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October 24, 2025

Board of Supervisors
County of Lake
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Lakeport, CA 95453
(email list under “cc” below)

Lloyd Guintivano, County Counsel
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Laura Hall, Senior Planner
Community Development Department
County of Lake
255 N. Forbes Street
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**Re: Appeal of Planning Commission Approval of AG Forest Wood
Processing Bioenergy Facility Major Use Permit UP 23-05, Initial
Study/Mitigated Negative Declaration IS 23-10**

Dear Honorable Supervisors, Mr. Guintivano, and Ms. Hall:

This office represents Larry Kahn, Barbara Morris, and a neighborhood organization with respect to the above-referenced appeal. Mr. Kahn appealed the County of Lake Planning Commission’s approval of the AG Forest Bioenergy Project, including the Commission’s approval of Major Use Permit UP 23-05, and adoption of the Initial Study/Mitigated Negative Declaration (“IS/MND”) IS 23-10 (collectively, the “Project”). The Project will be the subject of a continued appeal hearing at the Board of Supervisors’ meeting on October 28, 2025, and these comments supplement the comments and appeal materials we have submitted previously.

The purpose of this letter is to explain to the Board of Supervisors that the proposed Project site (“Property”) is not being used or maintained pursuant to the County’s grant funding agreement with the Department of Water Resources (“DWR”). The County may not approve an industrial bio-char facility on a Property that was

acquired with public money and for which a conservation easement was required to be recorded upon acquisition. The grant funding agreement mandates that any property purchased with the grant funding may not be leased by the County for any purpose without permission from the State. No such permission has been sought or granted.

The project site located at 755 East State Highway 20 in Upper Lake (APN 004-010-040-000) was purchased by the Lake County Watershed Protection District in October 2015 using grant funds from the California Department of Water Resources “to protect or enhance flood protection corridors while preserving or enhancing wildlife values of the real property” located between Rodman Slough and Highway 20 for the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project. (See **Exhibit A**, DWR Funding Purchase Agreement No. 4600003318 (“Grant Agreement”).)

Through this Grant Agreement, the Department of Water Resources (“DWR”) provided over \$12 Million dollars to the County for the Flood Protection Corridor Program. With a portion of those funds, the County purchased the Property.¹ (**Exhibit B**.)

The Grant Agreement required the placement of a conservation easement over all properties purchased with the grant funds. (**Exhibit A**, Section 3.M.) Not only did the County fail to record the conservation easement on the Property, but it is also now essentially gifting the Property to another party for an industrial use in a residential area. In 2024, the County entered into a lease agreement with the project proponent purporting to lease 42.6 of the approximately 115 acres of the Property for \$100 per year for a period of 15 years. (**Exhibit C**.)

The purpose of the conservation easement requirement in the Grant Agreement is to protect these properties and the surrounding waterways and wetlands from development and incompatible uses. The conservation easements placed on some nearby properties purchased by the County with funds received under the Grant Agreement forbid the use of these properties for industrial or manufacturing uses. A sample conservation easement was provided to Pawan Upadhyay, Lake County Water Resources Director, by DWR staff in May of 2025. (**Exhibit D**.)

The proposed bio-char project is incompatible with the conservation easement that the County was required to place on the Property. The Grant Agreement also states that the land must be rezoned from current zoning (Agricultural Preserve, Scenic

¹ Lake County has received additional grant funding through a second agreement with DWR for funding to the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project. The two grant agreements and funding are discussed in detail below.

Combining, Waterway, Flood fringe) to “Open Space” upon purchase, and the County has failed to rezone the Property. (**Exhibit A**, Scope of Work.)

Section 3.B of the Grant Agreement States that the Flood Control District (“District”) “shall develop a program to acquire fee title...and restore wetland habitats and adjacent riparian and upland areas and improve water quality....” Section 3.K states that the District “shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever, all or any portion of the subject properties without prior permission from the State.” We made a Public Records Act over five months ago and have still not received any documents indicating that the County requested or received permission from the State.

A. Community Concerns

Instead of preserving the land as intended, Lake County is now “leasing” one of the State grant-funded parcels to a developer for construction of a bio-char facility. The bio-char facility is proposed in a residential neighborhood and raises significant public health, safety, and environmental concerns. (See **Exhibit E**, appeal letter sent to Lake County regarding approval of the project permit.) The required conservation of the Property was ignored by the County, and the Property is now essentially being gifted to a third party for a use that is in direct conflict with the conservation requirements of the Grant Agreement. In addition to this misuse of land acquired with State tax dollars, the County and DWR appear to have lost track of the funding, and there has not been an accounting of the maintenance fund the County was required to hold for all of the acquired properties. (See **Exhibit F**, email correspondence between DWR and County staff, including spreadsheets, indicating confusion regarding the tracking of funds, including a statement from County staff that “[w]e didn’t have a payment tracking spreadsheet specifically for this grant.”)

B. Lack of Transparency and Accounting

Lake County has not adequately responded to multiple Public Records Act (“PRA”) requests related to the proposed bio-char facility, land acquisitions and lease, and has provided no documents at all in response to a request made on April 15, 2025 seeking documents related to the fact that the Property was a tax-payer funded purchase by the County, and is subject to the Grant Agreement requirements. (See **Exhibit G**.) In its most recent response to repeated requests from this office to respond to the April 15, 2025, the County stated as follows: “[f]or your DWR PRA dated 4/15/25, the County continues to process your request. I understand it is being worked on by the department.” (See **Exhibit H**, email from Jackson Berumen, Deputy County Counsel.) *Five months*

after the PRA request was submitted to the County, after many contacts and attempts to get a response, an unspecified “department” is working on the request. The County has refused to be transparent regarding compliance with the Grant Agreement.

DWR responded to our PRA requests with a surprising dearth of documents related to the Grant Agreement and/or the Property. Email correspondence between DWR staff and Pawan Upadhyay in May of 2025 indicates that DWR was searching its files for documentation of the required conservation easement on the Property and noted that the most recent invoices from the County had been on hold because the County had yet to provide DWR with any documentation of the required Maintenance Trust Fund Account for the acquired lands. (**Exhibit I.**)

The Grant Agreement requires “a full 20 percent of the acquisition cost will deposited [sic] in a trust fund to pay for maintenance of the properties.” (**Exhibit A**, Scope of Work, Task 5.) Based upon what our PRA requests have revealed, it is entirely unknown what the County has deposited into the required Maintenance Trust Fund Account.

Lake County has not maintained records for the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project (“Middle Creek Project”), and it has not created a Maintenance Trust Fund that complies with its obligations associated with the grant funding.

In addition to the Grant Agreement that funded acquisition of the Property now being proposed for a bio-char facility, there is a second grant agreement that has provided an additional \$15 Million to Lake County.

Funding information for the Middle Creek Project may be found here: <https://bondaccountability.resources.ca.gov/Project/Details/8077/?PropositionPK=4>. All funds are coming from DWR’s <https://water.ca.gov/Work-With-Us/Grants-And-Loans/Flood-Corridor-Program>.

Agreement 1: SAP #4600003318 = \$12,721,083 (Prop 13) - The proposed bio-char project site was purchased under this agreement.

Agreement 2: SAP #4600012946 = \$15,000,000 (Prop 1E and Prop 84) - current agreement for the Middle Creek Project.

In total Lake County was allocated \$27,721,083 by DWR for the Middle Creek Project. Attached as **Exhibit J** is a spreadsheet comparing DWR’s accounting records to

Lake County's records for money Lake County received from DWR for the Middle Creek Project.

Records from DWR show that Lake County has received \$20,316,301 to date (1st agreement = \$12,710,197, 2nd agreement = \$7,606,104). Two invoices submitted by Lake County in April 2024 are currently outstanding (Invoice #17 and #17A). DWR requested that Lake County provide proof of a maintenance trust fund before additional invoices will be paid. Records show DWR gave Lake County 20% of the land acquisition total to be placed in a Maintenance Trust Fund. It has been 18 months since DWR requested proof that this money was placed in a Maintenance Trust Fund and the County has *not* provided this information, leaving Invoice #17 (\$13,906.80) and #17A (\$106,280) unpaid.

Emails between Jacqueline Storrs (Accountant for Lake County Dept. of Water Resources) and Nahideh Madankar (DWR) reveal Lake County has not been keeping a payment tracking spreadsheet for the Middle Creek Project. (See **Exhibit F.**) In August 2025, Storrs said she would create a payment tracking sheet with the payments she could "verify." The spreadsheet that Storrs created only accounts for \$3,659,644 of the \$12,710,197 that DWR paid to Lake County under the 1st agreement (Grant Agreement) for the Middle Creek Project (a difference of over \$9 Million). Storrs' spreadsheet tracking payments made under the 2nd agreement only account for \$2,237,454 of the \$7,393,896 paid by DWR (a difference of over \$5 Million). These figures differ significantly from DWR's records and only account for 29-30% of the funds received by the State. To date the State has reimbursed Lake County \$20,316,301 for the Middle Creek Project. This total includes reimbursements for land acquisitions, relocation costs, and escrow fees, as well as an additional 20% of the land acquisition to be placed in a Maintenance Trust Fund.

It is unclear why Lake County's records differ so significantly from the DWR's records. Presently, Lake County has indicated that it cannot "verify" over \$14,000,000 in payments from DWR. This is a shocking sum of tax-payer dollars that the County simply cannot account for. A portion of those funds were used to purchase the proposed Project site, and in complete disregard for its obligations under the Grant Agreement, the County has failed to record the required conservation easement, provide any evidence of the required maintenance fund, or seek the required permission to lease the Property to a third party.

In a recent conversation with Barbara Morris, Pawan Upadhyay stated that the County does not have sufficient work force to prepare and place the required

conservation easements on the properties acquired with the Grant Agreement funding, and that it would require the hiring of additional staff.

The Grant Agreement was signed in 2003, and the Property that is the subject of this letter was purchased in 2015. A decade has gone by without the County following through on recording the required conservation easement, the County and DWR appear to have no records of the required Maintenance Trust Fund Account, and there is some information suggesting that most of the other properties acquired with the grant funds have also gone without the required conservation easements. We have not done title searches to confirm this but received information on only two conservation easements in a DWR response to a PRA request.

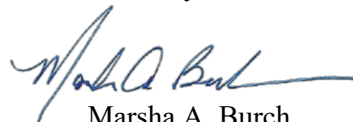
C. Conclusion:

We believe that the circumstances described above confirm that the Property the County is “leasing” for \$100 per year to the Project applicant has been mis-used and the Property has been misrepresented as industrial property the County may do with what it pleases. The Property is required to be under a conservation easement, and also to be maintained pursuant to the County’s agreements with the State.

The County may not use the Property in this way, and approval of the Project would add to the existing violations of the grant funding agreements.

We respectfully request that the Board of Supervisors grant the appeal and deny the approval of the proposed Project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marsha A. Burch", with a stylized flourish at the end.

Marsha A. Burch
Attorney

cc: Larry Kahn
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**STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
AGREEMENT BETWEEN THE STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES AND
LAKE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
UNDER THE FLOOD PROTECTION CORRIDOR PROGRAM**

THIS AGREEMENT, made in quintuplicate, on August 28, 2003, is entered into by and between the Department of Water Resources of the State of California (hereinafter called the State), and Lake County Flood Control and Water Conservation District (hereinafter called the District). The State and the District hereby agree as follows:

1. PURPOSE

The purpose of this Agreement is to utilize funds from the Flood Protection Corridor Program sub-account to acquire interests in real property from willing sellers to protect or enhance flood protection corridors while preserving or enhancing wildlife values of the real property. Funds from the Flood Protection Corridor Program grant will be used to acquire interest in real property for flood damage reduction while preserving wildlife value as provided by the California Water Code, section 79037(b) (4), for properties located at the north end of Clear Lake in the area bounded by State Highway 20 and Rodman Slough in Lake County. The District agrees to use the grant funds received in accordance with the terms specified in this Agreement and pursuant to the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act, (California Water Code section 79035 et seq., Division 26, Chapter 5, Article 2.5).

2. STATE ASSISTANCE

Subject to the availability of funds, the State shall provide assistance in the amount not to exceed \$5,214,000 to the District for the financing of the acquisition of real estate rights shown in Exhibit A and the financing of a portion of the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project to be carried out as described in Section 3 below. The dollar value of property rights to be acquired shall be determined through an appraisal or appraisals prepared by a qualified independent appraiser in accordance with standard appraisal practices. Each appraisal shall be approved by DWR and, if necessary, the California Department of General Services prior to the acquisition of the property addressed in the appraisal.

Because the Middle Creek Project is a flood management project subject to a cost-sharing formula imposed by the U.S. Army Corps of Engineers, the funding provided by the State pursuant to this agreement for costs creditable toward the

federal project shall count toward the cost-sharing obligation of the State and the local agency sponsor, with the ratio of such sharing of credit to be the same ratio determined pursuant to Water Code section 12585.7. Project activities shall be reviewed in advance by the State for the purpose of directing State funds provided pursuant to this agreement toward activities and costs that achieve maximum credit toward meeting State and local cost share obligations.

3. THE DISTRICT'S RESPONSIBILITIES

- A. The District shall develop and execute a plan for onsite work and to acquire fee title to properties identified in Exhibit A within the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project (Middle Creek Project) to allow flooding and to preserve wildlife value. The Middle Creek Project will restore the hydraulic connection between historic Robinson Lake and Scotts and Middle Creek watersheds, and reduce flooding on State Highway 20. The District's Project Manager shall develop the acquisition plan with the assistance of the Project Manager of the State. The plan shall include a cooperative effort between the District and the State to fulfill the environmental review and documentation requirements of the California Environmental Quality Act, and for fee title acquisitions shall include a phase 1 investigation of the potential for hazardous material spills or deposition on the site, with provision for cleaning up any hazardous materials found prior to or as part of the acquisition process. The work plan includes the Scope of Work (attached as Exhibit B) and Budget and Timeline (attached as Exhibit C). The Scope of Work will include a management plan for ongoing maintenance of the fee title acquisitions including expenditure of interest from any maintenance trust fund set up using funds provided by this agreement for that purpose.
- B. The District shall develop a program to acquire fee title to the targeted properties from willing sellers, and restore wetland habitats and adjacent riparian and upland areas and improve water quality entering Clear Lake. Development of the site management and restoration program is provided for in Exhibit B.
- C. The District agrees to faithfully and expeditiously perform or cause to be performed all project work, to apply State funds received only to eligible project costs and to expeditiously commence, and to continue efficient and economical operation of the project in accordance with applicable provisions of the law.
- D. The District, its contractors, subcontractors, and their respective agents and employees that perform any work in connection with the project, shall act in an independent capacity and not as officers, employees or agents of the State.

- E. The District is responsible for design, construction, operation and maintenance of the project. Review or approval of plans, specifications, bid documents, or other construction documents by the State is solely for the purpose of proper administration of the funds by the State and shall not be deemed to relieve or restrict the parties responsibility.
- F. The District shall complete the requirements and provide the information to the State that is necessary for payments to and closure of each land transaction escrow account. Information Necessary for Escrow Processing and Closure is attached as Exhibit D and by this reference incorporated herein.
- G. The District shall be responsible for any and all disputes arising out of its contracts for work on the project, including but not limited to bid disputes and payment disputes with District contractors and subcontractors. The State will not mediate disputes between the District and any other entity concerning responsibility for the performance of work.
- H. All contracts let for project design or construction shall be let by competitive bid procedures that assure award of the contract to the lowest responsible bidder, except as may be otherwise authorized under the District's enabling authority or approved by the State.
- I. Procurement of necessary supplies or equipment shall be undertaken in such a manner as to encourage fair and competitive treatment of potential suppliers.
- J. Provided that funding is obtained as anticipated in Exhibit B and the property owners agree to do so, the acquisitions shall be completed no later than August 28, 2006.
- K. If and when the target properties are acquired by the District using State funds as anticipated, the District shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever, all or any portion of the subject properties without prior permission of the State.
- L. Where the District acquires an easement under this Agreement, the District agrees to monitor and enforce the terms of the easement, unless the easement is subsequently transferred to another land management or conservation organization or entity with State permission, at which time monitoring and enforcement responsibilities will transfer to the new easement owner.
- M. Where the District acquires property in fee title or funds improvements to property already owned in fee by the District using grant funds provided

through this Agreement, an appropriate easement providing for non-structural flood benefits and wildlife habitat preservation shall be simultaneously conveyed to a regulatory or trustee agency or conservation group acceptable to the State. An example of such an easement is attached as Exhibit E.

- N. Without limiting the foregoing, the District shall keep informed of and take all measures necessary to ensure compliance with Labor Code requirements, including but not limited to Section 1720 et seq. of the Labor Code regarding public works, limitations on use of volunteer labor (Labor Code Section 1720.4) and payment of prevailing wages for work done under this agreement.

4. TERM OF AGREEMENT

The term of this Agreement will begin on August 28, 2003 and shall terminate three years after that date, except that the provisions of this Agreement relating to maintenance, operation, monitoring, and reporting, which shall continue to bind the District (or its successor as approved fee owner or easement holder) to the extent indicated herein. The term may be amended only by agreement of both parties, and must be in writing.

5. PROJECT MANAGERS

The Project Manager for the State is Bonnie Ross. The Project Manager and the person designated to submit the claims for the District is Robert Lossius, Assistant Public Works Director. Parties may change project managers from time to time by providing written notice of the change to the other party. The District shall be responsible for work related to this Agreement and for persons or entities working to acquire the anticipated property interests, including, but not limited to, subcontractors, suppliers and providers of services. The District shall give personal supervision to any work required for the acquisition of interest in real property or employ a competent representative with the authority to act on behalf of the District.

6. FUNDS MANAGEMENT

The District shall account for the money disbursed separately from all other agency funds. The District shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. The District shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds for at least three years after term of project completion. The District shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to this Agreement in accordance with generally accepted accounting

principles and practices. Records are subject to inspection by the State at any and all reasonable times.

7. COMPLIANCE

Prior to disbursement of property acquisition funds under this Agreement and prior to implementing any topographical changes or changes in vegetation that would affect the flow of floodwaters or surface storm water runoff on the properties acquired with State funds pursuant to this agreement, the District shall develop subject to State approval a plan to minimize the impacts to adjacent landowners (California Water Code section 79041, Division 26, Chapter 5, Article 2.5), and comply with all applicable requirements of all applicable federal, State and local laws, rules and regulations.

The District shall be responsible for obtaining any and all permits, licenses and approvals required for the acquisition of interest in or modifications to real property funded by this agreement. The District shall also be responsible for observing and complying with any applicable federal, State and local laws, rules or regulations affecting any such acquisition or work activity, specifically those including, but not limited to, environmental, procurement and safety laws, rules, regulations and ordinances.

The District, its contractors and subcontractors, shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et. seq.), the regulations promulgated there under (California Code of Regulations, Title 2, Section 7285.0 et. seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted by the awarding State agency to implement such article. The District, its contractors and subcontractors, shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The District shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts let for the construction of the project.

The District agrees, unless exempted, to comply with the nondiscrimination program requirements of Government Code, Section 12990, Title 2, California Code of Regulations, Section 8103.

The District agrees to indemnify the State and its officers, agents, and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses, costs, expenses, or liability due or incident to, either in whole or in part, and whether directly or indirectly, arising out of the acquisition.

The State shall indemnify, defend (upon the District's written request), protect, and hold the District, and the District's officers, employees, and agents harmless against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees) that arise from the acts or omissions of the State or its officers, employees, or agents in connection with the State's performance under this Agreement.

The District, its contractors or subcontractors agree to comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and have or will provide a drug-free workplace.

The District agrees to comply with the American with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to ADA.

8. REPORT

During the period this agreement remains in effect, annual programmatic progress reports shall be submitted by the District to the State summarizing project acquisition and work activities and describing progress achieved towards acquisition plan and Scope of Work completion. Such annual progress reports shall include a status report on the MA 17 Maintenance Trust Fund established in Section 15, and shall be due on the anniversary date of the Agreement until the Agreement expires.

A final written programmatic report shall be submitted by the District upon completion of the project. The final report shall describe the results of the acquisition and work activities, and include photographs of the properties acquired (or on which easements are acquired) and any improvements added or removed. The final report will be due on or before October 27, 2006, or within 60 days of escrow closure following acquisition of the final property shown on Exhibit A, whichever comes first.

Progress reports shall be submitted by the District with each invoice. Each progress report shall document the activities completed for the reporting period, the amount of funds expended and the purpose for these expenditures.

Interim financial reports documenting incurred eligible costs shall be submitted by the District within 60 days of completion of the acquisition of real property.

For any construction activity undertaken pursuant to and funded by this agreement, upon completion of the project the District shall provide for a final inspection and a written certification by a California Registered Civil Engineer that the project has been completed in accordance with final plans and specifications and any modifications thereto. Such certification shall be

submitted to the State with a copy of the final report of project expenditures required in the paragraph below.

The District shall keep on file, for the useful life of the project, as-built plans and specifications for the project. Such documents shall be made available for inspection by the State upon reasonable notice.

A Final financial report documenting total project expenditures shall be submitted by the District by October 27, 2006.

9. PROJECT OVERSIGHT

The State may inspect the project at any reasonable time to ensure it is being carried out in accordance with the work plan and that it is being properly maintained. During the administration of this contract, the State may also direct the District to provide additional available technical, financial, hydrologic, bioengineering, soil and water quality, environmental, water rights, legal analyses and justifications, and other relevant information to ensure the project is being carried out in accordance with this Agreement.

Pursuant to Government Code Section 8546.7, the contracting parties shall be subject to the examination and audit of the State for a period of three years after project completion. All the District's records or those of the District's subcontractors related to this agreement shall be retained for at least three years after project completion.

During regular office hours, each of the parties hereto and their duly authorized representatives, shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to the project. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to this project.

The State reserves the right to, at the State's expense, conduct an audit at any time between the execution of this letter agreement and the completion of the acquisitions of interest in real property.

The State shall have the right to inspect the work being performed at any and all reasonable times during this project. This right shall extend to any subcontracts. The District shall include provisions ensuring such access in all their contracts or subcontracts entered into for completion of the acquisition.

10. METHOD OF PAYMENT

The District shall submit invoices on a quarterly basis for non-capital costs as reimbursement after the costs have been expended, or after the work being

billed has been completed, and on an as-needed basis for capital costs. All payments will be made to the District upon receipt of an original invoice and three copies by the State of California, Department of Water Resources, 3310 El Camino Avenue, Sacramento, California, 95821, to the attention of Earl Nelson, Flood Protection Corridor Program Manager. Invoices should include SAP contract number and work plan element identification. For real property acquisition payments, see Section 16 of this agreement, and Exhibit D.

Within a period of 60 days from project completion, the District shall remit to the State any unexpended funds that were disbursed that were not needed to pay eligible costs.

All money disbursed for this project shall be deposited, administered, and accounted for pursuant to the provisions of law applicable to the District.

11. PAYMENT RETENTION

The State may withhold up to 10 percent of non-capital eligible costs from each invoice until it is satisfied that the portion of the acquisition of interest in real property being financed by withheld funds is completed. The amount of the funds withheld will be determined by the State based upon its determination of the amount needed to assure completion of the project. It is understood that such retentions, if any, may be withheld until the District has completed and filed with the State a report summarizing project results and the State has found it satisfactory.

At the end of the project, the State shall withhold 10 percent of the total non-capital project funding until the audit report, required in Item 8, is received and accepted by the State.

12. STANDARD CLAUSES

Exhibit F, Standard Clauses – Contracts with Public Entities, is attached and by this reference incorporated herein. The reference to "Contractor" in the Standard Clauses exhibit means the District.

13. SCOPE OF WORK

Exhibit B is attached and by this reference incorporated herein. Items included are in the attached Budget and Timeline (attached as Exhibit C) and designated for funding by DWR.

14. MAINTENANCE OF PROPERTY OWNED IN FEE

Within their respective ownership of land rights, the District agrees to use, manage, and maintain the property acquired, developed, rehabilitated or

restored with the grant funds provided in this Agreement consistent with the purposes of the program. Specific maintenance activities are outlined in Exhibit G (attached) and by this reference incorporated herein. The District or its successors may, with the approval of the State, transfer this responsibility to use, manage, and maintain the property acquired as discussed in Paragraph 3L. Such title transfer will occur in a way that binds the new owner to the same obligations.

15. MAINTENANCE TRUST FUND

- A. TITLE OF FUND. There is hereby established within the District an endowment fund, designated the MA 17 Maintenance Trust Fund (hereinafter referred to as the "Trust Fund") to receive contributions in the form of money and to administer the same.
- B. PURPOSE. The purpose of the fund shall be to pay for maintenance of the properties acquired pursuant to this agreement as specified in the District's Maintenance Plan attached as Exhibit G. Eligible maintenance costs shall include (a) costs of maintaining on- and off-site facilities necessary to protect the property against flooding until such time as the flood prevention facilities are no longer needed, and (b) the payment of annual property assessments established to fund such flood prevention facility maintenance.
- C. FUNDING. An amount equivalent to 20 percent of the purchase price of each property acquired pursuant to this agreement shall be provided by the State to the District for deposit in the Trust Fund at the time of each property purchase, until the total amount of grant funds provided for in this agreement have been expended.
- D. INVESTMENT OF FUNDS. The District shall have all powers necessary or in its sole discretion desirable to carry out the purposes of the Trust Fund, including, but not limited to, the power to retain, invest, and reinvest the Trust Fund and the power to commingle the assets of the Trust Fund with those of other funds for investment purposes.
- E. COSTS OF THE FUND. It is understood and agreed that the Trust Fund shall share a fair portion of the total investment and administrative costs of the District. Those costs annually charged against the Trust Fund shall be determined in accordance with the then current fee schedule identified by the District as applicable to funds of this type.
- F. NOT A SEPARATE TRUST. The Trust Fund shall be component part of the District. All money and property in the Trust Fund shall be held as general assets of the District and not segregated as trust property of a separate trust.

- G. DISTRIBUTION. The annual earnings allocable to the Trust Fund, net of the fees and expenses set forth in Paragraph E above, shall be committed, granted or expended solely for the purposes described in Paragraph B above. If the annual return of the Trust Fund is not sufficient to fund the committed obligations of the fund, the fund itself may be used to meet current obligations, until the fund has been completely expended. For budgeting purposes, annual expenditures from the fund should not exceed an amount projected to completely exhaust the Trust Fund at the same time all properties in the Middle Creek Project have been acquired by the District, and flood protection facility maintenance is no longer necessary.
- H. ADMINISTRATIVE PROVISIONS. Notwithstanding anything herein to the contrary, the District shall hold the Trust Fund, and all contributions to and earnings of the Trust Fund, subject to the provisions of California laws and the regulations and approvals that led to the establishment of the District. The District Board shall monitor the distribution of the Trust Fund.

16. PROPERTY RIGHTS ACQUISITIONS

The District is coordinating the acquisition of real property rights (Exhibit A attached hereto) for the purpose of the protection, restoration, and enhancement of the flood corridor by combining an effective and low-cost means of flood control protection with the preservation and enhancement of natural environmental values. The acquisition of any real property interest in these properties with State funds must comply with the following:

- A. The District must provide escrow documents and information as described in Exhibit D including a preliminary title report, vesting documents, and a fully conformed appraisal report to the State. Appraisals must be prepared and signed by a qualified general appraiser, who is licensed by the California Department of Real Estate Appraisers and demonstrates compliance with the Uniform Standards for Professional Appraisal Practices. Any and all appraisal reports shall be submitted to the State for approval, including if necessary, the Department of General Services prior to disbursement of funds for the acquisition. For low value property interests, the State, in its sole discretion, may waive any of the foregoing submittal requirements.
- B. The property rights shall be acquired from a willing seller as promulgated in Water Code section 79037 (b) (4), Division 26, Chapter 5, Article 2.5, and in compliance with current laws governing acquisition of properties by public agencies.

- C. The District shall provide sufficient notice to adjacent landowners and other members of the public to enable public input on interests that may be affected by the acquisition and changes in land use.
- D. The District shall use, manage, and maintain the property in a manner consistent with the purpose of the acquisition until the State determines that maintenance is no longer necessary. The District further assumes all management and maintenance costs associated with the acquisition, including the costs of ordinary repairs and replacements of a recurring nature, and costs of enforcement of regulations. The State shall not be liable for any cost of such management or maintenance. The District will, prior to the acquisition of the historic Robinson Lake floodplain interests, develop a monitoring and maintenance plan and determine who will be responsible for it and submit it to the State for approval.
- E. The District shall identify all riparian water rights that would be affected by a real property acquisition and propose appropriate treatment of such rights.
- F. Method of payment. Funds provided by the State for real property acquisitions shall be deposited by the State with an escrow holder acceptable to the State and with escrow instructions regarding funding and disbursement to be approved by the State. If the escrow does not close by the date set forth in the State's escrow instructions, or such other date as may be agreed to by the parties, the funds provided by the State shall be returned to State.
- G. The District shall supply a copy of any recorded vesting documents to the State after close of escrow.

IN WITNESS WHEREOF, the following authorized representatives have executed this Agreement as of the date first above written and approved as to Legal form and sufficiency.

LAKE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

ATTEST: KELLY F. COX
Clerk to the Board

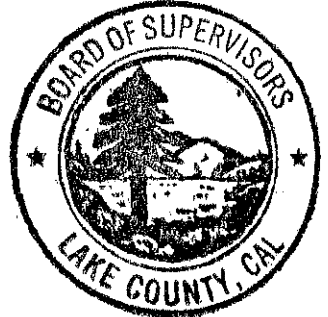
by Ed Robery
Chair, Board of Directors

Date: 3.23.04

BY: Gregory Hunt

APPROVED AS TO FORM:
CAMERON L. REEVES
County Counsel

[Signature]



STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES

By Lester A. Snow
LESTER A. SNOW, Director

Date: 5/14/04

Approved as to Legal Form and Sufficiency

By Peggy Bernardy
PEGGY BERNARDY, Chief Counsel

Date: MAY 04 2004

Attachments

List of Exhibits:

- Exhibit A – Real Estate Rights to Be Acquired
- Exhibit B – Scope of Work
- Exhibit C – Budget and Timeline
- Exhibit D – Information Necessary for Escrow Processing and Closure
- Exhibit E – Model Floodway and Conservation Easement
- Exhibit F – Standard Clauses for Contracts with Public Entities
- Exhibit G – Maintenance Provisions

EXHIBIT A

FLOOD PROTECTION CORRIDOR PROGRAM MIDDLE CREEK FLOOD DAMAGE REDUCTION AND ECOSYSTEM RESTORATION PROJECT

POTENTIAL PROPERTIES FOR ACQUISITION

Ninety-nine parcels have been identified as needing acquisition in fee, purchase of overflow easements or in need of hydraulic mitigation, see attached map and list of properties. Because funds provided (\$5.214 million) are not adequate to acquire all required property, we have established priorities for this funding. Priorities are as follows:

- Eighteen (18) properties have residential structures that are subject to significant flood depths in the event of levee failure. These properties will receive the highest priority for purchase. Acquisition priority will be based the depth of flooding at each residential parcel.
- Eight parcels are owned by the United States of America, which are held In-Trust for the Robinson Rancheria of Pomo Indians of California. Hydraulic mitigation (elevation of facilities above flood elevation) and purchase of overflow easement have been identified for implementation on portions of these parcels. Provided that issues related to transfer of the "In-Trust" from these properties are resolved, these properties will receive the second priority. If the "In-Trust" issues have not been resolved at the time all priority one properties have been acquired, then the District may proceed directly to priority three.
- In the event that funds are available, third priority will be given to the remaining parcels based on the depth of flooding on each parcel. This essentially means acquisition will begin in the southern parcels and proceed northward.
- As funds become limited towards the end of the acquisition process, the District reserves the right to "bypass" properties that have values greater than the remaining funds available.

All properties will be acquired according to local, State, and federal laws and regulations, including the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24.

**FLOOD PROTECTION CORRIDOR PROGRAM
MIDDLE CREEK FLOOD DAMAGE REDUCTION AND
ECOSYSTEM RESTORATION PROJECT
POTENTIAL PROPERTIES FOR ACQUISITION
EXHIBIT A**

Parcel No.	Owner Information	Property Address	Floodprone Residence
00402203	BAMBERGER MYRA R TRUSTEE	7450 RECLAMATION RD UL	Y
00402224	BOBST GLEN L & BEVERLY	7385 RECLAMATION RD UL	Y
00401633	CHRISTIANSON, JR ALBERT M & HELGA	8220 SAILOR AVE UL	Y
00402128	CONLEY MARVIN B & LYNN I	1370 RECLAMATION CUTOFF UL	Y
00401635	DEMLER LANCE E & LINDA R	8120 SAILOR AVE UL	Y
00402131	ESTATE OF REED JAMES INGALLS JR & INGALLS DAWN	1405 RECLAMATION CUTOFF UL	Y
00402121	FINCH JAMES	1280 RECLAMATION CUTOFF UL	Y
00402122	FINCH JAMES FRANCIS	1320 RECLAMATION CUTOFF UL	Y
00402130	GOULD DWIGHT E	1305 RECLAMATION CUTOFF UL	Y
00402125	HANSTEN ROBERT E & DOROTHY G	7950 RECLAMATION RD UL	Y
00401631	IRWIN JOHN JR	8340 RECLAMATION RD UL	Y
00402120	MCCARTHY SYLVIA A	1350 RECLAMATION CUTOFF UL	Y
00402124	MORRILL KEVIN R & ESTHER M	7998 RECLAMATION RD UL	Y
00402127	MURDERS LEON & CHERI	7500 RECLAMATION RD UL	Y
00401513	PIERSON MICKEY E & JOYCE M	1235 E STATE HWY 20 UL	Y
00401620	ROONEY PHILIP M & MARCIA D	8050 SAILOR AVE UL	Y
00401634	STERLING ROBERT W	8230 SAILOR AVE UL	Y
00401602	TORRENCE NANCY	8240 EZRA AVE UL	Y
00401406	BOBST GLEN L & BEVERLY	8223 RECLAMATION RD UL	
00401920	BOBST GLEN L & BEVERLY	8051 RECLAMATION RD UL	
00401921	BOBST GLEN L & BEVERLY	8053 RECLAMATION RD UL	
00401922	BOBST GLEN L & BEVERLY	8055 RECLAMATION RD UL	
00402012	BOBST GLEN L & BEVERLY	7415 RECLAMATION RD UL	
00402118	BOBST GLEN L & BEVERLY	7945 RECLAMATION RD UL	
00402119	BOBST GLEN L & BEVERLY	7575 RECLAMATION RD UL	
00402201	BOBST GLEN L & BEVERLY	7525 RECLAMATION RD UL	
00402202	BOBST GLEN L & BEVERLY	7527 RECLAMATION RD UL	
00401606	CARL ERNEST	8485 RECLAMATION RD UL	
00401420	CHRISTIANSON AL	8465 RECLAMATION RD UL	
00402234	CLARK STANLEY E & JACKLYN A JR	1675 E STATE HWY 20 UL	
20101001	CLARK STANLEY E JR & JACKLYN A	1845 E STATE HWY 20 UL	
00401502	DIPLOUDIS SIMEON & VIRGINIA S	1055 E STATE HWY 20 UL	
00401605	EDMANDS RECLAIMED LAND CO	8475 RECLAMATION RD UL	
00401404	EDMANDS RECLAMATION DIST	8345 RECLAMATION RD UL	
00401405	EDMANDS RECLAMATION DIST	8221 RECLAMATION RD UL	
00401902	EDMANDS RECLAMATION DIST	8035 RECLAMATION RD UL	
00401419	FLOYD BRAD & MARY LOU	8250 RECLAMATION RD UL	
00401629	FRYE CARRIE M	1375 E STATE HWY 20 UL	
00401317	GARD LARRY W	557 E STATE HWY 20 UL	
00401016	GILLETT ROBERT & FRANCES TRUSTEE	975 E STATE HWY 20 UL	
00401309	GILLETT ROBERT T & FRANCES TRUSTEE	941 E STATE HWY 20 UL	
00401632	IRWIN JOHN JR	8300 RECLAMATION RD UL	
00401319	IRWIN WILLIAM S	8335 RECLAMATION RD UL	
00401413	IRWIN WILLIAM S	8325 RECLAMATION RD UL	
00401311	KOKER THOMAS B & DONNA M	8217 RECLAMATION RD UL	

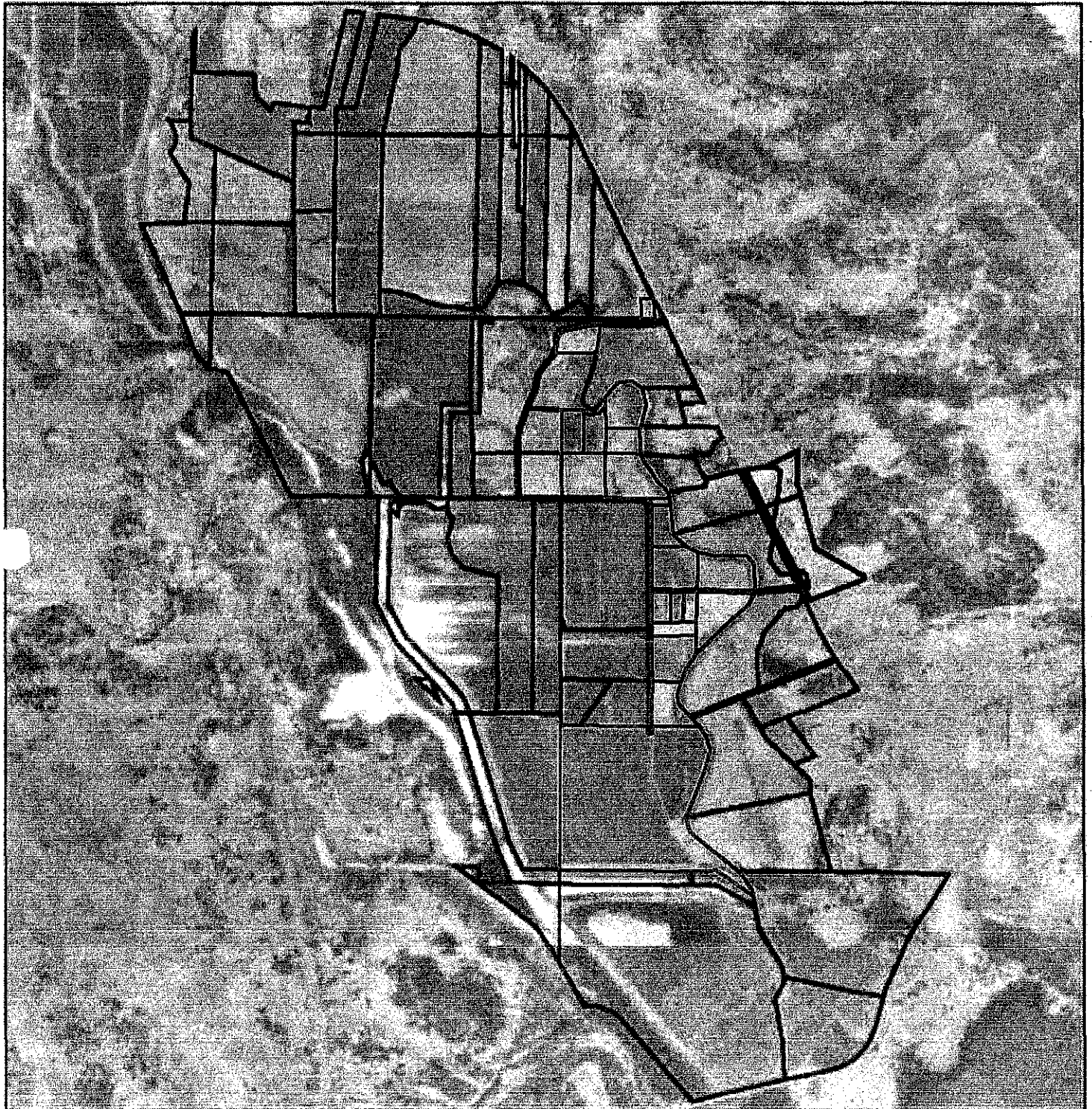
**FLOOD PROTECTION CORRIDOR PROGRAM
MIDDLE CREEK FLOOD DAMAGE REDUCTION AND
ECOSYSTEM RESTORATION PROJECT
POTENTIAL PROPERTIES FOR ACQUISITION
EXHIBIT A**

Parcel No.	Owner Information	Property Address	Floodprone Residence
00401415	LAKE COUNTY MOSQUITO ABATEMENT DIST	8155 RECLAMATION RD	UL
00401611	MARTELL FLORA MAE	1347 E STATE HWY 20	UL
00402129	MCCARTHY EDWARD T	7600 RECLAMATION RD	UL
00401603	MENDOZA JESUS & ELVA	8100 SAILOR AVE	UL
00401512	MONTGOMERY PAUL L & HANSEN MARJORIE ALICE	1175 E STATE HWY 20	UL
00305509	NARVAEZ GREGORY A	8950 BRIDGE ARBOR NORTH	UL
00401302	NARVAEZ GREGORY A	8924 BRIDGE ARBOR NORTH	UL
20101002	NICHOLSON LEWIS F & ANNE	1757 E STATE HWY 20	UL
03103109	OBRYANT LARRY L & KATHLEEN E	2200 POINT LAND FARMS DR	NICE
03104132	OBRYANT LARRY L & KATHLEEN E	1830 NICE-LUCERNE CUTOFF	NICE
00401004	OLD RIVER VINTNERS	755 E STATE HWY 20	UL
00401318	OLD RIVER VINTNERS	737 E STATE HWY 20	UL
00401029	OLDHAM MELVYN W & WINIFRED J CO TRUSTEE	725 E STATE HWY 20	UL
00401315	OLDHAM MELVYN W & WINIFRED J CO TRUSTEE	735 E STATE HWY 20	UL
00401018	OSBORNE JANELLE	895 E STATE HWY 20	UL
00401019	OSBORNE JANELLE	883 E STATE HWY 20	UL
00401020	OSBORNE JANELLE	873 E STATE HWY 20	UL
00401306	OSBORNE JANELLE	879 E STATE HWY 20	UL
00401312	OSBORNE JANELLE	881 E STATE HWY 20	UL
00401623	PARKINSON BARRY	1425 E STATE HWY 20	UL
00402010	RECLAMATION DIST 2070	7425 WESTLAKE RD	UL
00402207	RECLAMATION DIST 2070	7035 RECLAMATION RD	UL
00402221	RECLAMATION DIST 2070	7015 RECLAMATION RD	UL
00401618	ROBINSON MATILDA J TRUSTEE	8490 RECLAMATION RD	UL
00402108	ROBINSON RANCHERIA	1645 E STATE HWY 20	UL
00402115	ROBINSON RANCHERIA	1555 RECLAMATION CUTOFF	UL
00402208	ROBINSON RANCHERIA	1745 E STATE HWY 20	UL
00401034	ROGERS LAWRENCE A	635 E STATE HWY 20	UL
00401316	ROGERS LAWRENCE A	555 E STATE HWY 20	UL
00401412	SACRAMENTO & SAN JOAQUIN DRAINAGE DIST	8001 RECLAMATION RD	UL
00401414	SACRAMENTO & SAN JOAQUIN DRAINAGE DIST	8027 RECLAMATION RD	UL
00401919	SACRAMENTO & SAN JOAQUIN DRAINAGE DIST	8043 RECLAMATION RD	UL
00401010	SAECHAO OUYERN & MEUYTHAO	935 E STATE HWY 20	UL
00401308	SAECHAO OUYERN & MEUYTHAO	937 E STATE HWY 20	UL
00401417	SANTOS JOE D TRUSTEE	8190 RECLAMATION RD	UL
00401045	SEELY ERIC	9214 BRIDGE ARBOR NORTH	UL
00402304	SINO-AMERICAN BUDDHIST ASSOC	6980 WESTLAKE RD	UL
00402501	SINO-AMERICAN BUDDHIST ASSOC	1430 NICE-LUCERNE CUTOFF	NICE
00401614	U S A - IN TRUST	1495 E STATE HWY 20	UL
00401643	U S A - IN TRUST	1494 E STATE HWY 20	UL
00402134	U S A - IN TRUST	1570 E STATE HWY 20	UL
00402136	U S A - IN TRUST	1650 E STATE HWY 20	UL
00402139	U S A - IN TRUST	1585 E STATE HWY 20	UL
00402140	U S A - IN TRUST	1545 E STATE HWY 20	UL
00401642	U S A IN TRUST	1498 E STATE HWY 20	UL

**FLOOD PROTECTION CORRIDOR PROGRAM
MIDDLE CREEK FLOOD DAMAGE REDUCTION AND
ECOSYSTEM RESTORATION PROJECT
POTENTIAL PROPERTIES FOR ACQUISITION
EXHIBIT A**

Parcel No.	Owner Information	Property Address	Floodprone Residence
00402135	U S A IN TRUST	1580 E STATE HWY 20 UL	
00401005	WALTER III HARRISON	825 E STATE HWY 20 UL	
00401305	WALTER III HARRISON	877 E STATE HWY 20 UL	
00304110	WEGER INTERESTS LTD	8920 BRIDGE ARBOR NORTH UL	
00304210	WEGER INTERESTS LTD	8930 BRIDGE ARBOR NORTH UL	
00401310	WEGER INTERESTS LTD	8922 BRIDGE ARBOR NORTH UL	
00401411	WEGER INTERESTS LTD	8219 RECLAMATION RD UL	
00402212	WILCOX DONALD T & DOLORES J	2255 E STATE HWY 20 UL	
00401613	WILLS THOMAS E	1485 E STATE HWY 20 UL	

**FLOOD PROTECTION CORRIDOR PROGRAM
MIDDLE CREEK FLOOD DAMAGE REDUCTION
AND ECOSYSTEM RESTORATION PROJECT
POTENTIAL PROPERTIES FOR ACQUISITION
EXHIBIT A**



- 3 Project_Parcels
- 0 Project_Parcels_w_Homes
- 0 USA_In_Trust_Parcels

0 750 1,500 3,000 4,500 6,000 Feet



EXHIBIT B

FLOOD PROTECTION CORRIDOR PROGRAM MIDDLE CREEK FLOOD DAMAGE REDUCTION AND ECOSYSTEM RESTORATION PROJECT

SCOPE OF WORK

The Middle Creek Flood Damage Reduction and Ecosystem Restoration Project (Project) is one step in the process of restoring damaged habitat and the water quality of the Clear Lake watershed. Reconnection of this large previously reclaimed area, as a functional wetland is anticipated to have a significant effect on the watershed health and the water quality of Clear Lake. The Project will also eliminate flood risk to 18 residential structures, numerous outbuildings and approximately 1,400 acres of agricultural land.

In June 1999, the U.S. Army Corps of Engineers began a Feasibility Study that evaluated six alternatives, including the No Action, three restoration alternatives, a non-structural, and a structural flood damage reduction alternative. The restoration alternatives all include reconnecting the area adjacent to Clear Lake and Rodman Slough, with the primary difference being the northern limit of the Project area. The pure flood damage reduction alternatives were not cost effective. During the Feasibility Study that reviewed flood damage reduction, habitat, and other benefits, it was determined that the most beneficial project would be full restoration of the Project area. Full restoration requires all property in the Project area, 1,650 acres, be purchased in fee. Purchased lands will be restored to near natural conditions and the levees will be breached. Environmental review as required by the National Environmental policy Act and the California Environmental Quality Act was conducted concurrent with the Feasibility Study. The Final Feasibility Study/Environmental Impact Statement/Environmental Impact Report was issued in September 2002.

The purpose of this scope of work is to begin with acquisition of properties necessary to implement the Project. Acquisition will be made from willing sellers only. As total land, easement and relocation costs are in excess of \$13 million, this scope of work emphasizes acquisition of properties that have residential dwellings, as this will reduce the most potential for flood damages and reduce the risk to life of residents. Because not all land protected by the levees will be purchased, full restoration will be delayed until all properties are purchased, allowing restoration activities and decommissioning of the levee system.

