BOARD OF SUPERVISORS

AGENDA

Meetings are located at:
Yuba County Government Center
Board Chambers, 915 Eighth Street
Marysville, California

Agenda materials are available at the Yuba County Government Center, 915 8th Street, Marysville and www.co.yuba.ca.us. Any disclosable public record related to an open session item and distributed to all or a majority of the Board less than 72 hours prior to the meeting is available for public inspection at Suite 109 of the Government Center during normal business hours.

JANUARY 13, 2015

8:30 A.M. **YUBA COUNTY WATER AGENCY**

9:30 A.M. **YUBA COUNTY BOARD OF SUPERVISORS - Welcome to the Yuba County Board of Supervisors meeting. As a courtesy to others, please turn off cell phones, pagers, or other electronic devices, which might disrupt the meeting. All items on the agenda other than Correspondence and Board and Staff Members Reports are considered items for which the Board may take action. The public will be given opportunity to comment on action items on the agenda when the item is heard.**

I. **PLEDGE OF ALLEGIANCE** - Led by Supervisor Griego

II. **ROLL CALL** - Supervisors Vasquez, Nicoletti, Griego, Abe, Fletcher

III. **CONSENT AGENDA: All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.**

A. Administrative Services

1. (001-15) Approve Airport lease agreement with OPTEC Solutions and authorize Chair to execute.

2. (002-15) Approve Airport ground lease renewal and permit with Reach Air Medical Services and authorize Chair to execute.

B. Board of Supervisors

1. (003-15) Approve appointment of Supervisor Ron Sullenger as the Sutter County Alternate Director to Feather River Air Quality Management District Board for 2015.

2. (004-15) Approve letters of support for Sutter County Office of Education California Career Pathways Trust Grant, and for Camptonville Community Partnership's Joint Wood Innovations Grant and authorize Chair to execute.

C. Clerk of the Board of Supervisors

1. (005-15) Approve minutes from the meetings of December 9 and 16, 2014.

D. Community Development and Services

1. (006-15) Adopt resolution authorizing Public Works Director to execute Right of Way Certifications for federally funded projects with CalTrans.

E. Emergency Services

1. (007-15) Adopt resolution proclaiming the existence of an ongoing local drought emergency in the County of Yuba.

F. Health and Human Services

1. (008-15) Authorize soliciting request for proposals for Children's Services Differential Response Program services funded by Child Abuse Prevention Intervention and Treatment, Community Based Child Abuse Prevention Programs, and County Children's Trust Fund.

G. Sutter-Yuba Mental Health Services

1. (009-15) Approve memorandum of understanding with Blue Cross of California Partnership Plan, Inc. and the Counties of Sutter and Yuba for coordination of services for Medi-Cal Managed Care and authorize Chair to execute.

IV. **PUBLIC COMMUNICATIONS: Any person may speak about any subject of concern provided it is within the jurisdiction of the Board of Supervisors and is not already on today's agenda. The total amount of time allotted for receiving such public communication shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes. Prior to this time speakers are requested to fill out a "Request to Speak" card and submit it to the Clerk of the Board of Supervisors. Please note: No Board action can be taken on comments made under this heading.**

V. **COUNTY DEPARTMENTS**

A. Board of Supervisors

1. (010-15) Appoint Board representative and alternate to Rural County Representatives of California and California Home Finance Authority for 2015. (Five minute estimate)

2. (011-15) Consider appointing one individual to the Fish and Game Advisory Commission for a term ending January 13, 2019 and take action as appropriate. (Five minute estimate)

3. (012-15) Consider Yuba County doe hunt and take action as appropriate. (Supervisor Vasquez) (Fifteen minute estimate)

B. County Administrator

1. (014-15) Receive presentation regarding financing a portion of project costs for Sheriff's Yuba Street Facility and provide direction as appropriate. (Ten minute estimate)

C. Administrative Services

1. (015-15) Approve conditional award of contract to Randy Hill Construction, apparent low bidder, for construction of new Sheriff's facility, pending approval of the financing for the project; and adopt resolution delegating final execution of the contract with Randy Hill Construction to the Purchasing Agent once financing is in place, final negotiations are complete, and upon review and approval by County Counsel. (Ten minute estimate)

VI. **ORDINANCES AND PUBLIC HEARINGS: If you challenge in court the action or decision of the Yuba County Board of Supervisors regarding a zoning, planning, land use or environmental protection matter made at any public hearing described in this notice, you may be limited to raising only those issues you or someone else raised at such public hearing, or in written correspondence delivered to the Yuba County Board of Supervisors at, or prior to, such public hearing and such public comments will be limited to three minutes per individual or group.**

A. (524-14) Ordinance - Hold public hearing, waive reading, and adopt ordinance repealing and re-enacting Chapter 10.30 regarding requirements of the National Flood Insurance Program and Community Rating System. (Second Reading continued from December 9, 2014) (Land Use and Public Works Committee recommend approval) (Ten minute estimate) (Roll Call Vote)

VII. **CORRESPONDENCE: The Board may direct any item of informational correspondence to a department head for appropriate action.**

A. (016-15) Four notices from State of California Fish and Game Commission regarding the Tricolored Blackbird, central valley and ocean salmon sport fishing, mammal hunting regulations, and Clear Lake hitch.

B. (017-15) Yuba Sutter Regional Conservation Plan Notice of Preparation for Environmental Impact Report and Scoping meetings January 6, 2015 at 3:00 pm to 5:00 pm and 6:00 pm to 8:00 pm, at the Yuba County Government Center, Wheatland Room; and public comment period December 12, 2014 through January 25, 2015.

C. (018-15) Two notices from Yuba County Auditor-Controller inclosing Independent Audit of the financial records for Wheatland Cemetery District for year ending June 30, 2014, and Browns Valley Irrigation District for year ending December 31, 2013.

D. (019-15) Health and Human Services Public Health End of Year Report for 2014.

VIII. **BOARD AND STAFF MEMBERS' REPORTS: This time is provided to allow Board and staff members to report on activities or to raise issues for placement on future agendas.**

IX. **CLOSED SESSION**

A. Personnel pursuant to Government Code §54957 - Public Appointment/Health Officer Recruitment

X. **RECESS TO 1:30 P.M.**

A. (020-15) Adopt findings of facts, conclusion of law and orders authorizing the assessment of administrative and abatement costs and penalties and the recording of lien in the amount of $114,804.84 regarding 10137 Clark Ranch Way, Dobbins, CA owned by Karen Ungles Robins. (Thirty minute estimate)

XI. **RECESS TO 3:00 P.M.**

A. (545-14) Conduct workshop on updating Marijuana Cultivation Ordinance and provide staff direction. (Continued from December 9, 2014) (Community Development and Services/County Counsel) (60 minute estimate)

XII. **RECESS TO 6:00 P.M.**

A. (013-15) Direct staff to initiate Proposition 218 process to propose increase to water rates for River Highlands Gold Village. (Thirty minute estimate)

XIII. **ADJOURN**

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Clerk of the Board's office at (530) 749-7510 or (530) 749-7353 (fax). Requests must be made two full business days before the start of the meeting. To place an item on the agenda, contact the office of the Clerk of the Board of Supervisors at (530) 749-7510.

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CONSENT

AGENDA

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The County of Yuba

Department of Administrative Services

Doug McCoy, Director

AIRPORT
BUILDING & GROUNDS
FACILITIES MANAGEMENT
INFORMATION SERVICES 749-7891
PRINT SHOP 749-7880
PURCHASING 749-7880
TELECOMMUNICATIONS 749-7880

(530) 749-7880
FAX (530) 749-7936

January 13, 2015

TO: YUBA COUNTY BOARD OF SUPERVISORS

FROM: DOUG MCCOY, Administrative Services Director

SUBJECT: AUTHORIZE THE CHAIRMAN TO EXECUTE AIRPORT LEASE AGREEMENT BETWEEN THE COUNTY OF YUBA AND OPTEC SOLUTIONS

Recommendation:

It is recommended that the Board authorize the Chairman of the Board of Supervisors to execute the subject airport lease agreement.

Background:

The attached is a lease with Optec Solutions for office space in the amount of approximately 1,870 square feet, encompassing the second floor of the airport's restaurant and catering facility. Optec Solutions is a Service Disabled Veteran Owned Small Business that delivers world class manned and unmanned intelligence, surveillance, and reconnaissance systems and services. The company works closely with both military and defense agencies.

Discussion:

Optec Solutions currently has their business offices located in Yuba City that will move to the new office space. The location of the office space is shown on the attached layout as Exhibit A to the lease. The company is working with the Airport to develop a large hangar facility to be used in conjunction with their business operation. The company currently subleases a privately-owned aircraft hangar on the airport to store their aircraft.

The lease has been developed with similar rates and terms to the restaurant catering lease. As with the catering business operation, Optec Solutions will necessarily be making a significant investment in the office space and building as the area has not been used for several years other than for Airport storage. The Airport reroofed the facility in the previous year in order to allow a business to consider leasing the space.

Committee Action:

This item was not presented to the committee as it is a standard ground lease similar to the airport's catering lease for the same building. The agreement was reviewed and approved by County Counsel.

Fiscal Impact:

There are no costs associated with this agenda item that would impact the General Fund. This lease will provide the Airport with $3,000 in new annual revenue over the initial term of the lease.

Attachments

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LEASE

THIS LEASE, made on the _____ day of January, 2015, by and between the COUNTY OF YUBA, a political subdivision of the State of California (hereinafter referred to as "Lessor") and OPTEC SOLUTIONS (hereinafter referred to as "Lessee").

WITNESSETH:

Lessor does hereby lease to Lessee, and Lessee does hereby rent and accept from Lessor, for the consideration and subject to all of the terms and conditions hereinafter set forth, the following premises:

Yuba County Airport, Training Facility Second Floor
(formerly known as the Marysville Flight Service Station)
approximately 1,870 square feet

The premises are further described in Exhibit A attached hereto (hereinafter referred to as "the Premises").

NOW, THEREFORE, IT IS HEREBY AGREED:

1. TERM: The term of this Lease (hereinafter referred to as the "Lease Term") shall be for a period of five (5) years commencing on the first day of January 2015 and terminating on the 31st day of December 2019.

A. Option to Extend. Lessee shall have two (2) five (5) year options to renew by providing Lessor a minimum of three (3) months written notice of intention to exercise its option to extend term. The rent during each option period shall increase by FIFTY DOLLARS ($50.00).

B. Holding Over. If no agreement has been reached during the last sixty-day period of the Term and Lessee remains in possession of all or any part of the Premises after the expiration of the Term, with Lessor's written agreement, Lessee's occupancy shall constitute a month-to-month tenancy. Assuming Lessee is still using Premises for the uses described above in this Lease, the rent shall remain the same. After the initial term, either party may cancel the month-to-month tenancy with sixty (60) days written notice to the other party.

2. CONSIDERATION: Lessee hereby agrees to pay as rent for said premises the sum of TWO HUNDRED FIFTY DOLLARS ($250.00) per month, payable without deduction, setoff, prior notice, or demand, on or before the first day of each calendar month during the term hereof. Said rent and fee shall be paid in lawful money of the United States of America and shall be paid to Lessor at the address set forth herein for notices, or to such other person or persons, or at such other places, as Lessor may designate in writing. Rent for any period less than a calendar month shall be a pro rata portion of the monthly installment.

A. Late Charges and Return Check Charge. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent or other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which are not limited to, administrative processing of delinquent notices and accounting charges. Accordingly, if any installment of rent or of a sum due from Lessee is not received by Lessor or postmarked within ten (10) days after said amount is due, then Lessee shall pay to Lessor a late charge as specified in the County Master Fee Ordinance adopted by the Board of Supervisors. A late charge shall be applied each month rent is delinquent. Acceptance of late charges by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder.

B. Net, Net, Net Lease. The amount of rent reserved in Article 2 hereof is based upon the mutual agreement of Lessor and Lessee that, except as otherwise expressly provided herein, Lessee shall promptly pay all costs and expenses of every kind and description in any way relating to or connected with the Premises during the Lease Term, Option Lease Period, and any extension or renewal thereof including, but not limited to, taxes, insurance, and maintenance associated with use of the property.

3. REPAIRS AND MAINTENANCE: Except as otherwise expressly provided herein, Lessee at its sole cost and expense shall keep and maintain in good condition and state of repair the Personal Property and the Premises and all portions thereof, including but not limited to the interior portions thereof, and all plumbing, heating, and air conditioning systems. Except as otherwise expressly provided herein, Lessor has and shall have no obligation whatsoever regarding the maintenance or condition of the Personal Property or the Premises, and Lessee hereby waives all rights to make repairs at the expense of Lessor provided in Section 1942 of the California Civil Code and all rights provided for by Section 1941 of said Code. Lessor may inspect the Premises from time to time and notify Lessee of any repairs that may be necessary, and if the Lessee shall not promptly make such necessary repairs, then the Lessor may make the same at the expense and cost of the lessee.

A. Lessor's Maintenance Obligations. Lessor shall maintain in good condition exterior lighting, exterior walls, and foundation of the building, parking lot, and provide normal maintenance services for exterior pest control and landscape serving the property.

B. Tenant Improvements – Lessor. The premises are rented "as is" except Lessor, at Lessor's sole expense, shall provide the following prior to the commencement of the Lease:

- Repair / replace the facility roof

C. Alterations, Additions, or Changes. Lessor agrees that Lessee may, at Lessee's own expense, from time to time during the Lease Term and the Option Lease Period,

make such alterations, additions, and changes in and to interior portions of the Premises as it may find necessary or convenient for its purposes; provided that no alterations, additions, or changes may be made without first obtaining the Airport Manager's written approval. All alterations, additions, or changes shall be in accordance with plans and specifications with respect thereto approved in writing by Lessor before such work is commenced. The Manager of the Yuba County Airport shall be the authorized representative of the Lessor for the purpose of giving Lessor's written consent referred to under this Article 3.3. All work with respect to any alterations, additions, or changes shall be done in a good and workmanlike manner and diligently prosecuted to completion. Alterations, additions, or changes made with Lessor's written consent shall be considered as improvements and shall not be removable by Lessee, but shall immediately become and remain a part of the Premises. All alterations, additions, or changes shall be made strictly in accordance with all laws, ordinances, rules, building codes, and regulations relating thereto.

4. UTILITIES: Lessee shall have sole and exclusive responsibility for obtaining all electricity, gas, water, telephone, sewer, garbage, or other utility services and for the payment of all rates or charges levied, assessed, or charged against said premises in the operation thereof for such services. Lessee will furnish its own heat, light, and power for the operation of said premises, including but not limited to any service charges, connection or installation fees, related thereto.

5. TAXES: Under this Lease, a possessory interest subject to property taxation may be created. Notice is hereby given pursuant to California Revenue and Taxation Code Section 107.6 that such property interest may be subject to property taxation created, and that the party to whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. Lessee shall pay all taxes of whatever character that may be levied or charged upon Lessee's operations hereunder and upon Lessee's right to use Airport.

6. INSURANCE: Lessee shall throughout the existence of this Lease, at its own cost and expense, procure and maintain in full force and effect comprehensive general liability insurance in the minimum amounts of ONE MILLION DOLLARS ($1,000,000.00) combined single limit as follows:

A. The terms of the attached Exhibit B, "Insurance Provisions," are made a part of this Lease and are incorporated herein by reference.

B. Full Worker's Compensation and Employers' Liability Insurance covering all employees of Lessee as required by law in the State of California.

C. Additional Insureds: The insurance required shall include the County of Yuba, its officers and employees, as additional insureds except with regard to occurrences that are the result of their sole negligence.

D. Cancellation Notice: The insurance required shall provide that no cancellation or material change in any policy shall become effective except upon thirty (30) days' prior written notice to the County of Yuba.

E. Proof of Insurance: Lessee shall furnish proof of coverage satisfactory to the Yuba County Risk Manager as evidence that the insurance required above is being maintained.

7. INDEMNITY: Lessee shall indemnify and defend the County and its officers, agents, and employees against and hold it harmless from any and all loss, damage, and liability for damages, including attorneys' fees and other costs of defense incurred by County, whether for damage to or loss of property, or injury to or death of person, including properties of County and injury to or death of County's officers, agents, and employees, which shall in any way arise out of or be connected with Lessee's operations hereunder, unless such damage, loss, injury or death shall be caused solely by the negligence of County.

8. USE: Lessee may use the Premises for its business office operations and activities.

9. FIXTURES AND PERSONAL PROPERTY

A. Lessee's Right to Remove. Trade fixtures and equipment installed in or attached to the Premises by and at the expense of Lessee and which are not in replacement of similar articles originally installed by Lessor shall remain the property of Lessee, and Lessee shall have the right at any time, and from time to time, during the Lease Term, the Option Lease Period, and any extensions or renewals thereof, to remove any and all such trade fixtures and equipment which it may have stored or installed in the Premises, including, but not limiting to same to, machinery, production devices, counters, shelving, and other personal property; provided, however, that before any removal of such trade fixtures and equipment, Lessee shall have paid and satisfied all obligations due and owing under the terms of this Lease. Lessee, at its own expense, shall immediately repair any damage occasioned to the Premises by reason of the removal of any such trade fixtures and equipment. Lessee agrees to pay before delinquency all taxes levied or assessed against such trade fixtures and equipment.

B. Obligation to Remove Fixtures. If, on the expiration of this Lease, Lessor shall give Lessee notice so to do, Lessee shall, within five (5) days after the date of such notice, commence and diligently prosecute to completion the removal of all trade fixtures and equipment specified in said notice which were installed in or upon Premises by Lessee. Lessee shall complete such removal on or before the expiration of the period of fifteen (15) days from the date of such notice. Lessee, at its own expense, shall within the fifteen (15) day period repair any damage occasioned to the Premises by reason of the removal of any such trade fixtures and equipment.

C. Obligation to Remove Personal Property. Any personal property or fixtures not removed by Lessee within fifteen (15) days after written notice may, at the option of Lessor,

become its sole property.

