, or filing civil litigation against government actions. California’s anti-SLAPP statute defines “acts in furtherance of a person’s right of petition or free speech” to include:

(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(Code Civ. Proc., § 425.16(e).) Moreover, the “Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.” (*Id.*, § 425.16(a).) The anti-SLAPP statute provides for a special motion to strike against SLAPP suits.

The strong language in the California anti-SLAPP statute, including its reference to the “constitutional right of petition,” suggests that under the analysis in *Nahrstedt*, a covenant purporting to waive the exercise of such right would be ruled contrary to public policy. The same statutory preference for public participation can likely be drawn out of CEQA – an act that could serve as a vehicle for resident opposition. (*See City of Benicia v. Remy* (Cal.App. 2002) 2002 WL 1753203 (unpublished) [the court found it was undisputed by

the parties that CEQA proceedings were matters of public concern and that public participation in them was protected under the anti-SLAPP statute.]; Cal. Code Reg., § 15201 [“Public participation is an essential part of the CEQA process.”].)

Therefore, while a covenant or equitable servitude running with the land would be the most aggressive basis for preventing new residents from challenging flood control projects, there appears a significant danger that a court would find such a covenant unenforceable, and thus ineffective to bar the filing of CEQA or nuisance claims.

2. Enforceability – Requirements for Covenants / Equitable Servitudes to Run With the Land. The vast majority of covenants and servitudes deemed to run with the land relate to the use of the burdened land or require payment of association fees. A covenant not to complain about nearby land uses might be susceptible to an argument that the covenant does not “touch and concern” the land – one of the requirements for a covenant to run with the land. On the other hand, this covenant does relate to the use and enjoyment of the property; it is not entirely unrelated to the property. The covenant has a real connection to the property in the sense that the reason for the covenant is the property’s proximity to the flood control projects. Ultimately, the better argument is likely that the covenant does “touch and concern” the land. Moreover, even if the covenant does not meet technical statutory requirements for a covenant running with the land, a court may enforce the covenant as an equitable servitude, focusing more on the issue of actual or constructive notice and less on the issue of “touch and concern.”
3. Proper Party to Enforce. Another potential issue is whether there would be a proper party to enforce the covenant. Covenants are typically enforced by other residents within the subdivision (or homeowner’s association if there is one) or the covenantee who benefits from the covenant. The covenant here would not benefit other residents of the subdivision, nor is there an identifiable covenantee who benefits from the covenant (the Oakstone will sell the parcels and will unlikely have an interest in enforcing the covenant). The entity interested in enforcing the covenant would be WSAFCA. To ensure WSAFCA can enforce the covenant, the covenant would likely need to identify WSAFCA as an intended third-party beneficiary and provide WSAFCA with express enforcement rights. Apparently, providing municipalities with authority to enforce covenants is not an unusual practice. (Hannah and Van Atta, On California Common Interest Developments (2012), at 710 [noting that some declarations, “usually at the insistence of the municipal government, will provide that the municipal government, or some agency of the government, has the power to enforce the declaration.”].) A further option would be to make the homeowners association a beneficiary, in that the homeowners association represents many additional homeowners that will benefit from the higher levels of flood protection.

## CONCLUSION



The first option, providing notice of the flood control projects in the public report, deed and/or declaration would not provide a conclusive bar against challenges to flood control projects. Notice would, however, be a significant factor in a nuisance claim, making it difficult for nuisance plaintiffs to establish that the flood control projects unreasonably interfere with the use of their land (notwithstanding that the civil code bars nuisance claims against actions carried out under express statutory authority). Such notice would also be of value in convincing WSAFCA and the CVFPB to allow the home construction to proceed.

The second option of attempting to create a covenant running with the land would provide a stronger bar against challenges. Yet as discussed above, there would be a significant risk that such a covenant would be found unenforceable as a matter of public policy favoring public participation, free speech and the “right to petition.” If the covenant was deemed unenforceable, it would not preclude opposition, and could perhaps be ignored entirely. On the other hand, even if unenforceable as basis of precluding all challenges to flood control projects, the covenant might still be construed as providing notice of the proximity to flood control projects, resulting in the same effect as the first option of providing notice (a factor in nuisance claims).

The ultimate decision turns on how aggressive Oakstone want to be, what the regulatory agencies (WSAFCA and CVFPB) might require, whether WSAFCA or the homeowners association would be willing to litigate issues of covenant enforceability, and possible negative public perception that might associate with using a covenant to preclude public opposition to government projects. The first option, providing notice, could only have a positive effect in opposing any challenge from residents, and there are examples of comparable circumstances which are already the subject of notice (airports, BCDC jurisdiction, farm areas). If Oakstone simply needs the City/WSAFCA and the CVFPB to “sign-off” on a proposal for limiting opposition, the notice option would be the least contentious.