Ninety-nine parcels have been identified as needing acquisition in fee, purchase of overflow easements or in need of hydraulic mitigation (see Exhibit A). Because funds provided (\$5.214 million) are not adequate to acquire all required property, we have established priorities for this funding. Priorities are as follows:

Flood Protection Corridor Program, Scope of Work, Exhibit B
Middle Creek Flood Damage Reduction and Ecosystem Restoration Project

Page 2

1. Eighteen properties have residential structures that are subject to significant flood depths in the event of levee failure. These properties will receive the highest priority for purchase. Acquisition priority will be based the depth of flooding at each residential parcel. This essentially means acquisition will begin in the southern parcels and proceed northward.
2. Eight parcels are owned by the United States of America, which are held In-Trust for the Robinson Rancheria of Pomo Indians of California. Hydraulic mitigation (elevation of facilities above flood elevation) and purchase of overflow easement have been identified for implementation on portions of these parcels. Provided that issues related to transfer of the "In-Trust" from these properties are resolved, these properties will receive the second priority. If the "In-Trust" issues have not been resolved at the time all priority one properties have been acquired, then the District may proceed directly to Priority 3.
3. In the event that funds are available, third priority will be given to the remaining parcels based on the depth of flooding on each parcel. This essentially means acquisition will begin in the southern parcels and proceed northward.

As funds become limited toward the end of the acquisition process, the District reserves the right to bypass or skip over properties that have values greater than the remaining funds available and acquire the properties that can be acquired with the available funds.

All properties will be acquired according to local, State, and federal laws and regulations, including the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24.

After the properties are acquired, improvements, such as homes, outbuildings and associated infrastructure will be removed and/or abandoned on site in accordance with local, State, and federal laws. Properties will be rezoned as Open Space and no future building will be permitted on the properties.

Task 1: Administration

This task includes administration of the grant and coordination of activities associated with acquisition of the properties. Administrative costs include District/County staff time expended throughout the project. Staff includes, but is not limited to, the Assistant Director of Public Works, Water Resources Engineer, County Surveyor, Right-of-Way Agent and County Counsel.

Property acquisition will be in accordance with local and State regulations. Property acquisition will also be consistent with federal guidelines in order for the acquisition to

Flood Protection Corridor Program, Scope of Work, Exhibit B
Middle Creek Flood Damage Reduction and Ecosystem Restoration Project

Page 3

count as local match for implementation of the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project. A General Plan Conformity Report will be presented to the County Planning Commission for approval prior to commencing acquisition. At least one additional public meeting will be held after the contract is awarded to advise property owners of the acquisition process. Outreach materials will be prepared and provided to all potentially affected property owners.

After purchase, all properties will have a deed restriction, such as a flood easement recorded. After all properties are purchased, the County will initiate a rezone of the purchased parcels to change the zoning to Open Space.

Task 2: Relocation, Demolition and Cleanup Expenses

Because this is part of a larger federal project, federal requirements will apply to land purchase under the Flood Protection Corridor Program (FPCP) Program. Federal law (PL 91-646) requires relocation assistance be provided for residents that are displaced by federal projects. Relocation expenses, including moving expenses, are included under this task.

Since the primary emphasis of this scope of work is to acquire flood prone homes and the associated property, the structures and associated utilities will be removed and/or abandoned in place. Residential structures and accessory structures will be completely removed from the property. Paved sidewalks and driveways will also be removed. Unpaved areas will be re-vegetated as required. Revegetation is temporary until the full Project is implemented. Items such as septic systems and water wells will be abandoned in accordance with local and state laws. All other utilities will be removed from the purchased parcels.

Fencing to prevent trespass may be installed along the perimeter of the parcels to prevent trespass and off road vehicular use. Fencing will only be installed if trespass and off road vehicular activity becomes a problem.

Task 3: Acquisition Costs

Acquisition costs include all costs associated with purchase, including appraisals, inspections, purchase price, title insurance, and closing costs. Staff time associated with negotiations is included within Task 1: Administration. Subtasks include:

1. Obtain legal descriptions of parcels or surveyed descriptions for partial purposes.
2. Obtain an appraisal for the acreage and estate from an acceptable appraiser.
3. Obtain State approval of the appraised amount.
4. Make offers at not less than fair market value as provided in the appraisal.
5. Upon agreement of purchase price, enter escrow period, make appropriate inspections and close escrow.

Task 4: Hydraulic Mitigation on USA-In-Trust Parcels

There are eight parcels held by the United States in trust for the Robinson Rancheria. The Middle Creek Project will induce flooding on these parcels. Corps policy will not allow activities on the USA-In-Trust properties, therefore, a "ring levee" to protect the USA-In-Trust parcels was proposed in the Feasibility Study. The Robinson Rancheria is opposed to the ring levee and has proposed an alternative of transferring the trust status of two parcels to other parcels, elevating the parking lot above the 100-year floodplain, elevating a portion of the flood prone property, and selling overflow easements on the parcels west of Highway 20. The Corps has prepared an alternative that includes the Rancheria's proposal, however, it cannot be implemented until the trust is transferred.

Provided that the trust is transferred in a timely manner, this task will include the hydraulic mitigation (elevation of flood prone facilities) and acquisition of an overflow/conservation easement in the former trust properties west of Highway 20.

- Elevation of the facilities will require development of engineered plans and specifications, competitive bidding for a construction contract, and construction of the improvements. All construction will be subject to the appropriate local, state and federal regulations.
- Overflow-conservation easements will be acquired utilizing the same procedure described in Task 3.

Task 5: Property Maintenance

When the District purchases the properties as described above, the District will assume maintenance responsibility for the properties. Exhibit G describes the maintenance costs associated with ownership of the properties within the proposed Middle Creek Project area. We anticipate these costs will be ongoing for several years before the Middle Creek Project is fully implemented. Because the Middle Creek Project has not been authorized, nor has the CEQA/NEPA been fully approved, we cannot accurately determine the length of time that the properties must be maintained prior to full project implementation. Therefore, a full 20 percent of the acquisition cost will be deposited in a trust fund to pay for the maintenance of the properties. As expenses are likely to be greater than the interest on the trust fund, the balance of the trust fund will likely decrease over time.

Any balance in the trust fund that remains when the Middle Creek Project is fully implemented will remain in the trust fund and be utilized for long term operation, maintenance and monitoring of the full Project.

A detailed budget and timeline is included in Exhibit C.

EXHIBIT C

FLOOD PROTECTION CORRIDOR PROGRAM MIDDLE CREEK FLOOD DAMAGE REDUCTION AND ECOSYSTEM RESTORATION PROJECT

DETAILED BUDGET AND TIMELINE

The purpose of this budget and timeline is to define the approximate costs and schedule for acquisition of properties necessary to implement the Flood Protection Corridor Program portion of the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project (Project). Acquisition will be made from willing sellers only. As total land, easement and relocation costs are in excess of \$13 million, this scope of work emphasizes acquisition of properties that have residential dwellings, as this will reduce the most potential flood damages and reduce the risk to life of residents.

Budget

Currently, the Lake County Flood Control and Water Conservation District (District) does not have accurate estimates of the individual values of the parcels within the Project area. The District has prepared this budget based on the gross appraisal prepared by the Corps of Engineers in 2000 and our experience with property acquisition. Because the District does not have individual appraisals, the estimates will be by task only.

Task 1: Administration

This task includes administration of the grant and coordination of activities associated with acquisition of the properties. Administrative costs include District/County staff time expended throughout the project. Staff includes, but is not limited to, the Assistant Director of Public Works, Water Resources Engineer, County Surveyor, Right-of-Way Agent and County Counsel. Administrative costs are based on salaries, benefits, and overhead. Overhead includes building rental, utilities, supplies, travel and miscellaneous expenses.

Task 2: Relocation, Demolition and Cleanup Expenses

Because this is part of a larger Federal project, Federal requirements will apply to land purchase under the FPCP Program. Federal law (PL 91-646) requires relocation assistance be provided for residents that are displaced by Federal projects. Relocation expenses, including moving expenses, are included under this task.

Structures and associated utilities will be removed and/or abandoned in place for each property. Residential structures and accessory structures will be completely removed from the property. Paved sidewalks and driveways will also be removed. Unpaved

areas will be revegetated as required. Items such as septic systems and water wells will be abandoned in accordance with local and state laws. All other utilities will be removed from the purchased parcels. Fencing to prevent trespass may be installed along the perimeter of the parcels to prevent trespass and off road vehicular use.

Because the District does not have detailed estimates, the estimates are for the entire task.

Task 3: Acquisition Costs

All costs associated with the purchase, include appraisals, inspections, purchase price, title insurance, and closing costs. Staff time associated with negotiations is included within Task 1: Administration. Because the District does not have individual appraisals, the estimates are for the entire task.

Task 4: Hydraulic Mitigation on USA-In-Trust Parcels

Provided that the trust is transferred in a timely manner, this task will include the hydraulic mitigation (elevation of flood prone facilities) and acquisition of an overflow-conservation easement in the former trust properties west of Highway 20. The estimate is broken down into two sections, hydraulic mitigation and overflow-conservation easements: (1) Hydraulic Mitigation: Elevation of the facilities will require development of engineered plans and specifications, competitive bidding for a construction contract, and construction of the improvements. All construction will be subject to the appropriate local, state and federal regulations. All costs, including preliminary and construction engineering, and construction are included; (2) Overflow-conservation easements: Easements will be acquired utilizing the same procedure described in Task 3.

Task 5: Property Maintenance

A full twenty percent of the acquisition cost will be deposited in a trust fund to pay for the maintenance of the properties. Because the District does not have individual appraisals, the estimates are for the entire task.

Timeline

The timeline identifies milestones on a general basis. Because multiple parcels are involved, individual timelines for each parcel purchase are not provided.

**FLOOD PROTECTION CORRIDOR PROGRAM
MIDDLE CREEK FLOOD DAMAGE REDUCTION AND
ECOSYSTEM RESTORATION PROJECT
DETAILED BUDGET AND TIMELINE
EXHIBIT C**

TASK	DESCRIPTION	START¹	COMPLETE¹
1	Administration		
	Letter to Property Owners	0.5	0.5
	Public Meeting	1	1
	Administration	0	36
2	Relocation, Demolition and Cleanup		
	Relocation	3	36
	Demolition and Cleanup	4	36
3	Acquisition		
	Appraisals	2	36
	Negotiations	3	36
	Escrow Period	4	36
4	Hydraulic Mitigation of USA-In-Trust Lands		
	Negotiate Transfer of Trust ²	Ongoing	Ongoing
	Elevate Facilities ²	Ongoing	36
	Acquire Easement ²	Ongoing	36
5	Property Maintenance	4	Ongoing

¹ Schedule is months after fully executed agreement (Authorization to Proceed)

² Transfer of Trust has been negotiated with the Roblsonson Rancheria since 2002 and agreement on legislation was made in March 2004. The Board of Supervisors requested Congressman Thompson include the transfer of the Trust in the Water Resources Development Act (WRDA) that also authorizes the Project. The start date for hydraulic mitigation will depend on when WRDA is approved and signed into law.

Information Needed for Escrow Processing and Closure

Name and Address of Title Company Handling the Escrow

Escrow Number

Name of Escrow Officer

Escrow Officer's Phone Number

Dollar Amount Needed to Close Escrow

Legal Description of Property Being Acquired

Assessor's Parcel Number(s) of Property Being Acquired

Copy of Title Insurance Report

Entity Taking Title as Names Insured on Title Insurance Policy

Copy of Escrow Instruction in Draft Form Prior to Recording for Review Purposes

Copy of Final Escrow Instructions

Verification that all Encumbrances (Liens, Back Taxes, and Similar Obligations) have been Cleared Prior to Recording the Deed to Transfer Title

Copy of Deed for Review Purposes Prior to Recording

Copy of Deed as Recorded in County Recorder's Office

Copy of Escrow Closure Notice

Exhibit E

Conservation and Flood Easement Deed

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO:

DEPARTMENT OF WATER RESOURCES
Division of Land and Right of Way
Real Estate Branch
1416 9th Street, Room 425
Sacramento, California 95814

WITH A CONFORMED COPY TO:

[Easement Grantor]
[at Mailing Address]
Attention: [Contact Person]

Space Above This Line for Recorder's Use

CONSERVATION AND FLOOD EASEMENT DEED

Parcel No.

(Corporation)

File No.

The _____ (hereafter "Grantor"), does hereby grant, convey, and dedicate to _____ (hereafter, the "Grantee" or "Conservation Easement Steward") an exclusive and perpetual conservation and flood easement covering the real property situated in the County of _____, State of California, and more particularly described on Exhibit A attached hereto (hereafter, the "Conservation Area" or the "Property"), as follows:

Recitals

WHEREAS, Grantor [previously owned _____] [acquired fee title to _____ through grants of funding provided by the State of California, specifically, the California Department of Water Resources (the DWR)]. DWR awarded State Proposition 13 funds to Grantor to [acquire] [convey a conservation and flood

easement on] _____ [and] to carry out stewardship and management activities on (same) _____, including maintenance, monitoring, and [ecosystem restoration][wildlife-friendly farming practices]. The DWR determined the _____ acquisition and/or easement conveyance would implement the purposes of the Grantor and DWR by (1) _____ (2) providing opportunities to restore riparian habitat; and (3) _____.

WHEREAS, in addition, DWR awarded California Proposition 13 funds to Grantor to contribute to the cost of Grantor [acquiring fee title] [conveying an easement] to _____. DWR determined that [acquisition] [continued ownership] of _____ by Grantor, Grantor's continued management and use of _____ as a [transient storage area] [flood corridor] for floodwater overflow or conveyance from the (water body) _____ and for [wildlife habitat] agricultural land] preservation purposes, and Grantor's intention to [integrate] [continue to manage] the _____ property [into] [as part of] Grantor's existing holdings encompassing the _____, will preserve land, protect wildlife habitat, and protect it's floodplain area from inappropriate or incompatible development and maintain its availability for flood management purposes, consistent with the purposes of the Flood Protection Corridor Program described in Water Code section 79035 et seq..

WHEREAS, the contractual agreement which provides for the transfer of grant funds by the DWR to Grantor for Grantor's [acquisition of] [conveyance of an easement deed to] _____, acknowledges the multiple and complementary benefits the [property] _____ provides to the State of California for: (1) agricultural land preservation [if applicable]; (2) wildlife habitat protection [if applicable]; (3) protection of a floodplain area from potential inappropriate and incompatible development; and (4) potential role in future flood management and water management improvements (hereafter "Multiple and Complementary Benefits").

WHEREAS, Grantor and the DWR further acknowledge that the [County] [City] of _____ is evaluating the need for floodway improvements in the _____ watershed. The [County's] [City's] evaluation of alternatives for such floodway improvements in the _____ area may include use of all or a portion of the Conservation Area for future flood management projects or activities.

WHEREAS, it is the intent of the Grantee and Grantor, as parties to this Conservation and Flood Easement Deed, to protect each of the existing Multiple and Complementary Benefits of _____ property and to cooperate in the implementation of any flood management project or activity on the _____ property that may evolve from the [County's] [City's] flood management planning efforts.

NOW, THEREFORE, for good and valuable consideration provided in whole or in part by DWR, the receipt and sufficiency of which is hereby acknowledged, based on the common law and the California law of easements, including Section 815 et seq of the Civil Code, Grantor forever grants to the [easement grantee], its successors and

assigns, a conservation and flood easement, in over and across the Property ("the Conservation and Flood Easement"), subject to the terms and conditions hereinafter set forth describing the uses which may be made of the Property, and the parties agree as follows:

1. **Purposes.** The Property possesses significant [ecological and habitat values] [agricultural production capability]. These natural resources are of aesthetic, ecological, educational, historical, recreational, and scientific value to the people of the State of California. These natural resources are of great importance to both grantor and grantee. The purposes of this Conservation and Flood Easement are to preserve and protect each of the Multiple and Complementary Benefits of the Property. In so doing, it is also the purpose of this Conservation and Flood Easement to encourage and promote wildlife habitat, wetlands, transitory storage of floodwaters, agricultural use [if applicable] and wildlife-friendly practices on the Property.
2. **Grantee's Rights and Obligations.** The rights conveyed by this Conservation and Flood Easement to the Grantee include, but are not limited to, the following:
 - A. Grantee shall promptly record this instrument in the official records of _____ County, California, and may re-record it at any time as may be required to preserve its rights in this Easement.
 - B. The Conservation Area Steward may identify, monitor, research, preserve and protect forever the natural, ecological, environmental, agricultural [if applicable] and wildlife features of the Property, to the extent necessary to effectuate the express purposes of this Conservation and Flood Easement.
 - C. The Conservation Area Steward is hereby granted the rights of access, for itself and its agents and contractors to enter upon the Property, using appurtenant easements and rights of way, if any, and may enter upon the Property at any and all reasonable times, with reasonable prior notice to Grantor, to inspect, study and make scientific and engineering observations of the Property, to the extent necessary to effectuate the express purposes of this Conservation and Flood Easement, and to determine whether Grantor's activities are in compliance with the terms hereof. The Conservation Area Steward shall not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor, its successors in interest, and Grantor's guests, invitees, licensees, lessees, tenants and permittees and any other legally recognized occupants of the Property.
 - D. The Conservation Area Steward may enjoin any activity or use of the Property that is inconsistent with the purposes of this Conservation and Flood Easement, and may enforce the restoration of such areas or

features of the Property that may be damaged by any activity or use of the Property that is inconsistent with the terms of this Conservation and Flood Easement.

- E. The Conservation Area Steward may assign all or any part of its interests in the Conservation and Flood Easement without the consent of the Grantor, provided that (1) the Conservation Area Steward shall provide Grantor with reasonable notice of the [easement grantee's] intention to effect such assignment and afford Grantor the opportunity to confer with the Conservation Area Steward respecting an assignee that would be acceptable to Grantor, (2) the Conservation Area Steward shall provide to Grantor written notice of such transfer within thirty (30) days of such transfer, and (3) any such assignment shall be to a governmental agency or political subdivision or non-profit group or foundation with authority to own property (such as the County for flood management purposes). Any assignee shall assume responsibility for enforcement of and be subject to all the provisions of this Conservation and Flood Easement.
- F. In furtherance of the Multiple and Complementary Benefits, the above-described rights shall be exercised in a which is in harmony with, and does not materially interfere with, any of the Multiple and Complementary Benefits.
- G. Because this Conservation and Flood Easement was purchased at least in part by funds provided by the DWR Division of Flood Management, the Conservation and Flood Easement is intended to be consistent with any present or future flood management project or activity implemented on the Property, and any flood control easement recorded against the Property, that may evolve from the City's or County's flood management planning efforts. In that regard, any such flood management project or activity or future flood control easement shall be a permitted use of the Property pursuant to the terms of this Conservation and Flood Easement, and the necessary property rights to implement future flood management plans and activities on the Property including rights to construct floodway improvements and rights of access for construction, inspection, and maintenance purposes shall be provided by Grantor and Grantee to the Flood Management Agency having jurisdiction for flood protection on the Property at no cost to the Flood Management Agency.
- H. Upon request by Grantor, Grantee shall within 15 days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement, as may be requested by Grantor.

3. **Grantor's Rights and Obligations.**

- A. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Multiple and Complimentary Benefits of the Conservation Area. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Easement.
- B. Grantor shall be permitted to conduct [agricultural practices] [habitat development and passive recreation] on _____ in a manner consistent with the preservation or enhancement of the Multiple and Complementary Benefits. Notwithstanding the foregoing, Grantor may, without obtaining the consent of the Grantee, fallow areas within _____ consistent with sound agricultural practices or convert formerly agricultural land to wildlife habitat, whether terrestrial or aquatic.
- C. Grantor shall comply with all applicable federal, State and local laws, statutes, rules, regulations and ordinances (collectively, the "Laws") that apply to Grantor respecting Grantor's acquisition, ownership and operation of _____ and obtain any other permits, approvals, and licenses that Grantor is required to obtain under any law that is applicable to Grantor respecting Grantor's acquisition, ownership and operation of _____. Upon the request of DWR, Grantor shall deliver to DWR a copy of any requested final permit, license or approval obtained by Grantor in connection with Grantor's acquisition, ownership and operation of _____.
- D. Grantor agrees to indemnify and hold the Conservation Area Steward harmless for any damage suffered by the Grantee as a result of Grantor's activities on _____; provided, that such damage shall not have been caused by the gross negligence or willful misconduct of the Conservation Area Steward.
- E. Grantor shall assume all management, operation and maintenance costs associated with its ownership of the Property, including the costs of ordinary repairs and replacements of a recurring nature and costs associated with Grantor's compliance with any and all laws that are applicable to Grantor in connection with Grantor's ownership and operation of the Property. DWR, County, City, flood management district and the Grantee shall not be liable for any costs associated with the management, operation and maintenance of the Property, including flood management, except and to the extent of those costs associated with any flood management project or activity that is undertaken on the property in the future by DWR, County, City, flood management district, or the Conservation Area Steward.

- F. Grantor shall not engage in any dumping, releasing or other disposal of non-compostable refuse, trash, unsightly, toxic or other hazardous material on the Property; except to the extent such activities are conducted in connection with those agricultural operations and activities that are permitted under this Conservation and Flood Easement and are consistent with good farming practices and wildlife habitat management practices conducted in the general area and in a manner that is in compliance with all laws that are applicable to such activities.
- G. Grantor shall not explore for or extract minerals, hydrocarbons, soils, or other materials on or below the surface of the property except as needed to fulfill and implement the resource conservation purposes of this easement, and shall not change the topography of the Property without first obtaining the written consent of the Conservation Area Steward, including, without limitation, any topographical change resulting from any mining activity or levee or berm construction, except that any topographical changes resulting from any permitted agricultural activities conducted on the Property by Grantor or permitted wildlife habitat enhancement activities on the Property conducted by Grantor shall be permitted under this Conservation and Flood Easement without obtaining the consent of the Conservation Area Steward.
- H. Grantor may not manipulate, divert, or otherwise control or alter the natural watercourses or other bodies of water on the Property or adjacent property, except in connection with any permitted flood control activities, agricultural activities conducted on the Property by Grantor or permitted wildlife habitat enhancement activities on the Property conducted by Grantor, or engage in any activity that would pollute or degrade the surface or subsurface waters, except in connection with the permitted agricultural operations on the Property or as may be expressly permitted elsewhere herein. Grantee may not install wells or extract groundwater except to benefit the Conservation Area in amounts as may be reasonably required for conservation purposes on the property.
- I. Grantor shall pay all applicable real property taxes, assessments, fees and charges of whatever kind levied or assessed on the underlying fee interest in the Property. If Conservation Area Steward ever pays any taxes, assessments, fees or charges on the underlying fee interest that are the responsibility of Grantor, Grantor shall promptly reimburse the Conservation Area Steward for the same.
- J. Grantor shall be permitted to apply herbicides, pesticides or fungicides on the Property only in connection with permitted agricultural or wildlife enhancement activities conducted by Grantor on the Property in full

compliance with all applicable laws and consistent with good farming practices conducted in the general area of the Property.

- K. Grantor reserves all rights respecting the Property that are not expressly prohibited by this Conservation and Flood Easement and which are not inconsistent with the purposes of this Conservation and Flood Easement.
- L. Grantor shall include appropriate acknowledgment of DWR's and other cost-sharing entities' financial support in any written or other media describing Grantor's acquisition and management of _____.
- M. Grantor shall not use, or allow any portion of the Property to be used, for mitigation to compensate for adverse environmental impacts not on the Property, without the express written consent of DWR.
- N. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Conservation Area, including without limitation, a leasehold interest. Grantor further agrees to give written notice to the Grantee and the DWR at least fifteen (15) days prior to the date of any Conservation Area transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

5. General Provisions.

The following provisions apply to the Conservation and Flood Easement:

- A. Both Grantee and Grantor agree to work together to accomplish the preservation and protection of the Conservation Area.
- B. The parties agree that they do not intend, and this Conservation and Flood Easement shall not be construed, to create any obligations on the part of DWR or the Conservation Area Steward: (a) as an owner or operator, as those words are defined in any federal, State or local statute, regulation, ordinance, order or requirement relating to environmental conditions or hazardous materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. Sections 9601, et seq.); (b) as a person described in 42 U.S.C. 9607(a)(3); (c) as purchaser, with any obligation to investigate or remediate any hazardous materials associated with the Property; or (d) as a person with any control over Grantor's ability to investigate and remediate any hazardous materials associated with the Property. For the purposes of this Conservation and Flood Easement, the term "hazardous materials" shall mean any flammable, explosive or radioactive materials,

hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined in any law.

- C. The parties agree that enforcement of this Conservation and Flood Easement is essential to achieve its purposes. Therefore, the parties agree that any breach of the Conservation and Flood Easement may not be adequately compensated for by the recovery of damages, and that in addition to all other remedies available at law and equity, the parties shall be entitled to the remedy of injunction to restrain any actual or threatened violation or breach of this Conservation and Flood Easement and to compel the restoration of any portion of the Property affected by any unauthorized activity committed or permitted that is contrary to the purposes of this Conservation and Flood Easement. Except when an ongoing or imminent violation could significantly diminish or impair the purpose of the Conservation and Flood Easement, the Conservation Area Steward shall give Grantor written notice of any violation and 30 days to correct such violation or if it cannot be cured within such 30 day period, 30 days to commence such cure before filing any legal or equitable action. Grantor shall not be responsible for any extraordinary damage caused primarily by any event that can reasonably be called an "Act of God." The prevailing party in any litigation shall recover the cost of suit, including reasonable attorneys' fees.
- D. The terms "Grantor", "Conservation Area Steward" and "DWR," whenever used herein, and any pronouns used in place thereof, shall be held to mean and include the above-named Grantor, its successors, heirs and assigns, the [easement grantee] and its successors, heirs, and assigns, and DWR, its successors and assigns.
- E. The Grantor and Conservation Area Steward intend to create through this Conservation and Flood Easement real covenants and equitable servitudes running with the land. The covenants, terms conditions and restrictions of this Conservation and Flood Easement shall run with the land and burden and benefit the interests included in the Conservation and Flood Easement and the underlying fee of the Property (reserved interests of the Grantor), and shall be binding on and inure to the benefit of the Grantor and the Conservation Area Steward and their respective successors, heirs and assigns. If the Conservation Area Steward or its successors, heirs, and assigns become defunct and unable to fulfill the easement grantee responsibilities, the California Department of Fish and Game shall replace the easement grantee, and shall assume all rights, interests, duties and responsibilities associated with being the grantee of the aforementioned conservation and flood easement.

- F. Grantor agrees to reference this Conservation and Flood Easement in any subsequent deeds or other legal instruments, which are used to convey fee interests in all or any portion of the Property.
- G. Any notice required by this Conservation and Flood Easement shall be in writing and shall be personally delivered or sent by prepaid first class mail, or by other commercially acceptable means to Grantor and Conservation Area Steward respectively at the following addresses, unless a party has been notified by the other of a change of address.

With an additional copy to:

To DWR: Property Management Section
Division of Land and Right-of-Way
1416 Ninth Street, Room 421
Sacramento, CA 95814.

With an additional copy to:

Chief Counsel
Department of Water Resources
1416 Ninth Street, Room 1118
Sacramento, CA 95814

- H. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed to be an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- I. If any provision of this Conservation and Flood Easement is found to be invalid or inapplicable to a particular entity, the remainder of the provisions of the Conservation and Flood Easement shall not be affected thereby.
- J. The provisions of this Conservation and Flood Easement shall be liberally construed to effectuate its conservation purposes.
- K. This Conservation and Flood Easement shall be interpreted pursuant to the laws of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

- L. Enforcement of the terms of this Easement shall be at the discretion of the respective parties, and any forbearance by Grantor or Grantee to exercise their rights under this easement shall not be deemed or construed as a waiver by Grantor or Grantee of such term or of any subsequent breach of the same or any other term of this Easement of any of their rights under this Easement. No delay or omission by Grantor or Grantee in the exercise of right or remedy upon any breach by Grantor or Grantee shall impair such right or remedy or be construed as a waiver.
- M. Nothing contained in this Easement shall be construed to entitle any party to bring any action against Grantor or Grantee for any injury to or change in the Conservation Area resulting from causes beyond their control, including, without limitation, fire, drought, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Area and downstream property owners from such causes.
- N. This instrument sets forth the entire agreement of the parties with respect to the Conservation Area, and supersedes all prior discussions, negotiations, understandings, or agreements related to this easement except for the funding agreement between DWR and the Grantee or Grantor by which funds are provided to acquire in whole or in part the property rights related to the Conservation Area which remains in effect for the duration of its term.
- O. In the event the Conservation Area fee title and this Easement are ever owned by the same entity, there shall be no express or implied merger by operation of law or otherwise. If any party should claim such a merger, the parties agree that any and all terms and conditions of this Easement shall be deemed covenants and restrictions upon the Conservation Area, which shall run with the land according to California and/or other applicable law and otherwise exist in perpetuity.
- P. Grantor and Grantee hereby waive, solely as to each other any defense of laches, estoppel, or prescription.
- Q. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

This Conservation and Flood Easement may be amended only with the written consent of DWR, Grantor and Conservation Area Steward, in the form of an Amended Conservation and Flood Easement, which shall be recorded in the Official Records of County. Any such amendment shall be consistent with all applicable laws.

IN WITNESS WHEREOF, the undersigned have executed this Conservation and Flood Easement as of the dates set forth besides such party's respective name.

GRANTOR:

[Name of grantor organization]

Date: _____, 2001

By: _____

Name: _____

Title: _____

GRANTEE:

[Name of grantee organization]

Date: _____, 2001

By: _____

Name: _____

Title: _____

STANDARD CLAUSES - CONTRACTS WITH PUBLIC ENTITIES

Workers' Compensation Clause. Contractor affirms that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor affirms that it will comply with such provisions before commencing the performance of the work under this contract.

Claims Dispute Clause. Any claim that Contractor may have regarding the performance of this agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the Director, Department of Water Resources, within thirty days of its accrual, State and Contractor shall then attempt to negotiate a resolution of such claim and process an amendment to this agreement to implement the terms of any such resolution.

Nondiscrimination Clause. During the performance of this contract, the recipient, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereunder (California Administrative Code, Title 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135 - 11139.5), and the regulations or standards adopted by the awarding State agency to implement such article. Contractor or recipient shall permit access by representatives of the Department of Fair Employment and Housing and the awarding State agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Recipient, Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Availability of Funds. Work to be performed under this contract is subject to availability of funds through the State's normal budget process.

Audit Clause. For contracts in excess of \$10,000, the contracting parties shall be subject to the examination and audit of the State Auditor for a period of three years after final payment under the contract. (Government Code Section 8546.7).

Payment Retention Clause. Ten percent of any progress payments that may be provided for under this contract shall be withheld per Public Contract Code Sections 10346 and 10379 pending satisfactory completion of all services under the contract.

Reimbursement Clause. If applicable, travel and per diem expenses to be reimbursed under this contract shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations. Contractor's designated headquarters for the purpose of computing such expenses shall be: Lakeport, CA.

Termination Clause. The State may terminate this contract without cause upon 30 days' advance written notice. The Contractor shall be reimbursed for all reasonable expenses incurred up to the date of termination.

Drug-Free Workplace Certification. By signing this contract, the Contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the Contractor or grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
2. Establish a Drug-Free Awareness Program to inform employees about all of the following:
 - (a) The dangers of drug abuse in the workplace,
 - (b) The person's or organization's policy of maintaining a drug-free workplace,
 - (c) Any available counseling, rehabilitation and employee assistance programs, and
 - (d) Penalties that may be imposed upon employees for drug abuse violations.
3. Every employee who works on the proposed contract or grant:
 - (a) Will receive a copy of the company's drug-free policy statement, and
 - (b) Will agree to abide by terms of the company's statement as a condition of employment on the contract or grant.

This contract or grant may be subject to suspension of payments or termination, or both, and the Contractor or grantee may be subject to debarment if the department determines that: (1) the Contractor or grantee has made a false certification, or (2) the Contractor or grantee violates the certification by failing to carry out the requirements noted above.

Americans With Disabilities Act. By signing this contract, Contractor assures the State that it complies with the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Conflict of Interest. Current State Employees: a) No State officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment. b) No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.

Former State Employees: a) For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. b) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

EXHIBIT G

FLOOD PROTECTION CORRIDOR PROGRAM MIDDLE CREEK FLOOD DAMAGE REDUCTION AND ECOSYSTEM RESTORATION PROJECT

PROPOSED MAINTENANCE ACTIVITIES

The Project consists of purchasing flood prone property for future implementation of the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project (Middle Creek Project). No facilities will be constructed as part of this Project that will require maintenance by the Lake County Flood Control and Water Conservation District (District). The District will own numerous properties in fee and will be responsible for their upkeep. As structures and improvements will be demolished, relocated and/or abandoned, and temporary erosion control measures will be implemented, maintenance is anticipated to be minimal. Maintenance activities proposed until full implementation of the Middle Creek Project include:

1. Properties will be controlled and inspected on an as needed basis to ensure damage is not done to the lands by illegal dumping of garbage, off-road vehicle use, etc. Fencing will be provided on an as needed basis.
2. Grass and weeds will be managed on the properties in order to prevent damage to neighboring properties. This may be by mowing or disking the perimeter of the property.
3. Payment of the Maintenance Area No. 17 (MA-17) annual assessment on the purchased properties.

All costs for maintenance will be paid from the maintenance trust fund. In the event the land is leased for agricultural purposes that are consistent with the goals of the Flood Protection Corridor Program, maintenance costs could be significantly reduced.

Costs are estimated as follows:

1. Regular inspections and cleanup as needed: \$1,000 per year
Barb wire fence construction: three (3) miles at \$5,000 per mile, O&M cost \$500 per year
2. Area to be mowed annually is seven (7) acres. Estimated cost of \$1,000 per year.
3. Estimated cost of MA-17 assessments
Eighteen (18) residential properties:
MA-17: \$19,017
MA-17 Assessment calculated based on required revenues of \$132,124 (2004 required revenue) per year and a 6%(normal County) delinquency factor. This assumes essentially all property owners pay their assessments.
Reclamation District 2070: \$3,354

Reclamation District 2070 assessment calculated based on 2002-2003 assessments.

Potential agricultural properties:

MA-17: \$22,604.36

These are the three properties south of the Highline Slough. MA-17 Assessment calculated based on required revenues of \$132,124 (2004 required revenue) per year and a six percent (normal County) delinquency factor. This assumes essentially that all property owners pay their assessments.

AMENDMENT 1

**STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
FIRST AMENDMENT TO THE FUNDING AGREEMENT
BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES
AND THE LAKE COUNTY WATERSHED PROTECTION DISTRICT
UNDER THE FLOOD PROTECTION CORRIDOR PROGRAM**

On August 28, 2003, the State of California Department of Water Resources (hereinafter called the State), and the Lake County Watershed Protection District (formerly Lake County Flood Control District, hereinafter called the District). entered into a grant funding agreement for the purpose of acquiring interests in real property from willing sellers to protect or enhance flood protection corridors while preserving or enhancing wildlife values of the real property. The overall project includes acquisition of flooding rights and habitat restoration within a target area flood plain encompassing 1,600 acres. Of the 10 properties targeted for acquisition, the District has acquired in fee title four of the real properties and accomplished relocation of those owners requiring relocation assistance.

The State and the District desire to amend the original Agreement by extending the term of the Agreement by 3 years to provide the opportunity for the District to continue negotiations for the purchase of properties representing similar value.

The August 28, 2003 agreement is hereby amended by this instrument, Amendment No. 1, executed in quintuplicate to be effective August 28, 2006. This amendment is necessary to fulfill the intent and purpose of the August 28, 2003 agreement. Following this amendment, funds from the Flood Protection Corridor Program grant will continue to be used to acquire interest in real property for flood damage reduction while preserving wildlife value as provided by the California Water Code, section 79037(b) (4), for properties located at the north end of Clear Lake in the area bounded by State Highway 20 and Rodman Slough in Lake County.

This amendment includes a budget increase of \$500,000 to be obtained from funds made available by budget reductions in other FPCP projects. The purpose of this budget increase for the Middle Creek project is to cover the appreciation of land and relocation costs that have occurred since the original funding agreement budget was developed.

The State and the District hereby agree as follows:

The original Agreement dated August 28, 2003 remains binding with the following modifications:

1. The term of this Agreement which began on August 28, 2003 is hereby amended as of August 28, 2006 to extend the term until August 28, 2009. The provisions of this Agreement relating to maintenance, operation, monitoring, and reporting, shall continue to bind the District (or its successor as approved fee owner or easement holder) to the extent indicated herein.
2. Wherever the date August 28, 2006 appears in the Agreement, it shall be replaced with August 28, 2009.
3. Wherever the date October 27, 2006 appears in the Agreement, it shall be replaced with October 27, 2009.
4. The original budget shall be replaced by the amended budget (Exhibit C) attached and by this reference incorporated herein, showing remaining funds available for project administration and property acquisitions not to exceed \$3,871,713.

All other terms and conditions of the August 28, 2003 agreement remain unchanged.

IN WITNESS WHEREOF, the following authorized representatives have executed this Agreement as of the date first above written.

COUNTY OF LAKE



Chair, Board of Directors



ATTEST: KELLY COX
Clerk to the Board

By: 

APPROVED AS TO FORM:
ANITA GRANT
County Counsel

By: 

STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES

By: 

Lester A. Snow, Director

Date: 12/28/04

Approved as to Legal Form and Sufficiency

By: 

David Sandino, Chief Counsel

Date: 12/11/06

Exhibit C: Revised Budget

SAP Contract No4600003318

[illegible]

AMENDMENT 2

**STATE OF CALIFORNIA
CALIFORNIA NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
SECOND AMENDMENT TO THE FUNDING AGREEMENT
BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES
AND THE LAKE COUNTY WATERSHED PROTECTION DISTRICT
UNDER THE FLOOD PROTECTION CORRIDOR PROGRAM**

On August 28, 2003, the State of California Department of Water Resources (hereinafter called the State), and the Lake County Watershed Protection District (hereinafter called the District), entered into a grant funding agreement for the purpose of acquiring interests in real property from willing sellers to protect or enhance flood protection corridors while preserving or enhancing wildlife values of the real property.

The State and the District desire to amend the original Agreement by extending the term of the Agreement by an additional 5 years to provide the opportunity for the District to continue negotiations for the purchase of properties as outlined in the original agreement. This amendment also includes a budget increase of \$7,000,000 to be obtained from funds made available by Proposition 84 and Proposition 13. The revised budget and timeline allows for continued execution of tasks as specified in Exhibit C of the original agreement. Task 3 is revised to allow the District to be reimbursed in arrears for properties purchased with District funds. In addition to the tasks contained in the original agreement, this amendment will allow for a new task – Task 6 – to provide partial funding for the local share of the U.S. Army Corps of Engineers (USACE) design costs.

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The August 28, 2003 Agreement as amended effective August 28, 2006, is hereby amended by this instrument, Amendment No. 2, executed in quintuplicate to be effective August 28, 2009. This amendment is necessary to fulfill the intent and purpose of the August 28, 2003 Agreement. Following this amendment, funds from the Flood Protection Corridor Program grant will continue to be used to acquire interest in real property for flood damage reduction while preserving wildlife value as provided by the California Water

Code, section 79037(b) (4), for properties located to the North of Clear Lake in the area bounded by State Highway 20 and Rodman Slough in Lake County.

The State and the District hereby agree as follows:

The original Agreement dated August 28, 2003, remains binding with the following modifications:

1. The term of this Agreement which began on August 28, 2003, and as amended as of August 28, 2006, is hereby amended to extend the term until August 28, 2014. The provisions of this Agreement relating to maintenance, operation, monitoring, and reporting, shall continue to bind the District (or its successor as approved fee owner or easement holder) to the extent indicated herein.
2. Wherever the date August 28, 2009, appears in the Agreement as amended, it shall be replaced with August 28, 2014.
3. Wherever the date October 27, 2009, appears in the Agreement as amended, it shall be replaced with October 27, 2014.
4. The original budget shall be replaced by the amended budget (Exhibit C) attached and by this reference incorporated herein, showing remaining funds available for project administration and property acquisitions not to exceed \$8,047,508.47. The amended budget reflects the \$7,000,000.00 budget increase and brings the total approved budget including expenditures to a grand total of \$12,714,000.00.
5. Task 3: The property rights acquisition clause is hereby revised as follows:

16. Property Rights Acquisition

F. **Method of Payment.** Funds provided by the State for real property acquisitions shall be deposited by the State with an escrow holder acceptable to the State and with escrow instructions regarding funding and disbursement to be approved by the State when State funds are available. When funds are not available from the State at the time of escrow, the District may purchase property from documented willing sellers in the project area at their own expense, in which case, the State will directly reimburse the District in arrears at the State's discretion provided all other State requirements are met including, but not limited to a property appraisal approved by the State. If the State provides funds with an escrow holder and escrow does not close by the date set forth in the State's escrow instructions, or such other date as may be agreed to by the parties, the funds provided by the State shall be returned to the State.

6. Task 6 Design Cost: Amendment 2 will provide \$390,000.00 for the local cost share of design costs between the U.S. Army Corp of Engineers (USACE) and the District.

All other terms and conditions of the August 28, 2003 Agreement remain unchanged.

EXHIBIT C - REVISED

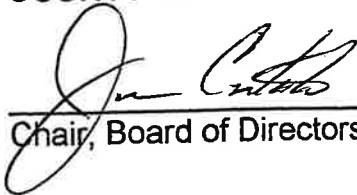
**Flood Protection Corridor Program
Middle Creek Flood Damage Reduction and Ecosystem Restoration Project
Proposed Budget, Amendment 2**

Task	Category	Orig Budget	Amend 1 Adjust	Amend 1 Budget	Amend 2 Adjust	Amend 2 Budget	Expenditures	Remaining
1	Administration	\$244,000	\$54,842	\$298,842	\$511,158	\$810,000	\$ (298,842.00)	\$511,158
2	Relocation, Demolition & Cleanup	\$675,000	(\$34,000)	\$641,000	\$379,000	\$1,020,000	\$ (478,956.78)	\$541,043
3	Acquisition Costs	\$3,090,000	\$1,054,000	\$4,144,000	\$5,015,000	\$9,159,000	\$ (3,405,552.75)	\$5,753,447
4	Hydraulic Mitigation	\$605,000	(\$605,000)	\$0	\$0	\$0	\$0	\$0
5	Property Maintenance	\$600,000	\$30,158	\$630,158	\$704,842	\$1,335,000	\$ (483,140.00)	\$851,860.00
6*	Design	\$0	\$0	\$0	\$390,000	\$390,000	\$ -	\$390,000.00
		----	-----	-----	-----	-----	-----	-----
	Total	\$5,214,000	\$500,000	\$5,714,000	\$7,000,000	\$12,714,000	\$ (4,666,491.53)	\$8,047,508.47

*Task 6: Design Costs- A new task that will provide money for 50% of the local share.
A portion of Invoice #3 is being withheld as retention (\$54,571.73).

IN WITNESS WHEREOF, the following authorized representatives have executed this Agreement as of the date first above written.

COUNTY OF LAKE


Chair, Board of Directors

ATTEST: KELLY COX
Clerk to the Board

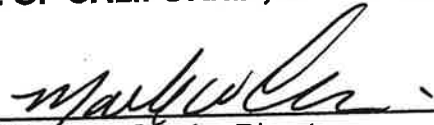
By: 
Miraya Murren



APPROVED AS TO FORM:
ANITA GRANT
County Counsel

By: 
Anita Grant

STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES

By: 
Mark W. Cowin, Director

Date: 4/1/2011

Approved as to Legal Form and Sufficiency

By: 
Cathy Crothers, Acting Chief Counsel

Date: 5-23-11

The within instrument is a correct copy of the Document on file in this office.

ATTEST: 06-07-2011

KELLY F. COX
Clerk of the Board of Supervisors of
the State of California in and for the
County of Lake.

By: 
Miraya Murren



AB
5/23/11

AMENDMENT 3

**STATE OF CALIFORNIA
CALIFORNIA NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
THIRD AMENDMENT TO THE FUNDING AGREEMENT
BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES
AND THE LAKE COUNTY WATERSHED PROTECTION DISTRICT
UNDER THE FLOOD PROTECTION CORRIDOR PROGRAM**

On August 28, 2003, the State of California Department of Water Resources (hereinafter called the State), and the Lake County Watershed Protection District (hereinafter called the District), entered into a grant funding agreement for the purpose of acquiring interests in real property from willing sellers to protect or enhance flood protection corridors while preserving or enhancing wildlife values of the real property.

The State and the District desire to amend the original Agreement by extending the term of the Agreement by an additional 34 months to provide the opportunity for the District to complete property acquisition and demolition as outlined in the original agreement. The revised timeline allows for continued execution of tasks as specified in Exhibit C of the original agreement.

The August 28, 2003 Agreement was amended in 2006 and 2011, is hereby amended by this instrument, Amendment No. 3, executed in quintuplicate to be effective August 28, 2014. This amendment is necessary to fulfill the intent and purpose of the August 28, 2003 Agreement. Following this amendment, funds from the Flood Protection Corridor Program grant will continue to be used to acquire interest in real property for flood damage reduction while preserving wildlife value as provided by the California Water Code, section 79037(b) (4), for properties located to the North of Clear Lake in the area bounded by State Highway 20 and Rodman Slough in Lake County.

The State and the District hereby agree as follows:

The original Agreement dated August 28, 2003, remains binding with the following modifications:

1. The term of this Agreement which began on August 28, 2003, and as amended as of August 28, 2006 and March 20, 2011, is hereby amended to extend the term until June 30, 2017. The provisions of this Agreement relating to maintenance, operation, monitoring, and reporting, shall continue to bind the District (or its successor as approved fee owner or easement holder) to the extent indicated herein.

2. Wherever the date August 28, 2014, appears in the Agreement as amended, it shall be replaced with June 30, 2017.
3. Wherever the date October 27, 2014, appears in the Agreement as amended, it shall be replaced with August 31, 2017.

All other terms and conditions of the August 28, 2003 Agreement remain unchanged.

IN WITNESS WHEREOF, the following authorized representatives have executed this Agreement as of the date first above written.

COUNTY OF LAKE

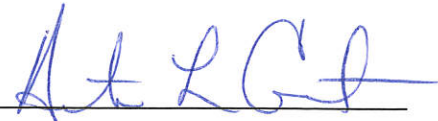

Chair, Board of Directors

ATTEST: MATT PERRY
Clerk to the Board



By: 

APPROVED AS TO FORM:
ANITA GRANT
County Counsel

By: 

STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES

By: 
Keith E. Swanson, Chief, Division of Flood Management

Date: 8/29/14

Approved as to Legal Form and Sufficiency

By:  8-26-14
Robin E. Brewer, Acting Chief Counsel

Date: 8-26-14



Fidelity National Title Company

377 Lakeport Blvd., Lakeport, CA 95453
Phone: (707)263-0127 | FAX: (707)263-0901

FINAL BUYER'S STATEMENT

Settlement Date: October 22, 2015

Escrow Number: FSON-0301-FSNX-3011400337

Disbursement Date: October 22, 2015

Escrow Officer: Sharon Salvador

Buyer: Lake County Watershed Protection District, a public entity
255 N. Forbes St.
Lakeport, CA 95453

Seller: Robinson Lake Vineyard, LLC, a California limited liability company who acquired title as
Robinson Lake Vineyard, LLC
2042 Pine Acres
Conroe, TX 77384

Property: 755 and 737 E. State Hwy 20
Upper Lake, CA
Parcel ID(s): 004-010-040-000 004-013-180-000

		\$ DEBIT	\$ CREDIT
FINANCIAL CONSIDERATION			
Contract sales price		1,510,000.00	
Buyer's funds to close	Lake County Watershed Protection District, a public entity		1,529,906.82
PRORATIONS/ADJUSTMENTS			
Relocation of personal property and equipment		17,354.94	
County taxes	07/01/15 to 10/22/15 (\$7,171.93 / 180 X 111 days)		4,422.69
TITLE & ESCROW CHARGES			
Escrow Fee	Fidelity National Title Company	2,350.00	
RE: Commercial			
Owner's title insurance	Fidelity National Title Company	3,408.00	
Policies to be issued:			
Owners Policy			
Coverage: \$1,510,000.00	Premium: \$3,408.00 Version: CLTA Standard Coverage Policy 1990		
MISCELLANEOUS CHARGES			
refund of excess funds	Department of Water Resources	1,216.57	
Subtotals		1,534,329.51	1,534,329.51
TOTALS		1,534,329.51	1,534,329.51

SAVE THIS STATEMENT FOR INCOME TAX PURPOSES

Recording Requested By:

Lake County Watershed Protection District

And When Recorded Mail To:

Board of Directors
Lake County Watershed Protection District
Courthouse – 255 N. Forbes Street
Lakeport, CA 95453

Documentary Transfer Tax \$ Exempt
County of Lake

By: Thomas R. Ford

Recording Fee \$0.00

Govt. Code 27383



Doc # 2015013886
Page 1 of 4
Date: 10/22/2015 09:03A
Filed by: FIDELITY NATIONAL TITLE
Filed & Recorded in Official Records
of COUNTY OF LAKE
RICHARD A. FORD
COUNTY RECORDER
Fee: \$0.00

004-010-040
004-013-180

Space Above This Line For Recorder's Use

GRANT DEED

**ROBINSON LAKE VINEYARD, LLC, a California limited liability company who acquired title as
ROBINSON LAKE VINEYARD, LLC**

do(es) hereby GRANT to the

**LAKE COUNTY WATERSHED PROTECTION DISTRICT, a public entity, the following
described real property in the County of Lake, State of California;**

FOR DESCRIPTION, SEE EXHIBIT "A" ATTACHED HERETO:

**ROBINSON LAKE VINEYARD, LLC,
a California limited liability company**

BY: Katherine Mims

Katherine Mims, Manager

Dated: 7/30/15BY: Kevin Mims

Kevin Mims, Manager

(Signatures must be notarized)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of ~~California~~ ^{Texas})
) ss
County of ~~Montgomery~~)

On August 3, 2015, 2015 before me, Wendy R Trahan, Notary Public, personally appeared Katherine Minus, Manager who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument. and Kevin Minus, Manager of Robinson Lake Vineyard, LLC

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.