10. SIGNAGE: Provided Lessee first obtains the written consent of the Airport Manager, Lessee may maintain reasonable advertising signs and devices on the Premises which are not in the sole opinion of the Airport Manager offensive in nature. Lessee shall, at its own expense, maintain and keep in good repair all signs and advertising devices which it is permitted to maintain under this Lease and shall pay for all charges required to keep them in good repair. Lessee shall, on the expiration of this Lease, remove all such signs and advertising devices at its own expense and repair any damage occasioned to the Premises by reason of the removal of such signs and advertising devices.

11. MECHANICS' LIENS

A. Payment for Work. Lessee agrees that it will pay or cause to be paid all costs and expenses for work done with respect to the Premises, which is of a character that will or may result in a lien on or affecting the Premises; and Lessee shall keep the Premises free and clear of all mechanic's liens and other liens on account of work done for Lessee or persons claiming under Lessee. Lessee agrees to and shall indemnify and save Lessor free and harmless against all liability, loss, damage, costs, and expenses, including attorneys' fees, on account of claims, and claims of liens, of laborers or material men or others for work done or materials or supplies furnished for Lessee or for persons claiming under Lessee.

B. Default in Payment of Lien Claims. If Lessee shall be in default in paying any charge for which a mechanic's lien, claim, or suit to foreclose the lien has been recorded or filed, Lessor shall have the right, but shall in no way be obligated, to pay said lien or claim and any cost; and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing to Lessor with interest at the rate specified in the County Master Fee Ordinance adopted by the Yuba County Board of Supervisors.

C. Notice of Claims. Should any claims of lien be filed and/or recorded against the Premises, or any action affecting the title thereto be commenced, Lessee shall give Lessor written notice thereof as soon as it has knowledge thereof.

12. DEFAULT: In the event Lessee is in default in the payment on any amount due under the terms of this Lease or defaults in the performance of any of the covenants or conditions on Lessee's part to be performed, then Lessor, at its option, may terminate this Lease and re-enter upon the premises. Lessor shall have the right to retain all rents and any other sums owing and unpaid to the date of termination hereunder.

13. BANKRUPTCY: In the event of bankruptcy, either voluntary or involuntary, or any assignment for the benefit of creditors made by Lessee, Lessee's interest hereunder shall automatically terminate.

14. FIRE DAMAGE: It is mutually understood and agreed between the parties hereto that in the event any portion of the demised premises be destroyed by fire and the same cannot be repaired within ninety (90) days, then Lessee may elect to terminate this Lease. In the event such restoration can be made within ninety (90) days, Lessor agrees to restore said premises provided further that during the period of non-occupancy by Lessee, the rent for said premises shall be waived during the period of non-occupancy and non-use.

15. BREACH OR NONCOMPLIANCE: The waiver of any breach or noncompliance with any terms, covenants, conditions, or provisions of this Lease or any rules, regulations, or decisions adopted pursuant thereto shall not constitute the waiver of any subsequent breach thereof whether such breach or noncompliance be the same or of a different kind or character.

16. ASSIGNMENT OR SUBLEASE: Lessee shall not transfer, assign, sublet, or hypothecate this Lease or Lessee's interest in and to the Premises or any part thereof without

first obtaining the written consent of Lessor, which shall not unreasonably be withheld, and any attempted transfer, assignment, subletting, or hypothecation without such written consent shall be void and confer no rights upon any third party, and shall constitute a default by Lessee under this Lease which, at option of Lessor, will constitute grounds for terminating this Lease. Transfers and assignments by operation of law shall be deemed included within the provisions of this preceding sentence. Lessor's consent to one such transfer, assignment, subletting, or hypothecation shall not waive the foregoing provisions, nor be a consent to a subsequent transfer, assignment, subletting, or hypothecation.

17. GENERAL PROVISIONS

A. Captions. The captions of articles, sections, and paragraphs of this Lease are for convenience only and are not a part of this Lease and do not, in any way, limit or amplify the terms and provisions of this Lease.

B. Non-Discrimination. The Lessee for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, sex, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, or national origin shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination, (3) that the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Lease and to reenter and repossess said Premises and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

Lessee shall furnish its services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable, and not unjustly discriminatory prices for services; provided, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers. Noncompliance with this provision shall constitute a material breach thereof and in the event of such noncompliance, the Lessor shall have the right to terminate this Lease without liability therefore or at the election of the Lessor or the United States either or both said Governments shall have the right to judicially enforce this provision.

C. Affirmative Action Program. The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, color, religion, sex, or national origin be excluded from participating in any employment activities covered by 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart.

D. Covenants. The parties hereto agree that all the provisions hereof are to be construed as covenants and agreements as though the words imparting such covenants and agreements were used in each separate paragraph hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

E. Interest. Any sum accruing to Lessor under the provisions of this Lease, which shall not be paid when due, shall bear interest at the rate specified in the County Master

Fee Ordinance adopted by the Board of Supervisors from the date when the same becomes due and payable by the terms hereof until paid.

F. Conditions. All of Lessor's and Lessee's covenants and agreements herein contained are conditions, and the time of the performance of each is of the essence of this Lease.

G. Remedies Cumulative. The specified remedies to which Lessor may resort under the terms of this Lease are cumulative and not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach by Lessee of any provision of this Lease. The failure of Lessor to insist in any one or more cases upon the strict performance of any of the covenants or provisions of this Lease shall not be construed as a waiver or a relinquishment for the future of such covenant or provision or any other covenant or provision. A receipt by Lessor of rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Lessor of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor. One or more waivers of any covenant, term, or condition of this Lease by Lessor shall not be construed as a waiver of any subsequent breach of the same or different covenant, term, or condition. The consent or approval by Lessor to or of any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent or approval to or of any subsequent similar acts by Lessee. In addition to the other remedies in this Lease provided, Lessor shall be entitled to the restraint by injunction in enforcing any of the covenants, conditions, or provisions of this Lease.

H. Final Agreement. This Lease constitutes the entire and final agreement between the parties hereto, and it shall not be modified except by a written instrument signed by or on behalf of all parties.

I. Saving Clause. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision of persons of circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

J. California Law. This Lease shall be governed exclusively by its express provisions and by the laws of the State of California.

K. No Abandonment. Lessee shall not abandon the Premises at any time during the term; and if Lessee shall abandon or surrender said premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the Premises shall be deemed abandoned, at the option of Lessor.

18. NOTICES: Any rental, payment, notice, consent, request, statement, or other communications which may be required or permitted to be given shall be in writing and either served personally or sent by prepaid, first-class mail. Such matters shall be addressed to the other party at the following address:

LESSOR:	Airport Manager YUBA COUNTY AIRPORT 1364 Sky Harbor Drive Olivehurst, CA 95961
LESSEE:	1340 Sky Harbor Drive Olivehurst, CA 95961
WITH A COPY TO:	County Counsel COUNTY OF YUBA 915 8th Street, Suite 111 Marysville, CA 95901

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the day and year first above written.

By _____
Roger Edwards, CEO
"Lessee"

COUNTY OF YUBA

By _____
Chairman

ATTEST: DONNA STOTTLEMEYER
Clerk of the Board of
Supervisors

_____

REVIEW OF INSURANCE:

_____
Risk Manager

APPROVED AS TO FORM:

_____
County Counsel
by: Bobbie Ross Todd

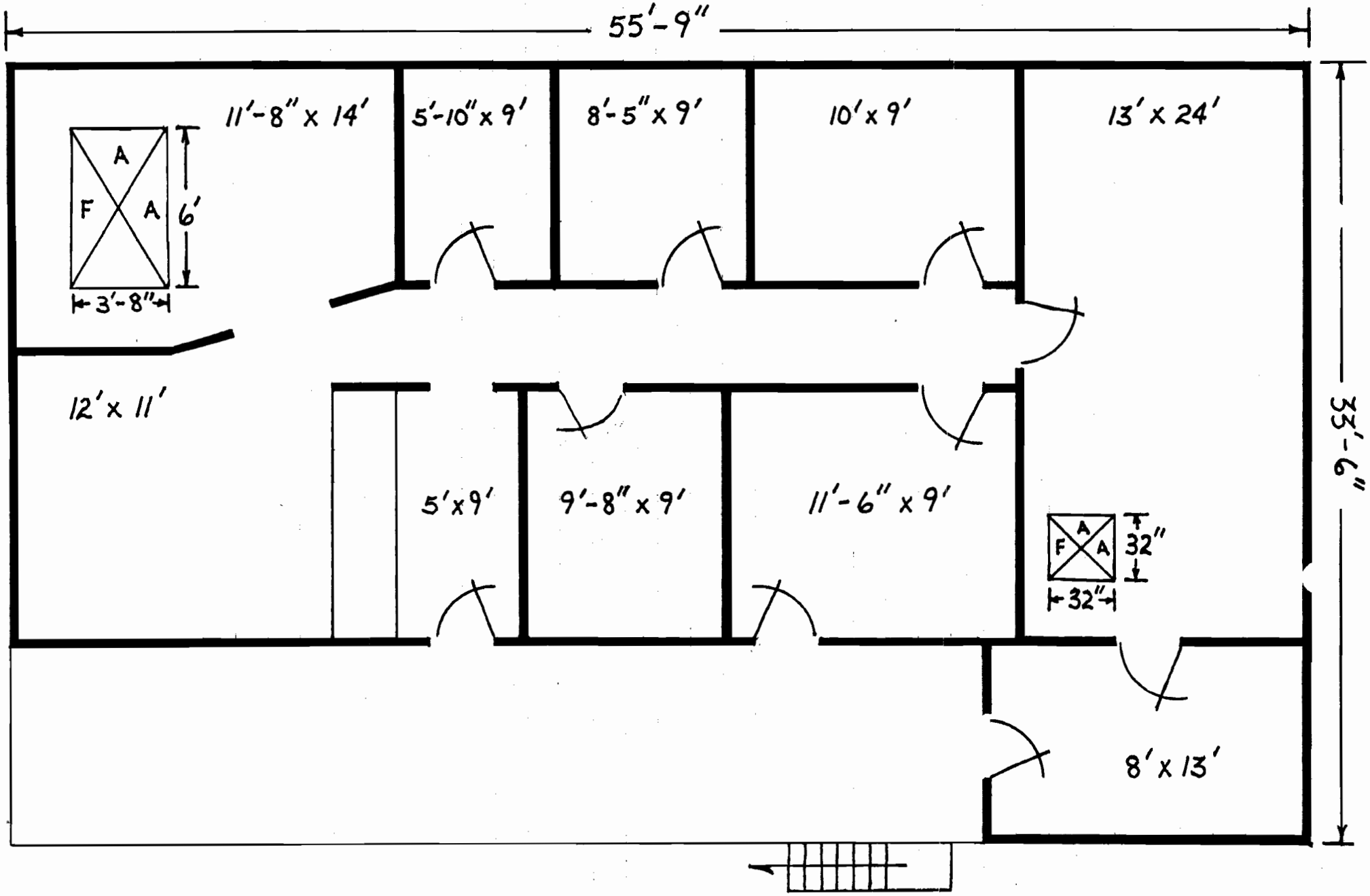
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EXHIBIT A

Exhibit B - Insurance Requirements

LESSEE, shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the LESSEE's operation and use of the leased premises. The cost of such insurance shall be borne by the LESSEE.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including property damage, bodily injury and personal injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **$1,000,000** per accident for bodily injury or disease.

3. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the LESSEE maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained.

Other Insurance Provisions:

The policies are to contain, or be endorsed to contain, the following provisions:

1. For General Liability, the County, its officers, officials, employees, and volunteers are to be **covered as additional insureds** with respect to liability arising out of ownership, maintenance, or use of that part of the premises leased to the lessee.

2. The LESSEE's insurance coverage shall be **primary insurance** as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the LESSEE's insurance and shall not contribute with it.

3. Each insurance policy required above shall contain, or be endorsed to contain, a waiver of all **rights of subrogation** against the County

4. Each insurance policy shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the County.

5. The Property insurance shall **name the County as Loss Payee** as its interests may appear.

Acceptability of Insurers
Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the County.

Deductibles and Self-Insured Retentions
Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, the LESSEE shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Verification of Coverage
LESSEE shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the County's Risk Manager. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Waiver of Subrogation
LESSEE hereby grants to County a waiver of any right to subrogation which any insurer of said LESSEE may acquire against the County by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

Special Risks or Circumstances
The County reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

The County of Yuba

Department of Administrative Services

Doug McCoy, Director

AIRPORT	7
BUILDING & GROUNDS	749-7880
FACILITIES MANAGEMENT	749-7880
INFORMATION SERVICES	749-7891
PRINT SHOP	749-7880
PURCHASING	749-7880
TELECOMMUNICATIONS	749-7880

(530) 749-7880
FAX (530) 749-7936

January 13, 2015

TO: YUBA COUNTY BOARD OF SUPERVISORS

FROM: DOUG MCCOY, Director of Administrative Services

SUBJECT: RENEWAL OF AIRPORT GROUND LEASE AND USE PERMIT BETWEEN THE COUNTY OF YUBA AND REACH AIR MEDICAL SERVICES

Recommendation:

It is recommended that the attached "Ground Lease and Use Permit" between the County of Yuba and Reach Air Medical Services be approved by the Board.

Background:

Reach Air Medical Services is headquartered in Santa Rosa, California. Reach provides helicopter and airplane patient transportation for critically ill or injured patients. In addition to air medical services, Reach provides contract aviation and patient referral services for other hospitals and air medical programs. Reach currently has bases in Stockton, Sacramento, Lakeport, Concord, Santa Rosa, Redding, Upland, Oceanside, Thermal, Imperial, and Corvallis, Oregon. During 2014, Reach upgraded their helicopter used at Yuba County Airport to provide even better and faster care services in the Yuba-Sutter Counties area.

Discussion:

Reach Air Medical Services has been located at the Yuba County Airport since 2005 on approximately 22,700 sf of area at the airport's emergency gate entry. This is a new lease as the previous lease expired June 30, 2014. The lease provides $18,828 in annual revenue to the Airport.

Committee Action:

This item was not considered by the Public Facilities Committee as it is a routine lease renewal.

Fiscal Impact:

The general fund is not affected by approval of this agreement. The permit fee is currently $125 per month and is adjusted annually on July 1. The lease rate is $1,444 per month or .065 cents per square foot, for a total monthly payment of $1,569.

Attachment

AIRPORT GROUND LEASE
AND USE PERMIT

THIS LEASE AND USE PERMIT made and entered into this _____ day of January, 2015, by and between the COUNTY OF YUBA, a political subdivision of the State of California, hereinafter designated "Lessor," and MEDIPLANE, INC., a California corporation dba REACH AIR MEDICAL SERVICES, hereinafter called "Lessee."

WITNESSETH

WHEREAS, Lessor owns and operates the public airport facilities situated in the County of Yuba, California, hereinafter referred to as "Airport"; and

WHEREAS, said real property is devoted to and held for airport development; and

WHEREAS, Lessee desires to conduct helicopter and airplane patient transfers for critically ill patients providing a base location at Airport; and

WHEREAS, air ambulance services are essential for responding to emergency situations requiring immediate medical attention not available in the general area of incident; and Lessee is qualified, ready, willing, and able to provide such services; and

WHEREAS, pursuant to the provisions of Section 25536, Government Code, Lessor is authorized to enter into leases of all or any portion of said property without complying with the provisions of Title 3, Division 2, Part 2, Article 8, of the Government Code; and

WHEREAS, Lessor hereby finds that the terms and conditions as set forth herein below are beneficial and necessary to promote the welfare and convenience of the public using the Airport.

NOW, THEREFORE, IT IS HEREBY AGREED:

1. LEASED PREMISES

1.1 Lessor hereby sets over, leases, and demises to Lessee, and Lessee hereby hires from Lessor, all that certain real property situated in the County of Yuba, State of California, and more particularly described as follows:

Yuba County Airport
North Terminal Area
Containing approximately 22,700 square feet

Attached to this Lease and Use Permit and marked "Exhibit A" is the subject map showing the specific location of the property herein demised, which for this purpose is incorporated herein and by this reference made a part hereof.

1.2 County's Right To Relocation of Tenant: Upon first giving six (6) months advance written notice to Lessee, and for any reason, County shall have the unilateral right, at County's sole cost and expense, to relocate Tenant to another location of similar size on County's Airport property, which contains comparable size and condition as existed immediately prior to relocation of Lessee. In the event Lessee reasonably disagrees with the new location, Lessee's sole remedy shall be to terminate this Lease and Use Permit, whereupon this Lease and Use Permit shall be void and Lessee shall have no obligation or liability of any kind or nature to County, except as to those obligations or liabilities which are deemed to survive the termination of this Lease.

2. TERM:

A. The term of this Lease and Use Permit shall commence on the 1st day of July, 2014, and terminate on the 30th day of June, 2017 (the "Termination Date"), unless earlier terminated under the provisions of this Lease and Use Permit. Lessee shall be entitled, but not obligated, at its sole option, to extend the term of this Lease and Use Permit one (1) additional term of three years. Lessee shall be deemed to have elected to have extended this Lease and Use Permit for an additional three (3) years, if Lessee has not delivered to County, not less than one hundred eighty (180) days prior to the expiration of the term, Lessee's notice of intent not to extend the term of the Lease and Use Permit.

B. Lessee shall be entitled to terminate this Lease at any time upon giving sixty (60) days' prior written notice.

3. CONSIDERATION:

A. Lessee hereby agrees to pay as rent for said premises the sum of ONE THOUSAND FOUR HUNDRED FORTY-FOUR DOLLARS ($1,444.00) per month and ONE HUNDRED TWENTY-FIVE DOLLARS ($125.00) per month airport use permit fee, payable without deduction, setoff, prior notice, or demand, on or before the first day of each calendar month during the term hereof. Said rent and fee shall be paid in lawful money of the United States of America and shall be paid to Lessor at the address set forth herein for notices, or to such other person or persons, or at such other places, as Lessor may designate in writing. Rent for any period less than a calendar month shall be a pro rata portion of the monthly installment.

B. If this Lease and Use Permit is extended, the monthly rental shall be increased in the same proportion that the Consumer Price Index (All Urban Consumers-All Items) figure for the San Francisco-Oakland area, published by the United States Department of

late payment provided for herein. Lessee agrees to pay Lessor immediately upon request any and all charges for dishonored checks.