**ATTACHMENT A: DRAFT RESTRICTIVE COVENANT**

**RESTRICTIVE COVENANT OF NON-REMONSTRANCE**

This Agreement (“Agreement”) to record a restrictive covenant is entered into as of \_\_\_\_\_, 20\_\_, between Oakstone Properties, LLC (“Oakstone”) and \_\_\_\_\_ (“Grantee”), (together, the “Parties”).

**RECITALS**

A. Oakstone is the owner of certain real property legally described in Exhibit A attached hereto (the “Property”). **[Exhibit A should include the full legal property description; survey, plat, APN, etc. ]**

B. The Property was once part of a larger tract for which Oakstone sought and obtained the requisite approvals from **[insert names of approving agencies such as City of West Sacramento, Cal. Dept. of Real Estate]** to subdivide the tract into smaller parcels.

C. The Property is located adjacent to a flood control management area under the jurisdiction of the Central Valley Flood Protection Board (“CVFPB”) and the West Sacramento Area Flood Control Agency (“WSAFCA”). CVFPB and WSAFCA carry out flood control projects in the flood control management area. Such projects may include, but are not limited to, levee construction and maintenance, removing and relocating utility lines, redirecting roadways, and other infrastructure construction and maintenance projects.

D. The Parties agree that the flood control projects carried out in the proximity of the Property are necessary and important to effectively manage flood risks to the larger community, neighborhoods, residents and businesses of the City of West Sacramento, and that such projects also benefit Grantee in providing for reliable access to Grantee’s property and stable property values.

E. The Grantee acknowledges that the proximity of the Property to the flood control management area and flood control projects may cause annoyances, inconveniences, or discomforts in connection with the use and enjoyment of the Property. Such annoyances, inconveniences or discomforts may include, but are not limited to, noise, odors, dust, the continuous or intermittent operation of pumps and heavy machinery, increases in traffic, and potentially disruptive road construction.

F. The Grantee desires to take ownership of the Property, and Oakstone desires to transfer the Property to Grantee.

### COVENANT

NOW THEREFORE, in consideration of the mutual undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Grantee, for itself, its successors, assigns and all subsequent grantees and transferees, hereby agrees not to object to, protest, oppose, petition against, or otherwise challenge any flood control project constructed, managed, funded, or otherwise carried out by or under the direction of WSAFCA located within a one mile radius of the Property. **[Such agreement shall not be construed to prevent Grantee from providing public comment to the CVFPB, WSAFCA, and other flood control agencies, in the form of oral or written comment, including providing comments under the California Environmental Quality Act and the National Environmental Policy Act. – optional additional sentence to remove some risk of an anti-SLAPP lawsuit].**

This covenant shall, from and after the date of recording this Agreement with the Clerk and Recorder of the County of Yolo, run with the land and the Property, and shall be binding upon any subsequent owner of the Property, or any portion thereof, and their heirs, successors, and assigns.

This covenant is created expressly for the benefit of WSAFCA and The Rivers Homeowners Association, both of which are intended third-party beneficiaries, and shall be specifically enforceable by and at the sole discretion of them. The Parties acknowledge and agree that, in addition to any other remedies that might be available, equitable remedies, including injunctive relief and specific performance are appropriate remedies for any violation of the covenant set forth herein. The failure to enforce the covenant set forth herein at the time of violation shall in no event be deemed to be a waiver of the right to do so as to any subsequent violation.

If any provision of this Agreement is held unenforceable by any court of competent jurisdiction, all other provisions of this Agreement will remain in effect. If any provision of this Agreement is held to be unenforceable only in part or in degree, it will remain effective to the extent not held unenforceable.

IN WITNESS WHEREOF, the GRANTOR has executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

(Owner)

BY:

\_\_\_\_\_

IN WITNESS WHEREOF, the GRANTEE has executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**[fill in Grantee details]**

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, who provided to  
me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to  
the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)

-----

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, who provided to  
me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to  
the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)

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RECORDED AT THE REQUEST OF, AND  
WHEN RECORDED PLEASE MAIL TO:

Neumiller & Beardslee  
Post Office Box 20  
Stockton, California 95201  
Attention: Real Estate & Development Group