Wendy R Trahan

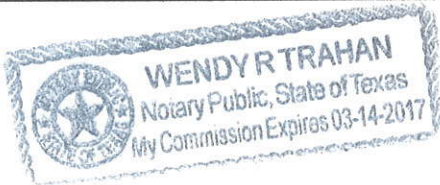


EXHIBIT "A"

LEGAL DESCRIPTION

For APN/Parcel ID(s): 004-010-040-000 and 004-013-180-000

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF LAKE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Beginning at the Northwest corner of the Northeast quarter of Section 18, Township 15 North, Range 9 West, M.D.B. & M.; thence running North 13° East 13.40 chains to the center of creek; thence following the meanders of said creek North 3° East 5 chains; thence North 34° 30' East 6.33 chains; thence North 12° East 4.87 chains; thence North 43° East 11.66 chains; thence North 6° 30' East 4 chains to the County Road; thence East 25.08 chains to the quarter corner between Sections 7 and 8 of said Township and Range; thence South along the Section line 15.11 chains; thence West 20 chains; thence South 24.89 chains to the North line of said Section 18; thence West 20 chains to the place of beginning.

Excepting therefrom all that portion thereof lying Northerly of the Southerly line of State Highway 20.

Also excepting therefrom all that portion conveyed to the State of California by Deed recorded February 10, 2009, Instrument No. 2009-001937, of Official Records.

APN: 004-010-040-000

Parcel Two:

Parcel A, as shown on a map filed in the office of the County Recorder of said Lake County on April 24, 1985, in Book 26 of Parcel Maps at Page 32, being a portion of Section 18, Township 15 North, Range 9 West, M.D.M.

APN: 004-013-180-000

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed dated April 30, 2015, from Robinson Lake Vineyard, LLC, a California limited liability company who acquired title as Robinson Lake Vineyard, LLC to the LAKE COUNTY WATERSHED PROTECTION DISTRICT, a public entity, is hereby accepted by order of the Board of Directors on 07/21/2015, and the grantee consents to recordation thereof by its duly authorized officer.

DATED: 07/21/2015

COUNTY OF LAKE
MATT PERRY
Clerk of the Board

By: 

Government Code
27281



RECORDING REQUESTED BY:

Johanna DeLong, Asst. Clerk

WHEN RECORDED MAIL TO:

Johanna DeLong
255 N. Forbes Street
Lakeport, CA, 95453



Doc # 2024004646
Page 1 of 25
Date: 5/7/2024 12:40P
Filed by: LAKE CO
Filed & Recorded in Official Records
of COUNTY OF LAKE
RICHARD A. FORD
COUNTY RECORDER
Fee: \$0.00

THIS SPACE FOR RECORDER'S USE ONLY

TITLE OF DOCUMENT

Lease Agreement

No fee for recording pursuant to
Government Code Section 27383 and 27388.1

LEASE AGREEMENT

THIS AGREEMENT is entered into this 23rd day of April, 2024, by and between the LAKE COUNTY WATERSHED PROTECTION DISTRICT, (the "DISTRICT") and the SCOTTS VALLEY ENERGY CORPORATION, a wholly tribally owned company established under the Scotts Valley Band of Pomo Indians of California's Tribal Business Corporation Code, ("SCOTTS VALLEY") for the lease of real property more particularly described herein-below (the "Leased Property").

I. THE LEASED PROPERTY

DISTRICT hereby leases to SCOTTS VALLEY and SCOTTS VALLEY hereby leases from DISTRICT on the terms and conditions herein set forth, the following described real property situated in the County of Lake, State of California, to wit:

A Parcel Beginning at the Northwest corner of the Northeast quarter of Section 18, Township 15 North, Range 9 West, M.D.B. & M.; thence running North 13° East 13.40 chains to the center of creek; thence following the meanders of said creek North 3° East 5 chains; thence North 34° 30' East 6.33 chains; thence North 12° East 4.87 chains; thence North 43° East 11.66 chains; thence North 6° 30' East 4 chains to the County Road; thence East 25.08 chains to the quarter corner between Sections 7 and 8 of said Township and Range; thence South along the Section line 15.11 chains; thence West 20 chains; thence South 24.89 chains to the North line of said Section 18; thence West 20 chains to the place of beginning.

II. LEASE TERM AND COMPENSATION

Subject to Section III herein-below, the term of this Lease Agreement shall be for a maximum term of fifteen (15) years for a rental amount of one hundred dollars (\$100.00) per year. The lease may be renewed for an additional term pursuant to the terms and

conditions mutually agreed upon by the parties and memorialized in writing. This Lease Agreement is of benefit to the DISTRICT because it reduces the maintenance burden for the DISTRICT and maintains a mutually beneficial government-to-government relationship between the DISTRICT and SCOTTS VALLEY. The biomass processing depot will increase fire fuel reduction efforts by serving as a central processing system for forest thinning biomass collected throughout Lake County. Moreover, the proposed system will produce biochar, which has potential to provide environmental benefits such as increasing soil carbon sequestration, crop yield, and soil fertility while reducing greenhouse gas emissions and nitrogen leaching. The biochar produced from this facility will also greatly improve water quality with its use as a filtration medium.

III. TERMINATION

This agreement may be terminated as follows:

- (a) By mutual consent of the parties,
- (b) By the Director of Water Resources thirty (30) days after delivery of written notice to the other party.

In the event this agreement is terminated, SCOTTS VALLEY at its sole expense shall remove such structures or improvements from said property as it may have erected thereon and shall return the leased property to the same conditions existing at the time this Lease Agreement was entered into within ninety (90) days of such termination.

IV. PERMISSIBLE USE OF LEASED PROPERTY

SCOTTS VALLEY may use said property for the following purposes only:

1. The establishment, maintenance and operation of a biochar production and wood / biomass processing facility which may include storage and operation of heavy equipment, wood staging facility and equipment,

materials for the biochar unit and products from the biochar unit and wood processing equipment.

2. Construction of additional facilities within the designated area providing that all such construction, development plans, lay-out plans, construction plans, alteration of land or improvements for the area are approved in advance in writing by the DISTRICT. Trees or shrubbery in the project area may be removed or destroyed only if the DISTRICT has expressly approved such removal and/or destruction in writing and marked or otherwise designated those that may be removed or destroyed.
3. EXCEPT AS SPECIFIED HEREIN BELOW, SCOTTS VALLEY is prohibited from using, storing, or placing on the Lease Property for any length of time any materials deemed to be "Hazardous Materials" as defined by California Health and Safety Code section 25115 or 25117 and California Administrative Code of Regulations, Title 22, Chapter 11; or the Code of Federal Regulations, Title 40, Sections 261.31 through 261.33.
4. SCOTTS VALLEY shall be permitted to store diesel fuel on the Leased Property in the form of an above-ground container with a volume no greater than fifty (50) gallons. SCOTTS VALLEY shall install and maintain a spill containment and prevention area where said diesel fuel is stored is satisfactory to the DISTRICT.

Throughout the term of this Lease Agreement, all fuel storage containers and/or tanks shall be securely fixed and so situated to reduce their visual impacts. Said containers/tanks shall not leak and must have effective

filling and venting arrangements. Such containers/tanks must be isolated and/or insulated from engines and other equipment and must have easily-accessible means of shutting off the fuel supply.

V. COMPLIANCE WITH ALL FEDERAL, STATE, AND LOCAL LAWS

1. SCOTTS VALLEY shall, at its sole cost and expense, comply with all requirements of all County, State and Federal authorities now in force, or which may hereafter be in force, pertaining to said premises, and shall faithfully observe in the use of the premises all County ordinances and State and Federal Statutes now in force or which may hereafter be in force.

2. SCOTTS VALLEY shall be solely responsible for ensuring that all environmental compliance requirements of state and federal law are met, and SCOTTS VALLEY's use of the Leased Property shall be subject to meeting all permit and environmental compliance requirements.

VI. ASSUMPTION OF RISK AND WAIVER OF CLAIMS

SCOTTS VALLEY, hereby expressly assumes any and all risks associated with its use of the Leased Property and, as a material part of the consideration to be rendered to DISTRICT, hereby waives all claims against DISTRICT, County of Lake, State of California, and their agents for damages to property in, upon or about said premises and for injuries to SCOTTS VALLEY, its agents, or third persons in or about the premises from any cause arising at any time.

VII. HOLD HARMLESS

SCOTTS VALLEY shall indemnify, defend, protect, and hold harmless DISTRICT and DISTRICT's officers, employees, and agents against all liabilities, claims, demands, damages, and costs (including attorneys' fees and litigation costs) to the extent caused by

the negligent or intentional acts or omissions of SCOTTS VALLEY or SCOTTS VALLEY's officers, employees, or agents. SCOTTS VALLEY's obligation under this Section covers, but is not limited to liabilities, claims, demands, damages, and costs arising from injury to or death of any person (including SCOTTS VALLEY's and DISTRICT's officers, employees and agents), and from damage to or destruction of any property (including SCOTTS VALLEY's and DISTRICT's real and personal property). SCOTTS VALLEY is not obligated, however, to the extent that the negligent or intentional acts or omissions of DISTRICT or DISTRICT's officers, employees and agents cause such liabilities, claims demands, damages, or costs. SCOTTS VALLEY's obligation under this Section shall survive this Agreement.

VIII. INSURANCE REQUIREMENTS

SCOTTS VALLEY further agrees to obtain and continue in force at all times during the term of this agreement comprehensive public liability insurance. The certification of insurance shall contain a provision that coverage afforded under the policies will not be cancelled until at least twenty (20) days prior written notice has been give to DISTRICT. Certification evidencing the insurance described herein shall be filed with the DISTRICT within ten (10) days after the date of execution of this lease by SCOTTS VALLEY.

SCOTTS VALLEY shall procure and shall maintain, during the life of this lease, at the SCOTTS VALLEY's expense during the term hereof, Comprehensive Public Liability Insurance, both bodily injury and property damage, in an amount of not less than (five hundred thousand) \$500,000 combined single limit coverage per occurrence, including but not limited to endorsements for the following coverages: personal injury, premises-operations, products and completed operations, blanket contractual, and independent contractors' liability. SCOTTS VALLEY shall deliver to DISTRICT an "Additional Insured

Endorsement" naming DISTRICT, its officers, employees and agents and the County of Lake, its officers, employees, and agents as additional insureds.

IX. ASSIGNMENT

SCOTTS VALLEY shall not assign this Agreement or any interest therein; and shall not sublet the said premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of SCOTTS VALLEY excepted) to occupy or use the said premises or any portion thereof, without the written consent of DISTRICT first had and obtained, and a consent to one assignment, subletting, occupation or use by another shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of DISTRICT, terminate this agreement.

X. ADVERTISING SIGNAGE PROHIBITED

No advertising, price lists, signs or billboards may be displayed by SCOTTS VALLEY without the approval of DISTRICT.

XI. LIMITED PUBLIC ACCESS

SCOTTS VALLEY covenants and agrees that the general public shall have the right to limited access to the Leased Premises from time to time under such reasonable conditions and days and times as determined by SCOTTS VALLEY to be appropriate.

XII. COUNTY, DISTRICT, STATE RIGHT OF INGRESS AND EGRESS

The officers, agents, employees and permittees of the County of Lake, the DISTRICT, and the State of California shall at all times and places, have the right to full ingress to, passage over, and egress from, all of said lands for the purpose of carrying on operations of the County of Lake, the DISTRICT and the State of California.

XIII. MAINTENANCE OF PREMISES

SCOTT VALLEY shall:

1. Be responsible for securing and remitting payment for, and maintaining all utilities, insurance, licenses, use permits, and all other regulatory costs, and all other expenses in connection with the operation of the activities herein referred to.
2. Exercise due diligence in protecting from damage the land and property of DISTRICT, covered by and used in connection with the permitted use of the Leased Property, and shall pay to the DISTRICT the full and complete cost for all damages resulting from SCOTT VALLEY's negligent or willful misconduct, including in its performance of this Lease Agreement actions or from the violation of the terms of this Agreement, or the violation of any law or regulation applicable to these particular Public Lands, by SCOTT VALLEY, which shall include, but not be limited to actions by its agents, employees, and officials, Be responsible for the daily and continuous maintenance of the Leased Property and shall keep the same clean and in good order, as directed by DISTRICT.
3. Maintain the improvements and premises to standards of repair, sanitation, and safety acceptable to the DISTRICT.

XIV. UTILITIES

SCOTT VALLEY shall maintain and be responsible for establishing, maintaining, operating, any water, power, sewer or other desired or needed utility on the parcel necessary to the safe operation of the Biochar facility. Unless another agreement exists, the SCOTT VALLEY will bear the cost of any needed utility for the biochar facility.

Any utility established shall be approved by the DISTRICT prior to commencing and notification of status of utilities shall be provided to the DISTRICT monthly.

XV. NO COUNTY COMMITMENT TO APPROVE ANY PROJECT ASSOCIATED WITH THE USE OF THE LEASED PROPERTY

Although the County of Lake may be deemed a third-party beneficiary of Sections V, VI, and VIII of this Lease Agreement, the parties understand and agree that entering into this Lease Agreement does not in any way obligate and/or commit the County of Lake to approve any project application submitted by Scotts Valley relating to its use of the Leased Property as described herein. The County of Lake retains and shall exercise its police power authority, including the authority to exercise its independent judgment to approve, approve with conditions or deny any such project application.

XVI. LIMITED WAIVER OF SOVEREIGN IMMUNITY

SCOTTS VALLEY hereby expressly and irrevocably waives its sovereign immunity (and any defense based thereon) in favor of the DISTRICT as to any dispute which arises out of or relates to this Lease Agreement. SCOTTS VALLEY hereby consents to the jurisdiction of the Superior Court of the State of California, County of Lake (hereinafter "Superior Court"), for the limited purpose of adjudicating any dispute arising out of this Lease Agreement. SCOTTS VALLEY and the DISTRICT agree that the venue of any action arising in any way out of the obligations of the parties under this Lease Agreement shall be, if in State Court, in the Superior Court and, if in Federal Court, in the Northern District Court in San Francisco, California.

XVII. MISCELLANEOUS PROVISIONS

SCOTTS VALLEY further agrees that it shall do the following:

1. Immediately report any violations of the law which come to the attention of SCOTTS VALLEY to the Lake County Sheriff.
2. Refrain from representing to the public in any manner that it is an agent

or employee of the DISTRICT.

3. No camping or overnight occupancy is allowed.

XVIII. ADDITIONAL PROVISIONS

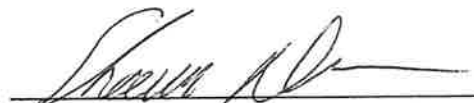
This agreement shall be governed by the laws of the State of California. It constitutes the entire agreement between the parties regarding its subject matter. This agreement supersedes all proposals, oral and written, and all negotiations, conversations, or discussions heretofore and between the parties related to the subject matter of this agreement. Executed at Lakeport, California, on the day and year first written above.

LAKE COUNTY WATERSHED
PROTECTION DISTRICT



Chairman, Board of Directors

SCOTTS VALLEY ENERGY
CORPORATION



Council Chair

ATTEST:

SUSAN PARKER
Clerk of the Board

SHAWN DAVIS

By: 

APPROVED AS TO FORM:
LLOYD GUINTIVANO
County Counsel

By: 



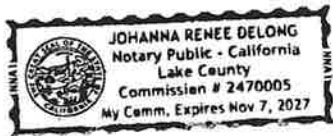
CALIFORNIA ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Lake }On 05/07/2024 before me, Johanna DeLong, Notary Public
Date Here Insert Name and Title of the Officerpersonally appeared Beno Subatier
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature Johanna DeLong
Signature of Notary Public**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer -- Title(s): _____☐ Partner -- ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer -- Title(s): _____☐ Partner -- ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

ACKNOWLEDGMENT

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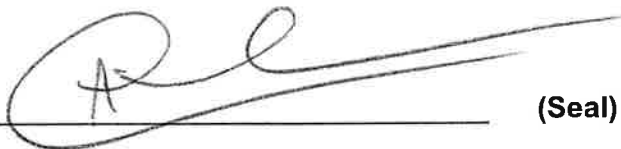
State of California
County of ALAMEDA)

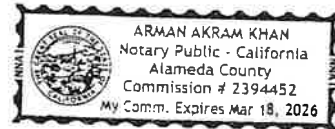
On 04/30/2024 before me, ARMAN AKRAM KHAN, NOTARY PUBLIC
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature  (Seal)



From: Madankar, Nahideh@DWR
Sent: Wednesday, May 21, 2025 12:25 PM
To: Upadhyay.Pawan@LC
Cc: Bryson, Elizabeth@DWR
Subject: 2008 Conservation Easement Deed
Attachments: Conservation Easement 10-07-2008.pdf

Pawan,

Thanks for today's call. Attached is an example of a signed conservation easement deed for one of the purchased project properties.

Regards,

Nahideh Madankar, P.E.

Department of Water Resources
3464 El Camino Avenue, Suite 200
Sacramento, CA 95821
Phone: (916) 820-7550
Nahideh.Madankar@water.ca.gov



RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

State of California
Wildlife Conservation Board
1807 13th Street, Suite 103
Sacramento, CA 95811
Attn: Rob Kane

Doc # 2010006093
Page 1 of 17
Date: 4/27/2010 10:33A
Filed by: NO FEE DOCUMENT
Filed & Recorded in Official Records
of COUNTY OF LAKE
DOUGLAS W. WACKER
COUNTY RECORDER
Fee: \$0.00

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED is made this 7th day of October, 2008, by Lake County Watershed Protection District ("Grantor"), in favor of THE STATE OF CALIFORNIA ("Grantee"), acting by and through its Department of Fish and Game, Wildlife Conservation Board, with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately 102 acres, located in the County of Lake, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

B. Grantor acquired fee title to the Property through grants of funding provided by the State of California, specifically, the California Department of Water Resources ("DWR"). DWR awarded State Proposition 13 funds to Grantor to acquire the Property and to carry out stewardship and management activities on the Property, including maintenance, monitoring, and ecosystem restoration. DWR determined the Property acquisition and/or easement conveyance would implement the purposes of the Grantor and DWR by (1) reducing potential flood damages; (2) providing opportunities to restore riparian habitat; (3) protecting the floodplain from potential inappropriate and incompatible development; and (4) providing a potential role in future flood management and water management improvements.

C. DWR awarded California Proposition 13 funds to Grantor to contribute to the cost of Grantor acquiring fee title to the Property. In awarding the funds to Grantor, it was DWR's intent that the project conserve wildlife and complimentary agricultural values while maintaining the availability of the property for floodwater conveyance and transitory storage purposes. DWR determined that acquisition of the Property by Grantor, Grantor's continued management and use of the Property as a flood corridor for floodwater overflow or conveyance from Clear Lake as well as for wildlife habitat preservation purposes, and Grantor's intention to integrate the Property into the Grantor's holdings encompassing the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project area will preserve land, protect wildlife habitat and protect its floodplain area from inappropriate or incompatible development and maintain its availability for flood management purposes consistent with the purposes of the Flood Protection Corridor Program described in Water Code section 79035 et seq.

TW

D. The contractual agreement which provides for the transfer of grant funds by DWR to Grantor for Grantor's acquisition of the Property acknowledges the multiple and complementary benefits the Property provides to the State of California for: (1) reducing potential flood damages; (2) providing opportunities to restore riparian habitat; (3) protecting the floodplain from potential inappropriate and incompatible development; and (4) providing a potential role in future flood management and water management improvements (hereafter "Multiple and Complementary Benefits").

E. Grantor and DWR acknowledge that the Grantor is evaluating the need for floodway improvements in the Clear Lake watershed. The Grantor's evaluation of alternatives for such floodway improvements in the Clear Lake area may include use of all or a portion of the Conservation Area for future flood management projects or activities.

F. It is the intent of the Grantee and Grantor, as parties to this Conservation Easement Deed, to protect each of the existing Multiple and Complementary Benefits of the Property and to cooperate in the implementation of any flood management project or activity on the Property that may evolve from the Grantor's flood management planning efforts.

G. Because this Conservation Easement was purchased with funds provided by the DWR Division of Flood Management, this Conservation Easement shall be consistent with any present or future flood management project or activity implemented on the Property, and any flood control easement recorded against the Property, that may evolve from the County's flood management planning efforts. Therefore, any such flood management project or activity, whether it involves non-structural flood management improvements or incidental structural modifications to support non-structural flood management improvements, or future flood control easement shall be a permitted use of the Property pursuant to the terms of this Conservation Easement.

H. It is the desire of the Department of Fish and Game to protect lands near the Clear Lake Wildlife Area for the purposes of wildlife and habitat protection and enhancement through such means as the existing Conceptual Area Acquisition Plan which supports protection through conservation easements or acquisitions.

I. The Department of Fish and Game has jurisdiction, pursuant to Fish and Game Code Section 1802, over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of those species, and the Department of Fish and Game is authorized to hold easements for these purposes pursuant to Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to California law, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property.

1. Purposes. The Property possesses significant wildlife, ecological and habitat values (collectively, "conservation values"). These natural resources are of aesthetic, ecological,

educational, historical, recreational, and scientific value to the people of the State of California. These natural resources are of great importance to both Grantor and Grantee. The purposes of this Conservation Easement are to preserve and protect each of the Multiple and Complementary Benefits of the Property. In so doing, it is also the purpose of this Conservation Easement to encourage and promote management and enhancement of wildlife habitats and wetlands, transitory storage of floodwaters, and wildlife-friendly practices on the Property.

2. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

- a. To preserve and protect the conservation values of the Property;
- b. To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, and for scientific research and interpretive purposes by Grantee or its designees, provided that Grantee shall not unreasonably interfere with Grantor's authorized use of the Property;
- c. To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the purposes of this Conservation Easement;
- d. All mineral, air and water rights necessary to protect and to sustain the biological resources of the Property.

In furtherance of the Multiple and Complementary Benefits, Grantee shall exercise the above-described rights in a manner which is in harmony with, and does not materially interfere with, any of the Multiple and Complementary Benefits.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement is prohibited. Except as provided in Section 5.a and without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties, are expressly prohibited:

- a. Unseasonal watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; grazing; or weed abatement activities unless these activities are used for the management of native communities; farming; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the purposes of this Conservation Easement;
- b. Use of off-road vehicles and use of any other motorized vehicles except on existing roadways or as necessary for the management, operation and maintenance of the property or in connection with any permitted flood control activities conducted on the Property by Grantor or permitted wildlife habitat enhancement activities on the Property conducted by Grantor;
- c. Commercial or industrial uses;

- d. Any legal or de facto division, subdivision or partitioning of the Property;
- e. Construction, reconstruction or placement of any building, billboard or sign, or any other structure or improvement of any kind except as necessary for the management, operation and maintenance of the property or in connection with any permitted flood control activities conducted on the Property by Grantor or permitted wildlife habitat enhancement or interpretive activities on the Property conducted by Grantor;
- f. Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;
- g. Planting, introduction or dispersal of non-native or exotic plant or animal species;
- h. Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Property;
- i. Altering the surface or general topography of the Property, including building of roads except in connection with any permitted flood control activities conducted on the Property by Grantor or permitted wildlife habitat enhancement activities on the Property conducted by Grantor;
- j. Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required (1) by law for fire breaks, (2) maintenance of existing foot trails or roads, (3) prevention or treatment of disease, (4) as necessary for the removal of existing buildings, or (5) in connection with any permitted flood control activities conducted on the Property by Grantor or permitted wildlife habitat enhancement activities on the Property conducted by Grantor; and
- k. Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters except in connection with any permitted flood control activities conducted on the Property by Grantor or permitted wildlife habitat enhancement activities on the Property conducted by Grantor.

4. Grantor's Duties. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the conservation values of the Property. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Conservation Easement, including but not limited to, Grantee's water rights.

a. Grantor shall comply with all applicable federal, State and local laws, statutes, rules, regulations and ordinances (collectively, the "Laws") that apply to Grantor respecting Grantor's acquisition, ownership and operation of the Property and obtain any other permits, approvals, and licenses that Grantor is required to obtain under any Law that is applicable to Grantor respecting Grantor's acquisition, ownership and operation of the Property.

b. Grantor shall assume all management, operation and maintenance costs associated with its ownership of the Property, including the costs of ordinary repairs and replacements of a recurring nature and costs associated with Grantor's compliance with any and all laws that are applicable to Grantor in connection with Grantor's ownership and operation of the Property. DWR, Lake County, the Flood Management Agency and the Grantee shall not be liable for any costs associated with the management, operation and maintenance of the Property, including flood management, except and to the extent of those costs associated with any flood management project or activity that is undertaken on the property in the future by DWR, County, or the Flood Management Agency.

5. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are not expressly prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

a. Notwithstanding anything stated to the contrary herein, Grantor also reserves the right to lease the property for agricultural purposes if the property was being used for that purpose at the time of the acquisition, and only in those areas in which agricultural activities were being conducted. Agricultural use may include activities necessary for and associated with the harvesting of various crops, including the use of harvesting equipment or machinery, the use of agricultural chemicals in accordance with all applicable laws and regulations, and the use of vehicles off roadways for agricultural purposes. Grantor further reserves the right to lease the property for livestock grazing for fuel reduction purposes. Said grazing shall be conducted according to best management practices. These rights shall terminate upon the implementation of the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project or on December 31, 2025, whichever occurs first unless extended by the prior written approval of the Grantee.

b. Grantor shall be permitted to conduct habitat development and passive recreation on the Property in a manner consistent with the preservation or enhancement of the Multiple and Complimentary Benefits as set forth in Section 1. Hunting and fishing consistent with applicable state and federal regulations shall be considered passive recreations.

6. Grantee's Remedies. If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation. If Grantor fails to cure the violation within fifteen (15) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin the cure within the fifteen (15) day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the conservation values of the Property, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed

prior to any such violation or injury. Without limiting Grantor's liability therefor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the conservation values of the Property, Grantee may pursue its remedies under this Section 6 without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

If at any time in the future Grantor or any subsequent transferee uses or threatens to use the Property for purposes inconsistent with this Conservation Easement then, notwithstanding Civil Code Section 815.7, the California Attorney General or any entity or individual with a justiciable interest in the preservation of this Conservation Easement has standing as interested parties in any proceeding affecting this Conservation Easement.

6.1. Costs of Enforcement. Any costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Grantor's negligence or breach of this Conservation Easement shall be borne by Grantor.

6.2. Grantee's Discretion. Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

6.3. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by Grantee or its employees.

6.4. Department of Fish and Game Right of Enforcement. All rights and remedies conveyed to Grantee under this Conservation Easement Deed shall extend to and are enforceable by the Department of Fish and Game.

7. Fence Installation and Maintenance. Grantor shall install and maintain a fence reasonably satisfactory to Grantee around the Conservation Easement area to protect the conservation values of the Property, including but not limited to wildlife corridors.

8. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor agrees that Grantee shall have no duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement Deed, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

8.1. Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Property free from any liens, including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

8.2. Hold Harmless. Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each an "Indemnified Party" and, collectively, "Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 4, 8, and 8.1; and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Indemnified Party or reimburse Grantee for all charges incurred for services of the Attorney General in defending the action or proceeding.

8.3. Extinguishment. If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

8.4. Condemnation. This Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided by Fish and Game Code Section 1348.3.

9. Transfer of Easement. This Conservation Easement is transferable by Grantee, but Grantee may assign this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code Section 815.3 (or any successor provision then applicable) or the laws of the United States. Grantee shall require the assignee to record the assignment in the county where the Property is located.

10. Transfer of Property. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the intent to transfer any interest at least thirty (30) days prior to the date of such transfer. Grantee shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Conservation Easement. The failure of Grantor or Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

11. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Grantor: Lake County Watershed Protection District
255 North Forbes Street
Lakeport, CA 95453
Attn: Director

To Grantee: Department of Fish and Game
North Central Region
1701 Nimbus Road Suite A
Rancho Cordova, CA 95670
Attn: Regional Manager

With additional
copies to: Department of Fish and Game
Office of the General Counsel
1416 Ninth Street, 12th Floor
Sacramento, California 95814-2090
Attn: General Counsel

Department of Water Resources
Division of Engineering
Real Estate Branch
1416 Ninth Street, Room 421
Sacramento, CA 95814

Department of Water Resources
Office of the Chief Counsel
1416 Ninth Street, Room 1118
Sacramento, CA 95814

or to such other address as either party shall designate by written notice to the other. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

12. Amendment. This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Lake County, State of California.

13. General Provisions.

a. Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state.

b. Liberal Construction. Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement Deed, such action shall not affect the remainder of this Conservation Easement Deed. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement Deed to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 12.

e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement Deed shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

g. Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

h. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

i. No Hazardous Materials Liability. Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property. Without limiting the obligations of Grantor under Section 8.2, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Indemnified Parties (defined in Section 8.2) from and against any and all Claims (defined in Section 8.2) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Grantee, its employees or agents. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Indemnified Party or reimburse Grantee for all charges incurred for services of the Attorney General in defending the action or proceeding.

Despite any contrary provision of this Conservation Easement Deed, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee any of the following:

(1) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*; hereinafter, "CERCLA"); or

(2) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or

(3) The obligations of a responsible person under any applicable Environmental Laws; or

(4) The right to investigate and remediate any Hazardous Materials associated with the Property; or

(5) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*; hereinafter "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*; hereinafter "HTA"); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*; hereinafter "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement Deed.

The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee that activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

j. Warranty. Grantor represents and warrants that there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests) which have not been expressly subordinated to this Conservation Easement Deed, and that the Property is not subject to any other conservation easement.

k. Additional Easements. Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is subordinate to this Conservation Easement Deed), or grant or otherwise abandon or relinquish any water agreement relating to the Property, without first obtaining the written consent of Grantee. Grantee may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the conservation values of the Property. This Section 13.k shall not prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement Deed and complies with Section 10.

l. Recording. Grantee shall record this Conservation Easement Deed in the Official Records of Lake County, California, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR:

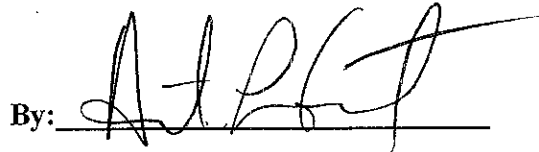
LAKE COUNTY WATERSHED
PROTECTION DISTRICT

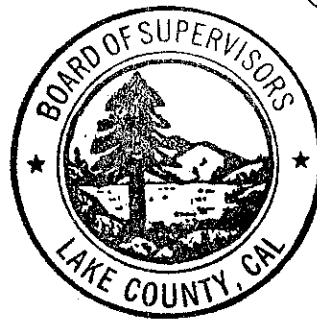

Chair, Board of Directors

ATTEST: Kelly F. Cox
Clerk of the Board

By: 

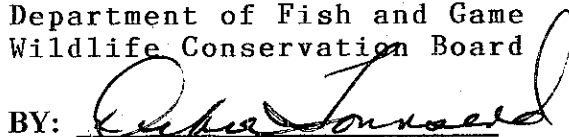
APPROVED AS TO FORM:
Anita L. Grant, County Counsel

By: 



GRANTEE:

State of California
Department of Fish and Game
Wildlife Conservation Board

BY: 

NAME: John Donnelly

TITLE: Executive Director

DATE: 4/15/2010

Approved as to form:

General Counsel
State of California
Department of Fish and Game

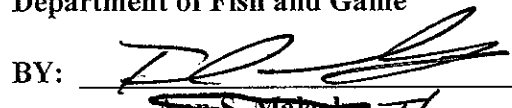
BY: 
~~Ann S. Malcolm~~ Thomas Gibson
Acty General Counsel

EXHIBIT "A"

PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF LAKE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

APN: 004-022-240-000

PARCEL ONE:

Lots 55, 56, 57, 58, 59, 60 and 61, as shown on that certain map entitled "EDMANDS RECLAIMED LAND CO. SUBDIVISION", filed in the office of the County Recorder of said Lake County on May 12, 1925, in Book 4 of Town Maps at Pages 52 to 56, inclusive.

EXCEPTING THEREFROM that portion thereof as described in Parcel 12 and 13 in the Deed from Essential Products Company, a Nevada Corporation, et al., to Reclamation District No. 2070, recorded June 13, 1930 in Book 67 of Official Records at Page 18.

(Affects lots 57, 58 and 59)

ALSO EXCEPTING THEREFROM that portion of Lots 55 and 56 as set forth in the Deed from Benjamin F. Modglin, et ux., to the County of Lake, recorded May 11, 1962 in Book 374 of Official Records at Page 536, Lake County Records.

PARCEL TWO:

Tract One:

BEGINNING at a point on the North line of Lot 62, as shown on that certain map entitled "EDMANDS RECLAIMED LAND CO. SUBDIVISION," filed in the office of the County Recorder of said Lake County on May 12, 1925, in Book 4 of Town Maps at Pages 52 to 56, inclusive, in the center line of Main Drainage Ditch as conveyed to Reclamation District No 2070, said point of beginning being 1251 feet East of the East line of Polk Avenue No. 5, as shown on said map, and running thence South 00°41' East, along the center line of said ditch, 521 feet; thence South 00°41' East, crossing said ditch, 25 feet, more or less, to the South line of said Lot 62; thence East, along the South line of said Lot 62, 679 feet, more or less, to the Westerly line Edmands Boulevard No. 1, as shown on said Map; thence along the Westerly line of said Boulevard, North 25°15' west 601.6 feet to the North line of said Lot 62; and thence West, along the North line of said Lot 62, 423.2 feet to the point of beginning.

ALSO, BEGINNING at the Southwest corner of Lot 60 of said "EDMANDS RECLAIMED LAND CO. SUBDIVISION", and running thence North 78° East 250 feet to the center line of Hammond Slough, being the old channel of Middle Creek; thence Southerly down the centerline of Hammond Slough, to the North line of

Section 29, Township 15 North, Range 9 west, M.D.M.; thence West 518.2 feet, along the said Section line, to the Easterly line of Edmands Boulevard No. 1, as shown on said subdivision map; and thence, along the Easterly line of said Edmands Boulevard No. 1, as follows: North 25°15' West 601.6 feet, and North 25°15' West 188.4 feet to the point of beginning.

Tract Two:

That portion of Lot 62 of said "EDMANDS RECLAIMED LAND CO. SUBDIVISION", described as BEGINNING at the Northwest corner of Lot 62, and running thence East 582 feet, more or less, to the West line of that certain drainage ditch running North and South through said Lot 62; thence South 564 feet, more or less, along the West line of said drainage ditch, to the South line of said Lot 62; thence West 582 feet, more or less, to the West line of said Lot 62; thence North 564 feet, more or less, to the point of beginning.

Tract Three:

BEGINNING at the Southeast corner of Lot 62, as shown on that certain map entitled "EDMANDS RECLAIMED LAND CO. SUBDIVISION", filed in the office of the County Recorder of said Lake County on May 12, 1925, in Book 4 of Town Maps at Pages 52 to 56, inclusive, thence South 48 feet to the toe of the levee; thence West 1980 feet; thence North 48 feet to the Southwest corner of Lot 61 of said Subdivision, thence East 1980, along the South line of said Lots 61 and 62 to the point of beginning.

EXCEPTING THEREFROM that portion of land heretofore conveyed to C.B. Burress by Deed dated July 3, 1933, executed by the Essential Products Co., a Nevada Corporation; Glen A. Younggreen and Lora L. Younggreen, his wife, Marion Y. Bucknell, formerly Marion A. Younggreen and Roy Bucknell, her husband, recorded July 14, 1933, in Book 87 of Official Records of Lake County at Page 172.

PARCEL THREE:

BEGINNING at the Southwest corner of Parcel Two in Tract Two above and running thence South 33.2 feet; thence, East 679 feet to the East line of Sovereign Location No. 7 within Section 29, Township 15 North, Range 9 West, M.D.M.; thence, North along the East line of said Location, 33.2 feet to the North line of said Section 29, and thence, West, along the North line of said Section 29, and thence, West, along the North line of said Section 29, 679 feet to the place of beginning.

PARCEL FOUR:

BEGINNING at a point on the North line of Section 29, Township 15 North, Range 9 West, M.D.M., 300 feet East of the Northwest corner of Location No. 154, Swamp and Overflowed Lands; said point of beginning, being the Northeast corner of Parcel Two of those certain lands conveyed by Essential Products Co., et al., to Reclamation District No. 2070 by Deed dated June 1, 1930, of record in Book 67 of Official Records of Lake County at Page 18, and running thence South 39°06' East 465.2 feet along the Northeasterly line of said lands so conveyed to Reclamation

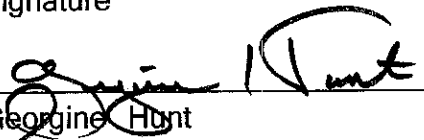
District No. 2070, to the center line of the old channel of Middle Creek, (being on the West line of Lot 333, as shown on that certain map entitled "CLEAR LAKE VILLAS", filed in the office of the County Recorder of said Lake County on July 1, 1922, in Book 3 of Town Maps at Pages 2 to 9, inclusive); thence Northerly up the center of the channel of said creek, and being along the Westerly line of said Lot 333, to the North line of said Section 29; and thence West 360 feet to the place of beginning.

STATE OF CALIFORNIA)
)
COUNTY OF LAKE)

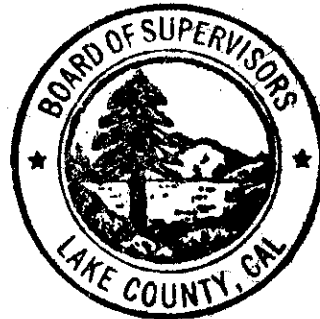
On October 7, 2008, before me, Georgine Hunt, personally appeared Ed Robey, Chair of the Lake County Watershed Protection District, for the County of Lake, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledge to me that she executed the same in her authorized capacity and that her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature



Georgine Hunt
Assistant Clerk of the Board

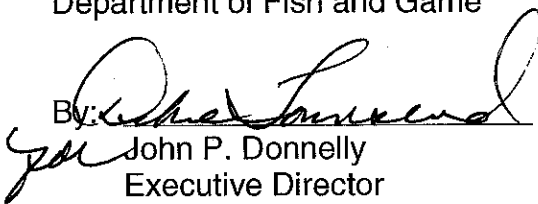


Clear Lake Conservation Area
Expansion 1
Middle Creek Unit
Lake County

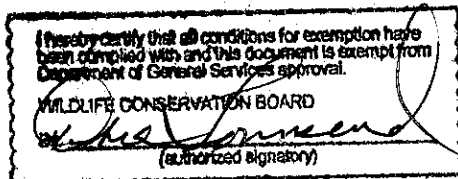
CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the interest in real property conveyed by the Conservation Easement Deed, dated October 7, 2008, from Lake County Watershed Protection District to the STATE OF CALIFORNIA, is hereby accepted by the undersigned officer on behalf of the State of California, pursuant to authority conferred by authorization of the Wildlife Conservation Board, Department of Fish and Game, Natural Resources Agency, State of California, adopted on February 25, 2010, and the grantee consents to the recordation thereof by its duly authorized officer.

STATE OF CALIFORNIA
Natural Resources Agency
Department of Fish and Game

By: 

John P. Donnelly
Executive Director
Wildlife Conservation Board



Date: 4/15/2010

MARSHA A. BURCH
LAW OFFICE

131 South Auburn Street
GRASS VALLEY, CA 95945

Telephone:
(530) 272-8411

www.marshaburchlawoffice.com

mburchlaw@gmail.com

May 13, 2025

Via email:

Board of Supervisors
County of Lake
255 N. Forbes Street
Lakeport, CA 95453
(email list under “cc” below)

Lloyd Guintivano, County Counsel
255 N Forbes Street
Lakeport, CA 95453
lloyd.guintivano@lakecountyca.gov

Laura Hall, Senior Planner
Community Development Department
County of Lake
255 N. Forbes Street
Lakeport, CA 95453
Laura.Hall@lakecountyca.gov

**Re: Appeal of Planning Commission Approval of AG Forest Wood Processing
Bioenergy Facility Major Use Permit UP 23-05, Initial Study/Mitigated
Negative Declaration IS 23-10**

Dear Honorable Supervisors, Mr. Guintivano, and Ms. Hall:

This office represents Larry Kahn, Barbara Morris, and a neighborhood organization with respect to the above-referenced appeal. Mr. Kahn appealed the County of Lake Planning Commission’s approval of the AG Forest Bioenergy Project, including the Commission’s approval of Major Use Permit UP 23-05, and adoption of the Initial Study/Mitigated Negative Declaration (“IS/MND”) IS 23-10 (collectively, the “Project”). Attached to this letter as Exhibit A is an expert report from Dale La Forest of Dale La Forest & Associates, describing the undisclosed and unanalyzed noise impacts of the Project, which are significant and for which no mitigation measures have been proposed.

This office has submitted two requests for records under the California Public Records Act (with one follow up request asking why no documents were produced for several of the categories), and we have received a small number of records in response. I have attempted to meet and confer with County Counsel's office, but that office has refused to respond to my request to meet and confer and has also refused to respond to my phone message. Currently, the County is violation of the Public Records Act for refusing to provide records in response to our requests, and it is a further violation of my clients' due process rights to continue with the appeal hearing without providing the documentation necessary for the appellant and other members of the public to fully understand the circumstances.

In addition to the stunning violations of the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 *et seq.* and the CEQA Guidelines, Cal. Code Regs. Tit. 14, § 15001, *et seq.*) and the State planning laws, described in detail below, the County's attempt to lease the Project site to the applicant for \$100 per year for an industrial use violates the explicit terms of the grant funding agreement that the Lake County Flood Control and Water Conservation District entered into with the California Department of Water Resources. The County failed to record a conservation easement on the property as required by the grant agreement and has leased the property without the required State approval. Lake County used over \$1.5 Million from the State under a grant agreement and purchased the property where the Project will be located. Then failed to perform any of its obligations under the grant agreement, handing a portion of the property off to the Project applicant in what amounts to a gift of public funds.

We request that the Board of Supervisors act to protect the public from a project that will harm the environment and be detrimental to human health, particularly those with homes near the Project site, and decide to live up to the terms of the grant funding agreement to avoid a breach of contract that will be subject to State enforcement.

A. The County does not have Authority to Lease the Project Site to the Applicant for a Biochar Facility.

On August 28, 2003, the Lake County Flood Control District¹ (the County), entered into The State of California the Resources Agency Department of Water Resources Agreement between the State of California Department of Water Resources and Lake County Flood Control and Water Conservation District under the Flood Protection Corridor Program ("Grant Agreement"). Through this Grant Agreement, the Department of Water Resources ("DWR")

¹ The District was created by special legislation (specifically, California Water Code Appendix Section 68-1 *et seq.*), and the Lake County Board of Supervisors serves as the ex officio Board of Directors of the District, and so the activities of the District are the activities of the County.

provided over \$5 Million dollars to the County for the Flood Protection Corridor Program. The funds were used by the County for, among other things, the acquisition of property.

The parcel where the proposed Project is located was acquired by the County with the grant funds, and a portion of it (42.6 of the approximately 115 acres) is now under a purported “Lease” agreement between the County and the Scotts Valley Energy Corporation (“SVEC”).

We submitted a Public Records Act request seeking documents related to the Grant Agreement and the acquisition of the Project site, and we were first informed that no responsive documents existed, suggesting that the County had failed to document the receipt of the millions in grant funds and the expenditure on the Project site. We have since been informed that the County is looking for responsive documents.

Section 3.B of the Grant Agreement States that the Flood Control District (“District”) “shall develop a program to acquire fee title...and restore wetland habitats and adjacent riparian and upland areas and improve water quality...” Section 3.K states that the District “shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever, all or any portion of the subject properties without prior permission from the State.” We requested documentation of the permission from the State for the County to lease the Project site to the applicant, and as noted above, we were told no documents existed, and now there is apparently an effort underway to look for the documents. We do not believe that the County requested or received permission from the State. We have been in contact with DWR representatives who are now investigating the County’s use of these lands.

Section 3.M of the Grant Agreement states that where the District acquires fee title using grant funds, “an appropriate easement providing for non-structural flood benefits and wildlife habitat preservation shall be simultaneously conveyed to a regulatory or trustee agency or conservation group acceptable to the State.” Again, we have received nothing in response to our request for records, but our research into the title of the Project site reveals that the County never recorded the required conservation easement on the Project site after it was acquired with funding from the State’s taxpayers.

The County’s lack of maintenance of the Project site and failure to comply with any of the requirements of the Grant Agreement is an ongoing breach of the Grant Agreement. Further, giving the applicant the use of a taxpayer funded property for \$100 per year, with no obligations for maintaining the property pursuant to the Grant Agreement, and no permission from the State, is an unconstitutional gift of public funds. (Cal. Constitution, Article XVI, Section 6.)

For these reasons alone, the Board of Supervisors should gain control over this situation and bring the County back into compliance with the DWR Grant Agreement and its obligations under the State Constitution.

B. The Project is Not Appropriate for the Project Site and the Surrounding Land Uses.

1. The Project is Not Permitted under the County's Zoning Ordinance or the Williamson Act.

In addition to the fact that the County was required to place a conservation easement on the Project site at the time it was acquired with State grant funds, the property is subject to a Williamson Act Contract and APZ zoning, neither of which allow for a biochar facility that does not meet the definition of a “power generation facility” under the Lake County Code.

The County asserts that the Project can be approved with a Major Use Permit pursuant to its Zoning Ordinance. (See December 12, 2024 staff report [“Staff Report”], p. 11.) This is inaccurate, while a “power generation facility” may under some circumstances be developed in a APZ zoning district, the Project will supply its own power needs but will not be a power generation facility as that term is defined in the County Code. Here, the Project site is zoned both APZ and Scenic Combining (SC). The scenic analysis in the IS/MND is cursory at best and is addressed further below.

The critical problem for the County is not just the APZ zoning that precludes non-agricultural uses, but also the Williamson Act Contract itself. The Contract for this property is something that the County has not been able to locate in response to our Public Records Act requests. That does not mean that the Contract does not exist, it just means that the County staff who worked on analyzing the Project and its impacts did not take the applicable Williamson Act Contract into account. Williamson Act Contracts are often tailored to the property, and at this time it is completely unknown what the Williamson Act Contract for the Project site contains.

There is nothing in the Government Code that would allow the construction of a power generation facility of any kind to be built on Williamson Act land, and the County's APZ provisions state that a “power generation facility” may be constructed on APZ lands with a major use permit. The County glossed over this in the staff reports and IS/MND, but the proposed biochar facility does not meet the definition of “power generation facility” in the County's Code.