5. OPERATIONS:

A. The premises shall be used and occupied by Lessee solely for the construction and operation of a building suitable for use as a medical air ambulance and medical air vital organ transport facility, including operation of Lessee aircraft, operation of pilots' and medical crew quarters, flight preparation and waiting room, office use for pilots, medical personnel and administrative personnel, storage of office and medical supplies, materials, and equipment, air charters, and directly related activities. Permitted uses also include aircraft maintenance and storage and Lessee performs its own aircraft maintenance.

B. Lessee shall have the right to construct fuel service/storage improvements for Lessee's sole use. Construction and use of these facilities would be in conformance with all then applicable laws and the Airport Rules & Regulations. Fuel co-ops are not permitted. Lessee will be required to enter into a separate Airport Fuel Agreement before conducting any fueling operations.

7. STANDARDS: In providing any of the required and/or authorized services or activities specified in this Lease and Use Permit, Lessee shall operate for the use and benefit of the public and shall meet or exceed the following standards:

A. Lessee shall select and appoint a full-time manager of its operations at the Airport. The manager shall be qualified and experienced, and vested with full power and authority to act in the name of Lessee with respect to the method, manner, and conduct of the operation of the services to be provided under this Lease and Use Permit. The manager shall

Labor, Bureau of Labor Statistics, for the month of April, 2017, bears to the said index figure for the month of April, 2014, which is hereby stipulated to be 773.166.

C. Lessee shall pay Lessor all other fees and charges as billed by Lessor pursuant to any separate agreement between the parties for services not referred to herein.

D. The airport use permit fee is set annually by the Yuba County Board of Supervisors and may be increased by Board action.

4. LATE CHARGES AND RETURN CHECK CHARGE:

A. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent or other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease and Use Permit, the exact amount of which are not limited to, administrative processing of delinquent notices and accounting charges. Accordingly, if any installment of rent or of a sum due from Lessee is not received by Lessor or postmarked within ten (10) days after said amount is due, then Lessee shall pay to Lessor a late charge as specified in the County Master Fee Ordinance adopted annually by the Yuba County Board of Supervisors. A late charge shall be applied each month rent is delinquent. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Lessor will incur by reason of the late payment by Lessee. Acceptance of late charges by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder.

B. Lessee agrees to pay Lessor a special handling charge or late fee as specified in the County Master Fee Ordinance adopted annually by the Yuba County Board of Supervisors for a check dishonored by the bank for any reason. This charge shall be added to and become part of Lessee's obligations hereunder, and shall be in addition to any charge for

be available at the Airport during regular business hours. During the manager's absence, a duly authorized subordinate shall be in charge and available at the Airport.

B. Lessee shall provide, at its sole expense, a sufficient number of employees to provide effectively and efficiently the services required or authorized in this Lease and Use Permit.

C. Lessee shall control the conduct, demeanor, and appearance of its employees, who shall be trained by Lessee, and who shall possess such technical qualifications and hold such certificates of qualification as may be required in carrying out assigned duties. It shall be the responsibility of Lessee to maintain close supervision over its employees to assure a high standard of service to customers of Lessee.

D. Lessee shall meet all expenses and payments in connection with the use of the premises and the rights and privileges herein granted, including taxes, permit fees, license fees, and assessments lawfully levied or assessed upon the premises or property at any time situated therein and thereon. Lessee may, however, at its sole expense and cost, contest any tax, fee, or assessment.

E. All of Lessee's activities conducted on Airport must be in accordance with appropriate federal and state statutory and decisional laws, Yuba County ordinances, rules, and regulations, and the requirements of any other duly authorized government agency; however, in the event any such law, rules, regulations or requirement is changed subsequent to the execution of this Lease and Use Permit and Lessee's activities are affected thereby, Lessee shall be allowed a reasonable time within which to comply with such change. Lessee shall

conform and comply with all noise abatement rules and regulations applicable to Airport. Lessee agrees to conduct all flights, activities authorized herein, and ground operations on, at, or near the Airport in accordance with proper rules and regulations of all authorities having jurisdiction over such operations and activities, including any appropriate or applicable FAA certifications. Lessee shall furnish the Airport Manager a copy of such certifications, upon request.

F. Lessee shall at all times and at its own cost and expense have all its owned or operated commercial aircraft maintained in good operating order and free from known mechanical defects.

G. The method and arrangement for operating on the Airport, including but not limited to the parking of aircraft, shall be subject to the review and approval of the Airport Manager. The Airport Manager shall at all times have final authority to designate the aprons, ramps, taxiways, runways, roadways, terminal, and common use areas at Airport to be utilized by Lessee in connection with its aircraft.

8. NONEXCLUSIVE RIGHT: It is not the intent of this Lease and Use Permit to grant to Lessee the exclusive right to provide any or all of the services described in this article at any time during the term of this Lease and Use Permit. Lessor reserves the right, as its sole discretion, to grant others certain rights and privileges upon the Airport, which are identical in part or in whole to those granted to Lessee. However, Lessor does covenant and agree that:

A. It shall enforce all minimum operating standards or requirements for all aeronautical endeavors and activities conducted at the Airport;

orders, and regulations affecting the leased premises and its cleanliness, safety, occupation, and use. Lessee shall not do or permit anything to be done in or about the leased premises, or bring or keep anything on the leased premises, that (i) will increase the premiums (unless Lessee pays such increase) or cause cancellation of any insurance on the building, (ii) is prohibited by any insurance on the building, (iii) would invalidate or be in conflict with the insurance coverage on the building, (iv) would invalidate any liability insurance of Lessor, (v) would be in violation of any county, state, federal or other jurisdictional ordinance, regulation, statute or law that applies to Lessee, or (vi) may be a nuisance or menace to other tenants or users of the Airport provided. If Lessee is prohibited from using the leased premises for the permitted uses and purposes set forth in this paragraph 11 in order to comply with the covenants of this paragraph (other than payment of increased premiums), Lessee may terminate this Lease and Use Permit upon written notice thereof given to Lessor within thirty (30) days of such prohibited use. Lessee agrees to pay for any additional premiums on Lessor's fire and liability insurance policies charged by reason Lessee's use of or operations on the leased premises. Lessee shall have the nonexclusive right to the use in common with others of the runways and taxiways at the Airport, subject to the restrictions herein provided and to the rights of Lessor herein reserved. No spray painting using inflammable paints or liquids will be done within the building without proper fire prevention and suppression equipment approved by Lessor.

11. SIGNS: During the term of this Lease and Use Permit, Lessee shall have the right, at its expense, to place in or on the premises a sign or signs identifying Lessee. Said sign or signs shall be of a size, shape, and design, and at a location or locations, approved by the Airport Manager and in conformance with any overall directional graphics or sign program

B. Any other operator or aeronautical endeavors or activities will not be permitted to operate on the Airport under rates, or terms of conditions which are more favorable than those set forth in this Lease and Use Permit; and

C. It will not permit the conduct of any aeronautical endeavor or activity at the Airport except under an approved lease and operating permit agreement.

9. USE OF COMMON AREAS:

A. Lessee shall be entitled, in common with others so authorized, to the use of all facilities and improvements of a public nature which are or may hereafter be connected with or appurtenant to the Airport, including the use of landing areas, runways, taxiways, navigational aids, terminal facilities, and aircraft parking designated by Lessor.

B. Lessor shall maintain all public and common or joint use areas of the premises, including the Air Operations Area, in good repair; and shall make such repairs, replacements, or additions thereto as, in its opinion, are required and necessary for the safe and efficient operation of the fixed-base operations.

C. Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

10. USE OF PREMISES: Except as otherwise specifically limited herein, the leased premises shall be used by Lessee only for the purpose of conducting therein and thereon air ambulance services and for no other purpose. Except for Lessor's obligations specifically set forth in this Lease and Use Permit, Lessee shall promptly comply with all laws, ordinances,

established by Lessor. Notwithstanding any other provision of this Lease, said signs(s) shall remain the property of Lessee. Lessee shall remove, at its expense, all lettering, signs, and placards so erected on the premises at the expiration of the term of this Lease and Use Permit.

12. INSURANCE: Lessee shall throughout the existence of this Lease and Use Permit, at its own cost and expense, procure and maintain in full force and effect comprehensive general liability insurance in the minimum amounts of ONE MILLION DOLLARS ($1,000,000.00) combined single limit as specified in Exhibit B. The provisions of Exhibit B attached hereto are incorporated herein by reference.

13. INDEMNITY: Lessee shall indemnify and defend the County and its officers, agents and employees against and hold it harmless from any and all loss, damage, and liability for damages, including attorneys' fees and other costs of defense incurred by County, whether for damage to or loss of property, or injury to or death of person, including properties of County and injury to or death of County's officers, agents and employees, which shall in any way arise out of or be connected with Lessee's operations hereunder, unless such damage, loss, injury or death shall be caused solely by the negligence of County.

14. MAINTENANCE: The premises are leased "as is." Lessee shall be responsible for the maintenance and repair of the premises and shall keep and maintain the premises in good condition, order, and repair, and shall surrender the same upon the expiration of this Lease and Use Permit in the condition in which they are required to be kept, reasonable wear, tear, and damage by the elements not caused by Lessee's negligence excepted.

15. ALTERATIONS, ADDITIONS, IMPROVEMENTS:

A. Lessee shall construct improvements as required for the air ambulance operation, including the placement of a modular building for use as their administration building.

B. All of the Lessee's work shall, upon construction or installation, become a part of the leased premises, subject to the use and occupancy of Lessee, and upon expiration or termination of this Lease does not become the property of Lessor. Lessee shall have the right at the termination of this Lease and Use Permit and within a reasonable amount of time after such expiration to remove Lessee's buildings, cement floors, personal property, and trade fixtures, provided any damage to Lessor's property resulting from such removal shall be repaired or restored at Lessee's expense. Any of Lessee's buildings, personal property, or trade fixtures that are not removed after sixty (60) days after the date of any termination of this Lease shall thereafter belong to Lessor without payment of any consideration therefor.

C. Lessee shall submit to Lessor for approval all detailed plans and specifications for all leasehold improvements. Lessor agrees that it shall either approve the plans and specifications as submitted, or transmit proposed revisions to Lessee, within thirty (30) calendar days of receipt of the plans and specifications from Lessee.

D. In the event that Lessor requires revisions of the original plans and specifications, Lessee shall have thirty (30) calendar days from the date of receipt of the proposed revisions to resubmit the plans and specifications for Lessor's approval. Lessor's approval of plans and specifications shall not be withheld unreasonably.

E. Upon receiving final Lessor approval of the plans and specifications, Lessee shall engage one or more qualified contractors to construct said improvements. Construction

shall commence within sixty (60) calendar days of Lessee's receipt of Lessor's final approval of the plans and specifications and shall be scheduled for completion not later than one hundred eighty (180) calendar days after commencement of construction.

F. Lessee, at its own expense, shall procure all necessary permits for any construction of facilities, and all work and installations shall be made in accordance with all applicable laws, ordinances, and rules and regulations of any governmental body having jurisdiction of such matters, Lessee shall save Lessor harmless from any loss or damage by reason of any mechanic's lien or encumbrance of any kind or nature.

G. This Lease and Use Permit shall be subject to the Federal Aviation Administration's approval of any proposed construction as provided for on Federal Aviation Administration Form 7460-1.

16. TAXES: Under this Lease and Use Permit, a possessory interest subject to property taxation may be created. Notice is hereby given pursuant to California Revenue and Taxation Code Section 107.6 that such property interest may be subject to property taxation created, and that the party to whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. Lessee shall pay all taxes of whatever character that may be levied or charged upon Lessee's operations hereunder and upon Lessee's right to use Airport.

17. UTILITIES: Lessee shall have sole and exclusive responsibility for obtaining all electricity, gas, water, telephone, sewer, or other utility services and for the payment of all rates or charges levied, assessed, or charged against said premises in the operation thereof for such services. Lessee will furnish its own heat, light, and power for the operation of said premises, including but not limited to any service charges, connection or installation fees, related thereto.

18. ASSIGNMENT OR SUBLEASE:

A. Lessee shall not assign or transfer in whole or in part by operation of law or otherwise this Lease and Use Permit or any of the Lessee's rights, duties, or obligations hereunder nor sublet any portion or all of the premises leased hereunder or the hangar constructed upon said premises without Lessor's consent to assignment of this Lease and Use Permit, and the Lessor shall not unreasonably withhold his consent to assignment. Lessor retains the right at time of proposed assignment to terminate this Lease and Use Permit and renegotiate a new Lease and Use Permit with proposed assignees at Lessor's option.

B. Lessee shall have the right to sublease up to 100 percent (100%) of his leasehold with the approval of the Airport Manager, but sublessees do not have the right to further sublease any of the property. Sublessees will be required to pay appropriate use and fees or charges as established from time to time by the County. Any sublease of this Lease and Use Permit shall also contain the above provision prohibiting further subleasing by sublessees.

C. If Lessee, without securing prior written approval of Lessor, attempts to effect such a transfer, assignment, sublease, or if a transfer occurs by operation of law, Lessor may terminate this Lease and Use Permit upon thirty (30) days' notice to Lessee without further liability to Lessor and such assignment, transfer, or sublease shall be void.

19. DEFAULT: In the event Lessee is in default in the payment on any amount due under the terms of this Lease and Use Permit or defaults in the performance of any of the covenants or conditions on Lessee's part to be performed, then Lessor, at its option, may terminate this Lease and re-enter upon the premises. Lessor shall have the right to retain all rents and any other sums owing and unpaid to the date of termination hereunder.

20. BANKRUPTCY: In the event of bankruptcy, either voluntary or involuntary, or any assignment for the benefit of creditors made by Lessee, Lessee's interest hereunder shall automatically terminate.

21. FIRE DAMAGE: It is mutually understood and agreed between the parties hereto that in the event any portion of the demised premises be destroyed by fire and the same cannot be repaired within ninety (90) days, then Lessee may elect to terminate this Lease and Use Permit. If the damage is so severe as to interfere with Lessee's use and enjoyment to the extent that Lessee must temporarily vacate the premises and, in the event such restoration can be made within ninety (90) days, Lessor agrees to restore said premises provided further that during the period of non-occupancy by Lessee, the rent for said premises shall not be the responsibility or obligation of Lessee.

22. BREACH OR NONCOMPLIANCE: The waiver of any breach or noncompliance with any terms, covenants, conditions, or provisions of this Lease and Use Permit or any rules, regulations, or decisions adopted pursuant thereto shall not constitute the waiver of any subsequent breach thereof whether such breach or noncompliance be the same or of a different kind or character.

23. ATTORNEY'S FEES: In case Lessor, without fault on its part, be made a part to any litigation commenced by or against Lessee, Lessee shall pay all costs, reasonable attorney's fees, and expenses which may be incurred or imposed on Lessor by or in connection with such litigation. Should either party hereto bring any action at law or in equity to enforce any of the rights hereunder, the prevailing party in such action shall be entitled to recover reasonable attorney's fees and any other relief that may be granted by the court, whether or not the party prevailing in such action be the party who instituted the same.

24. COMPLIANCE WITH SPONSOR'S FEDERAL GRANT ASSURANCES: To the extent applicable, Permittee shall comply with all Federal Aviation Administration (FAA) assurances as shown on Exhibit C, attached hereto and made a part hereof.

25. NOTICES: Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party pursuant to this Lease and Use Permit shall be in writing and either served personally or sent by prepaid, first-class mail. Such matters shall be addressed to the other party at the following address:

To County At:

Airport Manager
YUBA COUNTY AIRPORT
1364 Sky Harbor Drive
Olivehurst, CA 95961

To Lessee At:

REACH AIR MEDICAL SERVICES
451 Aviation Boulevard, Suite 101
Santa Rosa, CA 95403

A copy to:

County Counsel
County of Yuba
915 8th Street, Suite 111
Marysville, CA 95901

Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this paragraph. An affidavit of such mailing shall be executed under penalty of perjury by the person depositing such notice in the mail, and such affidavit shall set forth the date, time, and place of such mailing and be delivered to the other party within 48 hours of such mailing.