**SUPPLEMENT TO  
COMMUNITY CHARTER FOR THE RIVERS  
LOTS 17-51 AND LOT A**

1. **Date and Founder.** This Supplement ("Supplement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by OAKSTONE INVESTMENTS, LLC., a California limited liability company ("**Founder**"), as to that real property described in *Exhibit A* ("**Property**").
2. **Supplement to Charter.** The Property is subject to the Community Charter for the Rivers, recorded October 20, 2004, as Document No. 2004-0047802-00, Yolo County Records ("**Charter**"). Pursuant to Section 16.3 of the Charter, the Property is made subject to this Supplement. Founder executes this Supplement pursuant to its capacity as Founder in Section 2.1 of the Charter. This Supplement imposes "additional covenants" on the Property, as described in Section 1.2 of the Charter.
3. **Levee Lots.** The Property consists of Units as described in Section 3.1 of the Charter. For purposes of this Supplement, the Units will be referred to as "**Levee Lots**".
4. **Levee.** There is a levee along the right (south) bank of the Sacramento River is located directly underneath River Crest Drive and adjacent to the Levee Lots ("**Levee**"). The Levee Lots are located on the water-side of the Levee. The Levee is further described in the Supplemental Design Guidelines.
5. **Supplemental Design Guidelines.** Pursuant to Section 5.3 of the Charter, Founder adopted the Residential Design Guidelines applicable to the Property. Founder hereby adopts the Supplemental Design Guidelines in the form attached hereto as *Exhibit B* ("**Supplemental Design Guidelines**"), to be applicable only to the Levee Lots. The Supplemental Design Guidelines establish additional procedures and evaluation criteria for construction on the Levee Lots. The Supplemental Design Guidelines are not intended to supersede the Residential Design Guidelines; rather, the Supplemental Design Guidelines describe additional requirements associated with the Levee Lots as a result of these lots being located on the waterside of, and adjacent to, the Levee. The Supplemental Design Guidelines may be applied, amended, and enforced, in the manner and pursuant to the processes described in Section 5.3 of the Charter. The Rivers Community Association shall be primarily responsible for the enforcement of compliance with this Supplement and the Supplemental Design Guidelines. The Supplemental Design Guidelines contain the following requirements, summarized below:
  - A. **Building Setbacks.** Building setbacks for the Levee Lots within the Rivers development shall be as follows: (i) the front yard building setback shall be 25 feet minimum; and (ii) the rear yard building setback shall be 25 feet minimum. Side yard building setbacks shall remain as specified in the existing Residential Design Guidelines.
  - B. **Fencing Requirements.** Existing fencing requirements are detailed in Section 7 of the existing Residential Design Guidelines. Any additional fences or screen walls are not allowed in either the front yard or rear yard of the Levee Lots.



- C. **Zones.** Since the impacts of encroachments vary based upon proximity to the various components of the flood protection system, each of the Levee Lots has been divided into zones. Additional criteria may be applicable to each zone. Zone 1 consists of the front 25 feet of each lot within the CVFPB Levee Easement. Zone 2 is the middle portion of the lot between the two CVFPB easements but still subject to current Title 23 regulations. Zones 3, 4, and 5 consist of the rear 25 feet of each lot within the CVFPB Slope Control Easement. More specifically, Zone 4 consists of the existing drainage swale and Zone 5 consists of the 3:1 sloped area between the drainage swale and the top of the existing Armorflex wall. Zone 6 is outside of the Levee Lot parcel and consists of the parcel owned by the Rivers Community Association, including the Armorflex wall. A summary of zones is shown in Figure 3 of the Supplemental Design Guidelines.
6. **CVFPB and WSAFCA Jurisdiction and Activity.** The Levee is a Federal Project Levee and is under the jurisdiction the Central Valley Flood Protection Board (“**CVFPB**”) and the West Sacramento Area Flood Control Agency (“**WSAFCA**”). CVFPB and WSAFCA carry out flood control projects in the flood control management area. Such projects may include, but are not limited to, levee construction and maintenance, removing and relocating utility lines, redirecting roadways, and other infrastructure construction and maintenance projects. Such projects are necessary to managing flood risks to the surrounding community. Due to the proximity of this property to the flood control management area and related projects, the property may be subject to annoyances, inconveniences or discomforts associated with the flood control projects. The inconveniences of such projects may include, but are not limited to, noise, odors, dust, the continuous or intermittent operation of pumps and heavy machinery, increases in traffic, and potentially disruptive road construction. Individual sensitivities to these annoyances can vary from person to person.
7. **CVFPB Approval Required.** Pursuant to Title 23 of the California Code of Regulations, the CVFPB has the responsibility of regulating encroachments that may affect any flood control systems under its jurisdiction. Development of any of the Levee Lots constitutes an encroachment and therefore requires an encroachment permit from the CVFPB prior to construction. Any and all improvements to the Levee Lots and within either of the two CVFPB easements will require the approval of the CVFPB and the issuance of an encroachment permit prior to the commencement of work. The Encroachment Permit Process is more particularly described in Section 4 of the Supplemental Design Guidelines.
8. **CVFPB Easements.** The Central Valley Flood Protection Board (CVFPB) maintains two easements across the Levee Lots for purposes of flood protection. These easements are more particularly described in \_\_\_\_\_, incorporated herein by reference. The easements are described generally as follows:
- A. **CVFPB Levee Easement.** “The Levee Easement” associated with the levee encompasses the entire width of River Crest Drive, a portion of the open space on the south side of River Crest Drive, and a portion of the front yard of each Levee Lot. See \_\_\_\_\_.
  - B. **CVFPB Slope Control Easement.** The purpose of the Slope Control Easement is to ensure the maintainability of the slope at the back yard of each of the Levee Lots. The Homeowners Association (HOA) owns a parcel located directly behind each Levee Lots. The CVFPB Slope Control Easement includes the HOA parcel. See \_\_\_\_\_.