Specifically, the definition of “power generation facility” in Section 21-27(x) only refers to “[a]n *electrical* generation facility,” and not a “natural gas” or “biogas” generation facility. Moreover, this provision includes certain thresholds that are only stated in terms of megawatts (*i.e.*, facilities over 3 MW require neighbor approval), and not units of measurement applicable to gas generation. Finally, the record shows that there will be no energy transmission, aka “power generation”, from the Project. It will power its own functions, but no power will be transmitted elsewhere. The Staff Report states vaguely that power from the facility “may be available to

downstream users in the future.” Like much of the Project description, vaguely described future possibilities do not meet CEQA’s requirements.

The record does not contain evidence that the Project is a power generation facility, there is no evidence of the contents of the applicable Williamson Act Contract, and so there is insufficient evidence to support a conclusion that the Project could even be permitted through a Major Use Permit.

2. The Board Cannot Make the Findings Necessary to Approve Proposed Major Use Permit 23-05.

Section 21-51.4 of the County’s Zoning Ordinance states a Major Use Permit can only be approved if the County finds, *inter alia*:

That the establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.

(Lake County, Zoning Ordinance, Art. 51, § 21-51.4(a)(1) [Findings Required for Approval].) The findings also require assurances of public safety, consistency with the General Plan, and confirmation that no code violations exist. The County cannot make these findings.

As explained in detail below, substantial evidence of a fair argument exists that the Project would result in significant environmental effects. Indeed, the Project will adversely affect nearby agricultural resources, residents, and persons working in the area. (*Id.*). As such, the County cannot find the Project would not “be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood,” or the general welfare of the County. Nor can the County find the Project is consistent with its plan- level documents, as explained below.

Because the County cannot make the finding necessary to issue a Major Use Permit, or support those findings with substantial credible evidence, the Major Use Permit should be denied.

C. The IS/MND Fails to Disclose Important Information Needed to Evaluate the Environmental Effects of the Project.

1. Inaccurate Project Description and Baseline Conditions.

CEQA requires that the project description must include reasonably foreseeable future activities that are consequences of the project. (See *Laurel Heights Improvement Ass’n v. Regents*

of the Univ. of Cal. (1988) 47 Cal.3d 376.) The IS/MND, however, fails to provide a description of the Project sufficient to identify and evaluate its potential environmental effects. As noted above, the IS/MND and the Staff Report acknowledge that the Project is a piece of a much larger forest thinning and biomass project that the County is undertaking, and yet the rest of the overall project is not described. There has even been discussion at public meetings of the multiple sites that actually make up the whole of the project. Such information is necessary to evaluate whether the Project would have significant environmental impacts, and the whole of the project should have been analyzed to avoid impermissible piecemealing.

These omissions hinder a complete and accurate environmental review (and result in an invalid environmental document). Specifically, CEQA requires that the description of the project be accurate and consistent throughout the environmental document. (See, e.g., *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 195; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 738; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730; *Santiago Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 830; *Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 45; *Dusek v. Anaheim Redevelopment Agency* (1986) 173 Cal.App.3d 1029, 1040.) As explained in *County of Inyo*:

A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against the environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (*i.e.*, the "no project" alternative) and weigh other alternatives in the balance.

(*County of Inyo, supra*, 71 Cal.App.3d at 192-93.)

In this case, the Project description is unstable and omits critical information. The failure to describe the "whole of the project," resulting in piecemealing of the environmental review is discussed in greater detail below.

The Project description includes a denial of the existence of a blue line stream that appears on the soils map. (IS/MND, pp. 3 and 29.) The IS/MND refers to Figure 3 as the "Soils Map," but Figure 3 is the Quaternary Faults Map, and there is no Soils Map included. The IS/MND states that there was "careful investigation", and the stream could not be located, but neighboring landowners identified a "drainage ditch." (*Id.*) This is not analysis; it is an attempt to ignore a water body for convenience. Emails produced by the County included discussion among County staff regarding the biological assessment, noting that no wetland delineation was done for the Project site, and warning that the Project design creates a potential for sediment to wash into the drainage ditch. Whether it is referred to as a drainage ditch or a stream, it flows directly into

Rodman Slough, and then downstream with waters that end up in Clear Lake. Neighboring landowners have submitted ample evidence of the existence of the stream, and the Project plans will place driveway construction immediately adjacent (no setback) to the stream.

On April 10, 2022, the U.S. Department of Commerce, Economic Development Administration (“EDA”) issued a Record of Environmental Consideration (“REC”) for the project site. (The REC is attached as Exhibit B.) The REC concluded that there is “a potentially jurisdictional agricultural drainage on the western side of the access road adjacent to the project site.” (REC, p. 5.) The REC concludes that “to ensure that no impacts to the drainage would occur, all project construction activity would be located **at least 100 feet east of the existing drainage ditch.**” (REC, p. 5, emphasis added.) In stark contrast, the IS/MND and the Project materials show that construction will occur within less than 20 feet of the drainage ditch. (*See* application and site plans.) The IS/MND includes the cryptic and misleading “mitigation measure” stating that “prior to ground disturbing activities within 100 feet of the drainage ditch” the applicant would conduct pre-construction surveys for various listed species. (IS/MND, p. 29.) In other words, the Project applicant has every intention of violating the terms of the REC, and the County has agreed to let them do so by including a mitigation measure that has not a single thing to do with water quality. The applicant should be precluded from using the EDA grant funding in way that violates the REC.

The IS/MND also contains no information at all about the quantities of air emissions the Project will produce during construction and operation. Among other things, the IS/MND does not adequately identify and discuss important emissions-related information regarding process rates and emissions-generating equipment to be used routinely at the proposed Project. The IS/MND provides no information necessary to evaluate the project’s emissions of federally- and state-regulated criteria air pollutants for determination of project-related significant air quality impacts. With respect to Greenhouse Gas Emissions (“GHG”), the IS/MND simply states that the Project will “produce a small amount of GHG emissions”. (IS/MND, p. 40.) The County’s environmental review for the previously proposed Red Hills Bioenergy Project (Major Use Permit UP 19-05) was similarly flawed, and the flaws were well documented in the expert report from Greg Gilbert of Autumn Wind Associates. We request that all documents that comprised the administrative record of proceedings for the Red Hills Bioenergy Project be included in the record of proceedings for the present Project. Many of the same errors and shortcomings exist in the CEQA review for this Project, and the County’s own files contain information that could have resulted in a more defensible CEQA document here but unfortunately did not.

The lack of investigation, data collection, and disclosure is also true for noise impacts, as explained in the La Forest Report. Among other things, there is no mention of ambient/existing conditions against which noise impacts should be evaluated. (*Id.* at 7.) Nor is there an adequate description of nearby sensitive receptors, or how far those receptors are from the Project operations. (*See id.* at 6-7.) The IS/MND includes two paragraphs for the entire noise analysis, and the “substantial evidence” is no evidence at all: “Sound levels have been estimated and fall

under the county's acceptable levels for agriculture operations. The sound level of the power generation facility will be under the decibels A levels for non-business hours to the property line.” (IS/MND, p. 51.) It is almost beyond our ability to submit a comment on the noise analysis in the IS/MND because it is so woefully inadequate, it makes no logical sense. The La Forest Report reveals that the noise “analysis” the County intends to rely upon simply ignored the existence of (and failed to disclose in the Project description and baseline information) a dozen sensitive receptors, ignored the actual equipment that would be operated onsite, and came up with a “conclusion” that noise would be insignificant based upon no substantial evidence at all.

Lastly with respect to the Project description, in his letter of December 11, 2024, Brian Hall described in detail the flaws and inconsistencies in the architectural and structural building plans. The plans included a snow load for 8 to 15 feet of snow. Clearly an erroneous leftover from plans for another project. The electrical notes in the plans are for an unrelated solar project in San Benito County. The highway encroachment “design” is based upon real estate maps that lack critical design information. The Project plans are an important part of the Project description, and in this case, the plans are a collage of notes, plans, details, and specifications that include reliance on the British Columbia Structural Code, wind and snow loads calculated in metric units, and the number of trusses in the structural analysis is inconsistent with the number shown in the building elevation. This is the epitome of an unstable, inaccurate Project description.

2. The Improper Piecemealing/Segmentation of Environmental Review.

In this case, the Project description omits any explanation of the other elements of the forest thinning biomass network that the County asserts the Project will be “central” to. (Staff Report, p. 4, and the Lease Agreement with SVEC.) The Project description includes details for only one other facility, and this the “Donahoo facility at 8605 Bottle Rock Road, Kelseyville CA 95451, 21.2 miles away.” The Project description asserts that this is where most of the woody biomass will be “pre-processed” into wood chips before being transported to the Project site. (Staff Report, p. 5.) This office made a public records request for the permit(s) for the Donahoo facility, and we have not received any documents. Our inquiries have revealed that the Donahoo facility is no longer operating (in response to one phone call we were told it has been closed for over a year), and so the Project description is misleading and inaccurate. If the Donahoo facility does not have a permit to operate, or has ceased operations for other reasons, this is a critical gap in the Project description. Where will the woody biomass be “pre-processed”? If the biomass comes to the Project site without being pre-processed, this will result in a significant increase in the Project impacts, and the IS/MND must be amended and recirculated at the very least.

The entire project being proposed (and not some smaller aspect of it), must be described in the environmental document. This requirement reflects the CEQA Guideline’s definition of a “project” as the “whole of an action.” (Guidelines § 15378.) Here, the IS/MND does not describe

the whole of the action, but rather vaguely refers to the Project as being the “central” hub of a larger forest thinning and biomass project. The Project here is just one component of an overall project, and piecemealing the environmental review is a violation of CEQA.

The failure to adequately describe a project, or provide sufficient detail, results in the improper piecemealing or segmentation of environmental review. Here, by omitting important details about the Project, the IS/MND does just that. In *Santiago Water District*, for example, the court held the environmental review for a mining operation inadequate because the project description omitted mention of the construction of water delivery facilities that were an integral part of the project. “Because of this omission, some important ramifications of the proposed project remained hidden from view at the time the project was being discussed and approved. This frustrates one of the core goals of CEQA.” (*Santiago Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 830.)

Here, the Project would allow a completely different and much larger project than that described in the IS/MND. As noted above, the Project has been described in the Lease agreement between the County and SVEC, in the IS/MND, and in the Staff Report, as the “central” hub of a County-wide forest thinning and biomass project. The County has refused to identify the other components of the Project (other than the Donahoo facility, which appears to be defunct). In producing documents in response to our Public Records Requests, not a single document was provided regarding the overall forest thinning biomass project. By proceeding in this fashion, the IS/MND seeks to impermissibly piecemeal or segment environmental review.

3. Inadequate Description of the Environmental Baseline Conditions.

As noted above, and as explained in the La Forest Report, the IS/MND includes no mention of ambient/existing conditions against which noise impacts should be evaluated. (La Forest Report, p. 7.) The IS/MND likewise includes an inadequate description of nearby sensitive receptors, including a failure to accurately measure how far those receptors are from the Project operations. (See *id.* at 6-7.) Due to this failure, the IS/MND’s analysis of noise increases is incomplete and inaccurate. (*Id.*) Due to the failure to adequately describe baseline conditions, the IS/MND is invalid. There is also no baseline information for air quality or GHG emissions.

4. No Substantial Evidence to Support Qualifications of Project Professionals.

On December 11, 2024, Brian Hall submitted a comment letter to the County stating that the County had failed to comply with the Business and Professions Code requirements mandating that County staff to verify the licensure and signatures for all architectural, engineering, and land surveying documents as a condition of approval for all permits. Transparency in this process of verifying qualifications is part of assuring the public and the decisionmakers that the Project description and design is accurate and finite. We included in our

Public Records Request a request for documents showing that the County had verified the licensure and signatures of these professionals, and the document production included no documents responsive to this request. Thus, there has apparently not been an effort to verify the licensure of the professionals.

D. An Environmental Impact Report is Required for the Proposed Project.

1. A Fair Argument Exists that the Project Will Have Significant Effects on the Environment and, as such, an EIR is Required.

The Project is not appropriate for the Subject Property and should be denied on that basis. But, if the County were to consider the Project, the IS/MND is not the appropriate level of environmental review to evaluate the Project's potential environmental effects under CEQA. Rather, an Environmental Impact Report (EIR) is required, as there is substantial evidence supporting a fair argument that there are significant impacts from the Project, and those impacts could be cumulatively considerable.

Prior to considering any "project" under CEQA, a lead agency must first determine whether to prepare a Negative Declaration, a Mitigated Negative Declaration, or an EIR for the project. (Guidelines, § 15063.) The lead agency makes this determination based on what is called the "fair argument" standard. (Guidelines § 15064(f)(1).) As explained by the Supreme Court:

[S]ince the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act requires the substantial evidence that the project may have a significant environmental impact.

(No Oil, Inc. v. City of Los Angeles (1975) 13 Cal.3d 68, 75.)

The Supreme Court has explained that even in "close and doubtful cases," an EIR should *always* be prepared to ensure "the Legislature's objective of ensuring that environmental protection serve as the guiding criterion in agency decisions." (*Id.* at 84; see also Pub. Resources Code, § 21101, subd. (d).) Many courts have stated that the "EIR is the heart of CEQA. The report . . . may be viewed as an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes *before* they have reached ecological points of no return." (*Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 438 [quoting *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810] [emphasis added].)

The CEQA Guidelines set forth the "fair argument" test used to evaluate whether an EIR is required: If the lead agency finds there is substantial evidence in the record that the project

may have a significant effect on the environment, the lead agency shall prepare an EIR. Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency ***shall prepare an EIR*** even though it may also be presented with other substantial evidence that the project will not have a significant effect. (Guidelines § 15064(f)(1); see also Pub. Resources Code § 21080(d).)

Moreover, an agency's failure to gather or analyze information on a project's impacts can expand the scope of the fair argument standard necessitating the preparation of an EIR. (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ["CEQA places the burden of environmental investigation on government rather than the public," and a lead agency "should not be allowed to hide behind its own failure to gather data."].)

Accordingly, if any commenting party makes a fair argument that the proposed project's environmental impacts "may have a significant effect on the environment," the County ***must*** prepare an EIR, even if other substantial evidence supports the argument that adverse environmental effects will ***not*** occur. (Guidelines § 15064(g)(1); see also *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316 ["[i]f there is substantial evidence of such an impact, contrary evidence is not adequate to support a decision to dispense with an EIR."].)

A mitigated negative declaration is only appropriate where the applicant has agreed to eliminate or avoid all potentially significant environmental impacts by incorporating mitigation measures into the project. (See Pub. Resources Code §§ 21064.5, 21080(c)(2); Guidelines §§ 15064(f)(2) and 15070(b).) Here, substantial evidence supports a fair argument that an EIR is necessary:

2. The Project Will Result in Significant Noise Impacts.

This comment letter is accompanied by the May 10, 2025, Noise Impacts Report prepared by Dale La Forest & Associates. (See Exhibit A.) That report raises numerous concerns and demonstrates the Project would have significant noise impacts. For example, Mr. La Forest explains that the backup warning alarms will result in significant and unavoidable noise increase. There will likewise be significant noise impacts associated with electrical generator, the wood chipper, and the front-end loader, all of which will exceed the County's noise thresholds. Mr. La Forest's report also discusses adverse impacts associated with short-term construction-related noise. (See *id.*)

The La Forest Report explains that the IS/MND failed to identify and describe all of the sensitive noise receptors located near the Project site. (La Forest Report, pp. 2 and 6.) In fact, the IS/MND omitted mention of ***most*** of the sensitive receptors near the Project site. (*Id.*)

In addition, Mr. La Forest's analysis shows the County's noise analysis is incomplete, as it does not actually evaluate the magnitude of the noise increase caused by the Project to sensitive receptors. (La Forest Report, pp. 2 and 8.) CEQA requires the lead agency to evaluate the magnitude of the increase in noise levels, and the IS/MND never examined noise increases. Because the IS/MND does not examine these factors, it is insufficient under CEQA. (See *id.*)

The La Forest Report exposes the Project's noise impacts, which will be significant during construction, significant during operation, and will even be significant *indoors* for some nearby residences. (Report, pp. 3 and 16.) The Project will result in devastating impacts to nearby residential uses, and this could include health impacts. In short, substantial evidence of a fair argument exists that the Project would have significant acoustic impacts, and that the Project would result in events that exceed the noise levels included in the Lake County General Plan. (CEQA Guidelines, Appendix G, Subd. XI(a).) As a result, to the extent the County considers the Project for approval, a full EIR should be prepared.

3. The Project Will Result in Significant Impacts to Agricultural Resources.

The Project would negative effect agricultural recourse in numerous respects. First, the Project site is prime agricultural land, and while the IS/MND attempts to minimize this impact by stating that it is only five acres and the buildings could later be removed, the fact is that the 42 acres of leased property where the Project will be located is all prime agricultural land, and it will not be used for agriculture again for the foreseeable future, if ever. The property is also under a Williamson Act Contract, as discussed above, and the County has been unable to produce a copy of that contract in response to our Public Records Act requests. The potential impacts to 42 acres of prime agricultural land is evident in the record because it is under the protection of a Williamson Act contract that was never even discussed in the environmental review.

4. The Project Will Result in Significant Air Quality and GHG Emissions.

The County's own staff and internal documents reveal that the Project may have a significant impact on air quality, including the health of nearby residents. In the small number of documents produced by the County, we received a copy of an email from Laura Hall to "Steve" on February 8, 2024, stating that an Air Quality and Greenhouse Gas (GHG) Report with a Health Assessment would be required for the project because of a residence within 1,000 feet. Despite the Senior Planner's assessment that a such a report and Health Assessment were required for the Project, no such report or analysis was done. A copy of this email is attached as Exhibit C.

Not only did the County fail to prepare the analyses County staff determined were required, the paltry analysis in the IS/MND contains no baseline information and no analysis of

Project emissions, so there is a complete failure under CEQA's disclosure requirements, and also a complete lack of any evidence to support a conclusion that the air quality impacts will be less than significant. Appendix G requires that a lead agency "make a good faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project" (Section 15064(a)), yet the IS/MND contains no analysis of emissions from diesel-powered equipment, delivery trucks, etc., simply providing the bare conclusion that the GHG emissions would be a "small amount." This does not meet CEQA's standard.

Additionally, the record shows that a health risk assessment was required, as it was the opinion of County professional staff, and the Project will generate emissions that were not discussed in the IS/MND. For example, diesel delivery truck trip distances and frequencies should have been included in the IS/MND's air quality element. When combined with onsite diesel and dust emissions it is possible that a localized exceedance of PM10 standards or health risk thresholds could occur, and this potential should have been evaluated in the IS/MND. This shortcoming was also evident in the Red Hills Project review, and we urge the decisionmakers to review the record of the Red Hills Project to better understand the tremendous health and air quality risks associated with biochar facilities. As in that case, there is substantial evidence here that the Project will have significant air quality impacts and GHG emissions, and a full EIR is required.

5. The Project Will Result in Adverse Health Impacts.

The IS/MND also fails to sufficiently explain the nature and magnitude of the Project's health impacts on nearby residents and employees before concluding that the impacts would be less than significant. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 523 (hereafter *Friant Ranch*) [emphasizing that "a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact"].) An environmental document must discuss the health and safety problems that the proposed project may induce. (Guidelines § 15126.2(a) [requiring an EIR to discuss the "health and safety problems caused by the physical changes" that the proposed project will induce].) More specifically, when it comes to significant air quality impacts, an environmental document must allow the public to translate bare air pollutant data into adverse health impacts, or to understand why such translation is not possible. (*Friant Ranch*, supra, 6 Cal.5th 502, 525.)

Here, the IS/MND does not address this issue at all. It does not include baseline data, and it does not include any information about the quantity or nature of Project air emissions. This is critically important here, as the County has received evidence that similar operations have

adversely affected the health of nearby residents and employees, and this was pointed out to the County in detail in the Red Hills Bioenergy Project case.

The significant health impacts that will likely result from the excessive (and entirely unanalyzed) noise impacts on several nearby residences have also not been disclosed. There is substantial evidence in the record to support a fair argument that the Project's impacts to human health will be significant, and a full EIR is required.

6. The Project Will Result in Significant Land Use Impacts.

CEQA requires agencies to evaluate whether a proposed development project will, among other things, conflict with any land use plan, policy, or regulation of an agency with jurisdiction over a project. A fair argument exists that the Project as proposed will result in several conflicts with both the County's General Plan and the Upper Lake-Nice Area Plan. First, the Project seeks to bring an industrial land use into an area that is predominantly rural residential and agricultural. This conflicts with both sound land use principles, as industrial land uses are typically incompatible with residential land uses, particularly when they are adjacent to each other. It also interferes with the County's objectives and plans to promote agriculture and agritourism. Further, as explained in detail below, the Project is inconsistent with several policies and programs articulated in the County's General Plan.

In summary, substantial evidence supports a fair argument that the Project will cause significant environmental effects. As a result, the County cannot approve the IS/MND.

7. The IS/MND Fails to Disclose and Analyze Wildfire Risks and Impacts.

The IS/MND includes a few sentences regarding the wildfire risk and impacts associated with the Project. (IS/MND, p. 61.) Despite the fact that County staff and commenters raised concerns about the storage of dry, woody material on the Project site, and the potential for this to be a fire hazard within a few hundred feet of adjacent homes, the IS/MND does not include even one word of analysis of the risks, but simply states that a gate accessible to fire responders and a water storage tank will be provided as mitigation, so there will be no significant impacts. (*Id.*) The question is, what is being mitigated? As the IS/MND does not discuss the risks or impacts. The "conclusion" in this section is based upon not a single piece of evidence, much less substantial evidence.

Adding the risks of ignition associated with the equipment that will be used in Project operations, the risks of human ignition by introducing humans (workers, truck drivers, visitors) to the Project site, and adding a tremendous amount of combustible material to the Project site are all ignored and left out of the IS/MND. Oddly the IS/MND itself concludes that the mounds

of fuel that will be stored on the Project site are “combustible materials” and it would possibly take “hours to extinguish while there may be other emergencies in the service area needing attention.” (IS/MND, p. 61.) This potential impact is not discussed or analyzed, but it is evidence that the Project will have potentially significant impacts to wildfire risks, and a full EIR is required.

8. The Project’s Cumulative Impacts will be Significant.

CEQA “require[s] a finding that a project may have a ‘significant effect on the environment’ if . . . [t]he possible effects of a project are individually limited but cumulatively considerable.” (Pub. Res. Code § 21083.) A project’s cumulative impacts are significant if the project’s incremental contribution to the impact is “cumulative considerable.” (Guidelines § 15130(a).) A Project’s incremental contribution is cumulatively considerable if the incremental effects of the project are significant “when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (Guidelines § 15065(a)(3).) The fact that a particular project’s incremental impact is not alone significant, or is relatively small when compared to the greater overall problem, does not mean the project does not have significant cumulative impacts. This theory was rejected in *Kings County Farm Bureau* because it would allow “the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-21.) The proper standard for a cumulative impacts analysis is whether the impacts are “collectively significant.” (*Id.* at 721 [citing Guidelines § 15355].)

If a project’s incremental contribution to the impact is “cumulative considerable,” (CEQA Guidelines § 15130(a)) – *i.e.*, if they are “collectively significant,” (*Kings County Farm Bureau, supra*, 221 Cal.App.3d at 721) – the lead agency must examine reasonable, feasible options for reducing or avoiding the project’s contribution to those significant cumulative effects. (CEQA Guidelines, § 15130(b)(5).) A mitigated negative declaration may not be adopted unless the all potentially significant environmental impacts are eliminated or avoided by incorporating such mitigation measures into the project. (See, e.g., Pub. Resources Code, §§ 21064.5, 21080, subd. (c)(2); CEQA Guidelines, § 15064(f)(2), 15070(b).)

Here, the IS/MND did not include a cumulative impacts analysis. No other projects – past, present, or future – were identified. The only discussion of such impacts is in the Mandatory Findings of Significant; but these are findings without supporting evidence, or even identification to other development in the vicinity. It is striking that the cumulative impacts analysis concludes that there are no past, present, or future projects to analyze, and yet the IS/MND and staff reports refer to the other projects that will make up the whole of the forest

thinning and biomass project in the County. These other projects were not even mentioned in the cumulative impacts analysis.

Because the County did not evaluate cumulative impacts in any meaningful way, and the evidence in the record shows that the overall forest thinning and biomass project contemplated by the County will have cumulatively considerable impacts, the IS/MND cannot be adopted.

E. The Project Is Inconsistent with the Lake County General Plan.

State planning and zoning law requires that all land-use decisions of counties must be consistent with the county's General Plan. (Govt. Code § 65860(a); see also *Corona- Norco Unif. Sch. Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994.) A "project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." (*Corona-Norco, supra*, 17 Cal.App.4th at 994.) While perfect conformity may not be required, "a project must be compatible with the objectives and policies of the general plan." (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782 [emphasis added] [citing *Families Unafraid to Uphold Rural etc. County v. Board of Supers.* (1998) 62 Cal.App.4th 1332, 1336].) "A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear." (*Endangered Habitats, supra*, 131 Cal.App.4th at 782 [citing *Families Unafraid, supra*, 62 Cal.App.4th at 1341-42].) The Project is inconsistent with several goals and policies of the County's General Plan. General Plan Goal LU-1. The Project is inconsistent with this goal because it would discourage, diminish, and undermine agriculture and agricultural tourism. The Project would also diminish and undermine existing quality of life standards, particularly to nearby residents and businesses, due to noise, dust migration, aesthetic impacts, and other issues.

General Plan Policy LU-1.1. The Project is inconsistent with this policy because it directs an urban use in a largely rural area, and not in an area occupied by similar industrial uses. It therefore does not direct growth toward existing communities. It likewise does not preserve open space, but rather undermines the preservation of open space, because it will result in an industrial use in an otherwise bucolic area. This violation is particularly notable in light of the County's failure to record the mandatory conservation easement on the Project site at the time it was acquired with State grant funding.

General Plan Policy LU-1.3. The facility contemplated by the Project is incompatible with adjacent residential, commercial, and agricultural uses. As such, the Project is inconsistent with this policy.

General Plan Policy LU-5. This Project contemplates an industrial facility on land not otherwise designated for such uses. As such, the Project is not consistent with this goal.

General Plan Policy LU-5.4. The Project is entirely inconsistent with this policy, which requires compatibility of industrial projects with surrounding land uses.

General Plan Policy LU-5.6. The Project is inconsistent with this policy because it was not permitted under a planned development process, and the property is five acres in size.

General Plan Policy LU-7.15. The Project does not contemplate screening of the facility, including visual impacts. As such, it is inconsistent with this policy.

General Plan Policy PFS-6.2. To the extent the Project could be considered to include an electric facility, the facility would not be appropriately sited to minimize environmental and other impacts. There is no transmission system available in this location to “possibly” deliver electricity to “downstream” users. As such, it is inconsistent with this policy.

General Plan Policy HS-1.1. As set forth in detail above, the Project will create health risks to nearby residence because of excessive noise, and it will also expose neighbors to unanalyzed health risks associated with diesel emissions and particulate matter. The IS/MND tries to hide the fact that there will be chippers and shredders running on site, spewing dust into the air, while trucks and diesel equipment emit exhaust. The County staff’s own statement that a Health Assessment was required shows that the Project is inconsistent with this Policy.

General Plan Policy HS-3.4. The Project does not contemplate the paving of all internal roads used by trucks. In addition, there is a significant likelihood of continued dust associated with the Project. All of this is inconsistent with this policy.

General Plan Goal N-1. The Project is inconsistent with this goal because it would not shield residents, employees, and visitors from excessive noise.

General Plan Policy N-1.2. The Project would result in impacts to sensitive receptors that would exceed the thresholds identified in Table 8-1. As such, the Project would be inconsistent with this policy.

General Plan Policy N-1.3. For the same reasons as Policy N-1.2, the Project is inconsistent with this policy.

General Plan Policy N-1.4. The Project proponents did not site the facility in a manner that would result in successful noise attenuation. Nor are any of the mitigation measures in this policy required to be implemented. As such, the Project is inconsistent with this policy.

General Plan Policy N-1.5. The Project does not include any abatement for transportation noise, including noise associated with heavy vehicles. The mitigation measures in this policy have not been required. As such, the Project is inconsistent with this policy.

General Plan Policy OSC-2.7. The Project does not contemplate sufficient landscaping to shield the development from the scenic roadway. As such, it is inconsistent with this policy.

General Plan Policy OSC-4.4. The Project would result in the generation of dust and thus would interfere with and undermine this policy.

General Plan Goal AR-1. The Project undermines nearby agricultural uses. As such, it is inconsistent with this goal.

General Plan Policy AR-1.2. The Project undermines—rather than supports— on-site and nearby agricultural uses. As a result, the Project is inconsistent with this policy.

General Plan Policies AR-1.3, 1.4. These policies contemplate limiting non-agricultural development intensity around agricultural properties, while the Project does the opposite. No buffers or other mitigation measures were contemplated. It is thus inconsistent with these policies.

General Plan Policy AR-1.6. No buffers have been suggested between the Project and agricultural land uses. The Project is inconsistent with this policy.

General Plan Policies AR-2.1, 2.2, 2.6. The Project undermines agricultural uses. As such, it is inconsistent with these policies

Upper Lake-Nice Area Plan Objective 3.4.1c. (Preservation of agricultural lands with a soil type I through IV). The County reviewed the Project site under the LESA model, and failed to analyze the fact that the Project site is protected by a Williamson Act Contract, and did not even consider consistency with this Objective. The Project contemplates an industrial land use on Prime, Contract-protected agricultural lands, and it is inconsistent with this Objective.

Upper Lake-Nice Area Plan Objective 4.4.1b. The Project is inconsistent with this Objective because it brings an Industrial and commercial activity with the potential to emit toxic, hazardous, or nuisance air contaminants within dangerous proximity to residential areas, and other sensitive receptors.

Upper Lake-Nice Area Plan Objective 4.4.2b, 2f, and 2e. The Project is inconsistent with this Objective because it introduces a noise producing use adjacent to residences and, as shown in the La Forest Report, does not comply with the County noise standards. The Project is inconsistent with this Objective.

F. Conclusion

For the reasons set forth above, the IS/MND fails to meet the requirements of CEQA. The Project is also inconsistent with the governing land use plans, and the lease for the Project site violates the Grant Agreement between DWR and the County. For each of the foregoing

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May 13, 2025

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reasons, the County should not adopt the IS/MND for the Project and should decline to approve Project. If the County considers the Project, it must be reviewed with a full environmental impact report to adequately evaluate the numerous potentially significant effects of the Project, to fully mitigate each of those negative environmental effects, and to consider project alternatives.

Sincerely,

Marsha A. Burch

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Attorney

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Exhibit A

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NOISE IMPACTS REPORT

Initial Study/Mitigated Negative Declaration for
Ag Forest Wood Processing Bioenergy Project
Major Use Permit UP 23-05
Initial Study IS 23-10

Dear Ms. Burch:

May 10, 2025

At your request, I have prepared this Report in response to the County of Lake's IS/MND for the Ag Forest Wood Processing Bioenergy Project ("Project"). My qualifications are attached hereto as "Attachment 1". This report shows that the Project's noise impacts are potentially significant under the California Environmental Quality Act, Pub. Res. Code § 21000 *et seq.*, ("CEQA") and will exceed maximum permissible noise standards set by the County of Lake ("County").

During its operations, the Project would subject nearby homes and businesses to excessive noise levels from its proposed construction work, its wood chipper operation, and its heavy equipment with backup beepers and wood chip delivery truck use of the Project site.

Because operational noise impacts that are not fully disclosed in the Project's Initial Study will likely exceed applicable significant thresholds under the County's Zoning Ordinance and General Plan, the Planning Commission's approval of an IS/MND is inappropriate per 14 Cal. Code. Regs. § 15000 *et seq.* (the "CEQA Guidelines").

Hence, the County should require the Project applicant to prepare a more demanding CEQA review such as an environmental impact report ("EIR") to consider feasible mitigation measures.

INTRODUCTION

THE HUMAN COST OF NOISE: AN INTRODUCTION TO THIS NOISE IMPACTS REPORT

The following report details the significant noise impacts anticipated from the proposed Ag Forest Wood Processing Bioenergy Project and argues for a more thorough environmental review. Beyond many technical specifications and decibel levels, it is crucial to consider the human dimension of such a Project. The introduction of industrial noise into a community is not merely an inconvenience; it is an intrusion that can fundamentally alter the quality of life for those who call the area home. Their homes are more than just structures; they are sanctuaries where they seek rest, rejuvenation, and a sense of security. The persistent presence of excessive noise can shatter this peace, transforming a haven into a source of stress and anxiety.

The World Health Organization and numerous studies have well-documented the detrimental effects of noise pollution on human health. Constant exposure to loud or disruptive sounds can lead to a range of physical ailments, including sleep disturbance, cardiovascular issues, and increased stress hormone levels. Emotionally, the inability to escape invasive noise can foster feelings of frustration, helplessness, and a diminished sense of control over one's own environment. For families, particularly those with young children or individuals who work from home, the impact of excessively-loud, daytime neighboring industrial noise can be especially profound, affecting concentration, learning, and overall well-being.

This report will demonstrate that the noise generated by the proposed Project, from construction activities to daily operations involving wood chippers, heavy machinery, and truck traffic, poses a substantial threat to the health and emotional security of nearby residents. It underscores the necessity of robust regulations and diligent oversight to protect individuals from the proven harms of excessive noise. The quiet enjoyment of one's home is not a luxury, but a fundamental component of a healthy and secure life. Therefore, a comprehensive evaluation of noise impacts and the implementation of effective mitigation measures are paramount before a Project of this nature can proceed. The concerns of the neighbors are not just about noise; they are about preserving the sanctity and tranquility of their homes and their right to a peaceful existence.

EXECUTIVE SUMMARY

1. **INADEQUATE PROJECT DESCRIPTION:** The IS/MND violates CEQA due to its *failure to identify and describe the sensitive receptors located near the Project site*. Without this information, it is impossible to assess whether the Project's noise emissions could significantly impact these sensitive uses. The proximity and type of sensitive receptors directly influence the potential significance of noise impacts. The IS/MND fails to describe the locations of nearly all of the homes and businesses that may be exposed to this Project's excessive noise emissions. (See p. 6 of this Report.)
2. **FAILURE TO PROVIDE ANY AMBIENT NOISE LEVEL MEASUREMENTS:** The IS/MND *does not provide any measurements of ambient noise level conditions* at neighboring homes and businesses. CEQA, as well as the General Plan, require that such ambient noise level measurements be disclosed in an Initial Study. Such measurements are essential for neighbors to comprehend the potential harm they might experience during Project activities. (See p. 7.)
3. **FAILURE TO EVALUATE NOISE LEVEL INCREASES:** CEQA requires this IS/MND *to have evaluated the magnitude of the increase in noise levels* this Project may create at sensitive receptors. The public needs that information in order to determine if Project noise will be significant when compared to existing ambient noise levels. But the IS/MND never examined such noise level *increases*. That failure violates CEQA and is important because this Project will generate significant noise level increases at neighboring homes and businesses. (See p. 8.)
4. **FAILURE TO PROVIDE VITAL INFORMATION AND TO LIST ALL EQUIPMENT:** The IS/MND fails to describe all the equipment the Project would use that would create significant noise. It then fails to describe how loud such equipment would be when measured at known distances. Without that information, the public cannot review the IS/MND's conclusions or independently calculate the Project's noise level exposure at nearby homes. (See p. 11.)

5. EXCESSIVE NOISE LEVELS DURING CONSTRUCTION AT SENSITIVE RECEPTORS:

Construction-related short-term noise levels at neighboring homes and businesses will be significant. Noise levels at a dozen homes occurring during the Project's driveway construction would greatly exceed the County's maximum-allowed noise standards. Site development and construction activities could generate serious noise level increases at these homes of potentially 10 dBA louder than existing ambient noise levels.

Additionally, at some homes, *the magnitude of the increase in noise levels* during this Project driveway construction work would be significant when compared to existing ambient noise levels at those homes. (See p. 12.)

6. EXCESSIVE INTERIOR NOISE LEVELS FOR NEARBY HOMES: Not only would construction noise levels outside these neighboring homes be excessive, but those noise levels reduced while passing through exterior walls could be harmful as well inside these homes during the Project's driveway enlargement and other construction work. The Project's 24-hour averaged noise levels, when measured inside at least seven nearby homes with their windows closed could exceed the maximum-allowed noise standards set by the General Plan and State regulations. These interior noise standards are intended to protect against unreasonable noise impacts within residences including during daytime Project work. Excessively loud Project noise, when heard within these homes, could significantly harm some neighbors' stress levels, annoyance levels and health, especially when those neighbors would be helpless to protect against such noise intrusion. (See p. 16.)

7. EXCESSIVE NOISE DURING DAILY PROJECT OPERATIONS:

This Project would create significant noise impacts during its on-site operations. (See p. 18.)

- A. Use of a single **chainsaw** during Project operations will create noise levels that exceed County noise standards for at least eight of the nearest homes. (See p. 21.)
- B. Constant use of a **loud wood chipper** in this neighborhood may produce noise levels that exceed permissible standards. The County prohibits this Project from generating daytime noise levels greater than 55 dBA $L_{eq-1 \text{ hr.}}$ at residences and 60 dBA $L_{eq-1 \text{ hr.}}$ at commercial buildings. But just the use of a wood chipper may create noise levels applicable to at least nine homes, the pre-school, the casino, the tribal office building and the adjacent Ag building that will exceed these noise standards and thus violate the County's Noise Ordinance. (See p. 23.)
- C. Operation of a **front-end loader** during Project operations will create noise levels that exceed County noise standards at nine nearest homes. At distances less than 1,400 feet to these homes, the noise level from use of a front-end loader could be about 55.7 dBA $L_{eq-1 \text{ hr.}}$. That noise level at those homes would exceed the County's maximum allowed noise standard of 55 dBA $L_{eq-1 \text{ hr.}}$. It may also create a significant noise impact at one home by increasing its ambient noise level by more than 5 dBA. (See p. 24.)

- D. The use of **backup warning alarms** during chip truck deliveries and front-end loader operations will create noise levels exceeding the County's Zoning Ordinance's maximum daytime noise standards at all nine nearest sensitive receptors. (See p. 26 and Table 4.)
- E. **Operation noise** levels at the Upper Lake Park will exceed the County's noise standards. That Park is located about 1,070 feet northwest of the Project's noise sources. The County's General Plan sets a limit of a *Maximum Allowable Noise Exposure level* of 65 dBA CNEL for "**normally acceptable**" uses at a neighborhood park or playground. This Project's noise from a wood chipper, a tub grinder, a front-end loader, and a chainsaw could generate a noise level of **66.2 dBA CNEL** at the Park when that combined noise is added to the existing noise in the Park. That resulting noise level, deemed by the General Plan to be "**normally unacceptable**," would exceed this General Plan noise standard. Thus the General Plan recommends that at that excessive noise level, the Project's development should generally be discouraged. That law is triggered because the IS/MND does not include a mandatory, detailed noise analysis and because needed insulation features (like a noise wall) are not included to protect the public using this Park. (See p. 30.)
- F. **Operation noise** levels may exceed the County's noise standards at the office building with tribal offices located about 690 feet to the west of major Project noise sources. At that close distance, the noise level from Project operations would cause a significant noise impact. Yet the IS/MND never analyzed that serious risk to those office users that could harm their business work and personal health. (See p. 32 and Figure A.)
- G. **Operation noise** levels at the Running Creek Casino located about 1,010 feet to the northwest of major Project noise sources may also exceed the County's noise standards for commercial uses. (See p. 33 and Figure A.) The Zoning Ordinance allows up to 60 dBA $L_{eq-1\text{ hr}}$, but Project operation noise at the casino could be as high as about 68.2 dBA $L_{eq-1\text{ hr}}$. (See p. 33.)
- H. **Operation noise levels** could be excessive and unmitigated at the adjacent Ag Building located to the west of the Project's major noise sources less than 300 feet away. While the County's Zoning ordinance allows daytime noise levels only up to 55 dBA $L_{eq-1\text{ hr}}$ at such agricultural facilities, this Project may generate very seriously excessive noise levels there of about 82 dBA $L_{eq-1\text{ hr}}$. (See p. 34.)
- G. Project operation could generate noise levels at over a dozen neighboring homes within 2,000 feet that may exceed the County's 55 dBA $L_{eq-1\text{ hr}}$ noise limit. (See p. 34.)
8. The IS/MND underestimates the noise impacts by failing to consider that the Project will generate low-frequency noise that is more intrusive than County noise standards recognize. (See p. 35.)
9. The IS/MND fails to include any noise mitigations to reduce this Project's noise problems. The County previously imposed noise mitigations for the applicant's Red Hills BioEnergy project, but at this Highway 20 site with more affected neighbors has not done so. (See p. 36.)

10. The IS/MND violates CEQA against piecemealed environmental review by not evaluating the full scope of all noise impacts of Project operations along with other of its operational segments from off-site wood chip processing operations. It claims that “*there would not be a lot of noise*” because wood chips would be processed elsewhere, Yet such processing operations may be transferred to this Highway 20 site instead, resulting in more noise than estimated. (See p. 38.)

The consequence of the IS/MND’s failure to comply with CEQA and to reveal that this Project will likely violate County noise standards is that its approval must be overturned and an EIR be prepared to properly evaluate such noise impacts before this Project’s approval process is allowed to proceed.



The IS/MND fails to include important information relating to the equipment that would be used for the proposed Project. Specifically, the IS/MND fails to identify and describe the noise-generating equipment of the equipments' noise source levels at varying distances. The IS/MND should identify: (1) how many of each will be in operation for the Project, (2) the equipments' operating assumptions (e.g. estimated daily hours of operations), and (3) noise source levels for each piece of equipment. This inadequacy of the IS/MND's Project Description contravenes CEQA and undercuts the legitimacy of the remainder of the IS/MND, therefore an EIR must be prepared to remedy these deficiencies.

As will be shown in this Report, these additional unidentified noise-sensitive receptors will likely be significantly impacted by this Project's noise.

THE IS/MND PROVIDES NO AMBIENT NOISE LEVEL MEASUREMENTS

The County General Plan requires “*project specific acoustical studies for projects where existing or project-related noise levels exceed County noise standards.*”² This would be such a project because its noise levels would exceed County Noise Ordinance and General Plan noise standards. Part of such a required acoustical study is the assessment of the “*noise environment in the general project vicinity.*” (See: General Plan, Noise Element, p. 8-6.) To assess the noise environment, ambient³ noise level measurements are required of conditions near existing homes. But the IS/MND contains no ambient noise level measurements at all. Nor does it contain a credible acoustical report prepared by anyone with sufficient expertise to support its conclusions; but that is required by the General Plan.⁴ In the absence of any ambient noise level measurements and an acoustical report prepared by a qualified acoustical consultant, this Project is inconsistent with the General Plan and the Zoning Ordinance, § 41.11 Noise.

Conformity with a general plan does not insulate a project from EIR review where it can be fairly argued that the project will generate significant environmental effects. The IS/MND's exclusive reliance on some specific decibel metrics from the Zoning Ordinance does not provide a complete picture of the noise impacts to neighbors that may result from the Project.⁵ The setting here includes a rural location and some homes and businesses in the Project's neighborhood. The intrusion of this noisy industrial facility will likely result in a significant increase in the magnitude of noise levels at these neighboring homes and businesses. The ambient noise levels at neighboring homes are essentially baselines for comparison to the noise levels that will result from Project activities. For projects like this, CEQA requires ambient measurements. Ambient noise levels in the IS/MND would have allowed County officials and the public to have evaluated the magnitude and significance of the Project's noise level *increases* at the nearby sensitive receptors.

² See: County of Lake General Plan, p. 8-6, Table 8-2, Noise Implementation Measure 1.0.

³ Ambient Noise is defined “the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far. Ambient noise level is the level obtained when the noise level is averaged over a period of at least 15 minutes without inclusion of noise from occasional or occasional and transient sources, at the location and time of day near that at which a comparison is to be made.”

⁴ The Lake County General Plan, p. 8-6, Table 8-2, Noise Implementation Measure 1.0, requires an acoustical report “*be prepared by a qualified acoustical consultant.*”

⁵ Equivalent Noise Level (L_{eq}): The average noise level during a specified time period; that is, the equivalent steady-state noise level in a stated period of time that would contain the same acoustic energy as the time-varying noise level during the same period. Maximum Noise Level (L_{max}): The highest instantaneous noise level during a specified time period.

IS/MND FAILS TO EVALUATE THE MAGNITUDE OF THE NOISE LEVEL INCREASES.

The Project's *increase in noise* is a tremendous source of concern for nearby residents, especially because the proposed Project would place the Project's construction and wood delivery operations within a few hundred feet of some nearby homes along Highway 20. Moreover, the Project's noise level increases will be significant at numerous other homes.

California CEQA law considers an increase in noise levels compared to ambient noise to be potentially significant to residents for several key reasons:

1. Human Perception of Change:

Sensitivity to Increases: People are often more sensitive to a change in the noise environment than to a steady noise level, even if the new level remains within acceptable limits according to regulations. A sudden or noticeable increase can be disruptive and annoying, drawing attention even if it's not objectively "loud."

Relative Loudness: Our perception of loudness is not linear. A small increase in decibels can be perceived as a significant jump in loudness, especially when starting from a quieter ambient level. For example, a 3 dB increase is generally considered the threshold of a noticeable change, and a 10 dB increase is often perceived as a doubling of loudness.

Intrusiveness: A new noise source that stands out against the existing background noise is often considered more intrusive and bothersome than a consistent noise level, even if the absolute level of the new noise is not high.

2. Potential for Health and Well-being Impacts:

Annoyance and Stress: Increased noise can cause annoyance, irritability, and stress, even if it doesn't reach levels that cause hearing damage. Chronic exposure to even moderate noise increases has been linked to cardiovascular problems and other health concerns.

Communication Interference: Higher noise levels can make it difficult to hear conversations, watch television, or enjoy other activities, impacting quality of life.

Learning and Productivity: In residential areas, increased noise can disrupt concentration and learning.

3. Limitations of Noise Standards:

Averaging Effects: The County's noise standards rely on average noise levels (like L_{eq} or CNEL) over a period of time. These averages can mask short-term, intermittent, or impulsive noise events that can be particularly disruptive and annoying to residents. This biomass processing Project might technically comply with average noise limits at distant locations, but still generate significant short-duration noise increases due to the banging or clanking noise from heavy equipment, and during biomass unloading activities with heavy industrial equipment.

Existing High Ambient Levels: In areas with already high ambient noise levels, like along Highway 20, a small relative increase from this Project can push the total noise burden to a point where it significantly impacts residents' well-being, even if the Project's absolute noise contribution seems minor elsewhere. If the Project's noise level doesn't exceed numerical limits in the Noise Ordinance or General Plan, residents can still react negatively to noticeable increases in noise due to the reasons mentioned above.

Increased Awareness: A new or louder noise source can draw attention and become a constant reminder of the Project's presence.

Loss of Quiet: Residents may value the existing ambient quiet, and any intrusion, even if not legally "loud," can be perceived as a loss of their peaceful environment.

Perceived Quality of Life Reduction: Even if health impacts are not immediate or severe, increased noise can diminish residents' enjoyment of their homes and neighborhoods.

Concerns about Future Increases: Residents may worry that the initial noise increase is a precursor to further, more significant noise problems in the future.

Loss of Trust: If residents feel their concerns about noise were not adequately considered during the Project's review, it can lead to frustration and a loss of trust in County officials and the Project proponent.

Therefore, CEQA requires consideration of noise increases relative to the ambient level to provide a more comprehensive assessment of potential impacts on residents, going beyond simply checking if absolute noise thresholds are exceeded. This approach acknowledges the complexities of human perception and the potential for significant impacts even when regulatory limits are technically met.

Under Appendix G to the State CEQA Guidelines,⁶ a project's noise impact is normally significant if:

- Exposure of persons to or generation of noise levels is in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies;
- A substantial permanent increase in **ambient** noise levels in the project vicinity above levels existing without the project; or
- A substantial temporary or periodic increase in **ambient** noise levels in the project vicinity above levels existing without the project.