IN WITNESS WHEREOF, the parties have signed this Agreement the day and year first above written

REACH AIR MEDICAL

By _____
"Lessee"

COUNTY OF YUBA

By _____
Chairman, Board of Supervisors

ATTEST: DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

_____

REVIEW OF INSURANCE:

_____
Risk Manager

APPROVED AS TO FORM:

_____
County Counsel
by: Bobbie Ross Todd

Location of Reach facilities

EXHIBIT A

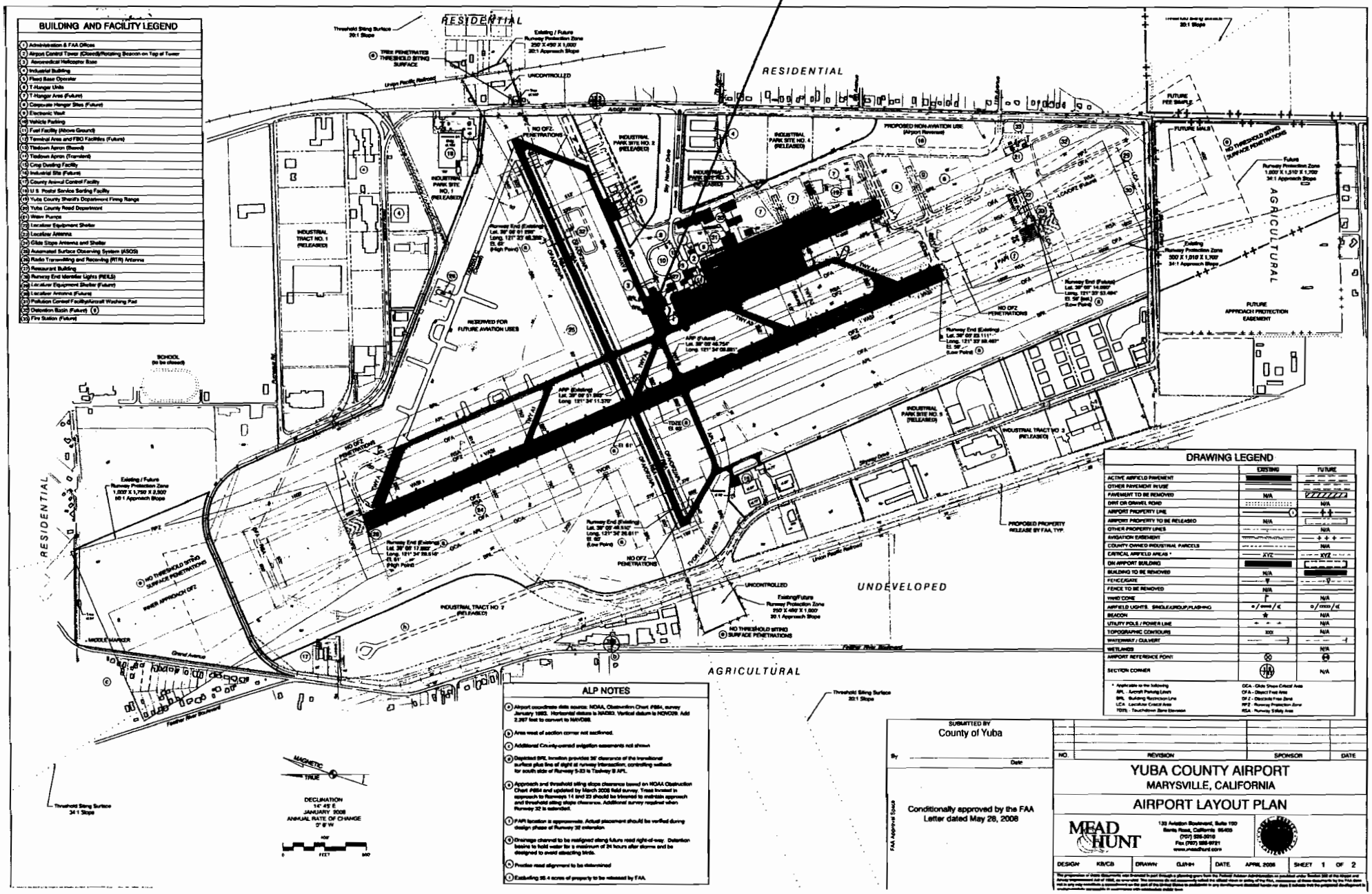

EXHIBIT B

INSURANCE PROVISIONS

LESSEE shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the LESSEE, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if LESSEE has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than $1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.
(Not required if LESEE provides written verification it has no employees)

4. **Professional Liability** (Errors and Omissions) Insurance as appropriate to LESSEE's profession, with limits no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate.

5. **Pollution Legal Liability** with limits no less than $1,000,000 per occurrence or claim, and $2,000,000 policy aggregate.

If the LESSEE maintains higher limits than the minimums shown above, COUNTY requires and shall be entitled to coverage for the higher limits maintained by LESSEE.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status
COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of LESSEE; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of LESSEE including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the LESSEE's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

Primary Coverage
For any claims related to this contract, **LESSEE's insurance coverage shall be primary** insurance as respect to COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, or volunteers shall be excess of LESSEE's insurance and shall not contribute with it.

Notice of Cancellation
Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the COUNTY**.

Waiver of Subrogation
LESSEE hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said LESSEE may acquire against COUNTY by virtue of the payment of any loss under such insurance. LESSEE agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not COUNTY has received a waiver of subrogation endorsement from the insurer. These Waiver of Subrogation provisions only apply to property/casualty/workers' compensation insurance policies.

Deductibles and Self-Insured Retentions
Any deductibles or self-insured retentions must be declared to and approved by COUNTY. COUNTY may require LESSEE to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers
Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the COUNTY.

Claims Made Policies
If any of the required policies provide coverage on a claims-made basis:
1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, LESSEE must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

Verification of Coverage

LESSEE shall furnish COUNTY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive LESSEE's obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

LESSEE shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Special Risks or Circumstances

COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

EXHIBIT C

FEDERAL AVIATION ADMINISTRATION ASSURANCES

A. COMPLIANCE WITH SPONSOR'S FEDERAL GRANT ASSURANCES: To the extent applicable, Lessee shall comply with all Federal Aviation Administration (FAA) assurances below:

1. The Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenants and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, COT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

2. The Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (in the case of leases add "as a covenant running with the land") that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the (Lessee, licensee, Lessee, etc. shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

3. That in the event of breach of any of the above nondiscrimination covenants, the County of Yuba shall have the right to terminate the permit and to reenter and repossess said land and the facilities thereon, and hold the same as if said permit had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

4. Lessee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the County of Yuba shall have the right to terminate this permit and the estate hereby created without liability therefore or at the election of the County of Yuba or the United States either or both said Governments shall have the right to judicially enforce Provisions.

6. Lessee agrees that it shall insert the above five provisions in any permit by which said Lessee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises herein permitted.

7. The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Par 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Lessee assures that it will require that its covered suborganizations provide assurances to the Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effort.

8. The County of Yuba reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee and without interference or hindrance.

9. The County of Yuba reserves the right, but shall not be obligated to the Lessee to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport together with the right to direct and control all activities of the Lessee in this regard.

10. This lease shall be subordinate to the provisions and requirements of any existing or future agreement between the County of Yuba and the United States, relative to the development, operation or maintenance of the airport.

11. There is hereby reserved to the County of Yuba, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein permitted. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Yuba County Airport.

12. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the permitted premises, or in the event of any planned modification or alteration of any present of future building or structure situated on the permitted premises.

13. The Lessee by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the land leased hereunder above the mean sea level elevation of 65 feet. In the event the aforesaid covenants are breached, the owner reserves the right to enter upon

the land permitted hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Lessee.

14. The Lessee by accepting this permit agrees for itself, its successors and assigns that it will not make use of the permitted premises in any manner which might interfere with the landing and taking off of aircraft from the Yuba County Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby permitted and cause the abatement of such interference at the expense of the Lessee.

15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

16. This permit and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency.

03-15

FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT

Serving Sutter and Yuba Counties

RECEIVED

DEC 18 2014

Clerk/Board of Supervisors

1007 Live Oak Blvd., Suite L
Yuba City, CA 95991
(530) **634-7659**
FAX (530) **634-7660**
www.fraqmd.org

Christopher D. Brown, AICP
Air Pollution Control Officer

To: Yuba County Board of Supervisors

From: Christopher D. Brown AICP, Air Pollution Control Officer

Subject: **Approval of appointment to the Board of Directors of the Feather River AQMD**

Date: December 18, 2014

Recommendation:

Approve the following new appointment to the Feather River Air Quality Management District Board of Directors for 2015.

Background and Discussion:

The Health and Safety Code section 40152(b) states the members and their composition shall be determined jointly by the counties and cities within the district. The Sutter County appointment requires the approval of the Yuba County Board of Supervisors.

Alternate Director:

Supervisor Ron Sullenger

Fiscal Impact:

None

Committee Action:

None required.

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RECEIVED

DEC 10 2014

Clerk/Board of Supervisors

04-15

SUTTER COUNTY
Superintendent of Schools
Bill Cornelius, Superintendent

TRI-COUNTY ROP REGIONAL OCCUPATIONAL PROGRAM
Colusa • Sutter • Yuba
Randy A. Page, Director

970 Klamath Lane • Yuba City, CA • 95993 • Phone (530)822-2952 • Fax (530)822-3003 • www.sutter.k12.ca.us

December 8, 2014

Dear: Honored Community Partner

Sutter County Superintendent of Schools, with the assistance of the Tri-County ROP and in partnership with Yolo County Office of Education, is once again applying for a California Career Pathways Trust grant and **we are asking for your support**. We will be applying for a minimum of six million dollars to provide Career Pathway funding for our area middle schools, high schools, Yuba Community College and other post secondary institutions. The name of our grant program is the Northern California STREAM Pathways Consortium. The term STREAM indicates that our grant will focus on Career Technical programs and pathways in which science, technology, technical reading, engineering, fine/digital arts, and math play a large role. We will concentrate on the following career areas in the grant application:

Advanced manufacturing/Engineering
Agriculture and Food Production
Advanced Transportation
Health/Biotechnology
IT Essentials/Digital Media
Public Services
Alternative Energy and Utilities

We need letters of support from the stakeholders in our region to demonstrate to the State that through our collaborative efforts, we can deliver on the development of robust career pathways that provide the trained labor force our area needs and keeps our businesses competitive in a global economy.

I have attached a sample letter of support and commitment. There are a whole host of opportunities listed that would assist our efforts. In addition, an attached page that gives you the flexibility of describing your agencies unique contribution to the grant effort.

While we have provided a sample letter for ease of use, you can, of course, write a letter of your choosing. To make the letter effective, it would be important that you clearly outline what level of support and commitment your business can provide to the grant effort. You would also need to refer to our grant program by its proper name- the Northern California Stream Pathways Consortium and use your organization/ agency letterhead. Your letterhead would need to be scanned on the attached prepared letter or one you write yourself. Please **email or mail** whatever **letter you use directly to me to the address on this page**. **Please do not mail your letter directly to Tom Torlakson**. **He will not receive it.** We must include it in our grant package.

If you have questions, please feel free to call me at 530-822-2953 or my cell at 530-845-3730. We can work on the letter together. Your support is critical to our efforts. Thank you in advance for your support.

Sincerely,

Randy Page

February 6, 2015

Honorable Tom Torlakson
State Superintendent of Public Instruction
1430 N Street
Sacramento, CA 95814

Dear Superintendent Torlakson:

On behalf of the Yuba County Board of Supervisors, please accept this letter of support for the California Career Pathways Trust application of the NCSPC- Northern California STREAM Pathways Consortium- a partnership of school districts and county offices of education in our region including Colusa, Sutter, Yolo, and Yuba Counties.

We know that building a career ready pool of talented workers starts with vibrant CTE pathway programs in our schools. Of particular interest to us is the NCSPC application's subject focus on STREAM- Science, Technology, Technical Reading, Engineering, Fine/Digital Arts, and math. We believe students with strength in these areas will produce a pool of knowledgeable, skilled AND experienced workers that are central to our ability to compete in a global economy and strengthen our region' economy. We are also aware that a coordinated, regional effort that is implemented at each school site, with strong support for teachers and students, will be essential to the success of this work.

Stottlemeyer, Donna

From: Nicoletti, John
Sent: Wednesday, December 24, 2014 7:10 AM
To: Stottlemeyer, Donna
Subject: FW: Request for BOS letter of support
Attachments: DRAFT Yuba BOS.doc

Please assist

-----Original Message-----
From: Regine Miller [regine@theccp.org]
Sent: Wednesday, December 24, 2014 06:53 AM Pacific Standard Time
To: Nicoletti, John
Cc: Randy Fletcher; Cathy LeBlanc
Subject: Request for BOS letter of support

Dear Chairman Nicoletti,

The Camptonville Community Partnership (CCP) is working together with the Nevada County Biomass Task Force (NCBTF) and the Fire Safe Council of Nevada County (FSCNC) to submit a joint application to the U.F. Forest Service's Wood Innovations grant program. The application proposes funding the project's "next steps" including site planning, permitting and a system impact study, which is required for interconnection with PG&E, for the proposed bioenergy facility site in Camptonville and the proposed site in Grass Valley. If awarded funding, CCP and NCBTF will manage all work pertaining to the Camptonville and Grass Valley sites, respectively. The FSCNC will serve as the project applicant and fiscal agent.

CCP is continuing to support the development of a bioenergy facility at the former sawmill site in Celestial Valley. Specifically, CCP is currently working to complete a site specific feasibility study, which was awarded funding in 2014 by the Sierra Nevada Conservancy(SNC). The Yuba County BOS supported the SNC grant application and recognized the many positive benefits that a bioenergy facility could have on the forest and community health and local economy in the Camptonville area.

On behalf of CCP, I am asking if you could write a letter of support on behalf of the BOS for this collaborative grant application. The grant application is due January 23rd which may not allow enough time for review of our proposed request at a regularly scheduled BOS meeting. Supervisor Fletcher suggested that you, as Chairman, could review CCP's request and individually query your fellow supervisors about CCP's request and, if agreeable, write a letter of support. I have attached a draft letter of support based upon the current application and the letter the BOS wrote for CCP's SNC application. Please feel at liberty to work from this, if you so desire. I'm available throughout the holidays and would be more than happy to talk with you further about the grant application.

Thank you for your consideration of CCP's request.

Sincerely,
Regine Miller

--
Regine Miller
Bioenergy Project Lead

January X, 2015

Larry Swan
USDA Forest Service
Pacific Southwest Region (R5)
1323 Club Drive
Vallejo, CA 95492-1110

RE: Letter of Support for Collaborative Bioenergy Project Wood Innovations grant application

Dear Mr. Swan:

The Yuba County Board of Supervisors supports Camptonville Community Partnership's (CCP) joint Wood Innovations grant application with the Nevada County Biomass Task Force (NCBTF), and the Fire Safe Council of Nevada County (FSCNC) for funding site planning, permitting and a system impact study for the proposed biomass facilities at the former Celestial Valley Mill site in Camptonville and at the NCBTF's Grass Valley site.

The Board recognizes heavy fuel loads in forested areas of Yuba County pose a threat to the health of the forest and create an elevated risk for devastating forest fires which the County has experienced in 1999 and 2010. Forest thinning would bring a significant reduction to this fire threat. The development of a bioenergy facility in Camptonville will help to reduce cost of forest management, improve forest and community health, and support economic development and watershed protection.

We hope your agency will give this collaborative application the careful consideration it deserves.

Sincerely,

The County of Yuba

BOARD OF SUPERVISORS

DECEMBER 9, 2014 - MINUTES

The Honorable Board of Supervisors of the County of Yuba met in regular session on the above date, commencing at 9:30 a.m., within the Government Center, Marysville, California, with a quorum being present as follows: Supervisors Andy Vasquez, John Nicoletti, Mary Jane Griego, Roger Abe, and Hal Stocker. Also present were County Administrator Robert Bendorf, County Counsel Angil Morris-Jones, and Deputy Clerk of the Board of Supervisors Rachel Ferris. Chairman Nicoletti presided.

I. PLEDGE OF ALLEGIANCE - A moment of silence was held for American soldiers who have lost their lives in the current conflict followed by the Pledge of Allegiance led by Supervisor Stocker

II. ROLL CALL - Supervisors Vasquez, Nicoletti, Griego, Abe, Stocker – All Present

III. CONSENT AGENDA: All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.

MOTION: Move to approve MOVED: Mary Jane Griego SECOND: Hal Stocker
AYES: Mary Jane Griego, Hal Stocker, Andy Vasquez, John Nicoletti, Roger Abe
NOES: None ABSENT: None ABSTAIN: None

A. Board of Supervisors

1. (531-14) Appoint V. Sue Shaffer to the Commission on Aging as the District Two Representative for a term ending December 31, 2016. Approved.

B. Clerk of the Board of Supervisors

1. (532-14) Approve Conflict of Interest Codes for Wheatland Cemetery District; District 10-Hallwood Community Services District; Linda Fire Protection District; and Browns Valley Irrigation District. Approved.

2. (533-14) Approve minutes from the meeting of November 18, 2014. Approved as written.

C. Clerk-Recorder/Elections

1. (534-14) Accept certification of statement of vote for the November 4, 2014 General Election. Approved.

D. Treasurer-Tax Collector

1. (535-14) Adopt resolution delegating investment authority to County Treasurer for year 2015. Adopted Resolution No. 2014-117, which is on file in Yuba County Resolution Book No. 45.

IV. PUBLIC COMMUNICATIONS:

Mr. Russ Watts Contra Costa County Treasurer-Tax Collector and President Elect of the California Association of County Treasurers Tax Collectors presented the Gavel Award to Treasurer Dan Mierzwa for Excellence in Leadership and Service as President of the California Association of County Treasurers and Tax Collectors for the Fiscal Year 2014-2015.

Kern County Treasurer Tax Collector Jackie Denny commended Mr. Mierzwa for his leadership and dedication.

Mr. Mierzwa expressed appreciation to the Board for their support.

V. COUNTY DEPARTMENTS

A. Administrative Services

1. (536-14) Adopt resolution supporting new Tri-County Juvenile Rehabilitation Facility in Marysville and authorizing Chair to execute grant funding application for Round Two SB 81 Local Youthful Offender Rehabilitation Facilities Construction funds. (Ten minute estimate) Director Doug McCoy recapped grants and responded to Board inquiries.

MOTION: Move to adopt MOVED: Mary Jane Griego SECOND: Roger Abe
AYES: Mary Jane Griego, Roger Abe, Andy Vasquez, John Nicoletti, Hal Stocker
NOES: None ABSENT: None ABSTAIN: None

Adopted Resolution No. 2014-118, which is on file in Yuba County Resolution Book No. 45.

B. Community Development and Services

1. (537-14) Adopt Program for Public Information for County floodplain management activities and a component of the Community Rating System. (Ten minute estimate) Principal Engineer Dan Peterson recapped FEMA National Flood Insurance Program and Program for Public Information Committee including specific activities and projects for public outreach, and responded to Board inquiries.

MOTION: Move to approve MOVED: Hal Stocker SECOND: Mary Jane Griego
AYES: Hal Stocker, Mary Jane Griego, Andy Vasquez, John Nicoletti, Roger Abe
NOES: None ABSENT: None ABSTAIN: None

VI. ORDINANCES AND PUBLIC HEARINGS: The clerk read the disclaimer.

A. (538-24) Public Hearing - Hold public hearing to receive comment regarding Final Grantee Performance Report for closeout of Community/Economic Development Block Grant 10-EDEF-7271. (Ten minute estimate) Yuba Sutter Economic Development Corporation Loan Officer Jackie Slade recapped applications received, status of applications, and responded to Board inquiries.

The Chair opened the public hearing. The following individual spoke: Mr. Steve Wigley, Loma Rica.

MOTION: Move to close the public hearing MOVED: Mary Jane Griego SECOND: Roger Abe
AYES: Mary Jane Griego, Roger Abe, Andy Vasquez, John Nicoletti, Hal Stocker
NOES: None ABSENT: None ABSTAIN: None

B. (539-14) Ordinance - Hold public hearing, waive reading, and introduce ordinance amending Chapter 7.50 of Title VII of the Yuba County Ordinance Code relating to Stormwater Quality. (First reading) (Land Use and Public Works recommends approval) (Ten minute estimate) Principal Engineer Dan Peterson recapped new definitions and requirements including provisions for storm management plan and responded to Board inquiries.