9. **Covenant of Non-Remonstrance.** By accepting title to a Levee Lot, subsequent owners acknowledge and agree:

- A. The flood control projects carried out in the proximity of the Property are necessary and important to effectively manage flood risks to the larger community, neighborhoods, residents and businesses of the City of West Sacramento, and that such projects also benefit subsequent owners in providing for reliable access to each owner's property and stable property values.
- B. The proximity of the Property to the flood control management area and flood control projects may cause annoyances, inconveniences, or discomforts in connection with the use and enjoyment of the Property. Such annoyances, inconveniences or discomforts may include, but are not limited to, noise, odors, dust, the continuous or intermittent operation of pumps and heavy machinery, increases in traffic, and potentially disruptive road construction.
- C. To the fullest extent permitted by law, subsequent owners of Levee Lots agree not to object to, protest, oppose, petition against, or otherwise challenge any flood control project constructed, managed, funded, or otherwise carried out by or under the direction of WSAFCA located within a one mile radius of the Property. Such agreement shall not be construed to prevent Grantee from providing public comment to the CVFPB, WSAFCA, and other flood control agencies, in the form of oral or written comment, including providing comments under the California Environmental Quality Act and the National Environmental Policy Act.
- D. This covenant shall, from and after the date of recording this Supplement, run with the land and the Property, and shall be binding upon any subsequent owner of the Property, or any portion thereof, and their heirs, successors, and assigns. This covenant is created expressly for the benefit of WSAFCA and The Rivers Community Association, both of which are intended third-party beneficiaries, and shall be specifically enforceable by and at the sole discretion of them. The Parties acknowledge and agree that, in addition to any other remedies that might be available, equitable remedies, including injunctive relief and specific performance are appropriate remedies for any violation of the covenant set forth herein. The failure to enforce the covenant set forth herein at the time of violation shall in no event be deemed to be a waiver of the right to do so as to any subsequent violation.
- E. If any portion of this covenant is held unenforceable by any court of competent jurisdiction, all other provisions of this covenant and the Supplement will remain in effect. If any provision of this Agreement is held to be unenforceable only in part or in degree, it will remain effective to the extent not held unenforceable.

10. **Application of Terms.** Any term or phrase shown in quotes within parentheses shall have the meaning of the term or phrase that immediately precedes the initial use of the term or phrase shown in quotes within the parentheses. The capitalization of the first letter of any term used in this Supplement, other than proper names and terms or phrases defined in this Supplement, indicates that such term is defined in the Charter, and shall have the meaning set forth in the Charter.

11. **Incorporation by Reference.** Unless otherwise specified, all Exhibits referred to in this Supplement are attached to this Supplement and incorporated herein by this reference, and all recorded documents referred to in this Supplement are incorporated herein by this reference as if fully set forth.

**IN WITNESS WHEREOF**, Founder has executed this Supplement the day and year first above written.

**OAKSTONE INVESTMENTS, LLC,**  
a California limited liability company

\_\_\_\_\_  
By: \_\_\_\_\_

STATE OF CALIFORNIA )

)

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_, personally known to me (or proved to  
me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed  
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on  
the instrument the person(s), or the entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**EXHIBIT A**

**PROPERTY DESCRIPTION**

All that certain real property in the City of West Sacramento, County of Yolo, State of California, more particularly described as follows:

[Lots 17-51 and Lot A]

**EXHIBIT B**  
**SUPPLEMENTAL DESIGN GUIDELINES**