Neither County officials nor the public can evaluate this Project's noise level *increase* without having that ambient noise level data that should have been measured at sensitive receptors. As a result, the IS/MND did not and could not evaluate if there might be a substantial short-term noise level increase during construction or a permanent noise level increase during subsequent operations.

⁶ California Natural Resources, Appendix G- Environmental Checklist Form, <https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/ab52/final-approved-appendix-G.pdf> Also, the current version of Appendix G for noise impacts, although revised, still directs the County to consider if the project's increase in ambient noise levels in the vicinity of the project may be substantial.

Generally, if a project's operational noise actually increases the overall noise level at a neighboring residence by 5 dBA or more, that much of an increase is considered by many California agencies and the courts to be a significant noise impact.⁷ If the future noise level during the Project's operation is greater than the *normally acceptable* noise level, a noise increase of 3 dBA CNEL or greater should be considered a potentially significant noise impact, and mitigation measures must be considered.

But the IS/MND never analyzes how loud the combined noise levels of this Project's various activities will be when added to the existing noise levels at neighboring homes. Nor does the IS/MND disclose what the ambient noise levels at these homes currently are. As the result, the IS/MND fails to comply with CEQA because it does not discuss how much of an increase in noise levels at these home will result once the Project begins operating its noisy equipment.

Instead, and without credible data or analysis, the IS/MND vaguely concludes that this Project's noise levels will not exceed the County's allowable noise standards. But a presumed comparison only to the County's noise limit standards is not consistent with CEQA. The IS/MND should also have examined the magnitude of the noise level increase at sensitive receptors. The IS/MND entirely fails to explain why the magnitude of the increase in ambient noise levels at sensitive receptors played no role in determining whether the change would be significant.

In a court decision: *King and Gardiner Farms, LLC v. County of Kern et al* (2020) 45 Cal.App.5th 814, 830, the Court of Appeal ruled:

“As to the project's noise impacts, the County determined the significance of those impacts based solely on whether the estimated ambient noise level with the project would exceed the 65 decibels threshold set forth in the County's general plan. Based on prior case law, we conclude the magnitude of the noise increase must be addressed to determine the significance of change in noise levels.”

That is the same error made in this Project's IS/MND. The IS/MND, on pages 50 – 51, and supported by the applicant's Sound Level Analysis page,⁸ compares the County's maximum noise standards and concludes the Project's noise levels will comply with those standards. Nowhere does the IS/MND consider the magnitude of the Project's noise level increases at nearby sensitive receptors. The IS/MND, pp. 50 - 51, fails to include any mention of a substantial increase in noise levels triggering its significance criteria.⁹ Because the IS/MND is seriously flawed in this regard, an EIR must be prepared to evaluate if the magnitude of such noise level increases would be significant.

⁷ See: *King and Gardiner Farms, LLC v. County of Kern et al* (2020) 45 Cal. App.5th 814, 892.
https://scholar.google.com/scholar_case?case=4251652402952652772

⁸ See IS/MND, PDF p. 88, “Sound Level Analysis,” for its notation: “Residence - Expected Continuous Sound Levels Under 55 dBa.”

⁹ The IS/MND, p. 50, for XIII Noise Significance Criteria, asks “would the Project (a) result in the generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?” The IS/MND p. 51, § XIII, never answers its question about the generation of a substantial *increase* in ambient noise levels.

THE IS/MND OMITTS OTHER VITAL INFORMATION ESSENTIAL FOR INFORMED PUBLIC PARTICIPATION.

The IS/MND misleads the public by underestimating how many activities would occur and how much noise this Project would emit from those activities.

The IS/MND, pp. 50 - 51, inadequately answers the question of:

“Would the project: (a) result in the generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

But the IS/MND’s **Discussion (a)** in response to that question claims there would be a less-than-significant noise impact, while never even mentioning anything about the nearby homes or other noise-sensitive land uses affected by the Project’s noise emissions. It utterly misleads the public by merely pointing to effects on “agricultural operations” where it states:

“Sound levels have been estimated and fall under the county's acceptable levels for agriculture operations. The sound level of the power generation facility will be under the decibels A levels for non-business hours to the property line.”

But what about noise impacts to nearby homes that are not businesses? Those affected residents are also entitled to protection from excessively loud industrial noise impacts. What about the pre-school’s exposure to excessive construction noise levels?

The IS/MND fails to describe the distances of nearby homes other than one home to the east and one to the north. No mention is made of over a dozen other homes where Project noise levels may be excessively loud. The IS/MND also does not identify the distances from the Project to the Running Creek Casino or to the related office building about 500 feet from driveway construction work. The Upper Lake Park¹⁰ is not mentioned in the Noise Section of the IS/MND either. These commercial facilities’ use can also be harmed by exposure to loud Project noise.

Serving to hide essential information related to disclosure of the Project’s noise impacts, nothing in the IS/MND’s Noise Impact section (pages 50 – 51) points elsewhere to the applicant’s Sound Level Analysis page that only the most inquisitive reader might accidentally discover where it is buried some 37 pages later in the IS/MND along with property maps.

The IS/MND fails to include important information about heavy industrial equipment that would be used for the Project. Specifically, the IS/MND fails to identify and describe the noise-generating equipment with their noise source levels at varying distances. The IS/MND should identify: (1) how many of each will be in operation for the Project, (2) the equipments’ operating assumptions (e.g.

¹⁰ The Park’s website states that it contains a large playground, a shaded picnic structure, many picnic tables, public restrooms, BBQ’s, dog park, baseball field, tennis courts, a large well lit parking area and several walkways within 8 acres of lawn and numerous, beautiful trees.

estimated daily hours of operations), and (3) noise source levels for each piece of equipment. This inadequacy of the IS/MND's Project Description contravenes CEQA and undercuts the legitimacy of the remainder of the IS/MND. Therefore an EIR must be prepared to remedy these deficiencies.

Additionally, noise from Project deliveries will impact residents and businesses located farther from the Project site. For example, backup alarms on Project vehicles can likely be heard at homes a mile away. Increased truck traffic in the vicinity will raise the noise level at homes near Highway 20. Ambient noise level tests need to be conducted at greater distances from the Project site to adequately measure the potential noise impacts and assess these problems prior to Project approval.

The IS/MND fails to provide any evidentiary support by any qualified acoustical consultant for its conclusion that noise impacts resulting from construction and operation would be less-than-significant. In fact, all information in the IS/MND points to the opposite conclusion. Noisy construction work while building a suitable driveway would occur within about 400 feet of some homes to the north of Highway 20. The IS/MND discloses that other daily operations to process biomass chips would involve the use of loud heavy industrial equipment. The IS/MND further acknowledges that Project activities would occur during the daytime and for a period of four months during construction and long afterwards during operations. Some nearby residents work from home and would be disturbed by such intrusive daytime noise impacts. The increase in noise from trucks, a front-end loader, tractor, and chainsaws during daily operations will severely impact adjacent residents. The IS/MND provides no substantive mitigation. The revised IS/MND or EIR must include additional mitigation including on-going noise monitoring during these Project operations if noise levels exceed the County's noise standards.

CONSTRUCTION-RELATED SHORT-TERM NOISE IMPACTS WILL BE SIGNIFICANT.

The IS/MND, p. 50, acknowledges that CEQA requires analysis of whether the Project could result in the generation of substantial "temporary" noise in ambient noise level in the Project's vicinity. In this case, that temporary noise would occur during construction activities. But the IS/MND does not answer this question with any meaningful facts or analysis. Nonetheless it determines without substantial evidence that such temporary construction noise impacts would be less-than-significant. On that basis alone, the IS/MND violates CEQA which requires a good faith effort to protect the environment and a project's neighbors from excessive noise.

The IS/MND does not identify with any certainty what heavy equipment will be used during the Project's construction other than various trucks and some unspecified site compaction equipment. Accordingly, the IS/MND fails to adequately evaluate the Project's noise impacts during its construction activities. That construction work taking up to four months to complete includes constructing a long driveway with noisy equipment. The IS/MND provides no evidence whatsoever that such construction noise impacts to the neighbors will be less-than-significant.

However, and more informative, at least Lake County previously approved in 2020 and modified in 2023 a wood chipping project on property owned by the Scotts Valley Band of Pomo Indians with

similar driveway construction work. Its IS/MND¹¹ stated that during construction, that the Red Hills BioEnergy project “*may involve the use of a tractor/grader, compactor, water truck, and trucks delivering rock and concrete.*” We can assume similar equipment might be used for the Ag Forest site’s construction. Noise levels from backup alarms used on such mobile equipment are even louder. Project construction can generate very loud noise impacts for months that neighbors have a right to know about and be protected from during the IS/MND procedures.

TABLE 1. MAXIMUM ESTIMATED NOISE LEVELS OF POSSIBLE PROJECT EQUIPMENT

Project Equipment	Noise Levels at 50 feet (dBA L _{max})
Back-up Alarms (<i>based on alarm noise level: 97 to 112 decibels at four feet</i>)	90
Bulldozer	90
Compactor	85
Chainsaw	88
Excavator	92
Forklift	86
Front-end loader	90
Grader	89
Grinder*	96
Haul truck (under load)	95
Scraper	91
Tractor	90
Water truck for dust control	94
Wood Chipper **	89

Note: L_{max} = Maximum sound level; the highest sound level measured during a single noise event.

Equipment noise levels are at 50 feet from individual construction equipment and with no other noise contributors.

Source: County of Ventura, Construction Noise Threshold Criteria and Control Plan, 2010, Page 4, Figure 2. “Typical Construction Equipment Noise,” available online as of May 1, 2025:

<https://rma.venturacounty.gov/wp-content/uploads/2024/03/construction-noise-threshold-criteria-and-control-plan.pdf>

* Tub Grinder: 96 dBA L_{max}. See: Bradley Landfill and Recycling Center (DEIR), pp. 4.5-1 and 4.5-10, Table 4.5-5. <https://planning.lacity.gov/eir/BradleyLandfill/DEIR/4.5%20Noise.pdf>

** Wood Chipper: See: Napa County General Plan Update Draft EIR, Feb. 2007, page 4.7-18, Table 4.7-6 – “Construction Equipment Noise Emission Levels”: Wood Chipper: 89 dBA at 50 feet. <https://www.countyofnapa.org/DocumentCenter/View/7959/47-Noise-General-Plan-DEIR-PDF>

DRIVEWAY CONSTRUCTION NOISE EXCEEDS COUNTY’S NOISE STANDARDS

The IS/MND does not clearly describe or specify the noise levels for all the heavy equipment that would be used to build the Project’s rock driveway. The IS/MND vaguely lists: “*grubber; gravel truck; compaction equipment; post hole digger; ground screw anchor machine and delivery trucks; water trucks; and water buffalo trailer.*” No mention is made of typically loud heavy equipment such as a tractor or grader needed during the driveway construction. By comparison, the applicant’s Red Hills bioenergy project IS/MND listed a tractor/grader to be used during construction there.

¹¹ (See 2023 Red Hills BioEnergy Project Addendum to IS/MND, p. 16, available at: https://files.ceqanet.opr.ca.gov/288712-2/attachment/sz4G9B2JVrnyuEKGe88BAS-6ue4CrwgFLiUXkIDxC5e93AEJ6RJgLSakM1yt_pV-wr-OECzwIQQ0gcb30)

For this Noise Impacts Report, it is assumed then that during the Project's driveway construction, a haul truck, a compactor and a tractor/grader would be used and at times be operated simultaneously. Then that equipment use could generate a combined noise level of up to **60.3 dBA $L_{eq-1 \text{ hr.}}$** at Homes "H" and "I" that are located about 1,000 feet to the west from the Project's driveway construction work.¹² That noise level would exceed the County's maximum-allowed residential daytime noise level of 55 dBA $L_{eq-1 \text{ hr.}}$ per the Noise Ordinance § 41.11. Other homes are closer to the driveway construction work, such as Homes "C", "D", "E", "F", and "G", and therefore would be exposed to driveway construction noise levels even greater than 60.3 dBA $L_{eq-1 \text{ hr.}}$ (See Figure B for these distances from such homes to that driveway work.) That is substantial evidence that the Project's construction work would create significant noise impacts at seven or more neighboring homes.

The Upper Lake Middle School at 725 Old Lucerne Road is located 700 feet north-west of a portion of the Project's driveway construction work. The Noise Ordinance, § 41.11(a), Table 11.2, permits a **maximum of 57 dBA $L_{eq-1 \text{ hr.}}$** for noise level exposure at a school. But at that distance, this Middle School could be exposed to excessive noise levels of about **63.4 dBA $L_{eq-1 \text{ hr.}}$** .¹³ Excessive noise like this at schools can interfere with students being able to hear their teachers clearly.

While the construction work might be exempt from the County's Noise Ordinance standards during daytime hours, the Project's adverse noise impact when exceeding those noise standards is not exempt from the requirement for analysis and mitigation under CEQA.

DRIVEWAY CONSTRUCTION WOULD CAUSE SIGNIFICANT NOISE LEVEL *INCREASES*.

CEQA requires the IS/MND to disclose the magnitude of the temporary noise level increase during such construction work at these affected homes. For example, in this rural location, these homes (Homes "H" and "I") may be exposed to existing ambient noise levels of about 50 dBA $L_{eq-1 \text{ hr.}}$ in the daytime. But for months on end, they could be exposed to increased construction noise levels of up to about **60.3 dBA $L_{eq-1 \text{ hr.}}$** . That work could cause a temporary noise level increase of over 10 dBA. (60.3 – 50 = 10.3 dBA increase) That temporary increase would still be significant because it is much more than a typical 5 dBA threshold of significance used by many agencies reviewing CEQA

¹² The estimation of a combined noise level of 61.3 dBA $L_{eq-1 \text{ hr.}}$ at either home is calculated by adding the separate noise levels of a haul truck (84 dBA L_{max}), a compactor (85 dBA L_{max}), and a grader (89 dBA L_{max}) that could be used simultaneously to construct the driveway. Those are decibel levels at a distance of 50 feet, and when added, they cumulatively result in a noise level of 91.3 dBA L_{max} . Calculation:

$$L_{total} = 10 \times \log_{10} (10^{L1/10} + 10^{L2/10} + 10^{L3/10}) = 10 \times \log_{10} (10^{8.4} + 10^{8.5} + 10^{8.9}) = \mathbf{91.3 \text{ dBA } L_{max} \text{ at 50 feet.}}$$

Then this total noise level is adjusted with a typical usage factor for each equipment type. The usage factor is an estimate of the fraction of time each piece of equipment operates at full power. The usage factor is used to estimate L_{eq} from the L_{max} values in this case where the Lake County impact criteria is expressed in terms of L_{eq} . This equation below is used to estimate L_{eq} from L_{max} . It also includes a term for estimating noise at distances other than 50 feet, such as at 1,000 feet in this calculation. **$L_{eq} \text{ dBA} = L_{max} \text{ at 50 feet} - 20\log(D / 50) + 10\log(UF)$** where D = distance of interest, and UF = usage factor or fraction of time period of interest equipment is in use. Assuming each equipment is operated with a usage factor of 40%, and the distance from the driveway work to these two homes is 1,000 feet, the combined noise level during driveway work at these homes is calculated at 61.3 dBA $L_{eq-1 \text{ hr.}}$. At that distance, 1.0 dB would be subtracted to account for atmospheric attenuation, resulting in a calculated noise level of **60.3 dBA $L_{eq-1 \text{ hr.}}$** .

¹³ Calculation at 700 feet: $dB_2 = dB_1 - 10 \times A \times \log(R_2/R_1) = 60.3 - 10 \times 2.0 \times \log(700' / 50') = \mathbf{63.4 \text{ dBA } L_{eq-1 \text{ hr.}}}$ (That noise level at the Middle School includes subtracting 0.7 dB for atmospheric attenuation over 700 feet.)

projects.¹⁴ In such rural locations, loud industrial construction noise can be particularly intrusive and disturbing. An 10 dBA temporary noise level increase would be very significant. The IS/MND is inadequate for failing to disclose that potentially-significant temporary noise impact. Other agencies require such an evaluation of significant increases in noise due to construction activities. For example, the City of Los Angeles defines¹⁵ that “a project would normally have a significant impact on noise levels from construction if:

- Construction activities lasting more than one day would exceed existing ambient exterior noise levels by 10 dBA or more at a noise sensitive use.
- Construction activities lasting more than 10 days in a three month period would exceed existing ambient exterior noise levels by 5 dBA or more at a noise sensitive use.

This Project would expose at least nine neighboring homes, two schools and other structures to excessive noise levels during the Project’s driveway construction work. (See Table 2 below.)



¹⁴ A 5 dB increase in noise levels is considered significant if the ambient noise is below 60 dB day-night average sound level (L_{dn}). This threshold is applicable to the nearest residential areas to a project, where noise levels were recorded below 60 dB Ldn. A leading court case involving a proposed oil and gas ordinance in Kern County indicated that a 5 dB increase over existing ambient noise levels could constitute a significant noise impact, regardless of the maximum levels allowed under their General Plan. The Federal Interagency Commission on Noise (FICON) also uses this 5 dB threshold of significance assessing increases in project-related noise, taking into account the base level of ambient noise.

¹⁵ See L.A. CEQA Thresholds Guide (2006) Page I.1-3, Section 2(A) Significance Threshold.

DRIVEWAY CONSTRUCTION COULD GENERATE NOISE LEVELS INSIDE SOME NEIGHBORING HOMES THAT EXCEED THE COUNTY'S GENERAL PLAN 45 dBA CNEL INTERIOR NOISE LIMIT.

Another standard that the General Plan Noise Element Policy N-1.10 requires to be considered is the California Noise Insulation Standards (Building Code Title 24, Section 3501 *et seq.*). This standard for residences sets a maximum interior noise level of **45 dBA L_{dn}** in any habitable room, averaged over a 24-hour period. That is essentially the same standard set by the County's General Plan maximum indoor noise requirement of **45 dBA CNEL** at these homes.¹⁶ These standards protect against sleep-disturbance impacts at nighttime, and more pertinent here to actual construction noise, against unreasonable annoyance impacts during the daytime. But the IS/MND never evaluated this Project's compliance with this residential noise standard that would be violated within nearby homes.

If the Project's driveway construction activities generate a total noise level of **71.3 dBA L_{eq}** at 1,000 feet at Home "H" or "I", that noise level would exceed the maximum indoor noise standards at these two homes. For construction occurring for 10 hours per day, for example from 7:30 a.m. to 5:30 p.m., but with the Project site being quiet for the remaining 14 hours per day, the day-night weighted average noise level can be calculated to **67.5 dBA CNEL** at those two homes' exteriors.¹⁷ This impact would be even greater if the facility operates for over 11 hours per day, since it is permitted to operate from 7:30 am to 7:00 p.m.¹⁸

With an exterior noise level of 71.6 dBA CNEL at Homes "H" and "I's windows, and with a typical attenuation (reduction) factor of 20 dBA due to noise passing through the walls and roof of a home with its windows closed, the interior noise level indoors would be as much **51.6 dBA CNEL**.¹⁹ That interior noise level due to Project construction would exceed the Building Code standards and the County General Plan's maximum allowable **45 dBA CNEL** interior noise limit. Even with a slight reduction in noise levels due to atmospheric attenuation of about 1 dB at these distances, the interior noise levels would still exceed the County's maximum standards. Therefore this Project's construction noise impacts to the interior noise levels would be significant at some homes.

Other homes exposed to noise from this Project's driveway construction work would be significantly impacted by that construction noise. The homes "C", "D", "E", "F", and "G" which are north of State Highway 20 are also less than 1,000 feet from sections of this driveway's construction work. They too would be exposed to interior noise levels when their windows are closed of greater than 45 dBA CNEL, a noise level which exceeds the County's maximum interior noise standards.

¹⁶ See County of Lake General Plan, Noise Element, p. 8-4, Policy N-1.3, Interior Noise Levels: 45 CNEL.

¹⁷ Calculation of CNEL: Assign **71.3 dBA L_{eq}** to each of 10 daytime hours from 7:30 a.m. – 5:30 p.m., and assume **45 dBA L_{eq}** for each of 3 evening hours from 7 p.m. – 10 p.m., (i.e. add 5 dB to each hour presumed at 40 dB), and **50 dBA L_{eq}** for each of the 9 hours from 10 p.m. – 7 a.m. (i.e. add 10 dB to each nighttime hour presumed at 40 dB). Then assume **40 dBA L_{eq}** for the remaining 2 hours. Then calculate the logarithmic average of these noise levels for all 24 hours in a day with this formula:

$$\begin{aligned}\text{CNEL} &= 10 \log_{10} \left[\left(\frac{1}{24} \right) \times \left\{ (10^{(71.3)/10} \times 10 \text{ hrs}) + (10^{(40+5)/10} \times 3 \text{ hrs}) + (10^{(40+10)/10} \times 9 \text{ hrs}) + (10^{(40)/10} \times 2 \text{ hrs}) \right\} \right] \\ &= 10 \log_{10} \left[\left(\frac{1}{24} \right) \times \{ 13,896,288 + 94,868 + 90,000 + 20,000 \} \right] \\ &= 10 \log_{10} \left[\left(\frac{1}{24} \right) \times 135,101,156 \right] = 10 \times \log_{10} [5,629,214] = 10 \times 6.75 = \mathbf{67.5 \text{ CNEL}}\end{aligned}$$

¹⁸ The IS/MND, p. 8, states: "Hours of operations will occur between 7:30 a.m. and 7:00 p.m."

¹⁹ Calculation: 71.2 dBA CNEL outdoors – 20 dB (loss with windows closed) = 51.2 dBA CNEL indoors

FIGURE B - DISTANCES FROM NOISE SENSITIVE RECEPTORS TO CONSTRUCTION NOISE

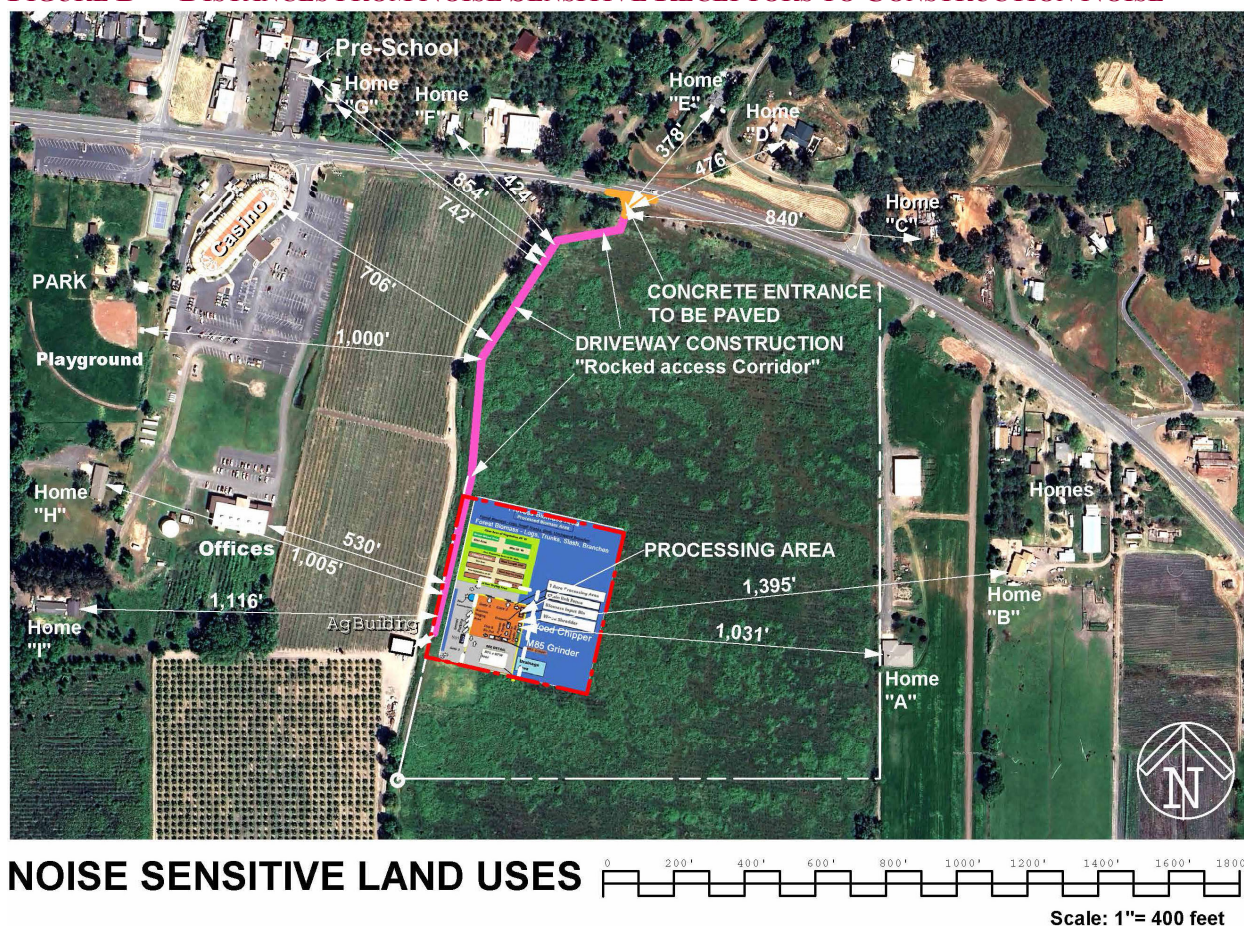


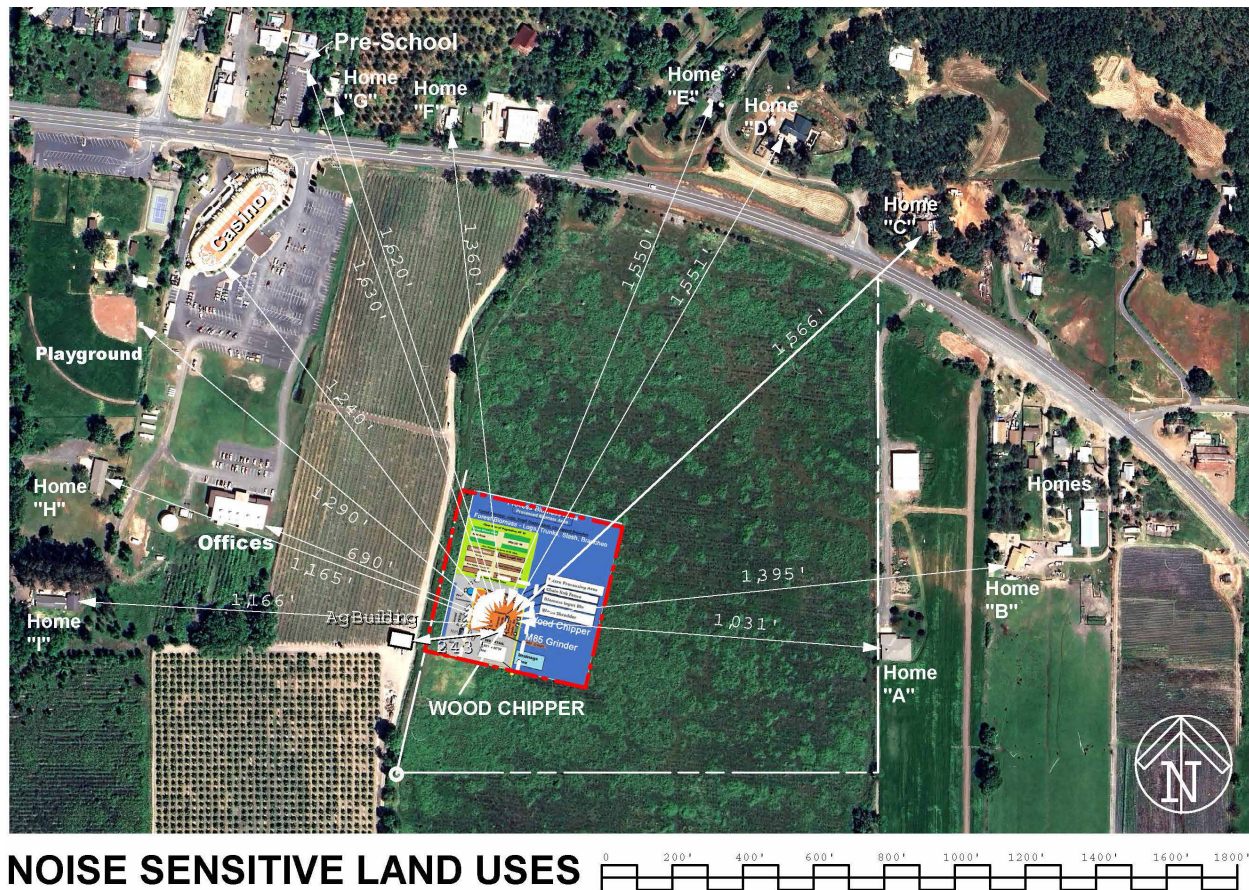
Table 2 - Noise Levels During Construction and During Operation at Sensitive Receptors

Sensitive Receptor (homes or businesses)	Distances To Construction At driveway or site work (in feet) See Figure A	Noise Level Exposure During Construction (dBA L _{eq} -1 hr.)	Max dBA allowed by §41.11	Distances To Operation (in feet) See Figure C	Noise Level Exposure During Operation (dBA L _{eq} -1 hr.)	Max dBA allowed by §41.11	Complies with Noise Standards?
A	1031	60.0	55	1031	69.8	55	No
B	1395	57.4	55	1395	67.2	55	No
C	840	61.8	55	1566	66.2	55	No
D	478	66.7	55	1551	66.3	55	No
E	378	68.8	55	1550	66.3	55	No
F	424	67.8	55	1360	67.4	55	No
G	742	62.9	55	1620	65.9	55	No
H	1005	60.3	55	1165	68.8	55	No
I	1116	59.3	55	1166	68.8	55	No
Preschool	854	61.7	57	1630	65.9	57	No
Middle School	700	63.4	57	1850	64.7	57	No
Casino	706	63.3	60	1240	68.2	60	No
Ag Bldg.	100	80.3	55	243	82.4	55	No
Office	530	65.8	60	690	73.3	60	No

(Construction noise levels based on 60.3 dBA L_{eq}-1 hr. at 1,000 feet & atmospheric attenuation. See p. 14)

(Operation noise levels are based on 67.9 dBA L_{eq}-1 hr. at 1,290 feet & atmospheric attenuation. See p. 31)

FIGURE C - DISTANCES FROM NOISE SENSITIVE RECEPTORS TO WOOD CHIPPER NOISE



OPERATIONAL NOISE IMPACTS WOULD BE SIGNIFICANT IN THE NEIGHBORHOOD.

Neighbors to this proposed Project have legitimate concerns that the Project's IS/MND has not adequately disclosed the serious noise impacts that they may be forced to live with if this Project's daily operations and their likely noise levels are not adequately examined and sufficient noise mitigations are not imposed.

The confluence of increasing interest in sustainable waste management and renewable energy production has led to the emergence of combined wood processing and biochar production as potentially beneficial industrial operations. These facilities can efficiently utilize biomass resources, converting wood waste into valuable products such as biochar, a carbon-rich material with applications in agriculture and environmental remediation. However, the operation of heavy machinery inherent in both wood processing and material handling for biochar production carries the potential for significant noise pollution.

A thorough assessment of the noise impact from such combined facilities is crucial for ensuring the safety and well-being of workers and for maintaining positive relationships with surrounding communities. This report aims to provide a comprehensive analysis of the expected noise levels emanating from a combined wood processing and biochar plant. The analysis will consider the noise generated by specific equipment commonly used in these operations, the principles governing the

combination of sound levels from multiple sources, findings from existing research on similar industrial settings, the regulatory landscape concerning noise from biochar plants, and the various factors that can influence the overall noise environment.

The integration of these two industrial processes within a single facility can lead to complex acoustic interactions, where the noise generated from different stages of wood processing and biochar production might overlap and potentially amplify the overall noise footprint. Therefore, a detailed examination of the cumulative noise impact is essential.

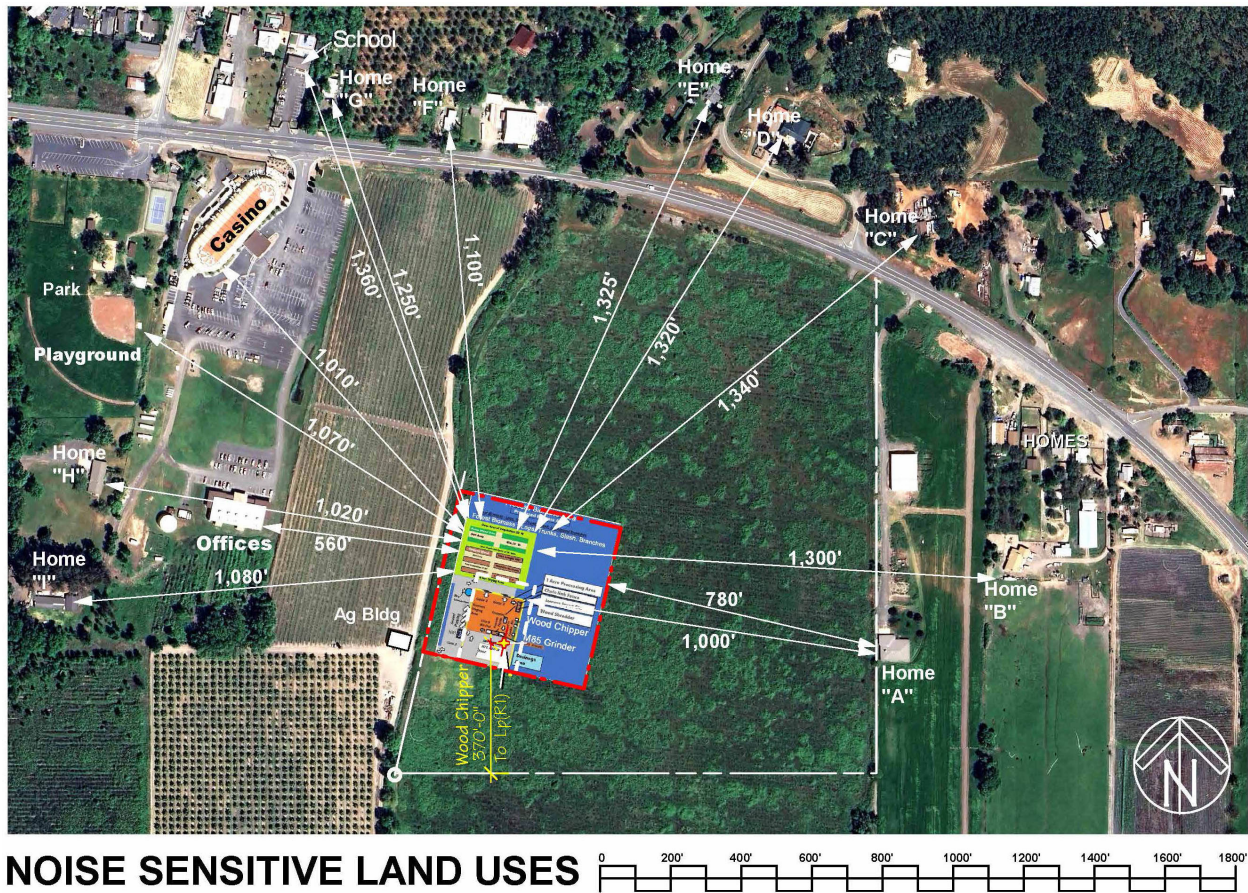


Loud noise would occur on the entire 5-acre Project site during Project operations. The IS/MND does not disclose the increased noise exposure risk during truck unloading and chainsaw noise at the northern portion of the site to residents living north of Highway 20. The IS/MND's only map²⁰ of the neighborhood is deceptive and misinforms the public. It does not have any mention of noise source locations other than at a point (labeled "Lp(R1)") that is near the southern end of the 5-acre site. That location is up to 400 feet farther to the south from homes near Highway 20 than where other major sources of noise at the northern end of the 5-acre site would operate. Yet on that map, there is no outline or other indication where the Project 5-acre site would be positioned. If that major noise source point representing the location of a wood chipper or a *M85 grinder* was described on a map somewhat like [Figure A](#), below, the public could understand how other loud Project noise sources operating 400 feet closer to homes and the pre-school to the north would impact people. That distance decrease can make a significant difference to those neighbors. The same noise level measured at 1,000 feet from the noise source would be about **3 dBA** louder than if measured at 1,400 feet away.

On the following page, a map ([Figure A](#)) is repeated for convenience to show distances from various loud Project operations to each sensitive receptor listed in this report.

²⁰ See IS/MND, PDF page 88: the only neighborhood aerial photo map is on page labeled "Sound Level Analysis."

FIGURE A - DISTANCES FROM PROJECT OPERATION TO NOISE SENSITIVE RECEPTORS



During preparation of this Noise Impacts Report, we were able to uncover the IS/MND's mapping inadequacy by using precise CAD drafting software that County officials and the general public probably do not have access to. But the public should not have such critical mapping information be hidden from them such that they would need specialized software and skills to unravel.

The overarching principles of CEQA inherently necessitate that documents intended for public review are presented in a format that allows for understanding. One of CEQA's primary purposes is to ensure that government decision-makers and the public are informed about the potential environmental effects of proposed activities. This informational goal is undermined if the documents, including crucial visual aids like site plans and maps, are missing vital information. Furthermore, CEQA mandates that public agencies disclose and evaluate the significant environmental impacts of projects, a process that relies on the public's ability to access and understand the information provided. The public review period, a cornerstone of CEQA, offers an opportunity for community members to submit comments on the project and the environmental document, an opportunity that is severely limited if key parts of the document are essentially unreadable. The public's ability to engage meaningfully in the CEQA process depends on their capacity to understand the information presented in all environmental review documents. Furthermore, the requirement for a "good faith effort of full disclosure" suggests a broader expectation within CEQA that agencies will present environmental information in a format that allows for genuine understanding and scrutiny.

USE OF A SINGLE LOUD CHAINSAW AT THE NORTHERN SIDE OF PROJECT SITE COULD EXCEED COUNTY'S NOISE LIMITS AT NEARBY HOMES.

The IS/MND, p. 23, describes that the Project proposes to have up to approximately 100 million pounds per year²¹ of forest materials delivered to the northern end of the 5-acre site during 12-hour workdays. Processing that much material would generate a lot of noise at the site. Then branches and tree trunks will be unloaded from delivery trucks by a front-end loader, and cut as needed with chainsaws. After further processing operations, other trucks and loaders will store the material in piles and haul away wood chips or biochar stored nearby. Noise levels generated by these multiple equipment types would be significant to nearby residents. The IS/MND places no limits on what equipment may operate there or how many chainsaws can be used at one time.

The use of a single loud chainsaw at the northern portion of the 5-acre site could generate noise levels at numerous homes that exceed the County's noise standards.

For example, that chainsaw could create noise levels at **Home "F"** to the north of approximately 57.1 to 58.0 dBA L_{eq} 1-hr. That noise level would exceed the County's daytime noise standard for residences which is 55 dBA L_{eq} 1-hr.

Explanation: Home "F" is about 1,000 to 1,100 feet from where such a chainsaw could be operated at the north end of the Project's 5-acre site. Chainsaw noise levels have been measured at an average of 85 dBA L_{eq} at a 50-foot distance, and up to a maximum of 88 dBA L_{max} at 50 feet.²² If at a distance of 1,050 feet, that 85 dBA L_{eq} average sound level would decrease to 58.6 dBA L_{eq} .²³ Then with atmospheric attenuation absorbing 1.1 dBA over that 1,100-foot distance, the resulting noise level would be **57.5 dBA L_{eq} 1-hr.** That noise level constitutes a significant noise impact at that home because it is greater than the County's maximum 55 dBA L_{eq} 1-hr. noise standard.²⁴

At **Home "E"** located about 1,325 feet northeast from where a chainsaw could be operated on the 5-acre site, this home's noise exposure to just that chainsaw noise would be about **55.2 dBA L_{eq} 1-hr.**, slightly louder than the County's maximum allowed noise standard at a residence.²⁵

Homes "A", "B", "C", "G", "H", and "I" are less than that 1,325-foot distance from the 5-acre site and, using a similar noise level calculation, they too could also be exposed to excessive noise levels during the operation of a single loud chainsaw. See Figure A above for distances between the 5-acre site where chainsaws could be used and these various homes.

²¹ (Up to 50,000 tons per year).

²² Source: County of Ventura, Construction Noise Threshold Criteria and Control Plan, 2010, Page 4, Figure 2. "Typical Construction Equipment Noise," (Chainsaw: 85 dBA L_{eq} at 50-feet); this source is available online as of May 1, 2025, and a copy will be provided to County of Lake officials if requested:

<https://rma.venturacounty.gov/wp-content/uploads/2024/03/construction-noise-threshold-criteria-and-control-plan.pdf>

²³ Calculation: $dB_2 = dB_1 - 10 \times A \times \log(R_2/R_1) = 85 - 10 \times 2.0 \times \log(1,050' / 50') = 58.6 \text{ dBA } L_{eq}$. Subtracting 1.1 dB for atmospheric attenuation, the resulting noise level would be 57.5 dBA L_{eq} 1-hr.

²⁴ See Noise Ordinance, § 41.11, Table 11.1 (Maximum one-hour equivalent sound pressure levels, daytime, residential): 55 dBA L_{eq} 1-hr.

²⁵ Calculation: $dB_2 = dB_1 - 10 \times A \times \log(R_2/R_1) = 85 - 10 \times 2.0 \times \log(1,320' / 50') = 56.5 \text{ dBA } L_{eq}$. Subtracting 1.3 dB for atmospheric attenuation in 1,320 feet, the resulting noise level would be **55.2 dBA L_{eq} 1-hr.**

All these neighboring homes would be affected by louder noise levels yet than just from a chainsaw when noise levels are combined from the other Project noise sources. Those other sources include haul trucks, front-end loader, wood chipper, grinder, shredder, grappler, crumbler/rotary shear, and backup warning alarms used on mobile equipment.

Because gas-powered chainsaw noise could create noise levels at these neighboring houses that exceed the Zoning Ordinance's noise standards, this Project would create a significant noise impact.



USE OF JUST THE WOOD CHIPPER WILL CREATE NOISE LEVELS IN EXCESS OF ZONING ORDINANCE'S 55 dBA $L_{eq-1\text{ hr}}$ DAYTIME MAXIMUM STANDARDS.

This Project would use a wood chipper to grind up logs and small tree trunks.²⁶ Wood chippers play a crucial role in processing smaller diameter wood, branches, and other woody debris into smaller, more uniform chips. Wood chipper noise levels have been rated by other counties up to 89 dBA L_{max} at 50 feet.²⁷ That accordingly is a noise level also used in this Report. The applicants have not agreed to only use a quieter wood chipper. The Planning Commission enacted no conditions of approval, no mitigation and no other requirement to use a less noisy wood chipper. With few effective noise barriers proposed to remain at all times surrounding the wood chipper, the following calculated noise levels at nearby homes are estimated.

Table 3 - COMPARISON OF WOOD CHIPPER NOISE LEVELS WITH COUNTY NOISE ORDINANCE

Sensitive Receptor	Distance to chipper (in feet)	Maximum Allowed Chipper Noise Level (dBA $L_{eq-1\text{ hr.}}$)	Calculated Noise Level at Receptor (dBA $L_{eq-1\text{ hr.}}$)	Comply with Noise Standard?
A	1031	55.0 (See Note 1)	61.7	No
B	1395	55.0	58.7	No
C	1566	55.0	57.5	No
D	1551	55.0	57.6	No
E	1550	55.0	57.6	No
F	1360	55.0	58.9	No
G	1620	55.0	57.2	No
H	1165	55.0	60.5	No
I	1166	55.0	60.5	No
Casino	1240	60.0 (See Note 2)	59.9	(Yes)
Preschool	1630	57.0	57.1	No
Offices	690	60.0 (See Note 2)	66.5	No
Ag Bldg.	243	60.0 (See Note 2)	75.0	No

Note 1: Noise Ord., § 41.11, Table 11.1 (Maximum one-hour equivalent sound pressure levels, daytime, residential)

Note 2: Noise Ord., § 41.11, Table 11.1 (Max. one-hour equivalent sound pressure levels, daytime, commercial)

Note: These noise levels include adjustment for atmospheric attenuation over the specified distances.

Nearly all of these noise levels from wood chipper operation listed in Table 3 above would exceed the County's maximum allowable daytime noise levels at residences of **55 dBA $L_{eq-1\text{ hr.}}$** , for a pre-school of **57 dBA $L_{eq-1\text{ hr.}}$** , and for commercial buildings of **60 dBA $L_{eq-1\text{ hr.}}$** .

That calculation does not include other Project noise such as trucking, front end loader noise, conveyor belt noise, backup alarm warning noise – any of which would raise the Project's noise

²⁶ See IS/MND, PDF p. 83, "Detail "B", Equipment Layout of 5 Acre Leased Site, where the processed biomass area included a label that describes the project processing "Forest Biomass – **logs, small (tree) trunks** . . .".

²⁷ See: Napa County, BDR 2005. *Napa County General Plan Update Draft EIR*, Feb. 2007, page 4.7-18, Table 4.7-6 – "Construction Equipment Noise Emission Levels"; Wood Chipper: **89 dBA at 50 feet**.

This document is online and/or a copy will be made available to County officials if requested:

<https://www.countyofnapa.org/DocumentCenter/View/7959/47-Noise-General-Plan-DEIR-PDF>

even further.²⁸ This is strong evidence that the Project as proposed will generate noise levels that exceed the Noise Ordinance limitations.²⁹

As calculated, the wood chipper's use may create noise levels so loud that they can exceed the Noise Ordinance's maximum one-hour **55 dBA $L_{eq-1\text{ hr}}$** during a daytime hour at any of the nine sensitive receptors studied in this Report. Numerous homes in a residential subdivision located to the west and as close as 1,700 to 2,000 feet to the wood chipper could also be exposed to excessive noise levels greater than 55 dBA $L_{eq-1\text{ hr}}$ during use of the wood chipper, not even considering the Project's other major noise sources. As such, this Project's IS/MND incorrectly determined the Project's noise impact due to the use of the proposed wood chipper will be less-than-significant.

Take note that the calculated noise levels described in Table 3 above have been decreased due to a factor that accounts for "atmospheric attenuation." For example, at 1,500 feet, such absorption of sound by the atmosphere could be about 1.5 dBA.³⁰

OPERATION OF JUST THE FRONT-END LOADER WILL CREATE SIGNIFICANT NOISE IMPACTS AT THE NINE NEAREST HOMES.

A diesel-engine powered front-end loader is proposed for use during operations.³¹ A front-end loader is a noisy piece of heavy equipment when operated for 10 (or 11) hours per day near homes.³² This Project requires that wood be chipped and stored on the site using a front-end loader. Sound pressure levels measured at a distance of 50 feet for these machines typically fall within the range of 80 dBA to 94 dBA. In 1971, the US EPA reported front-end loaders can generate 87 dBA L_{max} at 50 feet.³³ The County of Ventura³⁴ as recently as 2024 describes a front-end loader's noise level as **90 dBA L_{max}** . The engine and exhaust system of the loader are major sources of this noise.

²⁸ The estimations of predicted chipper noise levels were calculated with this formula below which has been used in other calculations previously in this report. First, noise attenuates from a point source at a rate of approximately 6.0 dBA per doubling of distance, the Project's noise impacts on sensitive receptors nearby can be determined by the following equation for noise attenuation over distance:

$$(1) \quad L_2 = L_1 - |20 \log_{10} \left(\frac{d_1}{d_2} \right)|,$$

Where:

L_1 = known sound level at d_1

L_2 = desired sound level at d_2

d_1 = distance of known sound level from the noise source

d_2 = distance of the sensitive receptor from the noise source

²⁹ See: Noise Ordinance § 41.11, Table 11.1, for daytime residential and commercial maximum one-hour equivalent noise levels of 55 dBA $L_{eq-1\text{ hr}}$. See also Table 11.2 for the maximum noise levels at schools of 57 dBA $L_{eq-1\text{ hr}}$.

³⁰ Atmospheric attenuation is an additional reduction factor caused by the sound energy being converted to heat as it travels through the air, and it is not due to the sound spreading out and decreasing by approximately 6 dB for each doubling of distance. See: "Calculation of Absorption of Sound by the Atmosphere, where 0.1 dB is reduced per 100 feet of distance, for noise of 1,000 Hz at 70 degrees F; this calculator is available online or a copy will be provided to County officials if requested, at <http://www.sengpielaudio.com/calculator-air.htm>

³¹ See: IS/MND p. 7: "Moving materials and loading them into processing equipment will be accomplished with a front loader."