Following Board discussion Mr. Peterson responded to specific inquiries regarding penalties for violations, coordination with local utilities and surrounding counties and municipalities, and additional public outreach.

The Chair opened the public hearing. The following individuals spoke:
- Ms. Mary Solvado, Olivehurst
- Mr. Zack Cross, Loma Rica

Supervisor Stocker left the meeting at 10:13 a.m. and returned at 10:17 a.m.

MOTION: Move to close the public hearing, waive reading and introduce ordinance
MOVED: Mary Jane Griego SECOND: Hal Stocker
AYES: Mary Jane Griego, Hal Stocker, John Nicoletti, Roger Abe
NOES: Andy Vasquez ABSENT: None ABSTAIN: None

C. (524-14) Ordinance - Hold public hearing, waive reading, and adopt ordinance repealing and re-enacting Chapter 10.30 regarding requirements of the National Flood Insurance Program and Community Rating System. (Second reading. Continued from November 18, 2014) (Ten minute estimate) Supervisor Vasquez requested second reading be continued to January 13, 2014 to allow additional time for public inquiry.

The Chair opened the public hearing. No one came forward.

MOTION: Move to close the public hearing and continue item to January 13, 2014
MOVED: Andy Vasquez SECOND: Roger Abe
AYES: Andy Vasquez, Roger Abe, John Nicoletti, Mary Jane Griego, Hal Stocker
NOES: None ABSENT: None ABSTAIN: None

D. (540-14) Administrative Appeal Hearing - Hold hearing for imposition of administrative penalty regarding Assessor's Parcel Number 019-200-088, Olivehurst, owned by Mohammad A. Khan and Lucy Salva, in lien amount of $13,213.82. (Twenty minute estimate) The oath was administered by the clerk for those individuals planning to give testimony.

Chief Code Enforcement Officer Jeremy Strang presented a PowerPoint presentation outlining property description and location, notices sent to property owner, number of plants, and additional violations on the property.

Attorney Charnel James refuted her client Mr. Khan had prior knowledge of the violations, and when Mr. Khan became aware of the situation contacted the authorities to have the trespasser and trailer removed from the property. Ms. James further advised Mr. Kahn checked on the property at least once a quarter and did not notice anything out of the ordinary on his last visit.

Chair Nicoletti opened the public hearing. No one came forward.

MOTION: Move to uphold imposition of administration penalties and lien in the amount of $13,213.82.
MOVED: Mary Jane Griego SECOND: Roger Abe
AYES: Mary Jane Griego, Roger Abe, Andy Vasquez, John Nicoletti, Hal Stocker
NOES: Andy Vasquez ABSENT: None ABSTAIN: None

VII. CORRESPONDENCE: The Board may direct any item of informational correspondence to a department head for appropriate action.

A. (541-14) Letter from Nevada Joint Union High School District regarding increase of development fees and certification before issuance of building permits. Accepted.

B. (542-14) Minutes from the California Wildlife Conservation Board meeting of August 28, 2014 which are on file in the Board office. Accepted.

C. (543-14) News Release from United States Fish and Wildlife Services announcing public hearing for proposal to designate critical habitat for western yellow-billed cuckoo. Accepted.

VIII. BOARD AND STAFF MEMBERS' REPORTS:

Supervisor Vasquez: Memorial Adjournment - Baby Emmett Daniel Weckman

Supervisor Griego Memorial Adjournment - Mrs. Rosella Crouse

Supervisor Abe: CSAC conference held November 22, 2014

Supervisor Stocker: State of California drought

Supervisor Nicoletti: ACWA Conference held December 3, 2014

IX. CLOSED SESSION: The Board retired into closed session at 11:27 a.m. and returned at 11:47 a.m. with all staff present as indicated above.

A. Personnel pursuant to Government Code §54957.6(a) - Labor Negotiations – DDAA Direction provided

X. RECESS TO 1:30 P.M.

A. (544-14) Receive presentation from State Water Resources Control Board regarding cannabis cultivation enforcement initiative. (Christian Carrigan, Director, Office of Enforcement) (Ten minute estimate) Director Carrigan provided a PowerPoint presentation recapping the following and responding to inquiries:
- Illegal diversion
- Sanitary issues
- Organic site practices
- Outreach and Compliance
- Permitting
- Regulatory Tools
- Legal Remedies
- Water Code Section 13304
- Public/Private Lands
- Enforcement Challenges

B. (545-14) Conduct workshop on updating Marijuana Cultivation Ordinance and provide staff direction. (Community Development and Services/County Counsel) (60 minute estimate) Chairman Nicoletti provided an outline for presentation and public comments.

Chief Deputy Counsel John Vacek recapped the current ordinance, enforcement difficulties, compliance, and affect of ordinance on County.

Supervisor Abe left the meeting at 2:05 p.m. and returned at 2:10 p.m.

Mr. Vacek recapped three ordinance models identified as:

- Shasta County - bans outdoor grows, allows 12 plants in single permitted accessory structure
- Sacramento County - bans outdoor grow, allows indoor residential grow of 9 plants in a confined area
- Fresno County - indoor and outdoor grow prohibited

The following individuals spoke:

- Ms. Mary Jane Salvato, Olivehurst
- Ms. Marlys Eatmen, Olivehurst
- Mr. Jed Ivy, Oregon House
- Mr. Michael Lee, Dobbins
- Mr. Eric Salerro, Redhill Way
- Mr. Zachary
- Mr. John McLean, Redhill Way
- Mr. Lee Boutt, Olivehurst
- Ms. Lacie Whittington, Moonshine Road
- Mr. Buck Weckman, Brownsville
- Ms. Karen Liggett, Marysville
- Ms. Buck Weckman, Brownsville
- Mr. Samuel McConnell, Yuba County
- Mr. Lewis Paullin, Yuba County
- Mr. Dave Draper, Browns Valley
- Mr. Richard Baum, Dobbins
- Ms. Michelle Parson, Marysville
- Mr. Sam McConnell, Growers Association
- Ms. Angeline Perez, Marysville Business Owner
- Mr. Gene West, District 5
- Mr. Chris Ashe, Rackerby
- Mr. Zach Cross, Fruitland Road
- Mr. Ben Crott, Browns Valley
- Ms. Shirley Henrikson, Browns Valley
- Mr. Bryan Dozzi, Dobbins
- Ms. Karolyn McCall, Dobbins
- Mr. Daniel Aspin, Olivehurst
- Mr. Rick, Olivehurst
- Mr. Sheldon Weeks, Browns Valley
- Mr. Michael Worrell, Oregon House
- Ms. Carla Virga, Yuba City

- Mr. Erick Lock, Marysville
- Ms. Jean Terry, Browns Valley
- Mr. Al Owens, Camptonville

Supervisor Vasquez left the meeting at 3:26 p.m. and returned at 3:30 p.m.

- Mr. Ken Odom, Browns Valley
- Mr. Norman Hall, County
- Mr. Calvin Ivie, Camptonville
- Mr. Roger Morgan, Lincoln
- Mr. Michael Green, Fresno
- Ms. Kathie Thelen, Browns Valley
- Mr. Gary McQuary, Dobbins
- Ms. Teri Douyon, Sutter County
- Ms. Margaret Thomas, Rackerby
- Dr. Leif Rasmussen, Chico
- Mr. Vic Milligan, Browns Valley
- Mr. Paul Guevara, Marysville
- Mr. Mike Hatherly, Oregon House

Recessed at 4:24 p.m. and reconvened at 4:41 p.m. with all present as indicated above.

Chairman Nicoletti recommended and received Board consensus to agendize the matter for January 13, 2015 at 3:00 p.m. to allow staff and board members time to review comments and handouts provided during comments.

XI. RECESS TO 6:00 P.M. The Board recessed at 4:50 p.m. and reconvened at 6:00 p.m. with all Board and staff members present as indicated above.

A. (546-14) Community Development and Services Direct staff to initiate Proposition 218 process to propose increases to water and sewer rates for River Highlands Gold Village. (Land Use and Public Works Committee recommends approval) (Fifteen minute estimate) Director Kevin Mallen recapped rates that were established for services, grant funding received requiring meter rate structure, and proposed rates to be increased. Mr. Mallen further advised of the process for raising the fee, protesting of fees, and responded to Board inquiries.

The following individuals spoke:
Mr. Greg Bock, Smartsville
Ms. Babette Schrank, Smartsville
Ms. Susie Grosie, Gold Village
Ms. Carol Lawrence, property owner in Gold Village
Mr. Jim Abbott
Mr. Vance Grossie

Principal Engineer Dan Peterson responded to Board inquiries regarding opportunities for infrastructure funding.

Following Board discussion, the matter died for lack of a motion.

XII. ADJOURN 7:21 p.m. in memory of Baby Emmett Daniel Weckman, Mrs. Rosella Crouse, and Mrs. Veronica Bendorf.

_____
Chair

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

_____
By: Rachel Ferris, Deputy Clerk

Approved: _____

The County of Yuba

BOARD OF SUPERVISORS

DECEMBER 16, 2014

The Honorable Board of Supervisors of the County of Yuba met on the above date, commencing at 9:33 a.m., within the Government Center, Marysville, California, with a quorum being present as follows: Supervisors Andy Vasquez, John Nicoletti, Mary Jane Griego, Roger Abe, and Hal Stocker. Also present were County Counsel Angil Morris-Jones and Clerk of the Board of Supervisors Donna Stottlemeyer. Chairman Nicoletti presided.

I. PLEDGE OF ALLEGIANCE - A moment of silence was held for all the soldiers lives lost in this current conflict followed by the pledge led by Ms. Sandy Williams.

II. ROLL CALL - Supervisors Vasquez, Nicoletti, Griego, Abe, Stocker - All present.

III. CONSENT AGENDA: All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.

MOTION: Move to approve MOVED: Hal Stocker SECOND: Andy Vasquez
AYES: Hal Stocker, Andy Vasquez, John Nicoletti, Mary Jane Griego, Roger Abe
NOES: None ABSENT: None ABSTAIN: None

A. Administrative Services

1. (549-14) Approve sublease agreement with Peach Tree Clinic for space at 5730 Packard Avenue and authorize Chair to execute. Approved.

2. (550-14) Approve amendment to agreement with Indigo/Hammond and Playle Architects for design changes to Water Agency communications room, review for the new Sheriff's facility, and authorize Chair to execute same. Approved.

B. Board of Supervisors

1. (551-14) Approve Board of Supervisors meeting schedule for 2015 and cancelling certain meetings. Approved.

C. Clerk of the Board of Supervisors

1. (552-14) Adopt list of ongoing boards, commissions, and committees appointed by the Board of Supervisors.
Clerk of the Board Donna Stottlemeyer responded to Board inquiries regarding current appointments and the adoption of the list.

MOTION: Move to approve MOVED: Mary Jane Griego SECOND: Hal Stocker
AYES: Mary Jane Griego, Hal Stocker, Andy Vasquez, John Nicoletti, Roger Abe
NOES: None ABSENT: None ABSTAIN: None

2. (553-14) Approve appointment of Ann Soliday to the Public Agency position of the Child Care Planning Council of Yuba and Sutter Counties for the term ending September 30, 2015. Approved.

3. (554-14) Approve Certification Statement regarding Composition of Local Planning Council Membership and authorize Chair to execute. Approved.

4. (555-14) Appoint Cara Irwin to the Yuba County Fish and Game Advisory Commission as the Youth Representative for a term to end December 16, 2015. Approved.

D. Community Development and Services

1. (556-14) Adopt resolution approving submittal of application to Federal Highway Administration for Hammonton-Smartsville Road and authorizing Public Works Director to execute the grant and any related documents for the administration of the grant. Adopted Resolution No. 2014-119, which is on file in Yuba County Resolution Book No. 45.

2. (557-14) Approve plans, specifications, estimate, and authorization for advertisement of bids for Spring Valley Road at Browns Valley ditch bridge replacement project and authorize Chair to execute. Approved.

3. (558-14) Receive Notice of Final Tract Map 2011-0001 (TSTM 2010-0001/Cote) under review and pending approval by the County Surveyor. Received.

E. County Administrator

1. (559-14) Adopt resolution repealing and enacting certain sections of the Yuba County Administrative Policy and Procedures Manual. (Finance and Administration Committee recommends approval) Adopted Resolution No. 2014-120, which is on file in Yuba County Resolution Book No. 45.

2. (560-14) Adopt resolution recognizing ongoing wildfire threat and supporting Governor's effort to urge Federal action on fire prevention and maintenance. Adopted Resolution No. 2014-121, which is on file in Yuba County Resolution Book No. 45.

F. Emergency Services

1. (561-14) Adopt resolution proclaiming the existence of an ongoing local drought emergency in the County of Yuba. Adopted Resolution No. 2014-122, which is on file in Yuba County Resolution Book No. 45.

G. Health and Human Services

1. 562-14) Authorize increase in the amount of $15,174 to revenue Account No. 100-0000-361-45.00 (State Social Services Administrations) and to expenditure Account No. 100-5200-451-63.30 (Capital Asset Equipment IT Hardware) for final invoice for Presidio Virtual Desktop Infrastructure project. Approved.

IV. SPECIAL PRESENTATION

A. (563-14) Present proclamation to Supervisor Hal Stocker commending 20 years of service. (Five minute estimate) Supervisor Griego read and presented the proclamation recognizing Supervisor Stocker.

B. (564-14) Present proclamation to Sandra Williams commending 20 years of service. (Five minute estimate) Chairman Nicoletti read and presented the proclamation to Ms. Sandy Williams.

C. (565-14) Present proclamation to Paul Donoho commending 22 years of service. (Five minute estimate) Chairman Nicoletti read and presented the proclamation to Mr. Paul Donoho.

D. (568-14) Present Certificate of Recognition to Linda Fire Protection District. (Five minute estimate) Chairman Nicoletti presented the certificate to the following firemen recognizing their contribution and taking care of the "Old Glory" at North Beale Road and Lindhurst Avenue:
- Jim Brannon
- Dave Gothrow
- Scott Simeroth
- Toby Price
- Kyle Heggstrom
- Billy Gardner
- Aaron White
- Chey Gonzalez

V. PUBLIC COMMUNICATIONS

Mr. Dan Jones - Accountability regarding child welfare and adoption funding

VI. COUNTY DEPARTMENTS

A. Administrative Services

1. (569-14) Adopt resolution amending the Departmental Position Allocation Schedule as it relates to Administrative Services effective December 1, 2014. Director Doug McCoy recapped the need for restructuring of administrative staff, providing oversight, and responded to inquiries.

   MOTION: Move to adopt MOVED: Roger Abe SECOND: Hal Stocker
   AYES: Roger Abe, Hal Stocker, Andy Vasquez, John Nicoletti, Mary Jane Griego
   NOES: None ABSENT: None ABSTAIN: None

   Adopted Resolution No. 2014-123, which is on file in Yuba County Resolution Book No. 45.

2. (570-14) Declare certain property as surplus, authorize the County Purchasing Agent to dispose of items in accordance with Yuba County Ordinance Code 2.50.060, and adopt resolution authorizing the Purchasing Agent to regularly process and dispose of electronic waste. Contracts-Purchasing Administrator Andrea Armstrong recapped process and the need for disposal, and responded to inquiries.

   MOTION: Move to adopt MOVED: Mary Jane Griego SECOND: Hal Stocker
   AYES: Mary Jane Griego, Hal Stocker
   NOES: None ABSENT: None ABSTAIN: None

Adopted Resolution No. 2014-124, which is on file in Yuba County Resolution Book No. 45.

B. County Administrator

1. (571-14) Receive First Quarter Financial Report for Fiscal Year 2014-15 and provide direction as appropriate. (Ten minute estimate) Management Analyst Grace Mull recapped revenue, expenditures, building permits, and state updates. Ms. Mull responded to inquiries.

2. (572-14) Adopt resolution approving Preliminary Official Statement and Bond Purchase Agreement related to the offering and sale of special tax bonds of the County for Community Facilities District 2005-1 (Orchard Montrose Public Improvements) related to Improvement Area A of district and approving other related documents and actions. (Fifteen minute estimate) Community Development and Services Director Kevin Mallen recapped the impacts of the resolution and responded to inquiries.

   MOTION: Move to adopt MOVED: Mary Jane Griego SECOND: Hal Stocker
   AYES: Mary Jane Griego, Hal Stocker, Andy Vasquez, John Nicoletti
   NOES: Roger Abe ABSENT: None ABSTAIN: None

   Adopted Resolution No. 2014-125, which is on file in Yuba County Resolution Book No. 45.

VII. ORDINANCES AND PUBLIC HEARINGS: The clerk read the disclaimer.

A. (539-14) Ordinance - Hold public hearing, waive reading, and adopt ordinance amending Chapter 7.50 of Title VII of the Yuba County Ordinance Code relating to Stormwater Quality. (Second reading. Continued from December 9, 2014) (Ten minute estimate) Principal Engineer Daniel Peterson recapped changes, updates included within the ordinance, public awareness programs, and responded to inquiries. Directors Kevin Mallen and Mike Lee responded to inquiries.

   Chairman Nicoletti opened the public hearing. No one came forward.

   MOTION: Move to close public hearing, waive reading, and adopt ordinance
   MOVED: Mary Jane Griego SECOND: Hal Stocker
   AYES: Mary Jane Griego, Hal Stocker, John Nicoletti
   NOES: Andy Vasquez, Roger Abe ABSENT: None ABSTAIN: None

   Adopted Ordinance No. 1537, which is on file in Yuba County Ordinance Book No. 24.

VIII. CORRESPONDENCE: The Board may direct any item of informational correspondence to a department head for appropriate action.