³² See: IS/MND, PDF p. 88: "Planned Operational Hours of Equipment Listed Above 7:30am – 5:30pm".

³³ See: U.S. EPA, "Noise from Construction Equipment and Operation," Building Equipment and Home Appliances, 1971.

At a distance of 1,400 feet relevant to at least nine affected homes,³⁵ this equipment's noise levels as reduced by that distance, and assuming it would be used 40% of the time during a workday, would be about **55.7 dBA $L_{eq-1 \text{ hr}}$** .³⁶ That noise level from just a single piece of equipment would exceed the County's maximum allowed 55 dBA $L_{eq-1 \text{ hr}}$ standard for daytime noise at these residences.³⁷

Moreover, the actual noise level during Project operations would be substantially higher at these homes when the cumulative noise from other equipment that would also be simultaneously operating is added, including trucks, tractor, shredder, wood chipper, M85 grinder, grappler, chainsaws, a crumbler/rotary shear, and backup warning alarms. This construction equipment usage seriously risks a significant noise impact to neighbors that the IS/MND fails to disclose.

NOISE LEVEL INCREASE FROM OPERATION OF FRONT END LOADER WOULD BE SIGNIFICANT AT NEARBY HOMES.

Not only will the noise level from just the front-end loader's use exceed County noise standards during any hour of the day, but its operation will also generate a noise level *increase* that will be greater than 5 dBA louder in magnitude than the existing ambient noise levels at one of the neighboring homes, Home "I". Because the IS/MND provides no ambient noise level measurements at these homes, it is assumed that some of these homes experience ambient noise levels of below 50 dBA L_{eq} during the daytime. For example, the Lake County General Plan Noise Element, page 8-13, Figure 8-7, contains a roadway noise contour map showing the 55 dBA L_{dn} noise contour at about 360 feet from the centerline of Highway 20. That 55 dBA L_{dn} day-night weighted 24-hour average noise level represents a daytime noise level of about 55 dBA L_{eq} .³⁸ Then at a distance of 1,140 feet from the centerline of Highway 20, the daytime ambient noise level can be calculated to be about 50 dBA L_{eq} .³⁹ Home "I" (at 625 E. Highway 20) is more than 1,140 feet from Highway 20,

³⁴ See: County of Ventura, Construction Noise Threshold Criteria and Control Plan, 2010, Page 4, Figure 2. "Typical Construction Equipment Noise," available online as of May 1, 2025, and a copy will be provided to County of Lake officials if requested: <https://rma.venturacounty.gov/wp-content/uploads/2024/03/construction-noise-threshold-criteria-and-control-plan.pdf>

³⁵ The distance from where the front-end loader would be used to Homes "A", "B", "C", "D", "E", "F", "G", "H", and "I" could be less than 1,400 feet.

³⁶ Calculation: $dB_2 = dB_1 - 10 \times A \times \text{LOG}(R_2/R_1) = 90 - 10 \times 2.0 \times \text{LOG}(1,400' / 50') = 63.1 \text{ dBA } L_{max}$. Then assuming a Use Factor of 40% for the front-end loader, its noise level would drop to 57.1 dBA $L_{eq-1 \text{ hr}}$ at 1,400 feet. Subtracting 1.4 dB for the atmospheric attenuation at that distance would result in the front end loader's noise level of **55.7 dBA $L_{eq-1 \text{ hr}}$** at 1,400 feet.

³⁷ See: Noise Ordinance § 41.11, Table 11.1, for daytime residential maximum one-hour equivalent noise levels of 55 dBA $L_{eq-1 \text{ hr}}$.

³⁸ Source: The Engineering ToolBox's [Day-Night Sound Level Calculator](https://www.engineeringtoolbox.com/sound-level-d_719.html), assuming a daytime equivalent sound level of 55 dBA L_{eq} and a nighttime equivalent sound level of 45 dBA L_{eq} , which calculates to a day-night sound level of **55 dBA L_{dn}** , which is available online at: https://www.engineeringtoolbox.com/sound-level-d_719.html

³⁹ Calculation of noise level farther from highway: $L_2 = L_1 - 10 \times n \times \log_{10}(r_2/r_1)$, where L_1 is the initial noise level at a distance r_1 from the highway, and L_2 is the noise level at a new, further distance r_2 from the highway, and n is a factor ($n = 1$) representing a 3 dBA reduction for every doubling of distance from a linear noise source of highway traffic. Where $L_1 = 55 \text{ dBA } L_{dn}$ at 360 feet, then L_2 calculates to 50 dBA L_{dn} at 1,140 feet per this formula:

(Continued): Calc: $L_2 = L_1 - 10 \times n \times \log_{10}(r_2/r_1) = 55 - 10 \times 1 \times \text{Log}(1,140/360) = \mathbf{50 \text{ dBA } L_{dn}}$ at 1,140 feet from Highway 20.

so presumably its residents would experience ambient daytime noise levels less than 50 dBA L_{eq} . But when just a front-end loader is operating and generating noise levels of 55.7 dBA $L_{eq-1 \text{ hr.}}$ as calculated at this house, that noise level increase of over 5 dB would be significant. (55.7 – 50 = 5.7 dB increase.) That increase is more than a typical 5 dBA threshold of significance used by many agencies reviewing CEQA projects. That much of an increase is a significant noise impact and it would be clearly audible and likely annoying to these residents. When the cumulative noise levels from multiple pieces of equipment operating simultaneously is considered, this significant, greater-than-5 dBA increase in noise levels due to Project operations would impact additional homes in the vicinity too. Yet the IS/MND utterly fails to disclose, evaluate or mitigate the noise levels this front-end loader (and other equipment) will generate at these nearby homes.

NOISE IMPACTS OF HEAVY EQUIPMENT BACKUP WARNING ALARMS WOULD SIGNIFICANTLY EXCEED NOISE ORDINANCE STANDARDS.

The IS/MND fails to analyze the noise impacts to the neighbors from this Project's heavy equipment backup warning beepers. Such backup alarms are mandated on the haul trucks delivering wood chips and on the front end loader. That noise could be very audible and annoying at some homes and businesses near this Project site. As discussed below, likely noise levels from those backup beepers would be unlawful in this setting because they will significantly exceed the County's maximum noise standards at neighboring properties.

Backup alarms are required to protect workers from being run over by heavy equipment. For on-ground workers, it is crucial to detect backup alarm signals as far away as possible rather than at close distances since this will provide them more time to react to approaching vehicles. However the required single-frequency tone used in typical backup alarms is not uniformly loud in all directions. For that reason, alarm manufacturers often make these alarms extra loud to protect their companies from liability as well as to protect nearby workers. Workers also often wear over-the-ear hearing protectors, like ear muffs, to protect their hearing from the loud heavy equipment operational noise. No reasonable worker using the Project's heavy equipment and very loud chipper would work without hearing protection. Such hearing protectors however reduce workers' ability to localize the direction of the backup alarms and move safely out of harm's way. Accordingly they require the alarms be louder than required to provide them an adequate safety margin.

"The use of these hearing protectors may impair the ability to localize sound, i.e., recognize the direction of the source of the sound."⁴⁰ For safety reasons, under industrial conditions, it is vital to be able to correctly localize the noise source, which particularly applies to vehicle back-up alarm signals. Localization enables the user to take action to avoid being hit by a vehicle."⁴¹

⁴⁰ See: Impact of Hearing Protection Devices on Sound Localization Performance, by Véronique Zimpfer and David Sarafian (2004), available online at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4052631/> A copy of this document is available to County officials if requested.

⁴¹ See: Localization of Vehicle Back-Up Alarms by Users of Level-Dependent Hearing Protectors under Industrial Noise Conditions Generated at a Forge; Int. J. Environ. Res. Public Health 2019, 16, 394; Available on Internet at: <https://www.mdpi.com/1660-4601/16/3/394> A copy of this document is available to County officials if requested.

Such backup alarms are typically the loudest equipment used on such wood chipping operations, so it is inexcusable that the IS/MND is entirely silent on revealing the extent of their noise impacts.

Backup alarms or beepers are a frequent source of complaints from neighbors, whether they are used during the daytime or nighttime. Backup alarms must generate a noise level at least 5 to 10 dBA above the background noise in the vicinity of the rear of the machine where a person would be warned by the alarm. Thus, they are significantly louder than the Project's proposed chip delivery trucks and front-end loader equipment's engine noise.

Yet the IS/MND fails to describe these alarms' decibel rating. The applicant has not agreed to place specific decibel limits on their loudness. Backup alarms typically produce from 97 to 112 decibels at four feet,⁴² which attenuates to about **75 to 90 dBA at 50 feet**,⁴³ and can even be heard at the distances where the surrounding neighbors live. At the noise levels the neighbors will hear, backup alarm noise would exceed the County's maximum limit for *pure tone* noise sources at 1,000 Hertz of 49 dBA L_{max} at residential property lines.⁴⁴ These backup alarms beep about once per second at a penetrating frequency of about 1,000 Hertz⁴⁵ which is designed to be easily heard by most people.

The County's Noise Ordinance, § 41.11(c), seeks to protect residentially-zoned and commercially-zoned property from loud, annoying *unusual* noise. It limits the maximum noise level for "noises of unusual periodic character," such as noise with a "pure tone" characteristic. A "pure tone" is simply definable as a single frequency sound such as a backup alarm emits. Pure tone noise is unusual and more annoying, and thus the County's Noise Ordinance, with its Table 11.3, sets limits on the median octave band noise levels. Octave Frequency Bands divide the audio spectrum into 10 equal parts. The specific octave band pertinent in this Project's case to backup beeper alarms has a center frequency of 1,000 Hz, and it ranges in frequency from 710 to 1420 Hz. This center frequency of 1,000 Hz is the median frequency of this octave band. According, the County's Table 11.3 limits the maximum sound pressure level for pure tone noise like backup alarms of 1,000 Hz during the daytime (7 a.m. to 10 p.m.) to at most **49 dBA L_{max}** as heard at residential properties beyond the Project site. This limit is a *maximum* allowed noise level, not an average. Unlike other noise standards in the Noise Ordinance, this limit is not complicated by requiring the difficult, logarithmic averaging of the source's noise level over an hour. It is therefore simple to measure and to calculate. If the backup alarms would create a pure tone louder than 49 dBA at the property line of any residential property, they would violate the County's Noise Ordinance. It can be readily shown that this Project's backup alarms will greatly exceed that noise level limit at neighboring properties or homes. Their use would also exceed the permissible limit at the neighboring commercial businesses.

⁴² Source of back-up alarm noise levels from alarm manufactured by Pollak, #41-761, "Manually adjustable Back-up Alarm," rated at 112, 107, 97 dB.

Holzman, David C. (2011-01-01). "Vehicle Motion Alarms: Necessity, Noise Pollution, or Both?" available online at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3018517/> Environ Health Perspect. 119 (1): A30–A33. doi:10.1289/ehp.119-a30. PMC 3018517. PMID 21196143

A copy of this report will be made available to County officials if requested.

⁴³ Noise level attenuation due to distance is calculated as reduced by about 6 dB for each doubling of distance, and 7.5 dB for each doubling of distance beyond 1,000 feet from the noise source due to atmospheric attenuation.

⁴⁴ See Lake County Zoning Ordinance, § 41.11(c).

⁴⁵ See: "Vehicle Motion Alarms: Necessity, Noise Pollution, or Both?" (2011) available online at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3018517/>

TABLE 4 - COMPARISON OF BACKUP ALARM NOISE LEVELS & NOISE ORDINANCE STANDARDS

Sensitive Receptor	Distance to alarm (in feet) See Fig. A	Maximum Allowed Alarm Noise Level Standard for Pure Tones 1000 Hz (dBA L_{max})	Calculated Noise Level at Receptor (dBA L_{max}) See Fig. A	Comply with Noise Standard?
A	1000	49.0	63.0	No
B	1300	49.0	60.4	No
C	1340	49.0	60.1	No
D	1320	49.0	60.2	No
E	1325	49.0	60.2	No
F	1100	49.0	62.1	No
G	1250	49.0	60.8	No
H	1020	49.0	62.8	No
I	1080	49.0	62.2	No
Casino	1010	54.0 (See Note 1)	62.9	No
Office	560	54.0 (See Note 1)	68.5	No
Ag Bldg.	250	59.0 (See Note 2)	75.8	No

Note 1: Per Lake County Noise Ordinance § 41.11(d), an additional allowance of 5 dB above the allowable pressure levels specified in Table 11.3 is allowed when the receiving property is zoned commercial. (i.e. 49 + 5 = 54 dBA L_{max} maximum allowable pure tone noise at 1000 Hz.

Note 2: Per § 41.11(d), an additional allowance of 10 dB above the allowable pressure levels specified in Table 11.3 is allowed when the receiving property is zoned industrial. However the neighboring Ag Building is located on land zoned for agriculture.

These calculations include a reduction in noise levels due to atmospheric attenuation.

BACKUP ALARM NOISE LEVELS AT HOMES "A", "B", "H" AND "I" EXCEED NOISE ORDINANCE LIMITS.

The nearest home (labeled *Home A* on Figure 1, “Noise Sensitive Land Uses”) is about 1,000 feet east of this Project’s chip yard. The backup alarm noise level at that home would be as loud as about 63 dBA L_{max}.⁴⁶ That calculation assumes the backup alarms emit up to 112 decibels as measured at a distance of four feet away. That noise level would be 14 dBA louder than the County’s maximum permitted pure tone noise limit of 49 dBA L_{max} for residences. Two more homes, “H” and “I”, exist to the west of the Project’s chip yard and are located at about the same distance as Home A (1,020 feet and 1,080 feet respectively.) This is strong evidence that the IS/MND is seriously flawed for failing to identify this backup alarm component of the Project being able to emit noise levels that greatly exceed the County’s noise standards at surrounding homes. Nothing in the Project Description, mitigations or conditions of approval prohibits the applicant’s use of typical backup alarms of that loudness for its mobile equipment.

⁴⁶ Calculation: $dB_2 = dB_1 - 10 \times A \times \log(R_2/R_1) = 112 - 10 \times 2.0 \times \log(1,000' / 4') = 64.0 \text{ dBA } L_{max}$. With atmospheric attenuation at that 1,000 foot distance, the noise level is reduced 1.0 dB to **63.0 dBA L_{eq-1 hr}**.

Another home (*Home "B"* on Figure 1) is about 1,300 feet at the closest from this Project's chip yard where backup alarms would be used. At that distance, the backup alarms' noise levels could be up to **60.4 dBA L_{max}**.⁴⁷ That noise level would also be unlawful because it could be over 11 dB louder than the County's maximum pure tone noise limit of 49 dBA for residences.

BACKUP ALARM NOISE LEVELS AT HOMES "C", "D", "E", "F", & "G" TO THE NORTH OF HIGHWAY 20 ALSO EXCEED NOISE ORDINANCE LIMITS.

The nearest homes to the north of the Project's chip yard are located between 1,100 to 1,340 feet away from where backup alarms would be used while workers load chips into outdoor storage piles. (See Figure A, Map of "Noise Sensitive Land Uses" on page 6 of this Report for location of Homes "C", "D", "E", "F", and "G"). These distances are estimated using Google Earth's measuring tool and computerized drafting software.

As discussed above, a single backup warning alarm emitting 90 dBA at 50 feet could be as loud as 60.1 dBA L_{max} at **Home "C"** located **1,340** feet away from alarm use. **Noise levels there of 60.1 dBA L_{max} could be 11 dBA greater than County's maximum pure tone limit of 49 dBA L_{max} for noise of 1,000 Hz frequency for residences.**

If two backup alarms are used and emit noise at the same time, such as from the simultaneous operation of the Project's front-end loader and the tractor, those backup alarms' combined noise levels would be even louder by approximately 3 dBA.⁴⁸ The County's noise standard in § 41.11(d) for equipment that emits such pure tone noise is based on maximum, not average, noise levels. Therefore, these noise level estimations can be based on the maximum noise levels that typical backup alarms can generate when two alarms are in use at the same time.

Because Homes "D", "E", "F", and "G" are even closer to the Project's chip yard with their distances listed in Figure 1 above, these homes would be exposed to backup alarm noise levels that are even greater than 60.1 dBA L_{max} (or 63.1 dBA L_{max} when two alarms are used.)

CONCLUSION ABOUT BACKUP ALARM NOISE IMPACTS

As shown above, there are numerous homes, a pre-school, and a commercial office where this Project's backup alarms could generate noise levels that exceed the County's Noise Ordinance's maximum permissible standards. Such calculated exceedances present a fair argument of significant noise impacts at those homes and other sensitive receptors. Such a potential violation of the Noise Ordinance must be evaluated in a subsequent environmental study in order to be consistent with CEQA.

⁴⁷ Calculation: $dB_2 = dB_1 - 10 \times A \times \text{LOG}(R_2/R_1) = 112 - 10 \times 2.0 \times \text{LOG}(1,300' / 4') = 61.7 \text{ dBA L}_{\text{max}}$. However at a distance of 1,300 feet, atmospheric attenuation could reduce that noise level by approximately 1.3 dBA, resulting in a noise level at that home of about **60.4 dBA L_{max}**.

⁴⁸ Doubling the amount of noise with two alarms results in a 3 dBA increase in their combined noise levels.

NEARBY PARK WOULD BE EXPOSED TO PROJECT OPERATION NOISE LEVELS THAT EXCEED COUNTY NOISE STANDARDS.

People using the Upper Lake Park located about 1,290 feet to the west of the Project's operational noise sources are entitled to protection from excessive noise.⁴⁹ Excessive noise from this industrial wood chipping project that breaches a neighborhood park's maximum acceptable noise standards can subject park-goers to a range of health risks, psychological impacts, and significant annoyance, undermining the intended use and tranquility of the public space.

Parks are designated as noise-sensitive areas in the County's General Plan, recognizing their role in providing places for recreation, relaxation, and social interaction. When noise levels exceed the established limits in these settings, the impacts can extend far beyond simple inconvenience. Even moderate increases in noise above ambient levels in a park can lead to significant annoyance. This is particularly true for intrusive and unfamiliar sounds like those generated by industrial machinery. Annoyance can disrupt leisure activities, make conversation difficult, and detract from the enjoyment of nature and the park environment. The World Health Organization (WHO) identifies noise annoyance as a health effect in itself, linked to feelings of dissatisfaction, disturbance, and irritation. Parks are often sought out for their restorative qualities, offering an escape from the stresses of daily life. High noise levels can counteract these benefits, leading to increased feelings of stress, anxiety, and frustration among visitors. If the Park is too noisy, fewer people will visit it, and may not benefit from a park's value in their lives.

The County's General Plan noise standards normally allow noise levels in neighborhood parks and playgrounds at noise levels not exceeding 60 dBA CNEL.⁵⁰ For louder noise levels in such recreational areas between 60 to 65 dBA CNEL, such noise levels are only conditionally allowed "after a detailed analysis of the noise reduction requirements is made and needed insulation features have been included in the design." If the noise level at the Park exceeds 65 dBA CNEL, that noise level is considered to be "Normally Unacceptable" and the General Plan states: "New construction or development should generally be discouraged." But this Project's IS/MND contains no such *detailed analysis*. It appears that this Project's noise exposure could exceed that 65 dBA CNEL normally unacceptable noise level. That would constitute a significant noise impact. Otherwise, in order not to exceed the General Plan's noise standards, this Project's operations must not raise the noise level in the Park to greater than 60 dBA CNEL.

During Project operations, as demonstrated in calculations in a footnote below, its activities could generate noise levels of about **66.2 dBA CNEL** at the Park when Project operation noise is added to the existing noise in the Park at 1,290 feet from this Project's operation area. This Project could simultaneously operate a wood chipper, a tub grinder, a front-end loader, and a chainsaw. The combined noise levels from this equipment can be calculated to a noise level of **67.9 dBA L_{eq-1 hr.}** at

⁴⁹ See Figure C for that distance of 1,290 feet from the Project's central processing area with the chipper to the Park.

⁵⁰ See: County of Lake General Plan Noise Element, p. 8-3, Table 8-1, "Maximum Allowable Noise Exposure by Land Use", for *Playgrounds, Neighborhood Parks*, with 60 dBA CNEL being the upper limit for "Normally Acceptable" noise," and 65 dBA CNEL being the upper limit for "Conditionally Acceptable" noise if a detailed analysis and needed insulation features are included.

1,290 feet.⁵¹ That noise level calculation has been already reduced by 1.3 dB due to atmospheric attenuation over that distance as explained elsewhere in the report.

Then, since the Project was approved operating for at least 11 hours per day, (7:30 a.m. to 7:00 p.m.), one can calculate the community equivalent noise level (CNEL) used by the General Plan for compliance. That noise level calculates to **66.2 dBA CNEL** when assuming a Project noise level during operations of 67.9 dBA $L_{eq-1 \text{ hr.}}$ at the Park for each of 11 hours, and an average ambient noise level of 55 dBA L_{eq} in the Park for each of the other 13 hours of the 24-hour day. That resulting 24-hour CNEL noise level of **66.2 dBA CNEL** when Project operation noise is added would exceed the General Plan's noise standard of 65 dBA CNEL, meaning the General Plan identifies the Project to be "normally unacceptable" and should be "discouraged" without the IS/MND containing the

⁵¹ Calculation: The estimation of a combined noise level of **67.9 dBA $L_{eq-1 \text{ hr.}}$** at the Park is calculated by adding the separate noise levels of a wood chipper (89 dBA L_{max} with 100% use), a tub grinder (96 dBA L_{max} with 100% use), and a front-end loader (90 dBA L_{max} with 40% use) and a chainsaw (88 dBA L_{max} with 50% use) that could be operated simultaneously to during Project activities. Those are decibel levels at a distance of 50 feet, and each is adjusted by its relative acoustical utilization factor ("UF").

The usage factor is an estimate of the fraction of time each piece of equipment operates at full power. The usage factor is used to estimate L_{eq} from the L_{max} values in this case where the Lake County impact criteria are expressed in terms of L_{eq} . This equation below is used to estimate L_{eq} from L_{max} . It also includes a term for estimating noise at distances other than 50 feet, such as at 1,290 feet to the Park in this calculation:

$L_{eq} \text{ dBA} = L_{max} \text{ at } 50 \text{ feet} - 20\log(D / 50) + 10\log(UF)$ where D = distance of interest, and UF = usage factor or fraction of time period of interest equipment is in use. To calculate their noise levels at the park 1,290 feet away:

First, with L_{max} value at 50 feet, calculate the L_{eq} noise level for each equipment with its UF at 1,290 feet:

Chipper: $89 \text{ dBA } L_{max} - 20 \times \log(1290'/50') + 10 \times \log(100\%) = 89 - 28.2 + 0 = 60.8 \text{ dBA } L_{eq-1 \text{ hr.}}$

Grinder: $96 \text{ dBA } L_{max} - 20 \times \log(1290'/50') + 10 \times \log(100\%) = 96 - 28.2 + 0 = 67.8 \text{ dBA } L_{eq-1 \text{ hr.}}$

Loader: $90 \text{ dBA } L_{max} - 20 \times \log(1290'/50') + 10 \times \log(40\%) = 90 - 28.2 - 4.0 = 57.8 \text{ dBA } L_{eq-1 \text{ hr.}}$

Chainsaw: $88 \text{ dBA } L_{max} - 20 \times \log(1290'/50') + 10 \times \log(50\%) = 88 - 28.2 - 3.0 = 56.8 \text{ dBA } L_{eq-1 \text{ hr.}}$

Now add these four noise levels logarithmically with this formula (where L_1 is the chipper noise level, etc):

$$L_{total} = 10 \times \text{Log}_{10} (10^{L_1/10} + 10^{L_2/10} + 10^{L_3/10} + 10^{L_4/10}) =$$

$$= 10 \times \text{Log}_{10} (10^{60.8} + 10^{67.8} + 10^{57.8} + 10^{56.8}) = 69.2 \text{ dBA } L_{eq-1 \text{ hr.}} \text{ at } 1,290 \text{ feet for these four noise sources.}$$

Source for summation calculation: California Department of Transportation, *Technical Noise Supplement*, 2009.

Next, reduce this combined noise level due to atmospheric attenuation by 1.3 dB, resulting in **67.9 dBA $L_{eq-1 \text{ hr.}}$** . The Zoning Ordinance does not specify a project's noise limit at a neighborhood park or playground, but the General Plan does regarding unacceptable noise levels. The General Plan, p. 8-1, defines: "*Community Noise Equivalent Level (CNEL). Used to characterize average sound levels over a 24-hour period, with weighting factors included for evening and nighttime sound levels.*" To account for greater noise sensitivity in the evening from 7 p.m. to 10 p.m., noise levels in this weighted averaging calculation are increased by 5 dB. And during the nighttime from 10 p.m. to 7 a.m., noise levels are increased by 10 dB. The General Plan, Table 8-1, *Maximum Allowable Noise Exposure by Land Use*, defines noise exposure at neighborhood parks and playgrounds greater than 65 dBA CNEL to be "*normally unacceptable.*" This Project's noise levels at the Park (of 66.2 dBA CNEL) could exceed 65 dBA CNEL and be "normally unacceptable" by the General Plan's noise standard.

Calculation of CNEL where Project operations expose the Park to 67.9 dBA L_{eq} for 11 hours per day and the average noise levels at the Park during the other 13 hours of a day are 55 dBA L_{eq} : **CNEL = 66.2 dBA**; See <https://www.noisemeters.com/apps/ldn-calculator/> for online calculator of "Lden" (which is CNEL) day-night weighted noise level. Or use this formula from the CalTrans Technical Noise Supplement to the Traffic Noise Analysis Protocol, September 2013, page 2-53, Formula 2-24 found online at: <https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/tens-sep2013-a11y.pdf>

$$\text{CNEL} = 10\log_{10}[(1/24) \times \{(10^{(55+10)/10} \times 9 \text{ hrs}) + (10^{(67.9)/10} \times 11 \text{ hrs}) + (10^{(55)/10} \times 1 \text{ hrs}) + (10^{(55+5)/10} \times 3 \text{ hrs})\}] = \mathbf{66.2 \text{ CNEL}}$$

[?] See: General Plan Noise Element p. 8-3, Table 8-1.

mandatory detailed noise analysis and noise insulation features. Actually, the Project's noise impact would be even greater yet than this calculation shows if the noise levels from the Project's haul trucks, backup alarms, a wood shredder, a tractor, and a crumbler/grappler are also considered. This General Plan standard exceedance represents a significant noise impact to some users of this Park who rely upon the Park for relaxation and enjoyment free from unpleasant industrial noise.

NEARBY OFFICE BUILDING WOULD BE EXPOSED TO EXCESSIVE NOISE LEVELS DURING PROJECT OPERATIONS.

The IS/MND does not describe that an office building with tribal offices exists at 635 E. Hwy 20 about 700 feet west of the Project's center of operations that would have a noisy wood chipper and other equipment use. At that distance, that office building would be exposed to Project noise levels that can substantially exceed the County's maximum allowable standards. The Zoning Ordinance allows a maximum daytime noise level of 60 dBA $L_{eq-1 \text{ hr.}}$ at that office building when the receiving property is commercial.⁵² Presuming the Project uses the same equipment simultaneously as discussed with calculations on the previous pages (a wood chipper, a tub grinder, a front-end loader, and a chainsaw), the noise level generated by Project operations at a distance of about 700 feet to this office building could be as high as about **73.2 dBA $L_{eq-1 \text{ hr.}}$** .⁵³

That noise level would exceed the County's maximum standard of 60 dBA $L_{eq-1 \text{ hr.}}$ **by over 13 dBA.** Office workers depend upon protection of excessive noise in order to communicate and conduct their business. This much of an exceedance is evidence of a significant noise impact at that location.

If just a loud wood chipper by itself is operating at that 700-foot distance, its noise level when measured at the office building could be about **65.4 dBA $L_{eq-1 \text{ hr.}}$** .⁵⁴ That noise level would exceed the County's maximum allowed noise standard of **60 dBA $L_{eq-1 \text{ hr.}}$** and would also create a significant noise impact there.

Office workers exposed to such excessive noise can experience a wide range of problems impacting their health, well-being, and productivity. The constant or intermittent loud noise, characteristic of industrial machinery and processes like wood chipping, creates a disruptive environment far exceeding typical office background noise. Excessive noise is a recognized stressor that can trigger physiological responses, including increased heart rate and blood pressure. Long-term exposure has been linked to a higher risk of hypertension and other cardiovascular problems. The unpredictable and intrusive nature of loud industrial noise can significantly elevate stress levels, leading to symptoms such as headaches, fatigue, irritability, difficulty relaxing, and increased anxiety.

⁵² See: Noise Ord., § 41.11, Table 11.1 (Maximum one-hour equivalent sound pressure levels, daytime, commercial)

⁵³ Calculation: Using the results of calculations for noise exposure at the nearby Park during operation of multiple equipment types, where at a distance of 1,290 feet the combined noise level would be as much as 67.9 dBA $L_{eq-1 \text{ hr.}}$, then at a distance of 700 feet, this is the calculated noise level:

$$dB_2 = dB_1 - 10 \times A \times \text{LOG}(R_2/R_1) = 67.9 - 10 \times 2.0 \times \text{LOG}(1,290' / 4') = \mathbf{73.2 \text{ dBA } L_{eq-1 \text{ hr.}}}$$

⁵⁴ Wood chippers have been rated at 89 dBA L_{max} at 50 feet by Napa County. To estimate that noise level at 700 feet: Calculation: $89 \text{ dBA } L_{max} - 20 \times \log(700'/50') + 10 \times \log(100\%) = 89 - 28.2 + 0 = 66.1 \text{ dBA } L_{eq-1 \text{ hr.}}$ Reducing that value by 0.7 dB for atmospheric attenuation in 700 feet, the resulting noise level at the office would be **65.4 dBA $L_{eq-1 \text{ hr.}}$** .

Loud and distracting noises make it significantly harder for office workers to concentrate on tasks requiring focus, analytical thinking, or creative problem-solving. This can lead to more errors and a decrease in the quality of work. Studies have shown that chronic noise exposure can negatively impact cognitive functions such as memory, attention span, and the ability to learn new information. The combination of reduced concentration, increased errors, and mental fatigue directly translates to lower overall productivity. Tasks may take longer to complete, and the volume of work may decrease. Loud background noise makes verbal communication challenging, leading to misunderstandings, the need to repeat information, and increased frustration during conversations and meetings. It can also make it difficult to hear important phone calls or virtual meeting participants. Persistent unwanted noise is a significant source of annoyance and frustration, negatively impacting mood and job satisfaction. Elevated stress levels and frustration due to noise can lead to increased irritability and a greater potential for conflict among colleagues. A noisy and disruptive work environment can significantly lower overall job satisfaction and contribute to a negative perception of the workplace. If the noise is an external factor that the office occupants have little control over, it can lead to feelings of helplessness and exacerbate stress. The specific intensity, frequency, and duration of the noise from the wood chipping and industrial equipment will influence the severity of these problems. However, even noise levels that would not cause immediate hearing damage can still have significant detrimental effects on the office workers' health, well-being, and ability to perform their jobs effectively.

CASINO WOULD BE EXPOSED TO OPERATION NOISE LEVELS THAT EXCEED COUNTY NOISE STANDARDS.

The Running Creek Casino is located about 1,010 feet to the northwest from where the Project's operations would use heavy equipment. (See [Figure A.](#)) Its distance to the center of the wood processing area that generates the most noise is approximately 1,240 feet. (See [Figure C.](#)) At that distance, this Casino would be exposed to noise levels that exceed the County's noise standards. The County allows noise levels in the daytime at commercial land uses like a casino up to 60 dBA ⁵⁵ $L_{eq-1 \text{ hr.}}$

The IS/MND fails to adequately analyze the Project's noise impact on this casino. At the casino building with its distance of about 1,240 feet from the Project's center of operations, that operational noise level could be as high as about **68.2 dBA $L_{eq-1 \text{ hr.}}$** .⁵⁶ This calculation is based upon the simultaneous use of a wood chipper, tub grinder, front-end loader, and a chainsaw during the biomass processing operations. This calculation does not include the additional noise from the Project's use of backup alarms or haul trucks at even closer distances to the casino. That noise level exceedance of more than 8 dBA above the County's maximum noise standards constitutes a significant noise impact.

⁵⁵ See Zoning Ordinance, p. 41-6, Table 11.1: Maximum one-hour equivalent sound pressure levels (A-Weighted - dBA), for the commercial category: **60 dBA $L_{eq-1 \text{ hr.}}$** . If this noise standard is followed strictly, since the Casino parcel is zoned "agricultural," the County would apply the maximum 55 dBA $L_{eq-1 \text{ hr.}}$ standard for listed for residential land uses because the Table 11.1 footnote states the residential category applies to "all agricultural and resource districts."

⁵⁶ This calculation uses the previous calculated noise level at the Park, and adjusts it for the slightly shorter distance.

NEARBY AG BUILDING WOULD ALSO BE EXPOSED TO EXCESSIVE NOISE LEVELS DURING PROJECT OPERATION.

The IS/MND does not adequately describe that an Ag Building exists about 243 feet west of the Project's center of operations. At that distance, that agricultural building would be exposed to severe Project noise levels that greatly exceed the County's standards. The County's maximum allowed daytime noise level in agricultural (as well as residential) zones is **55 dBA $L_{eq-1 \text{ hr.}}$** .⁵⁷ At that 243-foot distance, this Project's operational noise from the same equipment discussed above would be as high as about **82.4 dBA $L_{eq-1 \text{ hr.}}$** . (See Table 2 and Figure 3.) That is strong evidence that this Project will create a serious noise impact at that location.

The IS/MND, PDF p. 88, on its Sound Level Analysis map, incorrectly states that this Ag Building is expected (to have) continuous sound levels under 65 dBA. But 65 dBA is not the applicable noise standard for this receiving land use. That prediction made by the applicant's representative is also flawed because it presumes only one equipment type will be operating at a time. When multiple equipment operations simultaneously occur within the Project site, their combined noise levels at the Ag Building will be much louder than this Sound Level Analysis page in the IS/MND predicts.

RESIDENCES WITHIN 2,000 FEET COULD ALSO BE EXPOSED TO EXCESSIVE NOISE LEVELS DURING PROJECT OPERATION.

The people most likely to be harmed by this Project's loud noise levels are residents in the neighborhood. Besides not having noise disturbances heard within their homes, they are entitled to enjoy their outdoor patios and back yard recreational features without suffering from excessive noise originating from this Project.

As shown on Figure A and Figure C, over a dozen homes are located less than 2,000 feet from where this Project's onsite operations would occur. Just the processing operation's noise originating from the southern end of the Project site generated by the wood chipper, grinder, front-end loader, and other equipment, when measured at those homes and beyond up to 2,000 feet, the Project's noise levels could be about **64.1 dBA $L_{eq-1 \text{ hr.}}$** .⁵⁸ This noise level would exceed the County's maximum allowed daytime noise level at residences of 55 dBA $L_{eq-1 \text{ hr.}}$.

At closer distances, the Project's noise levels at these homes would be louder yet. Some on-site processing operations that take place at the north end of the 5-acre site would be closer to homes located north of E. Highway 20 and could generate substantial noise levels at those homes.

⁵⁷ Zoning Ordinance, p. 41-6, Table 11.1: Maximum one-hour equivalent sound pressure levels (A-Weighted - dBA), which notes that: "The Residential category also includes all agricultural and resource zoning districts."

⁵⁸ Assuming combined noise levels from operation of multiple equipment as described above, where the noise level at 1,290 feet could be 67.9 dBA $L_{eq-1 \text{ hr.}}$, this is the formula when the noise level at 1,290 feet would be 67.9 dBA $L_{eq-1 \text{ hr.}}$:
Calculation: $dB_2 = dB_1 - 10 \times A \times \text{LOG}(R_2/R_1) = 67.9 - 10 \times 2.0 \times \text{LOG}(2,000' / 1,290') = \mathbf{64.1 \text{ dBA } L_{eq-1 \text{ hr.}}}$

COUNTY NOISE STANDARDS DO NOT ADEQUATELY PROTECT NEARBY HOMES FROM LOW-FREQUENCY HEAVY EQUIPMENT NOISE.

The IS/MND fails to evaluate how intrusive the nature of this Project's low-frequency industrial noise would be if located so close to the neighboring residences. The County's noise standards do not limit the amount of very intrusive, low-frequency noise typically emitted from diesel-powered heavy equipment operations, trucks, front-end loaders, and wood chippers. The County's noise standards are based upon an "A-scale" frequency range that does not proportionately account for low frequency noise less than 500 Hertz where much heavy equipment noise energy is concentrated. Noise from wood chippers generate the highest noise levels in the 20–50 Hz frequency range which is a very low frequency. Low frequency noise from the Project's operations is not attenuated well by light-weight residential structures, and thus is more troublesome for this Project's neighbors. Low frequency noise like that is even more intrusive than the above calculations predict, since low-frequency noise penetrates homes with less dampening compared to noise with a wider range of frequencies. Low frequency noise can be very annoying if it penetrates residential walls and causes objects on shelves within neighboring homes to vibrate and rattle.

This kind of an incompatible neighboring land use is generally solved by not allowing heavy industrial operations to be so near to residences.

When low-frequency noise is of concern, C-weightings are used because they attenuate low frequencies much less than the other weightings. Other California EIRs discuss noise impacts using the C-weighted scale. For example, the Blue Rock Draft EIR for Sonoma County states:

“In special situations, the C-weighted sound level or dB(C) scale is sometimes used. This scale gives more weight to lower frequency noise. When it is used, the intent is to differentiate between noises that have varying amounts of low frequency noise that would produce only little differences in A-weighted sound level.”

It is true that people are more sensitive to noises in the "A"-weighted frequency range of 1000 Hz to 4000 Hz, but that doesn't mean that lower frequency sounds should be discarded from consideration. Industrial uses with large equipment and heavy trucking often produce much of their noise at frequencies less than 500 Hz. The "C"-weighted scale takes into account those frequencies down to 50 Hz where much industrial noise is generated. Noise level meter readings on the "C"-weighted scale can often be 8 dB louder than those on the "A"-weighted scale. The "A"-weighted noise scale emphasizes noise in the 500-20,000 Hz frequency range, while the "C"-weighted noise scale more broadly covers the lower frequency 50-20,000 Hz range where this Project's industrial noise from heavy truck deliveries and unloading of wood chips, chipper machinery and other equipment will be generated. The booming sound of heavy equipment can greatly impact nearby residences. Nearby homes neighborhood are predominantly constructed with lightweight wooden walls and thin windows that are not good at blocking low frequency sounds.

The IS/MND is inadequate for its utter failure to consider such low-frequency noise impacts.

COUNTY FAILED TO INCLUDE ANY NOISE MITIGATIONS BUT REASONABLE MITIGATIONS ARE FEASIBLE.

The IS/MND determined, but without valid analysis or evidence, that this Ag Forest Project would not create significant noise impacts. Accordingly, the IS/MND and the Planning Commission's approval included no noise mitigations. However, a previous 2020 IS/MND for the Red Hills BioEnergy project at 7130 Red Hills Rd, Kelseyville by the same project applicants did require some noise mitigations, suggesting that the County should impose noise mitigations on the current Project as well because it too would otherwise severely impact some neighbors.

Such extremely loud construction noise is not reasonable. It is somewhat avoidable because there are commonly available and routinely used methods to quiet such construction noise. For example, as noise mitigations, temporary sound curtains can be erected to protect neighbors. Or affected homes could be retrofitted with better windows that block outdoor noise. Somewhat like before, the County could require back-up alarms to be adjusted to the lowest allowable levels or to a specified limit, or require backup alarms that emit bright light to alert workers for their safety instead of noise. A noise mitigation could be adopted to require contractors to implement certain specified noise-reducing measures during construction work.

This Noise Impacts Report makes numerous fair arguments supported by substantial evidence to demonstrate that this Project would create significant noise impacts at many nearby sensitive receptors. CEQA requires the County to impose noise mitigations under these circumstances. As recently as May 1st, the appellate court in [*Los Angeles Parks Alliance v. Los Angeles County Metro. Transportation Authority*](#) (May 1, 2025) decided that all feasible mitigation measures must be identified for such significant impacts:

Accordingly, an EIR must identify and describe all feasible mitigation measures for each significant impact. (Guidelines, § 15126.4, subd. (a); § 21002; *Clover Valley*, supra, 197 Cal.App.4th at p. 244.) In this context, "[f]easible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (§ 21061.1.) Our Supreme Court has described the mitigation section as the "core" of an EIR. (*Goleta Valley*, supra, 52 Cal.3d at p. 564; *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1028-1029 (LAUSD).)

"The agency may not approve a project with significant environmental impacts 'if there are . . . feasible mitigation measures available which would substantially lessen' the project's significant environmental impacts." (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 348)

That court decision noted that insulating buildings can greatly reduce construction noise, especially when windows are sealed and cracks and other openings are filled.

Other noise mitigations could be considered and possibly be adopted.

Construction-Related:

- Require construction activities to be placed as far as possible from the nearest off-site land uses. Some construction equipment could otherwise be unnecessarily intrusive
- Require construction activities to be scheduled to avoid operating several loud pieces of equipment simultaneously; alternatively to reduce the overall length of the construction period, combine noisy operations to occur in the same time period if it will not be significantly greater than if operations were performed separately.
- Require the replacement of noisy equipment with quieter equipment, such as using rubber-tired equipment rather than track equipment, or using quieted and enclosed air compressors with properly working mufflers on all engines.
- Require construction contractor to avoid using vibratory rollers and packers near sensitive areas.
- Require construction staging areas to be as far from sensitive receptors as reasonably possible.
- Require all construction truck traffic to be restricted in hours so that deliveries are not received at times where the noise could be sleep-disturbing.
- Require the construction of noise barriers, such as temporary walls or piles of excavated material, between noisy activities and noise-sensitive receivers, including on all sides of the Project site.
- Require flexible sound control curtains to be placed around all noisy equipment when in use and more extensive noise control barriers protecting adjacent residential structures.
- Require power construction equipment operated at the project site to be equipped with effective state-of-the-art noise control devices (e.g., equipment mufflers, enclosures, and barriers) with contractors maintaining all sound-reducing devices and restrictions throughout the construction period and keeping documentation showing compliance.
- Require contractors to use either plug-in electric or solar powered on-site generators to the extent feasible.
- Require grading and construction contractors to use equipment that generates lower vibration levels such as rubber-tired equipment rather than metal-tracked equipment, such as a combination loader/excavator for light-duty construction operations.
- Two weeks before the commencement of construction at the Project Site, require notification to be provided to the immediate surrounding off-site properties that disclose the construction schedule, including the various types of activities and equipment that would be occurring throughout the construction period. A noise disturbance coordinator and hotline telephone number shall be provided to enable the public to call and address construction-related issues.
- Require all mitigation measures restricting construction activity to be posted at the Project Site and all construction personnel shall be instructed as to the nature of the noise and vibration mitigation measures.
- Require a noise monitoring/control plan that includes absolute noise limits for classes of equipment, noise limits at lot lines of specific noise sensitive properties, specific noise control treatments to be utilized (such as the above-mentioned measures), and a designated compliance officer to respond to promptly respond to complaints and take immediate correction action if limits/restrictions are not complied with.

Operation-Related:

- Prohibition of amplified sounds in outdoor spaces and/or meet specified dBA levels.
- Before the issuance of a Certificate of Occupancy, require the sound levels to be measured consistent with documentation of the measurements being submitted to the County's building officials for the file to demonstrate specified noise levels are not exceeded at the property lines.
- Use insulation or construct solid barriers between noise sources and noise receivers.
- Separate noise sources from noise receivers by distances sufficient to attenuate the noise to acceptable levels.
- Limit the hours of use for the equipment.
- Installation of double-pane exterior windows meeting specified Sound Transmission Coefficient rating for the Project for the adjacent residential uses.
- Redesign the source of equipment noise to radiate less noise (e.g., substitute a quieter equipment type process or enclose the source with sound absorbent material).
- All outdoor-mounted mechanical equipment be enclosed and impermeably-shielded with it breaking the line-of-sight from off-site noise-sensitive receptors.

PROJECT'S UNLAWFUL SEGMENTATION OF OPERATIONS RESULTS IN INADEQUATE NOISE LEVEL ANALYSIS AND MITIGATION.

This Ag Forest Project is being proposed more broadly as operating on more than one property along with additional chipping operations to be located elsewhere at a considerable distance. The IS/MND, on page 6, states: *"Forest materials are pre-processed into large wood chips offsite, mostly at the Donahoo facility at 8605 Bottle Rock Road, Kelseyville CA 95451, 21.2 miles away."* Because the trucking involved in transporting those forest materials or chips is necessarily linked to the Project, then the noise impacts that may be caused by such trucking must also be considered in the IS/MND. The IS/MND's noise analysis section, p. 51, even acknowledges that: *"Because the wood would be processed at the Donahoo site before being delivered to the site, there would not be a lot of noise that is normally associated with woody forest biomass projects that also process the wood on the site."* Yet the IS/MND never examines the noise impact of such related off-site trucking work. The IS/MND is alleging that this Project will be quieter because a lot of its noise would occur at a distant location. Yet that Donahoo location may not be available according to neighbors who have examined the matter.

Alternatively, if that distant wood processing is not permitted, then work on the Ag Forest site might be increased beyond what the IS/MND currently describes. That appears to have also occurred with some wood processing activities and equipment having been omitted at the Red Hills site owned by the Project applicant due to a 2023 out-of-court settlement and transferred to the Highway 20 Project site. This confusing and indefinite Project Description prevents the public from being able to adequately assess how much noise this Project would generate in its neighborhood. This problem may also violate CEQA.

A public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. CEQA prohibits such a "piecemeal" approach and requires

review of a Project's impacts as a whole. "Project" is defined as "the whole of an action," which has the potential to result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones — each with a minimal potential impact on the environment — which cumulatively may have disastrous consequences." Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project.

CONCLUSION

As discussed above, the Project's Initial Study/Mitigated Negative Declaration fails to provide sufficient and basic information required for the County to adequately assess the severe noise impacts of this Project. As a result, this Noise Impacts Report provides fair arguments backed by substantial evidence that the Project's likely construction and operational noise impacts may exceed County noise standards and that the Project may accordingly have significant noise impacts. As a result, this IS/MND is inadequate and inappropriate for the Project's CEQA review. The Project's possible loud noise levels at nearby homes and other sensitive receptors should compel the County to require proper CEQA review of these significant noise impacts and likely exceedances of County noise standards. Moreover, feasible mitigation measures are available and need to be considered pursuant to a CEQA-compliant EIR.

Sincerely,



Dale La Forest

Professional Planner, Designer, INCE Associate (Institute of Noise Control Engineering)
Dale La Forest & Associates

Attachment 1 - Statement of Qualifications

Dale La Forest & Associates
Design, Planning & Environmental Consulting
101 E. Alma Street, Suite 100-A; Mt. Shasta, CA 96067
Phone: (530) 918-8625 E-Mail: dlaforest@gmail.com

ATTACHMENT 1: Statement of Qualifications

INTRODUCTION

Dale La Forest & Associates provides commercial and residential design services, acoustical consulting, environmental review, project planning permitting for government approvals and multi-disciplinary environmental studies for government and private industry and citizens groups.

HIGHLIGHTS

In 50 years, I have designed hundreds of homes in California. During the last 20 years, I have also prepared expert acoustical studies for various development projects and reviewed and commented upon dozens of noise studies prepared by others. My expertise in environmental noise analysis comes from this formal educational training in architecture and planning, and from many years of evaluation of acoustics as relates to environmental analysis and challenging flawed project applications prepared by less-than-professional, industry-biased acousticians. I regularly measure and calculate noise propagation and the effects of noise barriers and building acoustics as they apply to homes near projects and their vehicular travel routes. I have also prepared initial environmental studies for noise-sensitive development projects including hotel and campground projects along major highways. I have reviewed dozens of quarry project and batch plant project environmental documents. I have designed highway noise walls, recommended noise mitigations, and have designed residential and commercial structures to limit their occupants' exposure to excessive exterior noise levels throughout California.

EXPERIENCE

1975 – 2025 **DESIGNER & PLANNER** — Dale La Forest & Associates; Mt. Shasta, CA.
Design of commercial, residential, subdivision planning projects and environmental and acoustical consulting for commercial and industrial firms and for the public.

Dale La Forest, Designer, INCE Associate (Institute of Noise Control Engineering)

EDUCATION

1966 – 1973 **University of Michigan**, College of Architecture and Planning - Bachelor of Architecture, 1973; and Masters studies in architecture and planning.

ACOUSTICAL ANALYSIS/COMMENTS

7/15/24	Norwalk Specific Plan Area Code Amendment, C.E., City of Norwalk, CA
2/28/24	Pacific Resort Plaza Development Project, revised, MND, Anaheim, CA
2/20/24	Golden Eagle Charter School, MND, County of Siskiyou, CA
4/13/23	Hilton Home2 Hotel Project, C.E., Hawthorne, CA
3/18/23	Mountain Townhomes Project, MND, Mt. Shasta, CA
2/5/23	Cherry Avenue Warehouse Project, C.E., Long Beach, CA
8/8/22	Kidder Creek Orchard Camp, EIR, Siskiyou County, CA
5/15/22	Summit Lofts Project, C.E., Mt. Shasta, CA
8/9/21	Pacific Edge Hotel Remodel Project, MND, Anaheim, CA
7/21/21	Jeff Hotel Project, MND, Culver City, CA
3/17/21	Pacific Edge Hotel Remodel Project, MND, City of Laguna Beach, CA
1/25/21	Hyatt House Hotel Project, C.E., Los Angeles, CA
11/26/20	Santa Maria Raceway Project, CEQA C.E., Nipomo, CA
9/14/20	Golden Eagle Charter School, MND, City of Mt. Shasta
8/31/20	Cargill Solar Sea Salt Activities Project, EA, San Francisco, CA
8/15/20	Redhills BioEnergy Project, MND, Lake County, CA
8/28/19	CitizenM Hotel Project, DEIR, Los Angeles, CA
4/15/19	Mart South Hotel Conversion Project, C.E., Los Angeles, CA
2/27/19	Citizens News Project, MND, Los Angeles, CA
2/11/19	2005 James Wood Hotel Project, MND, Los Angeles, CA
2/4/19	Breakers Hotel Project, C.E., Long Beach, CA
1/23/19	Residence at 1888 N. Lucile Ave., MND, Los Angeles, CA
12/5/18	100 E. Sunset Bridge Housing, C.E., Los Angeles, CA
12/18/18	Altes Special Events Project, MND, Mt. Shasta, CA
11/6/18	Dewey Hotel Project, C.E., Los Angeles, CA
8/16/18	Love's Travel Stop Project, EIR, Weed, CA
2/12/18	Residence at 17642 Tramonto Dr., Los Angeles, CA
11/16/17	Crystal Geyser Water Company, EIR, Mt Shasta, CA
8/18/17	Freeze Car Wash Project, MND, Mt. Shasta, CA
3/13/17	Roseburg Water Line Project, MND, Mt. Shasta, CA
1/19/17	Residence at 2056 Mandeville Canyon Rd., Los Angeles, CA
8/31/16	Austin Quarry Project EIR, Madera County, CA
10/20/15	Syar Napa Quarry Expansion Project, EIR, Napa
9/30/13	Shasta Dam Raising Draft EIS, Shasta County, CA
9/30/13	Livermore Walmart Project, Livermore, CA
8/27/13	Talmage Interchange Reconstruction Project MND, Ukiah, CA
6/10/13	Townhouse Project, MND, Mt. Shasta, CA
3/15/13	Costco Wholesale Store, DEIR, Ukiah, CA
3/14/13	Jaxon Enterprises Asphalt Plant, IS/MND, Shasta County, CA
3/14/13	Amdun LLC Asphalt Plant, IS/MND, Shasta County, CA
1/30/13	Grist Creek Aggregates Project IS/MND, Mendocino County, CA

9/24/12	Austin Quarry Draft EIR, Madera County, CA
8/26/12	Tesoro Viejo Specific Plan Revised EIR, Madera County, CA
10/10/11	Eagle Peak Asphalt Batch Plant MND, Callahan, CA
6/12/11	Walmart Expansion Project EIR, Poway, CA
2/20/11	McCloud Springs Ranch Subdivision MND, Siskiyou County, CA
1/4/11	Comingdeer Asphalt Batch Plant MND, Redding, CA
10/1/10	Biogreen Cogeneration Power Plant, La Pine, OR
7/13/10	Chapin Concrete Batch Plant MND, Volta, CA
1/25/10	Walmart Supercenter Draft EIR, Galt, CA
1/11/10	Doctor's Park MND, Mt. Shasta, CA
9/22/09	Livingston Concrete EIR, Placer County, CA
6/10/09	Poonkinney Quarry MND, Mendocino County, CA
5/11/09	Orchard Subdivision MND, City of Mt. Shasta, CA
1/2/09	McCloud Springs Ranch Subdivision MND, Siskiyou County, CA
10/8/02	Shasta Mountain Lodge Hotel 2 (Springhill Dr.), Mt. Shasta, CA
10/10/95	Shasta Mountain Lodge Hotel 1 (Mt. Shasta Blvd.), Mt. Shasta, CA

Exhibit C

Laura Hall

From: Laura Hall
Sent: Thursday, February 8, 2024 11:37 AM
To: Michelle Irace
Subject: RE: [EXTERNAL] Re: Air Quality and Greenhouse Gas (GHG) Report with a Health Assessment:

Michelle,

Too late, I already replied. I'll check out what he sent.

Thank you,

Laura

From: Michelle Irace <Michelle.Irace@lakecountycal.gov>
Sent: Thursday, February 8, 2024 11:35 AM
To: Laura Hall <Laura.Hall@lakecountycal.gov>
Subject: RE: [EXTERNAL] Re: Air Quality and Greenhouse Gas (GHG) Report with a Health Assessment:

I'm working on something else, but don't reply and let's chat on Monday . We don't need to respond to him right awa.

From: Steve <srr@woodbridge-energy.com>
Sent: Thursday, February 8, 2024 11:30 AM
To: Laura Hall <Laura.Hall@lakecountycal.gov>
Cc: Thomas Jordan <thomas.jordan@sv-nsn.gov>; Michelle Irace <Michelle.Irace@lakecountycal.gov>
Subject: Re: [EXTERNAL] Re: Air Quality and Greenhouse Gas (GHG) Report with a Health Assessment:

FYI,

Our site is equivalent of 1 semi truck in HP on the road with basically no NOx. We don't use oxygen in the gasification system. The amount of CO2 from the Mainspring linear generator is about 1/10 of that of a Natural Gas Fixed Generator. See BAAMD Engineering Report. The NOx is less than 1/5th.

The Bay Area Air board has approved the use of the Mainspring linear generators and are not a ICE unit.

In Mainspring's linear generator, electrically-controlled linear motion of oscillators compress a fuel and air mixture until the mixture reacts uniformly and near instantaneously without a flame or burning. Since there is no flame or burning (i.e., no combustion), the reaction occurs at low temperatures (less than 1500 C) and, as a result, produces near-zero NOx emissions. The energy from the low-temperature reaction drives linear motion of the oscillators, which is directly converted into electricity, and the electrically-controlled linear motion of the oscillators drives the reaction. Much like a fuel cell, Mainspring's linear generator only operates while producing electricity. This is in contrast to an engine, which can only operate by producing mechanical energy.

Mainspring unit generator
Emissions NOx: < 2.5 ppm (<0.07 lb/MWh)
Noise: < 70 dBA @ 6 feet

<https://news.ucr.edu/articles/2023/04/17/methane-megafires-more-spew-we-knew>

I build solar project and wind. They also have people that hate that technology and energy source.

Solar produces an estimate 50gams of CO2 for every kWh of produced in its life cycle. Nothing is for free.

The article that Biomass is worse than Coal is manipulating data to reinforce the agenda they are promoting.

They are calculating that you are cutting down the forest for the purpose of biomass power generation and not the fact that the forest material is already cut and being trucked for disposal or burned in the forest with little or no control of the pollutants being generated and that the burning produces no value to the community that needs energy. What do you do with the waste? If you don't burn it then it can compost and create major sources of methane that is 4x worse than CO2.

Our system used no oxygen to gasify the woody biomass and therefor creates almost no NOx. The CO2 is countered by the Biochar created with a value of 3x of its weight. So Net Zero carbon foot print.

So here is the conclusion that one of your articles states.

Conclusion:

Recommendations and Solutions Criteria for Just, Economical, Environmentally Sound Biomass Utilization In light of the continued and increasing production of woody material from wildfire management in forests, the presence of facilities to utilize this biomass is important. In comparison to open burning and landfilling, using biomass for electricity or heat production reduces pollution and creates opportunities to sell electricity and meet community power needs. We propose that any new biomass facilities meet the following criteria:

1. Feedstock comes only from ecological thinning, mill residues, or home hardening and defensible space practices as opposed to logging activities
2. Small-scale – 5 MW or less, in accordance with BioMAT program requirements, or slightly larger facilities approved on a case-by-case basis
3. No more facilities are built than are needed to process the wood waste associated with sustainable forest management activities within a reasonable distance of the facility. This avoids creating an industrial complex that requires constant and increasing feedstock
4. Companies engage local communities for input and collaboration in the planning, design, and deployment of new facilities
5. Facilities are located close to the sources of biomass production, which tend to be rural and mountainous locales, to reduce emissions and costs of long-distance shipping; facilities will not be sited in already over-polluted Central Valley communities.
6. When feasible, new facilities should use gasification or pyrolysis technologies, along with the best available emissions controls, to minimize GHG impacts
7. When possible, feedstock is produced by work crews that create jobs for local communities and Indigenous peoples

All of these are exactly what we are doing.

Regards
Steve

On Feb 8 2024, at 9:32 am, Laura Hall <Laura.Hall@lakecountyca.gov> wrote:

Steve,

What extensive research did you do and can you provide it please.

Regards,

Steve

On Feb 8 2024, at 7:15 am, Laura Hall <Laura.Hall@lakecountyca.gov> wrote:

Steve,

After extensive research to determine if there was an alternative to requiring an Air Quality and Greenhouse Gas (GHG) Report with a Health Assessment, staff has determined that a report will be necessary for the CEQA analysis. This is due to residents being less than 1,000 feet from the facility and daily truck trips from the Donohoe facility to the project site. This report should be completed by a qualified professional who specializes in air quality reporting in California.

As we are waiting on the Air Quality/GHG Report with Health Assessment and the revised Biological Assessment Report, I will continue working on the initial study.

Thank you for your patience.

Sincerely,

Laura



Laura L. Hall, MS

Senior Planner

Community Development Department

Planning Division – 3rd Floor

Address: 255 N. Forbes St.

Lakeport, CA 95453

Phone: (707) 263-2221

**U.S. DEPARTMENT OF COMMERCE**

Economic Development Administration
Jackson Federal Building, Room 1890
915 Second Avenue
Seattle, Washington 98174
Fax: (206) 220-7669

Date: August 10, 2022

To: SRO Project File – Scotts Valley Band of Pomo Indians, Upper Lake, Lake County, California, #07-79-07842

From: Rowena DeFato/REO

Subject: Scotts Valley Forest Biomass Management and Economic / Jobs Development Project; DOC Categorical Exclusion A-2, Record of Environmental Consideration

Project Description

The project site is located 1,000 feet southwest of the intersection of SR 20 with Old Lucerne Road., immediately southeast of the community of Upper Lake in central Lake County, California (Attachment A). The project site is flat, ranging from 1,334 feet above mean sea level (msl) in the northwestern corner to 1,330 feet msl along the southern side of the overall 5-acre site. The site was historically developed for agriculture, with a vineyard the most recent use.

The proposed project would install an approximately 600 linear-foot chain link fence to form an approximately 200-foot x 100-foot biomass processing area enclosure with access gates. Ground disturbance for fence installation would be limited to the digging of approximately sixty 4-inch holes, set approximately 10 feet apart. Within the fenced area, a temporary, 5,000 square-foot (sf) structure composed of four shipping containers and a hoop tent would be constructed with the containers serving as both walls for the hoop tent shelter and as on-site storage. No foundation would be used for placement of this proposed structure. The project would take approximately three months to complete.

Construction activities would involve clearing and grubbing activities including the removal of existing blackberry bushes from the site, fence installation limited to holes needed for fence posts, and placement of the proposed shipping containers and hoop tent onto the site. Total construction related land disturbance would be approximately 0.46 acre or less. Rock will be used for leveling in place of most grading. No further construction is proposed.

The proposed project also includes the procurement of equipment (Table 1). This equipment would be stored and operated within the biomass processing area and/or the hoop tent storage area. Mobile equipment would have wheels, further limiting ground disturbance.

When fully operational, the project would transform wood derived from forest thinning from multiple locations across Lake County into various saleable wood products including firewood, landscaping products, biochar, and intermediate products used for the downstream production of fuel pellets, engineered wood, and various other wood-based products. Raw and processed biomass would be temporarily stored within the overall larger project area

Table 1 Equipment List

Equipment Type	Application
Grinder / Shredder (SSI Shredder M85 Electric)	Biomass Processing
Wheel Loader (Cat 914, 2.5 cubic yard)	Biomass handling
Tracked Grapple Loader (John Deere 337E and Rotobec 6007 grapple with RT-222 Rotator)	Biomass handling
Skid-steer / articulated loader (Bobcat S590 loader with 62" industrial grapple bucket)	Biomass handling
Trommel Screen (McCloskey International 512A)	Biomass processing
Crumbler Feed Bin (20 cubic yard)	Biomass processing
Rotary Shear Mill (Crumbler P24 System)	Biomass processing
Orbital Screen System (BM&M Super Screen, 2 deck, 5 x 12)	Biomass processing
Firewood Processor (Multitek 1610 with electric driver)	Biomass processing (firewood)
Firewood Bundler (Multitek wrapper / bundler)	Biomass processing (firewood)
Conveyors (fixed and movable)	Biomass processing
Biochar handling and packaging	Biomass processing
Chip van (120 cubic yard, 48-foot trailer, 4)	Biomass transport
48-foot flatbed trailer	Biomass transport
Fuel tank	Site equipment
Truck Scale, non-permanent (Optima Scale OP-100 Truck Scale)	Biomass inhaul / outhaul and product measurement
Fabric Membrane Structure (5,000 square foot hoop tent with storage container walls)	Equipment non-permanent housing
Generator Set (2G Energy)	Biomass processing / on site energy production
Artis Units (Omni Bioenergy)	Biomass processing / on site energy production
Artis Power Electronics Upgrade (Omni Bioenergy)	Biomass processing / on site energy production
Shipping	Equipment procurement / setup
Equipment assembly, integration, and testing	Equipment procurement / setup
Mobile office trailer (20-foot length)	Site operation support / administration
Water Truck	Biomass processing / dust management

Biomass would be hauled to and from the site via truck along an existing, unnamed road immediately west of the project site. Maintenance of equipment, as well as periodic maintenance and upkeep for the proposed hoop tent and fence, would be completed intermittently as needed during project operation.

Vehicles would enter through a gate in the processing area, located near the southern edge of the processing area, and would access this gate via an existing gravel pad that is located along the southern edge of the project area. Incoming vehicles would proceed through the gate to be weighed, then proceed forward for loading, turnaround, and weighing on their way out of the facility.

NHPA Section 106 Consultation/Determination

The Tribe completed a review of its internal records and contacted key representatives from other area tribes to identify potential historic, archaeological, or cultural resources within the area of potential effect (APE) for the project site. The APE is defined as the 5-acre project site (Attachment B). No relevant historic, archaeological, or cultural resources were identified within the project's APE. The historically and culturally significant Bloody Island site is located approximately 0.6 mile southeast of the project site.

The Battle of Bloody Island site was listed as a California Historical Resource in March 1949. Located on private property, the site is marked with a historical marker at the intersection of SR 20 and Reclamation Road. The site is the location of a military attack on the Clear Lake Pomo in retribution for the death of two landholders who had gravely mistreated the Pomo. Historical records indicate that 40 or more Pomo were killed, most of whom were women and children.

Based on communications with local registered professional archaeologist Dr. John Parker, the remains of those killed were burned / buried on the east side of the creek that winds around the east side of the island. Soil, including levee soil, located near the island could contain cultural material. The levees in question are located at least 0.5 mile from the project's APE, and the project is not expected to affect these sensitive areas. However, since the Tribe has determined that there is potential for cultural materials to be located on the proposed project site, the Tribe proposes to conduct cultural monitoring during the construction process and implement Mitigation Measures CUL-1 and CUL-2 (refer to the Mitigation section of this document).

California SHPO Consultation

EDA requested consultation under Section 106 with the California SHPO by submitting a letter and relevant documents via the SHPO portal on May 12, 2022. SHPO concurred with the determination of no historic properties affected in a letter dated June 8, 2022.

Tribal Consultations

The Scotts Valley Band of Pomo Indians (SVPI) reviewed their files and contacted other tribes. They did not, however, request formal consultations with other local tribal bands residing in Lake County. The SVBPI's staff has made a brief project presentation at an informal meeting in which a few of the local tribal Environmental Directors were in attendance. The SVBPI has not received any comments of concern about the proposed project.

Table 2 Outreach from SVBPI to Tribal and Other Interested Parties

Date	Subject	Participants*
7/22/2021	Planning Grant for Env Ed Ctr/Lab/Native Plant Nursery/BioChar in Upper Lake	HPUL, RRA, CLERC, SVBPI
7/23/2021	Planning Grant for Env Ed Ctr/Lab/Native Plant Nursery/BioChar in Upper Lake	Added LC Water Resources
7/26/21	Planning Grant for Environmental Ed Ctr/Lab/Native Plant Nursery/BioChar Mtg	HPUL, RRA, CLERC, SVBPI, LCWR
7/30/2021	RE: Biochar Project planning letters of intent / commitment	HPUL, RRA, CLERC, SVBPI, LCWR
7/30/2021	CA Resilience Challenge Grant Planning Mtg 2	HPUL, RRA, CLERC, SVBPI, LCWR, TERA
8/17/2021	UL Environmental Ed/BioChar/Nursery discussion	HPUL, RRA, CLERC, SVBPI, LCWR, TERA
8/27/2021	UL EnvEd/BioChar/Nursery proposal paragraph meeting	HPUL, RRA, CLERC, SVBPI, LCWR, TERA
1/7/2022	741 E Hwy 20 Env report?	RRA, HPUL, Wolfcreek Archaeology
1/7/2022	741 E Hwy 20 Env report?	RRA, HPUL, Wolfcreek Archaeology
1/12/2022	Call w/HPUL THPO	HPUL
1/12/2022	TEAMS meeting with Robert Geary re: EDA question	HPUL
* HPUL = Habematolel Pomo of Upper Lake; RRA = Lake County Community Risk Reduction Authority CLERC = Clear Lake Environmental Research Center; SVBPI = Scotts Valley Band of Pomo Indians (Applicant); TERA = Tribal EcoRestoration Alliance		

EDA submitted an information request under Section 106 to the Native American Heritage Commission via their electronic portal on May 12, 2022. The NAHC responded that a search of their Sacred Lands File (SLF) was completed using the project information submitted by EDA. The results were negative.

In addition to searching the SLF, the NAHC provided a list of potentially interested tribes. The EDA sent initial consultation letters to all tribes identified by the NAHC as having ancestral ties to the project area as well as tribes identified by the HUD TDAT database.

Responses were received from Habematolel Pomo of Upper Lake, Middletown Rancheria, and Yocha Dehe. The Yocha Dehe deferred to the Habematolel Pomo of Upper Lake. Middletown Rancheria was interested in the location of the proposed project for future options of biomass energy generation.

Habematolel Pomo of Upper Lake

EDA received letter from the Habematolel Pomo of Upper Lake Cultural Resources Department dated July 27, 2022, which followed a phone call from Mr. Robert Geary, Cultural Resources Director, Tribal Historic Preservation Officer. The letter informed the EDA that upon review of the proposed project, the Cultural Resources Department determined that the project site is within their Aboriginal territories, and they have a cultural interest and authority in the proposed project area. The Tribe also requested a formal consultation with EDA and the SVBPI. EDA informed the SHPO of the request and provided a copy of the letter via the submittal portal. A subsequent submittal was made to SHPO following the consultation.

The consultation took place via a Teams call on August 3, 2022. The Habematolel Pomo of Upper Lake have information that the area of the proposed project is sensitive for cultural resources. Artifacts have been found on the adjacent property near Highway 20. The following items and actions were requested to be taken into consideration as the project moves to construction:

- SVBPI will provide a detailed description of all ground disturbing activities including depth and area to Mr. Robert Geary and his team. This will include details on the installation and function of the ground screws planned to be used to secure equipment, and installation of site lighting.
- An Unanticipated Discovery Plan will be developed and agreed to by both the SVBPI and the Habematolel Pomo of Upper Lake.
- Sensitivity Training will be developed and conducted for on-site workers.
- Tribal Monitor(s) will be in place during earth-disturbing activities.
- Members of the Habematolel Pomo of Upper Lake will be given access to the site to survey for cultural resources prior to construction.
- EDA will include Specific Award Conditions where appropriate.
- The SVBPI and the Habematolel Pomo of Upper Lake will work together to identify mitigation measures.

Subsequently, SVBPI has agreed to increase cultural monitoring oversight during the proposed project. The Habematolel Pomo will provide contracted cultural resources staff to the project to support additional cultural sensitivity training and oversight. In addition, SVBPI agrees to adhere to the Habematolel Pomo Cultural Resources Protocol (Attachment B) during project implementation.

Consultation documents are provided as Attachment B.

Wetlands

No wetland vegetation has been noted on the proposed project site. There is, however, a potentially jurisdictional agricultural drainage located on the western side of the access road adjacent to the project site. Vegetation associated with that swale can be viewed in Figures 9 and 10 (Attachment C). The feature is also shown on the US Fish and Wildlife Service's National Wetlands Inventory (NWI) mapper, as shown on Figure 11 (Attachment C).

Based on data provided by the NWI mapper, the offsite drainage is classified as follows:

- A Palustrine System, which includes all nontidal wetlands dominated by trees, shrubs, persistent emergents, emergent mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean-derived salts is below 0.5 ppt. It also includes wetlands lacking such vegetation, but with all of the following four characteristics: (1) area less than 8 ha (20 acres); (2) active wave-formed or bedrock shoreline features lacking; (3) water depth in the deepest part of basin less than 2.5 m (8.2 ft) at low water; and (4) salinity due to ocean-derived salts less than 0.5 ppt.
- Emergent (EM) Class: Characterized by erect, rooted, herbaceous hydrophytes, excluding mosses and lichens. This vegetation is present for most of the growing season in most years. These wetlands are usually dominated by perennial plants.
- Persistent (1) Subclass: Dominated by species that normally remain standing at least until the beginning of the next growing season.
- Seasonally Flooded (C) Water Regime: Surface water is present for extended periods especially early in the growing season but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.

Project activities would not interfere with or impact the existing agricultural drainage. All project related activities would take place to the east of the existing agricultural drainage ditch. Moreover, to ensure that no impacts to the drainage would occur, all project construction activity would be located at least 100 feet east of the existing drainage ditch.

Additionally, all biomass storage areas, which are located outside of the processing area, would be set back at least 100 feet from the drainage. Access to the project site would be via an existing gravel pad that is located along the southern edge of the project site to avoid the need for additional land disturbance in proximity to the agricultural ditch.

Floodplains

The proposed project site is not within a 100-year flood zone or within a 500-year flood zone, although the boundary of the 500-year floodplain is near the southern boundary of the project area (Attachment D). The project would not cause or directly or indirectly result in any placement of fill, use, or other activities in a FEMA-delineated floodplain. As a result, the project would not be affected by, nor would it affect, a 100-year or a 500-year floodplain. While Lake County does participate in the National Flood Insurance Program, the project would not be required to purchase flood insurance.

The proposed project does not involve property acquisition, management, construction, or improvements within the 100-year floodplain (Zones A or V) identified by FEMA maps and does not involve a "critical action" (e.g., emergency facilities) within a 500-year floodplain (Zone B).

Climate Change

Drawing on information provided in the National Climate Assessment including FEMA's National Risk Index, Lake County, and the census tract where the project is proposed (06033000100) score in the Relatively High category for risks, including those affected by climate change. More specifically, this area is expected to suffer a relatively high expected annual loss, with a relatively moderate social vulnerability and relatively low community resilience.

Key risk categories that contribute to the Relatively High determination include the following: drought (score of 28.22), earthquake (37.8), and wildfire (30.40). Climate change has the potential to contribute to / exacerbate both drought and wildfire incidence. The project requires limited volumes of water to operate and would not be substantially affected by drought, nor would it result in excessive consumption or use of water, and therefore would not exacerbate the local effects of drought (Attachment E).

The project would potentially be susceptible to wildfire. However, the project is designed to help mitigate wildfire threat within the Lake County region. The proposed project would help advance forest thinning / fuel reduction efforts regionally within Lake County, resulting in reduced forest fire risk for these areas. The project would also help to create new demand for wood harvested during forest thinning, thereby resulting in improved economics for local / regional forest thinning efforts. Moreover, the project would also result in the generation of renewable bioenergy on site as a coproduct during the production of biochar. Renewable bioenergy would be generated using a portion of the incoming biomass, and the electricity generated would be used to operate on site equipment and, if sufficient electricity is available, it would be sold back onto the grid as renewable power.

Moreover, all stationary equipment would be operated using electricity rather than fossil fuels, which would help to reduce the greenhouse gas (GHG) emissions footprint of project operations. Forest thinning related reductions in wildfire risk also have significant potential to reduce GHG emissions by reducing potential for additional catastrophic wildfires in Lake County, which to date have already released millions of tons of carbon dioxide and other air pollutants. Therefore, the project is expected to result in a net benefit with respect to potential impacts of climate change and would contribute to an incremental net reduction in climate related impacts.

ESA Section 7 Determination

The US Fish and Wildlife Service Information for Planning and Consultation (IPaC) database was queried on May 12, 2022, for special status species that may occur in or near the project area (Table 3).

Table 3: Species Potentially Affected by Project Activities

Common Name	Scientific Name	ESA Listing Status	Critical Habitat
Insects			
Monarch Butterfly	<i>Danaus plexippus</i>	Candidate	None designated
Birds			
Northern Spotted Owl	<i>Strix occidentalis caurina</i>	Threatened	Final designated
Fishes			
Delta Smelt	<i>Hypomesus transpacificus</i>	Threatened	Final designated
Flowering Plants			
Burke's Goldfields	<i>Lasthenia burkei</i>	Endangered	None designated

There are no critical habitats within the project area.

In addition to the above-listed species, certain birds are protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The birds listed in this section of the IPaC Report are of particular concern either

because they occur on the USFWS Birds of Conservation Concern (BCC) list or warrant special attention in the location of the proposed project. The Species List generated for the proposed project did not list any migratory birds. However, the IPaC resources list contained the following species:

- **Bald Eagle** (*Haliaeetus leucocephalus*): This is not a Bird of Conservation Concern (BCC) in this area but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. Breeds January 1 to August 31.
- **California Thrasher** (*Toxostoma redivivum*): This is a BCC throughout its range in the continental USA and Alaska. Breeds January 1 to July 31.
- **Common Yellowthroat** (*Geothlypis trichas sinuosa*): This is a BCC only in particular Bird Conservation Regions (BCRs) in the continental USA. Breeds May 20 to July 31.
- **Golden Eagle** (*Aquila chrysaetos*): This is not a BCC in this area but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. Breeds January 1 to August 31.
- **Nuttall's Woodpecker** (*Picoides nuttallii*): This is a BCC only in particular Bird Conservation Regions (BCRs) in the continental USA. Breeds April 1 to July 20.
- **Oak Titmouse** (*Baeolophus inornatus*): This is a BCC throughout its range in the continental USA and Alaska. Breeds March 15 to July 15.
- **Olive-sided Flycatcher** (*Contopus cooperi*): This is a BCC throughout its range in the continental USA and Alaska. Breeds May 20 to August 31.
- **Tricolored Blackbird** (*Agelaius tricolor*): This is a BCC throughout its range in the continental USA and Alaska. Breeds March 15 to August 10.
- **Wrentit** (*Chamaea fasciata*): This is a BCC throughout its range in the continental USA and Alaska. Breeds March 15 to August 10.
- **Yellow-billed Magpie** (*Pica nuttalli*): This is a BCC throughout its range in the continental USA and Alaska. Breeds April 1 to July 31.

The Probability of Presence Summary included in the IPaC Report (or species list) provides data on the probability of these species being present in the area of the proposed project and whether this presence is during breeding season. This information can be used to tailor and schedule proposed project activities to avoid or minimize impacts to birds.

The proposed project site has been used for agricultural purposes for generations. Therefore, there are no trees on the site. Based upon the lack of habitat in the project area for the federally listed species as well as the lack of federal designated critical habitat in the project area, there would be “no effect” to federally listed species (Attachment F).

Other Species

Although not included in the project species list, information provided for the proposed project indicates that there is potential for the California Red-legged Frog (*Rana draytonii*) to be present in the area. This species occurs from sea level to elevations of about 1,500 meters (5,200 feet). It has been extirpated from 70 percent of its former range and now is found primarily in coastal drainages of central California, from Marin County, California, south to northern

Baja California, Mexico. Potential threats to the species include elimination or degradation of habitat from land development and land use activities and habitat invasion by non-native aquatic species.

California red-legged frogs have been observed using a variety of habitat types, including various aquatic, riparian, and upland habitats. They include, but are not limited to, ephemeral ponds, intermittent streams, seasonal wetlands, springs, seeps, permanent ponds, perennial creeks, manmade aquatic features, marshes, dune ponds, lagoons, riparian corridors, blackberry (*Rubus* spp.) thickets, nonnative annual grasslands, and oak savannas. They are found in both natural and manmade aquatic habitats and inhabit areas of diverse vegetation cover.

The ephemeral agricultural drainage located adjacent to the project site could potentially serve as low-quality habitat for this species. While the project would not impact, alter, or affect the existing drainage, implementation of Mitigation Measure BIO-1 would ensure that no damage to California red-legged frogs would occur (refer to the Mitigation section of this document).

Hazardous or Toxic Substances

The proposed project would result in storage of up to 500 gallons of petroleum diesel fuel using a proposed on-site diesel storage tank. The tank would be located aboveground with double walls and/or secondary containment sufficient to hold the entire volume of the tank when full. The tank would adhere to / comply with all local, state, and federal requirements and regulations relevant to the onsite temporary storage of diesel fuel. The project would also store minor amounts of lubricant oil (up to 55 gallons) for use in the project equipment. All spent oil would be immediately recycled. Handling of lubricant oil and diesel would be subject to all local, state, and federal regulations, and would be subject to standard operating procedures to ensure worker safety as well as minimize potential for spill or release of these pollutants into the environment.

Phase I Environmental Site Assessment, June 2013, Revised June 17, 2013

A Phase I Environmental Site Assessment (ESA) was conducted in anticipation of a commercial real estate transaction involving several parcels (26) covering 762 acres. The proposed project site was included in this work (Attachment G).

The Phase I ESA revealed no evidence of recognized environmental conditions (RECs) in connection with the 26 parcels; however, it did reveal some de minimis conditions: 1) barns and storage sheds with vehicle and equipment storage that could contain petroleum-stained soils; 2) septic systems; 3) wells; 4) Wilcox property former on-site sewer pond abandoned reportedly in 2001. Data gaps: ASTs, persistent pesticides, and DDT use (*Phase I Environmental Site Assessment, Middle Creek Flood Damage Reduction and Ecosystem Restoration Project, Lake County, California*, GHD, Inc., June 2013; Revised June 17, 2013).

There are no significant impacts from hazardous or toxic substances from the implementation of the project.

Water Resources

The project site and its vicinity are underlain by groundwater resources. Nearby Clear Lake also provides a valuable water resource. The proposed project would draw limited volumes of water to support project operations - approximately 1.3 acre-feet per year. This volume is equivalent to the volume of water used by approximately two California households during a single year. This volume of water use would not impact or noticeably affect or deplete any locally available water supply.

Topography on the project site and its vicinity is generally level and was previously fine graded for agricultural use. The site has a gentle slope on site. Preliminary calculations for stormwater that would be collected by the hoop tent -

based on a 100-year storm event - were completed. Gutters sized at 4 inches were determined to be sufficient to contain stormwater flows. The originally proposed 20-foot trailer would be integrated into the hoop tent structure.

Gutters would be placed along the sides and the back (closed) end of the hoop tent to capture stormwater and route it away from the operations site. On-surface storm drainage conduit would be laid in an unused area of the project site. These pipes would take advantage of the gentle slope available on site and disperse water along the pipe array including through perforated pipes toward the ends of the array, to facilitate conveyance of water off site via sheet flow. This design avoids releasing concentrated flows onto the ground's surface, and mimics natural site drainage processes. There are no significant impacts to water resources from the proposed project (Attachment H).

Transportation

SVBPI would maintain sufficient gravel on the roadway to allow access year-round. During day-to-day operations, the facility would receive wood / biomass deliveries and pickups via mid- to heavy duty vehicles, typically of size class 5 to 6, occasionally of size class 7, and rarely of size class 8. Based on the proposed operations, it is anticipated that no more than four to six medium-to-heavy duty vehicle trips per day would be necessary for operations. Therefore, the site would not receive heavy traffic. Project operations would include adding rock to the gravel roadway on an as-needed basis to ensure that the road is fully operational and can handle targeted loads.

Air Quality

Dust Generation. The SVBI recognizes the need to minimize dust generation from truck traffic along the unpaved access road. To this end, the project design includes purchase and operation of a water truck. The water truck would be used during the dry season and/or whenever road conditions are dry enough that truck traffic along the unpaved access road could generate dust. During such periods, water would be applied to the road as needed to ensure that dust generation is avoided. The water truck would also be used on site as warranted to minimize dust generation for equipment and for transport trucks.

Odors. Potential for generation of odors would be very limited. Biomass activities that generate odors include the degradation or composting of biomass. Such activities would not occur on site. Microbial breakdown (e.g., composting) of the proposed wood products would be detrimental to their value. As a result, there would be an operational limit the storage period for wood products on site and wood products would be managed to avoid their breakdown and avoid the generation of odors. Incoming biomass feedstock would be composed only of forest thinning biomass and would not carry or generate odors. Splitting and chipping of incoming biomass could release natural and aromatics from fir and other evergreen vegetation, but any resulting scent would be faint/rapidly dissipating, and detectable only in very close proximity to the biomass operation. No further mitigation is warranted.

There are no significant impacts to air quality from project implementation. The project would not result in a cumulatively considerable net increase of a criteria pollutant under applicable federal or state ambient air quality standards.

Permits

The project would require a permit to operate from the Lake County Air Quality Management District. Construction of the proposed fence would require a county building permit. No other permits would be required.

The SVBI is coordinating with the County regarding the required CEQA process. Based on a preliminary review of the project, County environmental personnel noted that the project would most likely require completion of an Initial Study / Negative Declaration or an Initial Study / Mitigated Negative Declaration.

Public Notice

Regulations under the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) require that the public be offered an opportunity to be informed of, and involved in, Federal actions that may significantly affect the quality of their environment before decisions are made to implement actions.

The NEPA notice was published in the Paper of Record, The Lake County Record-Bee. The Lake County Record-Bee published the notice three times on April 8th, 9th, and 12th, 2022 (Attachment I).

The SRO Regional Environmental Officer received no comments pertaining to the proposed project since the NEPA notice was published. There is no known controversy about the proposed project.

Mitigation

The following mitigation measures were described in the application Environmental Narrative revised June 2021.

Historic / Archaeological Resources

Mitigation Measure CUL-1. Cultural Resources Construction Monitoring. During all groundwork (e.g., installation of fence posts), a certified cultural monitor--a member of Scotts Valley Band of Pomo Indians and/or the Habematolel Pomo of Upper Lake (monitor), shall be continuously present onsite, to observe disturbance areas. The monitor shall halt work in the immediate vicinity if artifacts, exotic rock, shell, or bone are uncovered during the construction. In the event such cultural resources are unearthed during ground-disturbing activities, and the monitor is not in that location, the project operator shall cease all ground-disturbing activities within 50 feet of the find and immediately contact the monitor. Work shall not resume until the potential resource can be evaluated by the monitor. The monitor shall be empowered to halt or redirect ground-disturbing activities away from the vicinity of the find until the qualified monitor has evaluated the find, determined whether the find is culturally sensitive, and designed an appropriate short-term and long-term treatment plan. The significance of the find shall be determined by the monitor, in consultation with the Scotts Valley and Habematolel Bands of Pomo Indians. If determined to be significant the archaeologist shall prepare a treatment plan in consultation with local experts, Native American Representatives, and the County Planning & Development Services Department.

Mitigation Measure CUL-2. Discovery of Unknown Resources. The project applicant shall continuously comply with the following requirement: In the event that unanticipated cultural or tribal cultural resources are encountered during the course of groundwork or construction, the project operator/contractor shall cease any ground-disturbing activities within 50 feet of the find. Cultural and/or tribal cultural resources may include prehistoric archaeological materials such as flaked and ground stone tools and debris, shell, bone, ceramics, and fire-affected rock, as well as historic materials such as glass, metal, wood, brick, or structural remnants. A certified cultural monitor shall evaluate the resource in consultation with the Scotts Valley and Habematolel Bands of Pomo Indians, and recommend treatment measures, as appropriate.

Wetlands

To ensure that no impacts to the drainage occur, all project construction activity would be located at least 100 feet east of the existing drainage ditch. Additionally, all biomass storage areas, which are located outside of the processing area, would also be set back at least 100 feet from the drainage. Access to the project site would be via an existing gravel pad that is located along the southern edge of the project site to avoid the need for additional land disturbance in proximity to the agricultural ditch.

Listed Species

Mitigation Measure BIO-1. Prior to project implementation, the Applicant shall retain a qualified biologist to complete a survey for the presence of California red legged frog and its suitable habitat. If the species or reasonably suitable habitat is found to be present, such that project construction could result in impact to the species, the Applicant shall adhere to the following measures:

- Project construction activities in potential red-legged frog habitat shall be restricted to the period between July 1 and October 15.
- Additional permitting and mitigation measures may be warranted in the event that red legged frogs are identified on site. Additional measures would be identified following the site survey and could include, but would not be limited to:
 - Prior to the onset of any project-related activities, the approved biologist must identify appropriate areas to receive red-legged frog adults and tadpoles from the project areas. These areas must be in proximity to the capture site, contain suitable habitat, not be affected by project activities, and be free of exotic predatory species (i.e. bullfrogs, crayfish) to the best of the biologist's knowledge.
 - A qualified biologist shall survey the project site at least two weeks before the onset of construction activities. If red-legged frogs are found in the project area and these individuals are likely to be killed or injured by work activities, the biologist will allow sufficient time to move them from the site before work activities resume. Only qualified biologists will participate in activities with the capture, handling, and monitoring of red-legged frogs.
 - Prior to the onset of project construction, a qualified biologist shall conduct a training session for all construction personnel. At a minimum, the training shall include a description of the red-legged frog and its habitat, the importance of the red-legged frog and its habitat, the general measures that are being implemented to conserve the red-legged frog as they relate to the project, and the boundaries within which the project may be accomplished. Brochures, books, and briefings may be used in the training session, provided that a qualified person is on hand to answer any questions.
 - A qualified biologist shall be present at the work site until such time as removal of red-legged frogs, instruction of workers, and habitat disturbance has been completed. The biologist shall have the authority to halt construction as warranted.

Water Resources

SVBPI will have a qualified engineer from the project engineering team design all elements of the proposed on-site drainage system. The drainage system will be designed to meet all applicable state and county standards. In no case will water be discharged from the property untreated, nor will it be discharged improperly onto a neighboring property. All stormwater releases will comply with applicable state and local regulations and requirements.

Gravel Road

SVBPI will maintain the gravel access road on an ongoing basis to avoid, mitigate, minimize, and/or correct rut and pothole formation. The road surface will be adequately maintained so as not to be left as bare mud or dirt during any season. Similarly, all access areas on the biomass depot site will be rocked and underlain with road base sufficient to support the weight of biomass haul trucks and other vehicles/equipment. These elements of the project will ensure

that mud tracking, rutting, and other road stability issues are avoided for the duration of the proposed facility's lifetime.

Specific Award Conditions

To assure mitigation of potential environmental impacts, mitigation measures are used in the form of grant conditions. The following Specific Award Conditions are recommended for placement on the Grant Agreement as an addendum to the General Terms and Conditions:

- **TRIBAL MONITOR:** Thirty (30) days prior to earth-disturbing activities funded under the EDA grant, the Recipient shall provide evidence satisfactory to the EDA that the Habematolel Pomo of Upper Lake have been notified and will have a tribal monitor on-site during earth-disturbing activities.
- **ARCHEOLOGICAL AND HISTORICAL RESOURCES:** If during construction of the project, historical and archeological resources, including burial grounds and artifacts are discovered, the Recipient shall immediately stop construction in the area, contact the applicable State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), interested Tribes, and EDA, and follow the SHPO or THPO instructions for the preservation of resources.
- **CULTURAL SENSITIVITY TRAINING:** Prior to solicitation of bids for construction, the Recipient shall provide evidence satisfactory to the EDA that Cultural Sensitivity Training for site workers has been developed in consultation with the Habematolel Pomo of Upper Lake. Site workers shall receive the training prior to commencement of earth-disturbing activities.
- **INADVERTENT DISCOVERY PLAN:** Prior to the start of any construction and/or earth-disturbing activities, the Recipient shall provide evidence satisfactory to the EDA that an Unanticipated Discovery Plan or equivalent has been prepared for the project in cooperation with the Habematolel Pomo of Upper Lake. The Plan shall follow the requirements of the California SHPO and the Habematolel Pomo Cultural Resources Treatment Protocol. If inadvertent discoveries are made, no further work will be allowed on the project until the SHPO and THPO have approved a plan for managing or preserving artifacts or features; the SHPO and THPO will be notified of changes to the project scope.
- **WETLANDS PROTECTION:** The project shall be designed to keep at least a 100-foot buffer between construction activities and wetland areas. Construction best management practices shall be used to avoid impacts to adjacent wetlands.
- **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):** Prior to solicitation of bids, the Recipient shall provide evidence satisfactory to the EDA that the Recipient has completed all CEQA requirements.
- **MITIGATION:** The Recipient shall follow mitigation measures outlined in the application Environmental Narrative revised June 2021 and subsequent responses, the Habematolel Pomo Cultural Resources Treatment Protocol, and the Inadvertent Discovery Plan.

Categorical Exclusion Determination

Categorical Exclusion DOC A-2: New construction upon or improvement of land where all of the following conditions are met: (a) The site is in a developed area and/or a previously disturbed site, (b) The structure and proposed use are compatible with applicable Federal, Tribal, State, and local planning and zoning standards and consistent with Federally approved State coastal management programs, (c) The proposed use will not substantially increase the number of motor vehicles at the facility or in the area, (d) The site and scale of construction or

improvement are consistent with those of existing, adjacent, or nearby buildings, and (e) The construction or improvement will not result in uses that exceed existing support infrastructure capacities (roads, sewer, water, parking, etc.).

The proposed project is new construction of an approximately 600 linear-foot chain link fence and a temporary, 5,000 square-foot (sf) structure composed of four shipping containers and a hoop tent to be used for a biomass management facility.

- a) The proposed project site was previously disturbed for agriculture, most recently a vineyard.
- b) The biomass processing facility is in an agricultural area of the county and is compatible with the surrounding land uses and zoning.
- c) Operation of the facility would not substantially increase the number of vehicles coming to the property or entering the area as no more than four to six medium-to-heavy duty vehicle trips per day are anticipated.
- d) The facility is consistent with surrounding development.
- e) The proposed project would not stress local infrastructure as the needs of the facility are well within the capacity of the surrounding infrastructure.



Digitally signed by
ROWENA DEFATO
Date: 2022.08.10
06:30:49 -07'00'

PREPARED BY:

Rowena DeFato, Regional Environmental Officer, Seattle Regional Office

Attachment A: Project Site

Attachment B: Historical and Archaeological Resources

Attachment C: Wetlands

Attachment D: Floodplains

Attachment E: Climate Change

Attachment F: Listed Species

Attachment G: Hazardous Materials

Attachment H: Water Resources

Attachment I: Public Notice

From: [Jacqueline Storrs](#)
To: [Madankar, Nahideh@DWR](#)
Cc: [Linda Rosas-Bill](#); [Upadhyay.Pawan@LC](#)
Subject: RE: MC (FCP)- Payment tracking (Tasks 3 & 5)
Date: Tuesday, August 19, 2025 11:28:39 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[Middle Creek Restoration Project DWR Grants - Payment Tracker.xlsx](#)

Good morning Nahideh,

Attached is the updated tracker for grant payments the County has received - I've created separate tabs for both agreements.

Let me know if you have any questions.

Many thanks,



Jacqueline Storrs
Accountant I
Department of Water Resources
255 N. Forbes St.
Lakeport, CA 95453
Phone: (707) 263-2344
Fax: (707) 263-1965
Email: Jacqueline.Storrs@lakecountyca.gov

From: Jacqueline Storrs
Sent: Monday, August 18, 2025 3:26 PM
To: Madankar, Nahideh@DWR <Nahideh.Madankar@water.ca.gov>
Cc: Linda Rosas-Bill <Linda.Rosas-Bill@lakecountyca.gov>; Pawan Upadhyay <Pawan.Upadhyay@lakecountyca.gov>
Subject: RE: MC (FCP)- Payment tracking (Tasks 3 & 5)

Thank you, I appreciate you sharing this with me!

The old agreement is proving slightly more difficult to reconcile, but I'm currently going through the files and comparing what I find to the County's finance system. Will send over what I'm able to verify.

I remembered earlier that Nathan had previously sent me a DWR tracking spreadsheet to compare with my findings when I was attempting to reconcile some property purchases last year. However, the data wasn't noted clearly like what you've shared below. Attaching the workbook he provided that I marked up with my notes. It looks like your list below matches the amounts I noted for the most part.

Does your tracking account for escrow refunds? I was able to identify a few, but I highlighted some entries that I couldn't find a clear one-to-one for.

I'll keep working on this and be in touch shortly.