A. (566-14) Two notices from State of California Water Resources Control Board of Petitions for Temporary Transfer of water of up to 5,000 acre feet, and petition for long-term transfer by Yuba County Water Agency. Received

IX. BOARD AND STAFF MEMBERS' REPORTS

Supervisor Abe:
- Yuba County Water Agency committee meeting held December 15, 2014
- RCRC Directors meeting held December 4, 2014

Supervisor Griego:
- Yuba County Water Agency committee meeting held December 15, 2014
- Olivehurst Christmas Parade December 6, 2014
- SACOG meeting December 18, 2014

Supervisor Vasquez: Requested consideration of eliminating doe hunt in County at a future Board meeting

Supervisor Nicoletti:
- Memorial Adjournment - Mr. David McVey
- Olivehurst Christmas Parade December 6, 2014
- Development Code update
- So You Can project

Chief Deputy Counsel John Vacek: Options presented at Marijuana Cultivation ordinance workshop and further options for consideration on January 13, 2015

X. CLOSED SESSION

The Board retired into closed session at 11:21 a.m. and returned at 11:39 a.m. with all present as indicated above.

A. Pending litigation pursuant to Government Code §54956.9(d)(1) - PG&E vs. County of Yuba By unanimous vote direction was provided.

B. Personnel pursuant to Government Code §54957.6(a) - Labor Negotiations - DDAA Negotiators/John Vacek/ Martha Wilson No report

XI. ADJOURN: 11:40 a.m. in memory or Mr. David McVey

_____
Chair

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

_____ Approved: _____

06-15

The County of Yuba

Community Development & Services Agency

Kevin Mallen, Director
Phone – (530) 749-5430 • Fax – (530) 749-5424
915 8th Street, Suite 123
Marysville, California 95901
www.co.yuba.ca.us

BUIL
749-5440 •

CODE ENFORCEMENT
749-5455 • Fax 749-5424

ENVIRONMENTAL HEALTH • CUPA
749-5450 • Fax 749-5454

HOUSING & COMMUNITY SERVICES
749-5460 • Fax 749-5464

PLANNING
749-5470 • Fax 749-5434

PUBLIC WORKS • SURVEYOR
749-5420 • Fax 749-5424

January 13, 2015

TO: BOARD OF SUPERVISORS

FROM: MICHAEL LEE, DIRECTOR OF PUBLIC WORKS

SUBJECT: ADOPT RESOLUTION AUTHORIZING THE PUBLIC WORKS DIRECTOR TO EXECUTE RIGHT OF WAY CERTIFICATIONS, AS REQUIRED BY CALTRANS, FOR FEDERALLY FUNDED PROJECTS

RECOMMENDATION:

Adopt the attached resolution authorizing the Public Works Director to execute right of way certifications, as required by Caltrans, for federally funded projects.

BACKGROUND:

Public Works manages many capital improvement projects that receive federal-aid funds, and those funds are administered and managed through the California Department of Transportation (Caltrans). As specified in Chapter 13 of Caltrans' Local Assistance Procedures Manual (LAPM), it is the local agency's responsibility to prepare the Right of Way Certification for each federal-aid project, even if no right of way is required.

DISCUSSION:

Caltrans now requires that an authorized official certify right of way requirements when receiving federal funds. A "Right of Way Certification" or a "No Right of Way Certification" must be endorsed by an authorized official or a designated alternate from the local agency and forwarded to Caltrans for acceptance. The right of way certification is a written statement summarizing the status of all right of way related matters pertaining to a proposed construction project. It is also intended to document that the project is ready to advertise for construction.

In accordance with the LAPM, a local public agency "...may adopt a resolution giving (a responsible agency official) blanket authority to execute Right of Way Certifications." This procedure is intended to streamline the process and avoid the necessity to have the Board execute individual certifications for each federal-aid project. The attached resolution will authorize the Public Works Director to execute right of way certifications, as required by Caltrans, for all federally funded projects.

COMMITTEE ACTION:

The Land Use & Public Works Committee was bypassed as this item is routine in nature.

FISCAL IMPACT:

None.

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BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA

RESOLUTION AUTHORIZING PUBLIC	)
WORKS DIRECTOR TO EXECUTE	)
RIGHT OF WAY CERTIFICATIONS FOR	)
FEDERALLY FUNDED PROJECTS WITH	)
CALTRANS	)

RESOLUTION NO. _____

WHEREAS, the County of Yuba is eligible to receive Federal-aid funding for transportation projects, administered by the California Department of Transportation (Caltrans); and

WHEREAS, Caltrans requires right of way certification to be approved for each Federal-aid project prior to encumbering construction funds; and

WHEREAS, staff is proficient with and routinely processes right of way certifications with Caltrans, and delegating approval authority to the Public Works Director is appropriate and in the best interest of project efficiency.

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NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Yuba hereby authorizes the Public Works Director to execute the right of way certification for federally funded projects.

PASSED AND ADOPTED this _____ day of _____ 2015, by the Board of Supervisors of the County of Yuba, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Chair

ATTEST: DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

_____

APPROVED AS TO FORM:
ANGIL P. MORRIS-JONES, COUNTY COUNSEL

_____

COUNTY OF YUBA
OFFICE OF EMERGENCY SERVICES

ROBERT BE
COUNTY ADMINISTRATIOR
DIRECTOR OF EMERGENCY SERVICES

SCOTT BRYAN
EMERGENCY OPERATIONS MANAGER

HOLLY POWERS
EMERGENCY OPERATIONS MANAGER

Board Memo

To: Board of Supervisors

Fr: Scott Bryan, Emergency Operations Manager
Holly Powers, Emergency Operations Planner

Re: Proclaim the existence of a local emergency in the County of Yuba

Date: January 13, 2015

Recommendation:
The Board of Supervisors adopt a resolution proclaiming the continuation of a local emergency due to the ongoing drought conditions.

Background:
On January 17, 2014 Governor Edmund G. Brown Jr. declared a Statewide Drought Emergency due to the impacts on the State of California as a result of four continuous years of drought. On February 18, 2014 the Director of Emergency Services proclaimed a local emergency due to the effects the drought has had within the County of Yuba. Your Board ratified said proclamation on February 25, 2014 and extended on December 16, 2014.

Discussion:
With an on-going water shortage affecting the County of Yuba, the final duration of the emergency has not yet been determined. The recent rainstorms are seasonally expected and are consistent with the average rainfall during this time of year. At this point, the storms have had no impact on lessening drought conditions. Therefore it is recommended that your Board extend the current proclamation of a local emergency until the end of the incident period per *(Govt. Code Section 8630 (c))*. This proclamation of emergency will be reviewed and renewed no less than once every thirty days. Per *(Govt. Code Section 8630(d)) this* proclamation of emergency shall be terminated as soon as reasonably possible.

Committee Action:
No committee action was taken due to time constraints.

Fiscal Impact:
There is an unknown impact to the general fund as of this date.

915 8TH STREET, SUITE 117
MARYSVILLE, CA 95901

StormReady County

(530) 749-7520 OFFICE
(530) 749-7524 FAX

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BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA

RESOLUTION:

THE BOARD OF SUPERVISORS	)	
ADOPT A RESOLUTION	)	
PROCLAIMING THE EXISTENCE OF	)	
AN ONGOING LOCAL DROUGHT	)	
EMERGENCY IN THE COUNTY OF	)	
YUBA.	)	**RESOLUTION NO.** _____

WHEREAS, the Yuba County Director of Emergency Services did hereby proclaim a local emergency in the County of Yuba on February 18, 2014 per Ordinance Code section 4.20; and

WHEREAS, conditions of peril to public health and safety remain in the County of Yuba due to the statewide drought; and

WHEREAS, the County of Yuba Board of Supervisors does hereby find that the aforesaid conditions of peril do warrant and necessitate a proclamation of the existence of a local emergency due to a statewide drought; and

NOW, THEREFORE, IT IS HEREBY PROCLAIMED, that a local emergency continues to exist in the County of Yuba and the Board of Supervisors Proclamations through this resolution of the continuance of a Local Emergency in the County of Yuba.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Yuba, State of California on the _____day of _____ 2015.

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Chair

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

_____

APPROVE AS TO FORM:
COUNTY COUNSEL

_____

The County of Yuba

HEALTH & HUMAN SERVICES DEPARTMENT

Jennifer Vasquez, Director
5730 Packard Ave., Suite 100, P.O. Box 2320, Marysville, California 95901
Phone: (530) 749-6311 FAX: (530) 749-6281

Michael Kinnison, M.D., Interim Health Officer
Phone: (530) 749-6366

TO: Board of Supervisors
Yuba County

FROM: Jennifer Vasquez, Director
Health & Human Services Department

Tony Roach, Program Manager
Child Welfare Services
Health & Human Services Department

DATE: January 13, 2015

SUBJECT: Requests For Authorization to Solicit Proposals for Differential Response Services

RECOMMENDATION: It is recommended that the Board of Supervisors authorize the Health and Human Services Department (HHSD) to solicit proposals for the Children's Services Differential Response (DR) Program services funded by Yuba County's Child Abuse Prevention Intervention and Treatment (CAPIT) and Community Based Child Abuse Prevention (CBCAP) Programs and the County Children's Trust Fund (CCTF).

BACKGROUND: In 2011, HHSD released a Request for Proposals (RFP) and awarded a contract for DR services. The contract will expire June 30, 2015. HHSD will be releasing another RFP for the funding cycle of July 1, 2015 –June 30, 2018. The focus of the RFP was determined through the County Self-Assessment (CSA) and the System Improvement Plan (SIP) completed by Child Welfare Services and Community Partners and approved by the Board of Supervisors this year.

DISCUSSION: On July 22, 2014, the Board of Supervisors approved the System Improvement Plan (SIP) for 2014-2019. In accordance with the SIP, HHSD has created a RFP for DR services soliciting responses from community-based organizations interested in providing the services. The Child Abuse Prevention Council will make recommendations to the BOS for awards to responsible applicants whose proposals are determined to be the most responsive to the requirements of the RFP and the SIP.

COMMITTEE: This item was not presented to the Human Services Committee because Board of Supervisors approved the SIP on July 22, 2014.

FISCAL IMPACT: The RFP provides a maximum annual award of $106,190.00 for the provision of Differential Response services. The cost is funded by state and federal dollars and there is no County Match requirement. However, applicants shall demonstrate the existence of a 10 percent cash or in-kind match, other than funding provided by this RFP.

SUTTER-YUBA MENTAL HEALTH SERVICES

1965 Live Oak Boulevard, Suite A
PO Box 1520
Yuba City, CA 95992-1520

09-15

Tony Hobson, Ph.D.
Assistant Director of Human Services
Director of Mental Health/Alcohol & Drug Program Administrator

Administration Services
(530) 822-7200
FAX (530) 822-7627

STAFF REPORT

DATE: January 13, 2015

TO: Yuba County Board of Supervisors

FROM: Tony Hobson, Ph.D., Assistant Director of Human Services for Mental Health

SUBJECT: Approval of Memorandum of Understanding regarding Medi-Cal Managed Care between Blue Cross of California Partnership Plan, Inc. and the Counties of Sutter and Yuba for Coordination of Services

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Recommendation: It is recommended the Board of Supervisors approve the Memorandum of Understanding (MOU) regarding Medi-Cal Managed Care between Blue Cross of California Partnership Plan, Inc. (ANTHEM) and the Counties of Sutter and Yuba for Coordination of Services.

Background & Discussion: Sutter-Yuba Mental Health Services (SYMHS) is the Mental Health Plan (MHP) in Sutter and Yuba Counties. The State Department of Health Care Services requires SYMHS to enter into an MOU with any Medi-Cal managed care plan providing health care services to MHP Medi-Cal beneficiaries. The purpose of the MOU is to describe the responsibilities of SYMHS through its MHP and ANTHEM in the delivery of specialty mental health services to Members served by both parties. It is the intention of SYMHS and ANTHEM to coordinate care between providers of physical care and mental health care. The program responsibilities conducted to the terms and conditions of this MOU shall be performed without the payment of any monetary consideration by ANTHEM or SYMHS.

Past Consideration of the Board: This item has not been considered by the Board previously.

Alternatives: There are no other viable alternatives.

Other Department or Agency Involvement: There are no other departments involved in this MOU.

Action Following Approval: This item was approved by the Sutter County Board of Supervisors at their December 16, 2014 meeting.

Fiscal Impact: There is no impact on the County General Fund. This item has no impact on the Mental Health or Mental Health Services Act Budgets.

Attachments or Document Enclosures:

Memorandum of Understanding regarding Medi-Cal Managed Care between Blue Cross of California Partnership Plan, Inc. and the Counties of Sutter and Yuba for Coordination of Services

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MEMORANDUM OF UNDERSTANDING
REGARDING MEDI-CAL MANAGED CARE
between
BLUE CROSS OF CALIFORNIA PARTNERSHIP PLAN, INC.
and COUNTIES OF SUTTER AND YUBA
for COORDINATION OF SERVICES

This MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into as of this 1st day of January, 2015 by and between the COUNTIES of Sutter and Yuba, Political Subdivisions of the State of California, hereinafter referred to as "COUNTIES" and BLUE CROSS OF CALIFORNIA PARTNERSHIP PLAN, INC. ("ANTHEM"), a health maintenance organization, whose address is One Wellpoint Way, Thousand Oaks, CA 91362 (Collectively the "Parties" and individually "Party") in order to implement certain provisions of Title 9 of the California Code of Regulations ("CCR").

WHEREAS COUNTIES, through Sutter-Yuba Mental Health Services, is a Mental Health Plan hereinafter referred to as "MHP", as defined in Title 9 CCR, section 1810.226 and is required by the State Department of Health Care Services ("DHCS") to enter into an MOU with any Medi-Cal managed care plan providing health care services to MHP Medi-Cal beneficiaries in accordance with Title 9 CCR; and

WHEREAS, this MOU cannot conflict with MHP's obligations in the State/County MHP Contract, CCR Title 9, and the State Plan for the Rehabilitation option and Targeted Case Management and the MHP's responsibilities as a federal managed care Prepaid Inpatient Health Plan (PIHP) under the 1025 (b) waiver; and

WHEREAS, all references in this MOU to "Members" are limited to individuals assigned to or enrolled in ANTHEM's health plan; and

WHEREAS the purpose of this MOU is to describe the responsibilities of COUNTIES through its MHP and ANTHEM in the delivery of specialty mental health services to Members served by both parties. It is the intention of COUNTIES and ANTHEM to coordinate care between providers of physical care and mental health care as set forth in Attachment 1, "Matrix of Parties' Responsibilities".

NOW, THEREFORE, in consideration of their mutual covenants and conditions, the parties hereto agree as follows:

1. TERM

This MOU shall become effective the 1st day of January, 2015 and shall remain in effect until January 1 2017.

2. TERMINATION

A. Non-Allocation of Funds – The terms of this MOU, and the services to be provided by the respective plan, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, this MOU shall be considered terminated as of the date funding is unavailable.

B. Without Cause – Under circumstances other than those set forth above, this MOU may be terminated by ANTHEM or COUNTIES or the Director of COUNTY's MHP, or designee, upon the giving of sixty (60) days advance written notice of an intention to terminate.

3. COMPENSATION

The program responsibilities conducted pursuant to the terms and conditions of this MOU shall be performed without the payment of any monetary consideration by ANTHEM or COUNTIES, one to the other.

4. INDEPENDENT CONTRACTOR

In performance of the work, duties and obligations assumed by ANTHEM under this MOU, it is mutually understood and agreed that ANTHEM, including any and all of ANTHEM's officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of the COUNTIES. Furthermore, COUNTIES shall have no right to control or supervise or direct the manner or method by which ANTHEM shall perform its work and function. However, COUNTIES shall retain the right to administer this MOU so as to verify that ANTHEM is performing its obligations in accordance with the terms and conditions thereof. ANTHEM and COUNTIES shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters which are directly the subject of this MOU.

Because of its status as an independent contractor, ANTHEM shall have absolutely no right to employment rights and benefits available to COUNTIES employees. ANTHEM shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, ANTHEM shall be solely responsible and save COUNTIES harmless from all matters relating to payment of ANTHEM's employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this MOU, ANTHEM may be providing services to others unrelated to the COUNTIES or to this MOU.

5. HOLD-HARMLESS

Each of the parties hereto shall be solely liable for negligent or wrongful acts or omissions of its officers, agents and employees occurring in the performance of this MOU, and if either party becomes liable for damages caused by its officers, agents or employees, it shall pay such damages without contribution by the other party. Each party hereto agrees to indemnify, defend (if requested by the other party) and save harmless the other party, its officers, agents and employees from any and all costs and expenses, including attorney fees and court costs, claims, losses, damages and liabilities proximately caused by the party, including its officers, agents and employees, solely negligent or wrongful acts or omissions. In addition, either party agrees to indemnify the other party for Federal, State and/or local audit exceptions resulting from noncompliance herein on the part of the other party.

6. DISCLOSURE OF SELF-DEALING TRANSACTIONS

Members of ANTHEM Board of Directors shall disclose any self-dealing transactions that they are a party to while ANTHEM is providing goods or performing services under this MOU. A self-dealing transaction shall mean a transaction to which ANTHEM is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transactions to which they are a party.

7. CONFIDENTIALITY

All responsibilities performed by the Parties under this MOU shall be in strict conformance with all applicable Federal, State and/or local laws and regulations relating to confidentiality.

8. NON-DISCRIMINATION

During the performance of this MOU, ANTHEM shall not unlawfully discriminate against any employee or applicant for employment, or recipient of services, because of race, religion, color, national origin, ancestry, physical disability, medical condition, sexual orientation, marital status, age, or gender, pursuant to all applicable State and Federal statutes and regulations.

9. AUDITS AND INSPECTIONS

Each Party shall, at any time upon reasonable notice during business hours, and as often as may be deemed reasonably necessary, make available for examination by the other Party, State, local, or federal authorities all of its records and data with respect to the matters covered by this MOU as may be required under State or federal law or regulation or a Party's contract with a State agency.

10. NOTICES

The persons having authority to give and receive notices under this MOU and their addresses include the following:

ANTHEM	COUNTY
Blue Cross of California Partnership Plan, Inc.	COUNTY OF SUTTER
One Wellpoint Way	1130 Civic Center Blvd.
Thousand Oaks, CA 91362	Yuba City, CA 95993
	COUNTY OF YUBA
	915 8th Street, Suite 109
	Marysville, CA 95901

or to such other address as such Party may designate in writing.

Any and all notices between COUNTIES and ANTHEM provided for or permitted under this MOU or by law, shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to such party.

11. GOVERNING LAW

The parties agree that for the purposes of venue, performance under this MOU is to be in Sutter County, or Yuba County, California.

The rights and obligations of the parties and all interpretation and performance of this MOU shall be governed in all respects by the provisions of California Department of Health Care Services' (DHCS) official policy letters and the laws and regulations of the State of California.

12. ENTIRE AGREEMENT

This MOU including all Exhibits and Attachments set forth below constitutes the entire agreement between ANTHEM and COUNTIES with respect to the subject matter hereof and supersedes all previous agreement negotiations, proposals, commitments, writings, advertisements, publications and understandings of any nature whatsoever unless expressly included in this MOU.

*****

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth beneath their respective signatures.

Blue Cross of California Partnership Plan, Inc.

Signature:

Print Name:

Title:

Date:

County of Sutter

Signature:

Print Name: Ron Sullenger

Title: Chairman

Date: 12/14/14

County of Yuba

Signature:

Print Name: John Nicoletti

Title: Chairman

Date:

To be completed by Blue Cross of California Partnership Plan, Inc. only:
Effective Date of Agreement:

APPROVED AS TO FORM
ANGIL P. MORRIS-JONES
COUNTY COUNSEL
BY:

Approved
Counsel
California
By

Included in Agreement	Attachment/Exhibit
X	**Attachment – Matrix of Parties' Responsibilities**
X	- Exhibit 1 Included ICD Diagnoses
X	- Exhibit 2 Medical Necessity Criteria for Specialty Mental Health
X	**Attachment B - All Plan Letter 13-021** " Medi-Cal Managed Care Plan Responsibilities for Outpatient Mental Health Services "

MEMORANDUM OF UNDERSTANDING
MATRIX OF PARTIES' RESPONSIBILITIES

CATEGORY	MENTAL HEALTH PLAN ("MHP")	BLUE CROSS OF CALIFORNIA Partnership Plan, Inc. ("ANTHEM")
A. Referrals & Access	1. In the case of a psychiatric emergency, when an individual is a danger to self or others or gravely disabled, the Managed Care Plan (MCP) or its providers may refer their patient to Psychiatric Emergency Services (PES). If the patient is physically compromised or unstable, the patient should first be referred to Hospital Emergency. PES is in operation 24 hours a day, 7 days a week. 2. In the case of non-emergency psychiatric services, the MCP or their providers may refer their patients to SYMHS open access clinics which are scheduled as follows: • Adult Open Access Clinic – Tuesdays or Wednesdays 9:00 AM to 3:00 PM and for Spanish speaking individuals Thursdays 9:00 AM to 11:00 AM. • Children or Youth Services – Monday, Thursday and Fridays 8:00 AM to 10:30 AM. 3. The screening tool for Adults will be the Level of Care Utilization System (LOCUS) and for Youth will be the Child and Adolescent Level of Care Utilization System (CALOCUS). Individuals scoring 1 or 2 on the scale will be treated by primary care. Individuals scoring 3 or above will by referred to the MHP.	1. ANTHEM has a liaison that coordinates activities with the MHP and MHP Liaison. 2. The Liaison will notify ANTHEM staff and ANTHEM providers of their responsibilities to coordinate services with the MHP. 3. The ANTHEM Provider Directory is available on line and updated at a minimum on a quarterly basis. 4. The ANTHEM Provider Operations Manual is available on line. 5. ANTHEM Primary Care Providers (PCPs) will be responsible for providing 24 hours a day, seven days a week, access to health care services for Members as specified in the ANTHEM contract with Department of Health Care Services. 6. PCPs will utilize the Mental Health Severity Screening tool to assist in the determination of appropriate level of care. Members who have indicators of ***serious impairment/disturbance*** in mood, behavior, and/or psychosocial functioning the member may be referred for Specialty Mental Health Services through the County services. PCPs will refer Members for: a. An assessment to confirm or arrive at a diagnosis.

		b. Mental health services other than medication management needed for a Member with a diagnosis included in the responsibilities of the MHP. c. For identification of conditions not responsive to physical health-based treatment. 7. PCPs will provide primary care mental health treatment that includes: a. Basic education, assessment, counseling and referral and linkage to other services for all Members. b. Medication and treatment for: i. Mental health conditions that would be responsive to physical healthcare-based treatment. ii. Mental health disorders due to a general medical condition. c. Medication-induced reactions from medications prescribed by physical health care providers. 8. PCPs will provide or arrange for: a. Covered medical services. b. Primary mental health intervention for Member with "Excluded Diagnosis" as identified in Specialty Mental Health Services identified in Exhibit 2. c. Outpatient mental health services within the PCP's scope of practice. 9. ANTHEM and MHP recognize that the PCP's ability to treat mental disorders will be limited to each provider's training and scope of practice. 10. When the Member does not meet mental health medical necessity, ANTHEM and PCP will be responsible for coordinating a referral to an ANTHEM contracted provider.

B. Medical Records Exchange Of Information	1. MHP will follow all applicable laws pertaining to the use and disclosure of protected health information including but not limited to: • HIPAA / 45 C.F.R. Parts 160 and 164 • W & I Code Sections 5328-5328.15 • 45 C.F.R. Part 2 HITECH Act (42. U.S.C. Section 17921 et. seq)	1. ANTHEM will follow all applicable laws pertaining to the use and disclosure of protected health information including but not limited to: • HIPAA / 45 C.F.R. Parts 160 and 164 • 45 C.F.R. Part 2 • HITECH Act (42. U.S.C. Section 17921 et. seq) CMIA (Ca Civil Code 56 through 56.37)
C. Covered Services and Populations	1. MHP will provide services as provided for in DHCS's Coverage and Population Matrix. This matrix is Attachment 1 to DHCS all Plan Letter 13-021, Medi-Cal Managed Care Plan Responsibilities for Outpatient Mental Health Services. (Attachment B)	2. ANTHEM will provide services as provided for in DHCS's Coverage and Population Matrix. This matrix is Attachment 1 to DHCS all Plan Letter 13-021, Medi-Cal Managed Care Plan Responsibilities for Outpatient Mental Health Services. (Attachment B)
D. Ancillary Mental Health Services	1. When medical necessity criteria are met and services are approved by the MHP, the MHP and its contracted providers will provide hospital-based specialty mental health services. 2. The MHP will provide the names of the MHP's prescribing physicians.	1. ANTHEM must cover and pay for medically necessary prescription drug, laboratory, radiological, and radioisotope services described in Title 22, CCR, Section 51311. ANTHEM will cover and pay for related services for Electroconvulsive Therapy (ECT), anesthesiologist services provided on an outpatient basis, per Attachment B, attached hereto. 2. ANTHEM will cover and pay for all medically necessary professional services to meet the physical health care needs of the Members who are admitted to the psychiatric ward of a general acute care hospital or to a freestanding licensed psychiatric inpatient hospital or Psychiatric Health Facility (PHF). These services include the initial health history and physical assessment required within 24 hours of admission and any medically necessary physical medicine consultation, per Attachment B, attached hereto.
E. Emergency Department Services	1. After the physical health care needs of the Member are resolved by the Emergency Department and the	1. ANTHEM shall cover and pay for all professional services, except the professional services

	member is referred to the MHP for psychiatric evaluation the MHP shall assess and evaluate if the Member meets MHP medical necessity criteria and the services that are required. 2. The MHP is responsible for the facility charges resulting from the care of a Member whose condition meets MHP medical necessity criteria when such services and care do result in the admission of the Member for psychiatric inpatient hospital services.	of a mental health specialist when required for the emergency services and care of a member whose condition meets MHP medical necessity criteria. 2. ANTHEM shall cover and pay for the facility charges resulting from the emergency services and care of a Member whose condition meets MHP medical necessity criteria when such services and care do not result in the admission of the member for psychiatric inpatient hospital services or when such services result in an admission of the member for psychiatric inpatient hospital services at a different facility. 3. ANTHEM shall cover and pay for the facility charges and the medical professional services required for the emergency services and care of a Member with an excluded diagnosis or a Member whose condition does not meet MHP medical necessity criteria and such services and care do not result in the admission of the Member for psychiatric inpatient hospital services. 4. Payment for the professional services of a mental health specialist required for the emergency services and care of a Member with an excluded diagnosis is the responsibility of ANTHEM. 5. ANTHEM will maintain a toll-free member service line during working hours as well as their 24/7 Nurse Line. 6. ANTHEM is not required to cover room and board charges or mental health services associated with a Member's admission to a hospital or inpatient psychiatric facility for psychiatric inpatient services, per Attachment B, attached hereto.

F. Home Health Agency Services	1. MHP shall cover and pay for case management, crisis intervention services, or any other specialty mental health services as provided under Section 1810.247, which are prescribed by the MHP's psychiatrist and are provided to a Member who is homebound. MHP will collaborate with ANTHEM on any specialty mental health services being provided to a Member.	1. ANTHEM will cover and pay for prior authorized home health agency services as described in Title 22, CCR, Section 51337 prescribed by an ANTHEM provider when medically necessary to meet the needs of homebound Members. 2. ANTHEM is not obligated to provide home health agency services that would not otherwise be authorized by the Medi-Cal program. 3. ANTHEM will refer Members who may be at risk of institutional placement to the Home and Community Based services (HCBS) Waiver Program if appropriate.
G. Nursing And Residential Facility Services	1. MHP will arrange and coordinate payment for nursing facility services, i.e., Augmented Board and Care (ABC), Skilled Nursing Facility (SNF), Institution for Mental Disease (IMD), etc., for Members who meet medical necessity criteria and who require a special treatment program [Title 22, California Code of Regulations (CCR), Section 51335(k)]. 2. MHP will provide medically necessary specialty mental health services, typically visits by psychiatrists and Mental Health staff.	1. ANTHEM will arrange and pay for nursing facility services for Members who meet the medical necessity criteria for the month of admission plus one month, per Title 22, CCR, Section 51335. 2. ANTHEM will arrange for disenrollment from managed care if Member needs nursing services for a longer period of time. 3. ANTHEM will pay for all medically necessary DHCS contractually required Medi-Cal covered services until the disenrollment is effective.
H. Emergency and Non-Emergency Transportation	1. Medical transportation services as described in Title 22, Section 51323 are not the responsibility of the MHP except when the purpose of the medical transportation service is to transport a Medi-Cal beneficiary from a psychiatric inpatient hospital to another psychiatric inpatient hospital.	1. ANTHEM will arrange and pay for transportation of Members needing medical transportation from: a. The emergency room for medical evaluation to the designated mental health facility.

		b. A psychiatric inpatient hospital to a medical inpatient hospital required to address the member's change in medical condition. c. A medical inpatient hospital to a psychiatric inpatient hospital required to address the Member's change in psychiatric condition. 2. ANTHEM will cover and pay for all medically necessary emergency transportation. Ambulance services are covered when the Member's medical condition contraindicates the use of other forms of medical transportation. 3. Emergency medical transportation is covered, without prior authorization, to the nearest facility capable of meeting the medical needs of the Member as per 22 CCR 51323. 4. Ambulance, litter van, and wheelchair van medical transportation services are covered when the Member's medical and physical condition is such that transport by ordinary means of public or private conveyance is medically contraindicated, and transportation is required for the purpose of obtaining needed medical care. Ambulance services are covered when the member's medical condition contraindicates the use of other forms of medical transportation. 5. ANTHEM will cover all nonemergency medical transportation necessary to obtain program covered services: a. When the service needed is of such an urgent nature that written authorization could not have been reasonably submitted beforehand, the

		medical transportation provider may request prior authorization by telephone. Such telephone authorization shall be valid only if confirmed by a written request for authorization. b. Transportation shall be authorized only to the nearest facility capable of meeting the Member's medical needs. 6. ANTHEM will cover and pay for necessary non-emergency medical transportation services when prescribed for a Member by a Medi-Cal mental health provider. 7. ANTHEM will maintain a policy of non-discrimination regarding Members with mental disorders who require access to any other transportation services provided by ANTHEM.
I. Developmentally Disabled Services	1. MHP will refer Members with developmental disabilities to the Alta California Regional Center for non-medical services such as respite, out-of-home placement, supportive living, etc., if such services are needed. 2. MHP has a current list of names, addresses and telephone numbers of local providers, provider organizations, and agencies that are available to a Member when that Member has been determined to be ineligible for MHP covered services because the Member's diagnosis is not included in Attachment B.	1. ANTHEM PCPs will refer Members with developmental disabilities to the Alta California Regional Center for non-medical services such as respite, out-of-home placement supportive living, etc., if such services are needed. 2. ANTHEM will make good faith efforts to execute an MOU with Alta California Regional Center
J. Psychiatric Hospital Admission	1. MHP will utilize ANTHEM network providers to perform medical histories and physical examinations required for mental health examinations required for mental health and psychiatric hospital admissions for ANTHEM members unless a provider is not available. 2. When medical necessity criteria are met and services are approved by the MHP, the MHP and	1. ANTHEM will cover and pay for all medically necessary professional services to meet the physical health care needs of Members who are admitted to the psychiatric ward of a general acute care hospital or freestanding licensed psychiatric inpatient facility. These services include the initial health history and physical assessment required within 24 hours of admission

	contracted providers will provide hospital based specialty mental health ancillary services. Per Title 9, CCR, Article 3, Section 1810.350*.	and any necessary physical medicine consultations, per Attachment B attached hereto.
K. Diagnostic Assessment And Triage	1. MHP will arrange and pay for specialty MHP provider services for Members who qualify for specialty mental health services. 2. Crisis/emergency triage via MHP providers is available 24 hours a day. 3. MHP provider will assess and diagnose Member's symptoms and level of impairment utilizing the LOCUS and CALOCUS evaluation tools.	1. ANTHEM will arrange and pay for assessments of ANTHEM members by PCPs to: a. Rule out general medical conditions causing psychiatric symptoms. b. Rule out mental disorders caused by a general medical condition. 2. The PCP will identify those general medical conditions that are causing or exacerbating psychiatric symptoms. 3. The PCP will be advised to identify and treat non-disabling psychiatric conditions which may be responsive to primary care, utilizing the Mental Health Severity Screening tool. When medically necessary, ANTHEM will cover and pay for physician services provided by specialists such as neurologists, per Attachment B, attached hereto.
L. Referrals	1. MHP will accept referrals from ANTHEM staff When Member is appropriately treated and/or stabilized, Member may be referred back, if appropriate, to PCP for maintenance care. The MHP and ANTHEM will coordinate services in such cases. 2. The MHP will refer the Member to a source of treatment or a source of referral for treatment outside the MHP when the MHP determines that the Member's diagnosis is not served by specialty mental health.	1. Following the PCP assessment, ANTHEM staff and/or PCP will refer those Members whose psychiatric condition would exceed mild to moderate as determined by the Mental Health Severity Screening tool to the MHP to determine if specialty mental health services are appropriate and meet medical necessity criteria. 2. ANTHEM and PCP will coordinate and assist the MHP and Member to keep their appointments and referrals back to their PCP as appropriate for all other services not covered by the MHP.

		3. Members not meeting MHP medical necessity guidelines will be referred by ANTHEM to appropriate community resources for assistance in identifying programs available for low income Medi-Cal beneficiaries.
M. Notice of Action (NOA)	1. Per Welfare & Institution Code, Section 5777.5(b) (2) the MHP will respond by the close of business day following the day the deferral notice is received.	
N. Service Authorizations	1. MHP will authorize assessment and/or treatment services by MHP providers who are credentialed and contracted with MHP for services that meet specialty mental health services medical necessity criteria.	1. ANTHEM will authorize medical assessment and/or treatment services by ANTHEM network providers who are credentialed and contracted with ANTHEM for covered services. 2. ANTHEM will inform PCPs that they may refer Members to the MHP for initial diagnosis and assessment of the Member.
O. Consultation	1. MHP will provide consultations to ANTHEM PCP providers as it relates to specialty mental health issues including but not limited to medication issues, linkage with community resources, etc., in accordance with HIPAA federal and state regulations regarding confidentiality per HIPPA Privacy Rule 45 C.F.R. Part 164	1. PCP providers will be available to consult with MHP and MHP providers regarding Members who are treated by both, in accordance with HIPAA federal and state regulations regarding confidentiality, per HIPPA Privacy Rule 45 C.F.R. Part 164. 2. For those Members who meet MHP medical necessity criteria and whose psychiatric symptoms will be treated by the MHP provider, ANTHEM and/or PCP will provide consultation to MHP providers and/or MHP staff on the following topics: a. Acquiring access to covered ANTHEM medical services. b. Treatment of physical symptoms precipitated by medications used to treat mental disorders. c. Treatment of complicated sub-syndrome medical symptoms.

		d. Complex medication interactions with medications prescribed by PCP not commonly used in psychiatric specialty practice.
P. Early Periodic Screening, Diagnosis And Treatment (EPSDT), Supplemental Services	1. MHP will utilize Medi-Cal medical necessity criteria established for EPSDT supplemental services to determine if a child, 21 years of age and under, meets those criteria. 2. When EPSDT criteria are met, MHP is responsible for arranging and paying for EPSDT supplemental services provided by MHP specialty mental health providers. 3. When EPSDT supplemental criteria are not met, MHP will refer Member children as follows: a. Referral to ANTHEM or an ANTHEM provider. b. Referral to California Children's Services (CCS)–for those children who have a CCS medically eligible condition and require mental health provider services related to the eligible condition. c. When a referral is made, the MHP will notify ANTHEM of the referral.	1. When ANTHEM determines that EPSDT supplemental services criteria are not met and the Member child's condition is not CCS eligible, ANTHEM will refer the Member child to the PCP for treatment of conditions within the PCP's scope of practice. 2. Referrals to an appropriate linked program will be made for treatment of conditions outside the PCP's scope of practice. ANTHEM will assist the members by providing links to known community providers of supplemental services. 3. ANTHEM will cover all, medically necessary professional services to meet the physical health care needs of Members admitted to a general acute care hospital ward or to a freestanding licensed psychiatric inpatient hospital or to a Psychiatric Health Facility (PHF).
Q. Pharmaceutical Services And Prescribed Drugs	1. MHP providers will prescribe and monitor the effects and side effects of psychotropic medications for Members under their treatment. 2. MHP will coordinate with ANTHEM representatives to ensure that psychotropic drugs prescribed by MHP providers are included in the ANTHEM formulary and/or available for dispensing by ANTHEM network pharmacies unless otherwise stipulated by state regulation.	1. ANTHEM will: a. Allow MHP credentialed providers access to pharmacy and laboratory services as specialty providers. b. Will make available a list of participating pharmacies and laboratories on the internet. c. Will make available the formulary and information regarding drug formulary procedures on the internet.