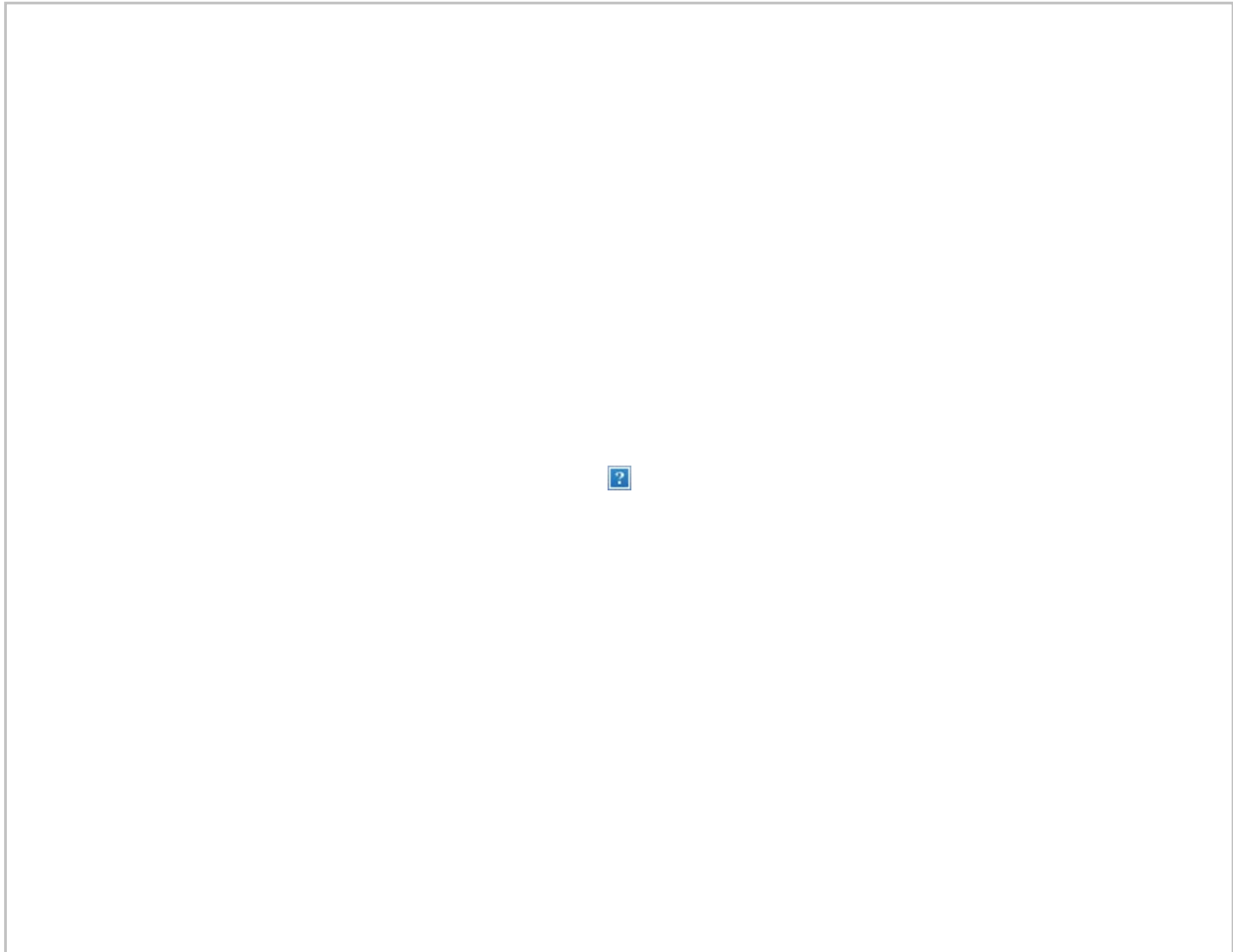
Many thanks,



Jacqueline Storrs
Accountant I
Department of Water Resources
255 N. Forbes St.
Lakeport, CA 95453
Phone: (707) 263-2344
Fax: (707) 263-1965
Email: Jacqueline.Storrs@lakecountyca.gov

From: Madankar, Nahideh@DWR <Nahideh.Madankar@water.ca.gov>
Sent: Monday, August 18, 2025 2:54 PM
To: Jacqueline Storrs <Jacqueline.Storrs@lakecountyca.gov>
Cc: Linda Rosas-Bill <Linda.Rosas-Bill@lakecountyca.gov>; Pawan Upadhyay <Pawan.Upadhyay@lakecountyca.gov>
Subject: [EXTERNAL] RE: MC (FCP)- Payment tracking (Tasks 3 & 5)

Below, some data from first agreement related to property costs reimbursement.



Regards,

Nahideh Madankar, P.E.

Department of Water Resources
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Sacramento, CA 95821
Phone: (916) 820-7550
Nahideh.Madankar@water.ca.gov

From: Jacqueline Storrs <Jacqueline.Storrs@lakecountyca.gov>

Sent: Monday, August 18, 2025 12:21 PM

To: Madankar, Nahideh@DWR <Nahideh.Madankar@water.ca.gov>

Cc: Linda Rosas-Bill <linda.rosas-bill@lakecountyca.gov>; Upadhyay.Pawan@LC <Pawan.Upadhyay@lakecountyca.gov>

Subject: RE: MC (FCP)- Payment tracking (Tasks 3 & 5)

Hi Nahideh,

We didn't have a payment tracking spreadsheet specifically for this grant, so I put this together this morning - please see the attached file.

Were you just needing the information for the current grant agreement (#4600012946), or do you also need to compare payment information for agreement #4600003318?

Many thanks,

 **Jacqueline Storrs**

**Accountant I**

Department of Water Resources
255 N. Forbes St.
Lakeport, CA 95453
Phone: (707) 263-2344
Fax: (707) 263-1965
Email: Jacqueline.Storrs@lakecountyca.gov

From: Linda Rosas-Bill <Linda.Rosas-Bill@lakecountyca.gov>
Sent: Monday, August 18, 2025 9:32 AM
To: Jacqueline Storrs <Jacqueline.Storrs@lakecountyca.gov>
Subject: FW: MC (FCP)- Payment tracking (Tasks 3 & 5)

FYI

Just forwarding.

Respectfully,



[Water Resources | Lake County, CA \(lakecountyca.gov\)](https://www.lakecountyca.gov/Departments/WaterResources)

From: Madankar, Nahideh@DWR <Nahideh.Madankar@water.ca.gov>
Sent: Monday, August 18, 2025 9:28 AM
To: Linda Rosas-Bill <Linda.Rosas-Bill@lakecountyca.gov>
Cc: Pawan Upadhyay <Pawan.Upadhyay@lakecountyca.gov>
Subject: [EXTERNAL] MC (FCP)- Payment tracking (Tasks 3 & 5)

Hi Linda,

Does the County have a tracking sheet for each payment received from the State for Middle Creek that you could share with me

This is in relation to recent public request for information. Area of interest is property purchases (Task 3) and maintenance fund (Task 5).

I'd like to verify DWR's data against County's before we respond. Thanks.

Regards,

Nahideh Madankar, P.E.

Department of Water Resources
3464 El Camino Avenue, Suite 200
Sacramento, CA 95821
Phone: (916) 820-7550
Nahideh.Madankar@water.ca.gov

NOTE: Provided by Nathan M. @ CA DWR for reconcilliation purposes, 5/1/2024 (JS)

Agreement	Reference	Recpt Date	Post Date	Amount	Notes
4600003318	7C RET		06/05/17	(\$12,107.51)	
4600003318	8 RET		06/05/17	(\$16,659.46)	
4600003318	10 RET		06/05/17	(\$64,554.93)	
4600003318	12 RET		06/05/17	(\$3,216.29)	
4600012946	1 RET		09/18/20	(\$2,337.62)	
4600012946	INV 02 RET		12/18/20	(\$2,508.46)	
4600012946	INV 03 RET		12/18/20	(\$4,434.67)	
4600012946	INV 04 RET		03/24/21	(\$62,740.53)	
4600012946	INV 05A RET		01/18/22	(\$2,100.20)	01/01/2021-03/31/2021
4600012946	6 RET		04/13/22	(\$2,547.14)	
4600012946	7 RET		04/13/22	(\$6,311.90)	07/01/2021-09/30/2021
4600012946	INV 08 RET		08/02/22	(\$2,762.83)	10/01/2021-12/31/2021
4600012946	INV 09		04/06/23	(\$1,289.60)	01/01/2022-03/31/2022
4600012946	10		06/23/23	(\$6,714.59)	04/01/2022-06/30/2022
4600012946	11		06/23/23	(\$1,337.19)	07/01/2022-09/30/2022
4600012946	12		06/23/23	(\$395.55)	10/01/2022-12/31/2022
4600012946	13		08/03/23	(\$740.93)	01/01/2023-03/31/2023
4600012946	14		09/22/23	(\$1,333.80)	04/01/2023-06/30/2023
4600012946	15 RET		11/20/23	(\$1,605.86)	07/01/2023-09/30/2023
4600012946	16RET		03/08/24	(\$1,089.49)	10/01/2023-12/31/2023
4600003318 RETENTION TOTAL:				(\$96,538.19)	
4600012946 RETENTION TOTAL:				(\$100,250.36)	
RETENTION TOTAL:				(\$196,788.55)	

Agreement	Reference	Recpt Date	Post Date	Amount	Notes
4600003318	05-170100395-SS-1	11/01/05	12/07/05	(\$379,013.58)	FINCH PROPERTY Acquisition Warrant # 09-057151 (Pre-SAP or BRASS)
4600003318	05-170100395-SS-2	12/20/05	12/20/05	(\$164,260.00)	FINCH PROPERTY Relocation (Pre-SAP or BRASS)
4600003318	04-529581-SS-1	04/11/06	05/30/06	(\$218,468.88)	WARE PROPERTY Acquisition (PARCEL 004-021-22) (Pre-SAP or BRASS)
4600003318	04-529581-SS-2	05/26/06	05/30/06	(\$34,673.00)	WARE PROPERTY Relocation (PARCEL 004-021-22) (Pre-SAP or BRASS)
4600003318	INV#529578-SS	07/11/06	07/13/06	(\$323,666.50)	ESCROW#529578 SS
4600003318	INV#529578-SS/A	07/11/06	07/13/06	(\$250,232.75)	ESCROW#170101409 SS
4600003318	INV#17010101409	07/11/06	07/13/06	(\$200.00)	
4600003318	INV#04-529577-SS	08/16/06	08/16/06	(\$359,642.31)	ESCROW#04-529577-SS
4600003318	INV#1	12/14/06	12/20/06	(\$112,201.83)	SEPT1'03-DEC31'05 4600003318 45-68220
4600003318	04-529582-SS	01/02/07	01/02/07	(\$424,352.60)	1/02/2007 46-3318 45-68220 MCCARTHY ESCROW
4600003318	04-529583-SS	01/02/07	01/02/07	(\$295,230.98)	1/02/2007 46-3318 45-68220 CONLEY ESCROW
4600003318	05-170101924-SS	01/18/07	01/18/07	(\$237,524.40)	JAN2006 46-3318 45-68220 ESC#05-170101924-SS
4600003318	04-529583-SS	02/02/07	02/05/07	(\$668.16)	JAN2007 46-3318 45-68220
4600003318	ESC#04-529584-SS	02/13/07	02/13/07	(\$426,690.97)	FEB'07 46-3318 45-68220 ESC#04-529584-SS
4600003318	E#05-170101924SS	02/13/07	02/13/07	(\$282,812.00)	FEB'07 46-3318 45-68220 ESC#05-170101924-SS
4600003318	INV#2	04/18/07	04/24/07	(\$604,613.07)	JAN'07 46-3318 45-68220
4600003318	INV#2	04/18/07	04/24/07	(\$122,085.33)	JAN'07 46-3318 45-68220
4600003318	INV#4 REVISED	01/17/08	01/24/08	(\$168,879.88)	JUL-SEPT'07 46-3318 45-68220
4600003318	INV#4 REVISED	01/17/08	01/24/08	(\$34,100.74)	JUL-SEPT'07 46-3318 45-68220
4600003318	INV#4 REVISED	01/17/08	01/24/08	(\$14,975.00)	JUL-SEPT'07 46-3318 45-68220
4600003318	ESC#0000529582	02/15/07	03/13/07	\$490.48	Escrow Refund
4600003318	04-529584SS REF	03/16/07	03/16/07	\$285.07	Escrow Refund
4600003318	ESC#05-529581-SS	04/25/07	04/25/07	\$128.07	Escrow Refund

4600003318	5	05/20/10	06/09/10	(\$122,900.36)	46-3318 45-068220 8/28/06-8/28/09
4600003318	6 (6a & 6b)	05/28/10	12/21/10	(\$34,727.46)	46-3318 45-068220 Mannual Claim Schedule
4600003318	7	04/15/13	04/22/13	(\$632,077.07)	46-3318 45-068220
4600003318	7B	04/15/13	04/22/13	(\$127,630.95)	46-3318 45-181083
4600003318	7C	04/15/13	04/22/13	(\$108,967.61)	46-3318 45-181083
4600003318	7D	04/15/13	04/22/13	(\$124,531.23)	46-3318 45-181083
4600003318	06-27-13	07/31/13	08/02/13	(\$251,413.94)	46-3318 45-068220
4600003318	07-23-13A	08/22/13	09/06/13	(\$109,982.21)	46-3318 45-1810083
4600003318	07-23-13B	08/22/13	09/06/13	(\$176,245.00)	46-3318 45-181083
4600003318	07-23-13	08/22/13	09/06/13	(\$15,958.24)	46-3318 45-068220
4600003318	MIDDLECREEKIRWIN	11/05/13	11/05/13	(\$129,900.00)	46-3318 45-181083
4600003318	10-24-13	11/19/13	11/20/13	(\$836,325.89)	46-3318 45-181083 Escrow 13-170108308-SS
4600003318	01-21-14	02/07/14	02/12/14	(\$75,000.00)	46-3318 45-068220
4600003318	01-21-14A	02/07/14	02/12/14	(\$265,303.80)	46-3318 45-181083
4600003318	8	02/19/14	02/28/14	(\$560,911.57)	46-3318 45-181083
4600003318	10	04/07/15	05/12/15	(\$141,998.00)	46-3318 45-181083
4600003318	004-014-170-000	04/30/15	05/12/15	(\$162,262.71)	46-3318 45-181083 (Santos Land Acquisition)
4600003318	004-021-290-000	06/05/15	06/22/15	(\$76,631.35)	46-3318 45-181083
4600003318	004-021-270-000	06/30/15	07/30/15	(\$251,405.94)	46-3318 45-181083
4600003318	11	08/28/15	09/02/15	(\$167,100.00)	46-3318 45-181083
4600003318	004-010-040-000	10/02/15	10/05/15	(\$1,529,906.82)	46-3318 45-181083
4600003318	12	04/28/16	05/03/16	(\$145,102.62)	46-3318 45-181083
4600003318	004-016-180-000	02/06/17	02/14/17	(\$357,716.10)	4600003318 4500181083
4600003318	FSNX-3011400325	02/06/17	02/14/17	(\$1,759,170.96)	4600003318 4500181083
4600003318	Escrow Refund (170108002)	11/22/13	11/25/13	\$694.11	Escrow Refund
4600003318	Escrow Refund (0170108005)	08/09/13	10/15/13	\$178.00	Escrow Refund
4600003318	501005252	08/12/15	08/25/15	\$221.97	Escrow Refund
4600003318	501005009	08/12/15	08/25/15	\$203.26	Escrow Refund
4600003318	501005365	08/12/15	08/25/15	\$27.51	Escrow Refund
4600003318	501006659	01/13/16	01/13/16	\$1,216.57	Escrow Refund
4600003318	RF CK 501010389	05/23/17	05/23/17	\$357.24	Escrow Refund
4600012946	1	06/08/20	09/18/20	(\$21,038.53)	4600012946 4500271700
4600012946	0019451-IN	11/16/20	12/16/20	(\$649,677.94)	4600012946 4500271700 (Jones Land Acquisition)
4600012946	INV 02	09/02/20	12/18/20	(\$22,576.11)	4600012946 4500271700
4600012946	INV 03	12/15/20	12/18/20	(\$39,911.99)	4600012946 4500271700
4600012946	INV 04	03/02/21	03/24/21	(\$564,664.81)	4600012946 4500271700
4600012946	05C (ORTEGA)	10/22/21	12/14/21	(\$172,227.56)	4600012946 07/22/2020-11/05/2021 (Ortega Land Acquisition)
4600012946	05D	12/07/21	12/27/21	(\$1,377,181.38)	4600012946 10/07/2021-10/07/2021
4600012946	INV 05A	01/18/22	01/18/22	(\$25,630.76)	4600012946 01/01/2021-03/31/2021
4600012946	INV 05B	01/18/22	01/18/22	(\$246,808.23)	4600012946 01/01/2021-03/31/2021
4600012946	INV 05E	03/17/22	03/22/22	(\$1,365,491.00)	4600012946 07/07/2021-01/03/2022
4600012946	7	03/28/22	04/13/22	(\$56,807.07)	4600012946 07/01/2021-09/30/2021
4600012946	6	03/28/22	04/13/22	(\$22,924.18)	4600012946 04/01/2021-06/30/2021
4600012946	INV 08A	07/06/22	08/02/22	(\$34,381.84)	4600012946 10/01/2021-12/31/2021
4600012946	INV 08	07/06/22	08/02/22	(\$24,865.48)	4600012946 10/01/2021-12/31/2021
4600012946	INV 09	03/13/23	04/06/23	(\$11,606.37)	46000129460 1/01/2022-03/31/2022
4600012946	INV 09A	03/13/23	04/06/23	(\$275,436.28)	46000129460 1/01/2022-03/31/2022
4600012946	10	06/20/23	06/23/23	(\$60,431.34)	4600012946 04/01/2022-06/30/2022
4600012946	10A	06/20/23	06/23/23	(\$273,098.20)	4600012946 04/01/2022-06/30/2022
4600012946	11	06/20/23	06/23/23	(\$12,034.71)	4600012946 07/01/2022-09/30/2022
4600012946	12	06/20/23	06/23/23	(\$3,559.91)	4600012946 10/01/2022-12/31/2022

4600012946	13	08/02/23	08/03/23	(\$6,668.33)	4600012946 01/01/2023-03/31/2023
4600012946	INV 12A	08/07/23	08/15/23	(\$1,212,036.00)	4600012949 07/06/2023-07/06/2023
4600012946	14	09/12/23	09/22/23	(\$12,004.23)	4600012946 04/01/2023-06/30/2023
4600012946	4906-7027365	11/14/23	11/20/23	(\$154,417.00)	4600012946 11/6/23-11/6/23
4600012946	15	11/16/23	11/20/23	(\$14,452.74)	4600012946 7/1/23-9/30/23
4600012946	4906-7027377	11/14/23	11/20/23	(\$25,100.00)	4600012946 11/6/23-11/6/23
4600012946	15A	11/20/23	11/22/23	(\$242,407.20)	4600012946 7/1/23-9/30/23
4600012946	4906-7027371	11/29/23	12/04/23	(\$534,538.00)	4600012946 11/20/23-11/20/23
4600012946	16A	03/06/24	03/08/24	(\$35,903.40)	4600012946 10/01/23-12/31/23
4600012946	16	03/06/24	03/08/24	(\$9,805.39)	460001246 10/01/23-12/31/23
4600012946	Refund of INV 0019451-IN		02/22/21	\$263.94	Escrow Refund
4600012946	Overpymt for Invoice 05C (Ortega)	03/08/22	03/10/22	\$818.35	Escrow Refund
4600012946	Oldham Overpmt Refund Inv 05E	04/14/22	04/21/22	\$500.00	Escrow Refund
4600012946	Abatement R18162	03/18/24	03/18/24	\$250.00	Escrow Refund
4600003318 Invoice Payment Total:				(\$12,613,659.53)	
4600012946 Invoice Payment Total:				(\$7,505,853.69)	
Invoice Payment Total:				(\$20,119,513.22)	

4600003318 Retention Total:	(\$96,538.19)
4600012946 Retention Total:	(\$100,250.36)
Retention Total:	(\$196,788.55)

4600003318 Total:	(\$12,710,197.72)
4600012946 Total:	(\$7,606,104.05)
Total:	(\$20,316,301.77)

Deposit Date	Check No.	Invoice Number	Amount Billed	Retention Withheld	Amount Deposited	Notes
1/9/2006	06-229915	#1	\$ 112,201.83	\$ -	\$ 112,201.83	
5/11/2007	XX-XXXXXX	#2	\$ 726,698.40	\$ -	\$ 726,698.40	Task 5: \$483,140.00 ; Finch, Ware, Bobst, Bamberger, Ingalls, McCarthy, Conley
		#3	\$ 89,299.19	\$ 89,299.19	\$ -	Full amount withheld for retention, appears to have been partially reimbursed later?
2/19/2008	08-143016	#4 (REVISED)	\$ 217,955.62	\$ -	\$ 217,955.62	
7/30/2010	06-043396	#5	\$ 122,900.36		\$ 20,647.26	Was split into two payments due to revised invoice 5?
12/7/2010	06-370280	#5A		\$ -	\$ 102,253.10	Was split into two payments due to revised invoice 5?
6/6/2012	07-979392	#6		\$ (34,727.46)	\$ 28,893.25	Retention release from Invoice 3? Contingent on recording conservation easements?
6/6/2012	07-979391	#6A			\$ 5,834.21	Retention release from Invoice 3? Contingent on recording conservation easements?
5/6/2013	08-878138	#7	\$ 1,005,314.37	\$ 12,107.51	\$ 993,206.86	Check remittance information split into 4 sections: #7, #7B, #7C, & #7D
4/1/2014	04-750363	#8R	\$ 577,571.03	\$ 16,659.46	\$ 560,911.57	Task 5: \$199,170.63 ; Morrill, Rooney, Embry, Sterling, Floyd
3/6/2014	04-676486	#9	\$ 340,303.80	\$ -	\$ 340,303.80	Task 5: \$42,000.00 ; Martin
6/5/2015	05-906671	#10	\$ 151,981.20	\$ 9,983.20	\$ 141,998.00	
9/30/2015	06-209492	#11	\$ 167,100.00	\$ -	\$ 167,100.00	Task 5: \$167,100.00 ; Weger
5/23/2016	06-791637	#12	\$ 148,318.91	\$ 3,216.29	\$ 145,102.62	

Old AGMT # ****3318

Total Billed-to-Date:

\$ 3,659,644.71

Total Paid-to-Date:

\$ 3,563,106.52

Total Retention Held:

\$ 96,538.19

BALANCED

Deposited to Maint. Fund (BU 1674):

\$ 891,410.63

Deposit Date	Check No.	Invoice Number	Amount Billed	Retention Withheld	Amount Deposited	Notes
10/8/2020	04-375012	#1	\$ 23,376.15	\$ 2,337.62	\$ 21,038.53	
3/10/2021	04-481289	#2	\$ 25,084.57	\$ 2,508.46	\$ 22,576.11	
3/19/2021	04-486429	#3	\$ 44,346.66	\$ 4,434.67	\$ 39,911.99	
5/26/2021	04-546434	#4	\$ 627,405.34	\$ 62,740.53	\$ 564,664.81	Task 3 exp.total: \$584,677.13, County purchased: Torrance/Vigil
2/1/2022	04-732683	#5A	\$ 27,730.96	\$ 2,100.20	\$ 25,630.76	Retention was not calculated correctly, s/b: \$2,773.10, 5A&5B combined on check
2/1/2022	04-732683	#5B	\$ 246,808.23	-	\$ 246,808.23	Task 5 - No retention withheld; Torrance/Vigil, Jones
6/20/2022	04-803195	#6	\$ 25,471.32	\$ 2,547.14	\$ 22,924.18	
6/20/2022	04-803194	#7	\$ 63,118.97	\$ 6,311.90	\$ 56,807.07	
8/23/2022	04-898060	#8	\$ 27,628.31	\$ 2,762.83	\$ 24,865.48	
8/23/2022	04-898061	#8A	\$ 34,381.84	-	\$ 34,381.84	Task 5 - No retention withheld; Ortega
4/25/2023	05-101325	#9	\$ 12,895.97	\$ 1,289.60	\$ 11,606.37	
5/3/2023	05-104007	#9A	\$ 275,436.28	-	\$ 275,436.28	Task 5 - No retention withheld; Mountanos
7/18/2023	05-172119	#10	\$ 67,145.93	\$ 6,714.59	\$ 60,431.34	Payment for Invs. 10, 10A, 11 & 12 combined on single check
7/18/2023	05-172119	#10A	\$ 273,098.20	-	\$ 273,098.20	Task 5 - No retention withheld; Oldham
7/18/2023	05-172119	#11	\$ 13,371.90	\$ 1,337.19	\$ 12,034.71	
7/18/2023	05-172119	#12	\$ 3,955.46	\$ 395.55	\$ 3,559.91	
8/18/2023	05-200970	#13	\$ 7,409.26	\$ 740.93	\$ 6,668.33	
10/13/2023	05-244579	#14	\$ 13,338.03	\$ 1,333.80	\$ 12,004.23	
12/8/2023	05-292327	#15	\$ 16,058.60	\$ 1,605.86	\$ 14,452.74	
12/8/2023	05-296515	#15A	\$ 242,407.20	-	\$ 242,407.20	Task 5 - No retention withheld; Seely
3/29/2024	05-389873	#16	\$ 10,894.88	\$ 1,089.49	\$ 9,805.39	
3/29/2024	05-387981	#16A	\$ 35,903.40	-	\$ 35,903.40	Task 5 - No retention withheld; Chandler, Reck
		#17	\$ 13,906.80	\$ 1,390.68		
		#17A	\$ 106,280.00	-		Task 5 - No retention withheld; Narvaez

New AGMT # ****2946

Total Billed-to-Date: \$ 2,237,454.26

Total Paid-to-Date: \$ 2,017,017.10

Total Retention Held: \$ 101,641.04

118,796.12

Deposited to Maint. Fund (BU 1674): \$ 1,108,035.15

MARSHA A. BURCH
LAW OFFICE

131 South Auburn Street
GRASS VALLEY, CA 95945

Telephone:
(530) 272-8411

www.marshaburchlawoffice.com

mburchlaw@gmail.com

April 15, 2025

Via email:

laura.hall@lakecountyca.gov

Laura Hall, Senior Planner
Lake County Community Development Department
255 N. Forbes Street
Lakeport, California 95453

**Re: AG Forest Wood Processing Bioenergy Project Major Use Permit
UP 23-05, Initial Study IS 23-10, Appeal of Planning Commission
Approval; and**

CALIFORNIA PUBLIC RECORDS ACT REQUEST #2

Dear Ms. Hall:

This letter constitutes a Public Records Act request (“PRA”) pursuant to Government Code Section 6250, et seq. for access to public records relating to the AG Forest Wood Processing Bioenergy Project, Major Use Permit UP 23-05, Initial Study IS 23-10 (“Project”). This PRA is in addition to the PRA sent on March 14, 2025, for other documents related to the same Project.

We have not received documents responsive to our first request and understand that the County is working on that process. We again request that the date of the appeal hearing be coordinated with this office, and that the date not be set until the documents requested in this, and our previous PRA have been produced, and we have had a reasonable amount of time to review them.

For purposes of this PRA, references to “County staff” includes, but is not limited to, employees of all County departments, members of the Board of Supervisors, County agents or consultants, and County Counsel. The term “County staff” also refers to all of these same persons and entities related to the Lake County Flood Control and Water Conservation District (the “District”). The District was created by special legislation (specifically, California Water Code Appendix Section 68-1 *et seq.*), and the Lake County Board of Supervisors serves as the ex officio Board of Directors of the District, and so the activities of the District are included in this PRA. The term “applicant” refers to Scotts Valley Energy

Corporation and any of its representatives. The term “Project Site” refers to the approximately 40-acre parcel where the Project is proposed, located at 755 E. State Hwy. 20.

We request the following:

1. A copy of any and all documents related to the purchase of the Project site by the Lake County Flood Control and Water Conservation District for the Flood Protection Corridor Program, with funds provided under the agreement dated August 28, 2003 (as amended), entitled: “State of California the Resources Agency Department of Water Resources Agreement Between the State of California Department of Water Resources and Lake County Flood Control and Water Conservation District Under the Flood Protection Corridor Program” (“Funding Agreement”). A copy of the Funding Agreement is attached for your reference.
2. A copy of any and all documents related to the conservation easement placed by the District on the Project Site after acquisition as required by the Funding Agreement. Please see Section 3.M of the Funding Agreement, requiring that where the District acquired fee title with the funds provided through the Funding Agreement, “an appropriate easement providing for non-structural flood benefits and wildlife habitat preservation shall be simultaneously conveyed to a regulatory or trustee agency or conservation group acceptable to the State.”
3. A copy of any and all documents related to the District’s compliance with the maintenance obligations set forth in Section 14 of the Funding Agreement.
4. A copy of any and all documents showing that the District has been relieved of (or has complied with) the following obligations contained in Exhibit B to the Funding Agreement: “Properties will be rezoned as Open Space and no future building will be permitted on the properties.”
5. Copies of any and all documents showing that the State of California has approved the lease agreement between the County and the Scotts Valley Energy Corporation, dated April 23, 2024, for the Project Site. Please see Section 3.K of the Funding Agreement, prohibiting leasing of the Project Site without State approval.

We request the assistance of the County in focusing the request on identifiable records pursuant to its obligation under Section 6253.1 of the Public Records Act, if the County believes any part of the request to be unclear.

If the County believes that a denial of any portion of this request is appropriate, the denial must be in writing, must contain the names and titles of each person responsible for the denial, and should explain the reasons for the County’s refusal to release the information and any authority relied upon. (Gov. Code §§ 6255(b) and 6253(d)).

With regard to the time permitted for the County’s response, Government Code section 6253(c) provides:

Laura Hall, Senior Planner

April 15, 2025

Page 3 of 3

Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available.

Before taking any action that might result in charges for reimbursement (*i.e.*, fees established by statute or the “direct cost” of copying of documents or electronic data), we request that you provide an estimate of the costs involved.

This PRA includes records on the “private” electronic accounts and devices of County officials, agents, and employees, pursuant to the California Supreme Court’s decision in *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, holding that communications on “private” electronic devices relating to public business are subject to the Public Records Act’s disclosure requirements.

Be advised that if the County fails to make any of the requested documents available that are properly disclosable, we may bring an action pursuant to Government Code section 6258 and seek an award of attorney’s fees and costs pursuant to Government Code section 6259.

Thank you for your attention to this request. If you have any questions or seek clarification of any item, please feel free to contact me.

Very truly yours,

Marsha A. Burch

Marsha A. Burch
Attorney

cc: Larry Kahn
Barbara Morris

From: Jackson Berumen Jackson.Berumen@lakecountyca.gov
Subject: RE: Re: [EXTERNAL] AG Forest Wood Processing Bioenergy Facility -- Failure to respond to Public Records Requests: Re: PRA 25-19
Date: October 3, 2025 at 3:48 PM
To: mburchlaw@gmail.com
Cc: julie.cannard@lakecountyca.gov, nicole.johnson@lakecountyca.gov, laura.hall@lakecountyca.gov, mireya.turner@lakecountyca.gov, pawan.upadhyay@lakecountyca.gov

JB

Good afternoon, Ms. Burch:

Please find the attached responsive communications to your request for all communications related to the Project for the last five years. Please note, some records or information otherwise responsive to this request are not subject to disclosure on grounds that may include, but are not limited to: Cal. Gov. Code, § 7927.705 – Attorney Client Privilege; Cal. Code Civ. Proc., § 2018.010 et seq – Attorney Work Product Privilege; Cal. Gov. Code, § 7927.500 - Preliminary drafts not retained by the public agency in the ordinary course of business.

Additionally, in response to your request for the Williamson Act Contract, the county responds: No Responsive Records.

For “professional qualifications, names, license numbers, of any professionals who prepared or assisted in the preparation of the project application and the “sound level analysis,” the county is continuing to look for any records in our possession. I anticipate that we will have a response to you by Friday, October 10, 2025.

For your DWR PRA dated 4/15/25, the County continues to process your request. I understand it is being worked on by the department.

Finally, for your request for a Privilege Log, the CPRA does not require that a local agency create a “privilege log” or list that identifies the specific records being withheld. (Haynie v. Superior Court (2001) 26 Cal.4th 1061 at 1075.) The response only needs to identify the legal grounds for nondisclosure, which have already been provided. The Golden Door case you cite is not on point, as that case deals with Civil Discovery, which we are not in. The County will not create a privilege log for records withheld under the CPRA.

Please be aware that due to the limitations of the file transfer application, Documents will only be available for download until November 1, 2025. If, after that date, you need to download the records after that date, please feel free to reach out to me and I can create a new link.

Sincerely,

Jackson Berumen
Deputy County Counsel
County of Lake
255 N. Forbes St
Lakeport, CA 95453
jackson.berumen@lakecountyca.gov
707-263-2321 x34102

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Message Expires	Saturday, 1 November
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Files attached to this message

Filename	Size
[EXTERNAL] Re_ Appeal for UP 23-05 UP 23-05 AG Forest Wood Processing Bioenergy_.pdf	258 KB
[EXTERNAL] RE_ Approval Letter With Instructions_.pdf	463 KB
[EXTERNAL] RE_ December 12, 2024, Planning Commission meeting for UP 23-05 AG Forest Wood Processing Bioenergy Project.pdf	224 KB
[EXTERNAL] RE_ Legal Notice for Use Permit UP 23-05; IS 23-10, AG Forest Wood Processing Bioenergy Project_.pdf	216 KB
[EXTERNAL] Upper Lake AG Forest Wood Processing Bioenergy Project.pdf	146 KB
[EXTERNAL] Upper lake town hall last night and staff recomendations on Bio-Char appeal.pdf	223 KB
Agforce wood energy project - transcript.pdf	189 KB
Appeal for UP 23-05 UP 23-05 AG Forest Wood Processing Bioenergy_.pdf	1.34 MB
Appeal to the BOS for BioEnergy facility in Upper Lake.pdf	1.31 MB
Appeal.pdf	1.21 MB
Approval Letter With Instructions_.pdf	440 KB
CEQA Handbook for Bioenergy_.pdf	2.71 MB
December 12, 2024, Planning Commission meeting for UP 23-05 AG Forest Wood Processing Bioenergy Project.pdf	109 KB

File Share Email With Comments for UP23-05_.pdf	240 KB
FW_ [EXTERNAL] AG Forest Wood Processing Bioenergy Project -- Public Records Act Request.pdf	400 KB
FW_ [EXTERNAL] Appeal of Planning Commission Approval of AG Forest Wood Processing Bioenergy Facility Major Use Permit UP 23-05, Initial Study_Mitigated Negative Declaration IS 23-10.pdf	9.44 MB
FW_ [EXTERNAL] Fwd_ Appeal of Planning Commission Approval of AG Forest Wood Processing Bioenergy Use Permit UP 23-05, IS_MND 23-10-Email4.pdf	8.56 MB
FW_ [EXTERNAL] Upper Lake AG Forest Wood Processing Bioenergy Project.pdf	225 KB
FW_ AB24-06 Larry Kahn Appeal and Question_.pdf	8.56 MB
FW_ Appeal to the BOS for BioEnergy facility in Upper Lake.pdf	1.31 MB
FW_ Appeal.pdf	1.31 MB
Fw_ IS_MND for UP 23-05 AG Forest Wood Processing Bioenergy Project_.pdf	15.3 MB
FW_ Legal Notice for Use Permit UP 23-05; IS 23-10, AG Forest Wood Processing Bioenergy Project_.pdf	3.15 MB
FW_ Request for Review (RFR) for Major Use Permit (UP 23-05); Initial Study (IS 23-10) at APN 004-010-04_.pdf	3.11 MB
FW_ Request for Review for UP 23-05 AG Forest Wood Processing_ (2).pdf	280 KB
FW_ Request for Review for UP 23-05 AG Forest Wood Processing_.pdf	427 KB
Fw_ Requested Documents for Major Use Permit UP 23-05 AG Forest Wood Processing Bioenergy Project_.pdf	291 KB
FW_ REVISED - LEGAL FOR BOS FOR MAY 20, 2025 HEARING.pdf	396 KB
FW_ UP 21-07 and UP 23-05 Comments.pdf	6.42 MB
	15.3

IS_MND for UP 23-05 AG Forest Wood Processing Bioenergy Project_.pdf	10.0 MB
Mail.pdf	250 KB
RE_ [EXTERNAL] AG Forest Wood Processing Bioenergy Project UP 23-05, IS 23-10.pdf	243 KB
RE_ [EXTERNAL] August 26, 2025 hearing on Appeal of Planning Commission Approval of AG Forest Wood Processing Bioenergy Facility Major Use Permit UP 23-05.pdf	214 KB
RE_ [EXTERNAL] Fw_ trash at 755 E. Hwy 20 Upper Lake CA 95485.pdf	200 KB
RE_ [EXTERNAL] meeting about Biochar project.pdf	232 KB
Re_ [EXTERNAL] Re_ Legal Notice for Use Permit UP 23-05; IS 23-10, AG Forest Wood Processing Bioenergy Project_.pdf	198 KB
RE_ [EXTERNAL] Re_ PRA-AG Forest Wood Processing Bioenergy.pdf	41.2 KB
RE_ [EXTERNAL] Re_ UP 23-05 AG Forest Wood Processing Bioenergy Project Question_.pdf	299 KB
RE_ [EXTERNAL] Request for Continuance -- Appeal of Planning Commission Approval of AG Forest Wood Processing Bioenergy Facility.pdf	266 KB
Re_ [EXTERNAL] Upper Lake _Biochar_ Project - Public Information Request.pdf	241 KB
RE_ [EXTERNAL] Upper Lake AG Forest Wood Processing Bioenergy Project.pdf	219 KB
RE_ [EXTERNAL] Upper Lake Bio-Char project (2).pdf	1.87 MB
RE_ [EXTERNAL] Upper Lake Bio-Char project.pdf	1.87 MB
RE_ [EXTERNAL] What is going on with the permit_.pdf	368 KB
Re_ [SUSPICIOUS MESSAGE] Re_ Legal for BOS May 5, 2025 Hearing.pdf	271 KB
RE_ Appeal For Biomass_.pdf	524 KB

RE_ Biochar plant in Upper Lake Question.pdf	15 MB
RE_ Can We Waive the Development Review Permit Requirement_.pdf	167 KB
RE_ December 12, 2024, Planning Commission meeting for UP 23-05 AG Forest Wood Processing Bioenergy Project.pdf	230 KB
RE_ FYI-I am reviewing 12_12 PC items .pdf	216 KB
Re_ Initial Study IS 23-10 for AG Forest Wood Processing Bioenergy Project_.pdf	324 KB
Re_ IS_MND (IS 23-10) AG Forest Wood Processing Bioenergy Project Use Permit (23-05) (APN 004-010-04).pdf	249 KB
RE_ IS_MND for UP 23-05 AG Forest Wood Processing Bioenergy Project_.pdf	783 KB
RE_ Legal Notice for UP 23-05 AG Forest Wood Processing Bioenergy Project_ (2).pdf	218 KB
RE_ Legal Notice for UP 23-05 AG Forest Wood Processing Bioenergy Project_.pdf	236 KB
RE_ Peer Review for Memo to the BOS for PL-25-22, AB24-06 Larry Kahn_.pdf	388 KB
RE_ Questions Regarding SCP Geothermal Study + State Examination of Scotts Valley Wood Processing + Esther Formula.pdf	221 KB
RE_ Request for Review - MMU 23-02 to UP 19-05 Red Hills BioEnergy Project.pdf	344 KB
RE_ Returned Mail_Larry Kahn_AG Forest Wood Processing Bioenergy Project.pdf	225 KB
RE_ SR0005409 -Request for Review for UP 23-05 AG Forest Wood Processing_ (2).pdf	1.29 MB
RE_ SR0005409 -Request for Review for UP 23-05 AG Forest Wood Processing_.pdf	470 KB
RE_ UP 23-05 AG Forest Wood Processing - Questions on Review Request.pdf	262 KB
Request for Review - MMU 23-02 to UP 19-05 Red Hills BioEnergy Project.pdf	1.44 MB

REVISED - LEGAL FOR BOS FOR MAY 20, 2025 HEARING.pdf	340 KB
Scotts Valley's Bioenergy Business Plan.pdf	733 KB
[EXTERNAL] AG Forest Wood Processing Bioenergy Project (HP-20220708-01)..pdf	1.72 MB
[EXTERNAL] Appeal of Planning Commission Approval of AG Forest Wood Processing Bioenergy Facility Major Use Permit UP 23-05, Initial Study_Mitigated Negative Declaration IS 23-10.pdf	9.41 MB
[EXTERNAL] Appeal of Planning Commission Approval of AG Forest Wood Processing Bioenergy Use Permit UP 23-05, IS_MND 23-10 - Email1.pdf	9 MB
[EXTERNAL] Biomass Subcommittee Meeting this Wednesday 9_17.pdf	831 KB
[EXTERNAL] FW_ Lake County News,California - Lake County Planning Commission to continue consideration of Upper Lake biochar plant.pdf	288 KB
[EXTERNAL] Fw_ trash at 755 E. Hwy 20 Upper Lake CA 95485.pdf	132 KB
[EXTERNAL] Fwd_ Legal for BOS May 5, 2025 Hearing.pdf	328 KB
[EXTERNAL] Item 6.4, August 18, 2020.pdf	3.62 MB
[EXTERNAL] Move the Bioenergy facility.pdf	378 KB
[EXTERNAL] Planning Commission hearing for AG Forest Wood Upper Lake project.pdf	202 KB
[EXTERNAL] Re_ Appeal for UP 23-05 UP 23-05 AG Forest Wood Processing Bioenergy_ (2).pdf	258 KB
RE_ Request for Review (RFR) for Major Use Permit (UP 23-05); Initial Study (IS 23-10) at APN 004-010-04_.pdf	608 KB
Request for Review (RFR) for Major Use Permit (UP 23-05); Initial Study (IS 23-10) at APN 004-010-04_.pdf	3.08 MB
RE_ [EXTERNAL] Item 6c Question.pdf	2.09 MB
IIP 23-05 Biomass Bioenergy Project .pdf	939

UP 23-05 Biomass Bioenergy Project.pdf	KB
Staff Report UP 23-05 Biomass... Due to Danae by December 3, 2024_.pdf	2.58 MB

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County of Lake Secure File Transfer — Secure File Transfer System:
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From: Madankar, Nahideh@DWR
Sent: Tuesday, May 20, 2025 1:42 PM
To: Bryson, Elizabeth@DWR; Upadhyay.Pawan@LC
Subject: RE: FCP- Middle Creek: Conservation Easement for APN: 004-010-04- Public Inquiry

Same here- thanks, Pawan.

Regards,

Nahideh Madankar, P.E.

Department of Water Resources
3464 El Camino Avenue, Suite 200
Sacramento, CA 95821
Phone: (916) 820-7550
Nahideh.Madankar@water.ca.gov

From: Bryson, Elizabeth@DWR <Elizabeth.Bryson@water.ca.gov>
Sent: Tuesday, May 20, 2025 4:40 PM
To: Upadhyay.Pawan@LC <Pawan.Upadhyay@lakecountyca.gov>; Madankar, Nahideh@DWR <Nahideh.Madankar@water.ca.gov>
Subject: RE: FCP- Middle Creek: Conservation Easement for APN: 004-010-04- Public Inquiry

2:30 works for me.

Elizabeth Bryson, P.E.

Manager, Flood Financial Assistance Section
Division of Flood Planning and Improvements
Cell: (916) 699-8379



From: Pawan Upadhyay <Pawan.Upadhyay@lakecountyca.gov>
Sent: Tuesday, May 20, 2025 4:28 PM
To: Madankar, Nahideh@DWR <Nahideh.Madankar@water.ca.gov>; Bryson, Elizabeth@DWR <Elizabeth.Bryson@water.ca.gov>
Subject: RE: FCP- Middle Creek: Conservation Easement for APN: 004-010-04- Public Inquiry

You don't often get email from pawan.upadhyay@lakecountyca.gov. [Learn why this is important](#)

Can we do 2:30 pm? I have another meeting at 3 pm.

Thanks,
Pawan

From: Madankar, Nahideh@DWR <Nahideh.Madankar@water.ca.gov>
Sent: Tuesday, May 20, 2025 3:53 PM
To: Bryson, Elizabeth@DWR <Elizabeth.Bryson@water.ca.gov>; Pawan Upadhyay

<Pawan.Upadhyay@lakecountyca.gov>

Subject: [EXTERNAL] Re: FCP- Middle Creek: Conservation Easement for APN: 004-010-04- Public Inquiry

Works for me.

Get [Outlook for iOS](#)

From: Bryson, Elizabeth@DWR <Elizabeth.Bryson@water.ca.gov>

Sent: Tuesday, May 20, 2025 3:49:34 PM

To: Madankar, Nahideh@DWR <Nahideh.Madankar@water.ca.gov>; Upadhyay.Pawan@LC
<Pawan.Upadhyay@lakecountyca.gov>

Subject: RE: FCP- Middle Creek: Conservation Easement for APN: 004-010-04- Public Inquiry

Tomorrow afternoon is better. Maybe around 3? Would that work?

Elizabeth Bryson, P.E.

Manager, Flood Financial Assistance Section
Division of Flood Planning and Improvements
Cell: (916) 699-8379



**SAVE
OUR
WATER** <https://saveourwater.com/>

From: Madankar, Nahideh@DWR <Nahideh.Madankar@water.ca.gov>

Sent: Tuesday, May 20, 2025 3:47 PM

To: Upadhyay.Pawan@LC <Pawan.Upadhyay@lakecountyca.gov>

Cc: Bryson, Elizabeth@DWR <Elizabeth.Bryson@water.ca.gov>

Subject: Re: FCP- Middle Creek: Conservation Easement for APN: 004-010-04- Public Inquiry

Thanks Pawan. I can after 4:30 today. Liz can you attend today?

Get [Outlook for iOS](#)

From: Pawan Upadhyay <Pawan.Upadhyay@lakecountyca.gov>

Sent: Tuesday, May 20, 2025 3:30:23 PM

To: Madankar, Nahideh@DWR <Nahideh.Madankar@water.ca.gov>

Cc: Bryson, Elizabeth@DWR <Elizabeth.Bryson@water.ca.gov>

Subject: RE: FCP- Middle Creek: Conservation Easement for APN: 004-010-04- Public Inquiry

Hello Nahideh,

We've received a similar PRA request, and I'm in the process of gathering the older documents. Would you be available for a quick Teams or Zoom call today or tomorrow to go over this?

Thanks,
Pawan

From: Madankar, Nahideh@DWR <Nahideh.Madankar@water.ca.gov>

Sent: Tuesday, May 20, 2025 11:32 AM

To: Pawan Upadhyay <Pawan.Upadhyay@lakecountyca.gov>

Cc: Bryson, Elizabeth@DWR <Elizabeth.Bryson@water.ca.gov>

Subject: [EXTERNAL] RE: FCP- Middle Creek: Conservation Easement for APN: 004-010-04- Public Inquiry

Good Morning, Pawan,

I am following up regarding the parcel shown below. DWR has received a public inquiry concerning this property. It is understood that the County has leased the parcel to a third party for use as a biochar facility. It is unclear to DWR whether the operations and objectives of the lessee are consistent with the intended purpose of the land purchased using State funds.

To help DWR respond to the public inquiry, please provide a copy of the conservation easement deed/agreement for the property (**APN: 004-010-04**) – attached for reference final buyer's statement.

Additionally, I have not yet received any information regarding the County's **Maintenance Trust Fund Account** for acquired lands. This issue was raised during my initial review of invoices 17 and 17A last year. As a result, both invoices remain pending until the County finalizes the invoices and provide details of the Trust Fund Account.

Property (Old River Vinters):
755 E Hwy 20, Upper Lake, CA
APN: 004-010-04

Regards,

Nahideh Madankar, P.E.

Department of Water Resources
3464 El Camino Avenue, Suite 200
Sacramento, CA 95821
Phone: (916) 820-7550
Nahideh.Madankar@water.ca.gov

From: Madankar, Nahideh@DWR

Sent: Tuesday, May 13, 2025 3:27 PM

To: Upadhyay.Pawan@LC <Pawan.Upadhyay@lakecountyca.gov>

Subject: FCP- Middle Creek: Conservation Easement for APN: 004-010-04

Hello Pawan,

I am looking for some old records for Middle Creek without much luck. I would appreciate it if your team could share with me the final agreement for the Subject.

The property was listed in DWR's original agreement (in 2003/2004). It is possible that APN# 004-010-04 was combined with multiple other properties as part of one CE agreement. I have attached a map I located in DWR files. Thank you for any input.

Property (Old River Vinters):
755 E Hwy 20, Upper Lake, CA
APN: 004-010-04

Regards,

Nahideh Madankar, P.E.

Department of Water Resources
3464 El Camino Avenue, Suite 200

Sacramento, CA 95821

Phone: (916) 820-7550

Nahideh.Madankar@water.ca.gov

Flood Corridor Program - Middle Creek Project - Comparison of Accounting Records for

Agreement	Total Allocated	DWR Records - Amount paid to LC	LC Records - Amount paid to LC
1: SAP #4600003318	\$12,721,083	\$12,710,197	\$3,659,644
2: SAP #4600012946	\$15,000,000	\$7,606,104	\$2,237,454
Total	\$27,721,083	\$20,316,301	\$5,897,098

*LC submitted invoice #17 (\$13,906.80) and #17A (\$106,280) to DWR in April 2024. Because the land acquisition total was placed into a Maintenance Trust Fund. DWR paid LC the

DWR accounting records provided by Nathan M. @ CA DWR

LC accounting records provided by Jacqueline Storrs @ LC DWR

or DWR vs. Lake County

\$Difference	%Difference	Unpaid Invoices*	Source - Bond Funds
(\$9,050,553)	-71.2%		Prop 13
(\$5,368,650)	-70.6%	\$120,186.80	Prop 1E & 84
(\$14,419,203)	-71.0%	\$120,186.80	

oth invoices remain unpaid, as LC has not provided proof that 20% of
 : 20% and want proof that it is being held in a trust as agreed upon.