	3. MHP providers will utilize ANTHEM contracted laboratories for laboratory tests required for medication administration and management of psychotropic medications. 4. MHP will provide ANTHEM with the names and qualifications of the MHP's prescribing physicians, if requested by ANTHEM.	a. Consider recommendations from MHP for utilization management standards for mental health pharmacy and laboratory services. b. Provide the process for obtaining timely authorization and delivery of prescribed drugs and laboratory services to the MHP. 2. ANTHEM will coordinate with MHP to ensure that covered psychotropic drugs prescribed by MHP providers are available through the authorization process or formulary for dispensing by ANTHEM network pharmacies unless otherwise stipulated by state regulation. (See Attachment B). 3 ANTHEM will apply utilization review procedures when prescriptions are written by out-of-network psychiatrists for the treatment of psychiatric conditions. a. Covered psychotropic drugs written by out-of-network psychiatrists will be filled by ANTHEM network pharmacies. b. ANTHEM will provide Members with the same drug accessibility written by out-of-network psychiatrists as in-network providers. c. ANTHEM will not cover and pay for mental health drugs written by out-of-network physicians who are not psychiatrists unless these prescriptions are written by non-psychiatrists contracted by the MHP to provide mental health services in areas where access to psychiatrists is limited.

		4. ANTHEM PCPs will monitor the effects and side effects of psychotropic medications prescribed for those members whose psychiatric conditions are under their treatment. 5. Reimbursement to pharmacies for new psychotropic drugs classified as antipsychotics and approved by the FDA will be made through the Medi-Cal Fee for Service (FFS) system whether these drugs are provided by a pharmacy contracting with ANTHEM or by a FFS pharmacy.
R. Laboratory, Radiological And Radioisotope Services	1. MHP or a Medi-Cal FFS mental health services provider needing laboratory, radiological, or radioisotope services for a Member when necessary for the diagnosis, treatment or monitoring of a mental health condition will utilize the list of ANTHEM contract providers.	1. ANTHEM will cover and pay for medically necessary laboratory, radiological and radioisotope services when ordered by a MHP or a Medi-Cal FFS mental health services provider for the diagnosis, treatment or monitoring of a mental health condition (and side effects resulting from medications prescribed to treat the mental health diagnosis). 2. ANTHEM will coordinate and assist MHP or Medi-Cal FFS mental health provider in the delivery of laboratory radiological or radioisotope services. 3. A list of ANTHEM contracted providers is available online. 4. ANTHEM will provide the process for obtaining timely authorization and delivery of prescribed drugs and laboratory services.
S. Care Coordination	1. MHP will utilize its Quality Assurance Officer as its lead for ongoing care coordination with the ANTHEM. Regular meetings will be held in conjunction with the ANTHEM Oversight Team on at least a quarterly basis.	1. ANTHEM will utilize their liaison as its lead for ongoing care coordination with the MHP. Regular meetings will be held on at least a quarterly basis.

T. Oversight Team	1. MHP will utilize its Quality Assurance Officer as its lead for the joint Oversight Team. The Oversight Team will be responsible for program oversight, quality improvement, problem and dispute resolution, and ongoing management of the MOU. The Oversight Team will also have oversight of the clinical process including screening, assessment, referrals, care management, care coordination, and exchange of medical information. 2. The Oversight Team will also be responsible for quality improvement requirements. 3. The Oversight Team will meet at least on a quarterly basis.	1. ANTHEM will utilize their liaison as its lead for the joint Oversight Team. The Oversight Team will be responsible for program oversight, quality improvement, problem and dispute resolution, and ongoing management of the MOU. The Oversight Team will also have oversight of the clinical process including screening, assessment, referrals, care management, care coordination, and exchange of medical information. 2. The Oversight Team will also be responsible for quality improvement requirements. 3. The Oversight Team will meet at least on a quarterly basis.
U. Grievances and Complaints	1. MHP will share with ANTHEM the established process for members and providers to register grievances/complaints regarding any aspect of the mental health care services. 2. MHP and ANTHEM will work collaboratively to resolve any formal grievance or complaint brought to the attention of either plan through the Oversight Team.	1. ANTHEM has in place a written process for the submittal, processing and resolution of all member and provider grievances and complaints which is inclusive of any aspect of the health care services or provision of services. 2. ANTHEM liaison will coordinate and share the established complaint and grievance process for its Members with the MHP. 3. MHP and ANTHEM will work collaboratively to resolve any formal grievance or complaint brought to the attention of either plan through the Oversight Team.
V. Appeal Resolution Process	1. MHP will ensure that the Members are given information on the MHP's appeal process. MHP's appeals process will be shared with ANTHEM.	1. ANTHEM will ensure that medically necessary services continue to be provided to Members while the dispute is being resolved. ANTHEM's appeal process will be shared with the MHP.

	2. MHP will ensure that the Members receive specialty mental health services while the dispute is being resolved.	2. ANTHEM will ensure that Members and providers are given an opportunity for reconsideration and an appeal for denied, modified or delayed services.
W. MOU Monitoring	1. MHP and ANTHEM will monitor this MOU at least on a semi- annual basis or upon request. a. Within two weeks of a formal request, MHP lead for the joint Oversight Team will meet with ANTHEM Liaison when MHP or ANTHEM management identifies problems requiring resolution through the Oversight Team. b. MHP lead for the joint oversight team will be responsible for coordinating, assisting and communicating suggestions for problem resolution to the MHP leadership. c. MHP lead for the joint oversight team will communicate and coordinate MOU changes to the California Department of Health Services (DHCS), MHP service providers and to ANTHEM and its providers. 2. MHP lead for the joint Oversight Team will participate in an annual review, update and/or renegotiations with ANTHEM, as mutually agreed. 3. MHP management will provide 60 days advance written notice to ANTHEM should the MHP decide to modify this MOU. Unless mandated by DHCS directives, state mandated requirements and/or Federal guidelines.	1. Local ANTHEM liaison will meet with the MHP liaison to monitor this MOU quarterly and/or upon request. a. Within two weeks of a formal request, ANTHEM liaison will meet with the MHP liaison when the MHP or ANTHEM management identifies problems requiring resolution through the MOU. b. ANTHEM liaison will be responsible for coordinating, assisting and communicating suggestions for problem resolution to ANTHEM leadership. c. ANTHEM will coordinate and communicate MOU changes to the California Department of Health Care Services, MHP providers and ANTHEM network services providers. d. ANTHEM liaison will make a good faith effort to agree to resolutions that are in the best interest of Members and are agreeable to all parties involved. 2. ANTHEM will conduct an annual review, update and/or renegotiation of this MOU as mutually agreed. 3. ANTHEM management will provide 60 days advance written notice to MHP should ANTHEM decide to modify this MOU.

X. Dispute Resolution Process	1. When the MHP has a dispute with ANTHEM that cannot be resolved through the process set forth in "Section W. MOU Monitoring" to the satisfaction of the MHP concerning the obligations of the MHP or ANTHEM under this MOU, the MHP may submit a request for resolution to DHCS consistent with the provisions of 9 CCR 1850.505. 2. The MHP shall give ANTHEM five (5) business days' notice of intent to submit a request for resolution to DHCS. 3. The MHP shall, concurrent with submitting its request for resolution to DHCS, provide ANTHEM with a copy of the information being provided DHCS pursuant to 9 CCR 1850.505. 4. Members shall continue to receive medically necessary services, including specialty mental health services and prescription drugs, while any dispute between MHP and ANTHEM is being resolved. 5. When the dispute involves ANTHEM continuing to provide services to a Member who ANTHEM believes requires specialty mental health services from the MHP, the MHP shall identify and provide ANTHEM with the name and telephone number of a psychiatrist or other qualified licensed mental health professional available to provide clinical consultation, including consultation on medications to ANTHEM provider responsible for the Member's care.	1. If ANTHEM has a dispute with the MHP that cannot be resolved through the process set forth in "Section W. MOU Monitoring" to the satisfaction of the ANTHEM concerning the obligations of the ANTHEM or the MHP under their respective contracts under this MOU, ANTHEM may submit a request for resolution to DHCS consistent with the provisions of 9 CCR 1850.505. 2. ANTHEM shall give the MHP five (5) business days' notice of intent to submit a request for resolution to DHCS. 3. ANTHEM shall, concurrent with submitting its request for resolution to DHCS, provide the MHP with a copy of the information being provided DHCS pursuant to 9 CCR 1850.505. 4. Members shall continue to receive medically necessary services, including specialty mental health services and prescription drugs, while any dispute between MHP and ANTHEM is being resolved.

Y. Protected Health Information	1. MHP will comply with all applicable laws pertaining to use and disclosure of PHI including but not limited to: • HIPAA / 45 C.F.R. Parts 160 and 164 • LPS / W & I Code Sections 5328-5328.15 • 45 C.F.R. Part 2 • HITECH Act (42. U.S.C. Section 17921 et Seq.) 2. MHP will train its workforce in policies and procedures regarding Protected Health Information (PHI) as necessary and appropriate to perform processes and functions within the scope of duties under this MOU. 3. Only encrypted PHI as specified in the HIPAA Security Rule will be transmitted via email. Unsecured PHI will not be transmitted via email. 4. MHP will notify ANTHEM within 24 hours during a work week of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use of disclosure of data in violation of any applicable Federal and State laws and regulations involving ANTHEM Members.	1. ANTHEM will comply with all applicable laws pertaining to use and disclosure of PHI including but not limited to: • Confidentiality of Medical Information Act [California Civil Code 56 through 56.37] • Patient Access to Health Records Act (California Health and Safety Code 123100, et seq.) • HIPPA (45 CFR Parts 160 and 164). 2. ANTHEM will train its workforce in policies and procedures regarding Protected Health Information (PHI) as necessary and appropriate to perform processes and functions within the scope of duties under this MOU. 3. ANTHEM will encrypt any data transmitted via Electronic Mail (Email) containing confidential data of Members such as PHI and Personal Confidential Information (PCI) or other confidential data to ANTHEM or anyone else including state agencies. 4. ANTHEM will notify MHP within 24 hours during a work week of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable Federal and State laws or regulations involving MHP Members.

Included ICD Diagnoses – All Places of Services Except Hospital Inpatient

295.00 – 298.9	302.8 – 302.9	311 – 313.82
299.1 – 300.89	307.1	313.89 – 314.9
301.0 – 301.6	307.3	332.1 – 333.99
301.8 – 301.9	307.5 – 307.89	787.6
302.1 – 302.6	308.0 – 309.9	

*Note: Treatment of diagnoses 332.1 – 333.99, Medication Induced Movement Disorders, is a covered service only when the Medication Induced Movement Disorder is related to one or more included diagnoses.

Medical Necessity for Specialty Mental Health Services that are the Responsibility of the County Mental Health Plan

Must have *all*, A, B *and* C:

A. Diagnoses
Must have one of the following DSM IV diagnoses, which will be The focus of the intervention being provided:

Included Diagnoses:
- Pervasive Development Disorders, except Autistic Disorder which is excluded.
- Attention Deficit and Disruptive Behavior Disorders
- Feeding & Eating Disorders of Infancy or Early Childhood
- Other Disorders of Infancy, Childhood or Adolescence
- Schizophrenia & Other Psychotic Disorder
- Mood Disorders
- Anxiety Disorders
- Somatoform Disorders
- Factitious Disorders
- Dissociative Disorders
- Paraphilias
- Gender Identify Disorders
- Eating Disorders
- Impulse-Control Disorders Not Elsewhere Classified
- Adjustment Disorders
- Personality Disorders, excluding Antisocial Personality Disorder
- Medication-Induced Movement Disorders (related to other included diagnoses).

Excluded Diagnoses:
- Mental Retardation
- Learning Disorder
- Motor Skills Disorder
- Communications Disorder
- Autistic Disorder, Other Pervasive Developmental Disorders are included.
- Tic Disorders
- Elimination Disorders
- Delirium, Dementia, and Amnestic and Other Cognitive Disorders
- Mental Disorders Due to a General Medical Condition
- Substance-Related Disorders
- Sexual Dysfunction
- Sleep Disorders
- Antisocial Personality Disorder
- Other Conditions that may be a focus of clinical attention, except Medication induced Movement Disorders which are included.

A beneficiary may receive services for an included diagnosis when an excluded diagnosis is also present.

B. Impairment Criteria
Must have one of the following as a result of the mental disorder(s) identified in the diagnostic ("A") criteria; must have *one* 1, 2 or 3:

1. A significant impairment in an important area of life functioning, or
2. A probability of significant deterioration in an important area of life functioning, or
3. Children also qualify if there is a probability the child will not progress developmentally as individually appropriate.
   Children covered under EPSDT qualify if they have a mental disorder which can be corrected or ameliorated (current DHS EPSDT regulations also apply).

C. Intervention Related Criteria
Must have *all* - 1, 2 and 3 below:

1. The focus of proposed intervention is to address the condition identified in impairment criteria "B" above,
   and
2. It is expected the beneficiary will benefit from the proposed intervention by significantly diminishing the impairment, or preventing significant deterioration in an important area of life functioning, and/or for children it is probable the child will progress developmentally as individually appropriate (or if covered by EPSDT can be corrected or ameliorated), *and*
3. The condition would not be responsive to physical health care based treatment.

4. EPSDT beneficiaries with an included diagnosis and a substance related disorder may receive specialty mental health services directed at the substance use as a secondary issue affecting the included diagnosis.

The intervention must be consistent with, and necessary to the attainment of, the specialty MH treatment goal.

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY

GRAY DAVIS, Governor

DEPARTMENT OF HEALTH SERVICES
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SACRAMENTO, CA 94234-7320
(916) 654-8076

March 16, 2000 REV.

MMCD Policy Letter No. 00-01 REV.

TO:
(X) Prepaid Health Plans
(X) County Organized Health System Plans
(X) Primary Care Case Management Plans
(X) Two-Plan Model Plans
(X) Geographic Managed Care Plans

SUBJECT: MEDI-CAL MANAGED CARE PLAN RESPONSIBILITIES UNDER THE MEDI-CAL SPECIALTY MENTAL HEALTH SERVICES CONSOLIDATION PROGRAM

PURPOSE

The purpose of this letter is to explain the contractual responsibilities of Medi-Cal managed care plans (Plan) in providing medically necessary Medi-Cal covered physical health care services to Plan members who may require specialty mental health services through the Medi-Cal Specialty Mental Health Services Consolidation program described in Medi-Cal regulations.

GOALS

The goals of this letter are:

- To provide Plans with information regarding the delivery of specialty mental health services to beneficiaries, including those enrolled in a Plan, under the Medi-Cal Specialty Mental Health Services Consolidation program through local mental health plans (MHP).

- To clarify the responsibility of Plans in developing a written agreement addressing the issues of interface with the MHP, including protocols for coordinating the care of Plan members served by both parties and a mutually satisfactory process for resolving disputes, to ensure the coordination of medically necessary Medi-Cal covered physical and mental health care services.

- To clarify the responsibilities of Plans in delivering medically necessary contractually required Medi-Cal covered physical health care services to Plan members who may require specialty mental health services through the Medi-Cal Specialty Mental Health Services Consolidation program.

BACKGROUND

In Fiscal Year 1991-92, legislation was enacted that allowed the Department of Health Services (DHS), as the single state agency with the authority to administer the Medicaid program in California, to establish new managed care programs for the delivery of Medi-Cal services to beneficiaries.

Subsequent legislation required DHS, in consultation with DMH, to ensure that all systems for Medi-Cal managed care include a process for screening, referral, and coordination with medically necessary mental health services. The statute designated DMH as the state agency responsible for the development and implementation of a plan to provide local mental health managed care for Medi-Cal beneficiaries; and further required DMH to implement managed mental health care through fee-for-service (FFS) or capitated rate contracts negotiated with MHPs. A MHP could include a county, counties acting jointly, any qualified individual or organization, or a non-governmental agency contracting with DMH and sharing in the financial risk of providing mental health services; however, counties were given the right of first refusal for MHP contracts.

DMH, with input from a broad range of stakeholders, developed a plan for the provision of Medi-Cal managed mental health care at the local level that consolidated two separate systems of mental health care service delivery; the Medi-Cal FFS system, which allowed clients a free choice of providers, and the Short-Doyle/Medi-Cal system administered through the county mental health departments. By consolidating the two systems of care and their separate funding streams, it was felt that the Medi-Cal program would both improve care coordination and reduce administrative costs.

DMH implemented the first phase of managed mental health care, the consolidation of Medi-Cal inpatient mental health services at the county level, in January 1995.

Because it restricted Medi-Cal beneficiaries' choice of providers to the MHP in their county of residence and its network of contract providers, the new mental health program required a waiver from the federal Health Care Financing Administration

(HCFA) of provisions of the Social Security Act that otherwise guarantee beneficiaries a choice of providers.

In September 1997, HCFA approved California's request to expand Medi-Cal managed mental health care to include outpatient specialty mental health services and renewed the waiver for an additional two years. DMH implemented the second phase of Medi-Cal managed mental health care, the consolidation of psychiatric inpatient hospital services and outpatient specialty mental health and certain other services, in November 1997. A request to renew the waiver for an additional two years was submitted to HCFA by DMH in June 1999.

This comprehensive program of Medi-Cal funded mental health managed care services, which is administered by DMH through an interagency agreement with DHS, is now known as the Medi-Cal Specialty Mental Health Services Consolidation program.

Currently, the county mental health department is the MHP in all 58 counties of California, although a few Plans have elected to cover some, but not all Medi-Cal covered specialty mental health services. Two MHPs, Sutter-Yuba and Placer-Sierra, cover a bi-county area. The MHP selects and credentials its provider network, negotiates rates, authorizes specialty mental health services, and provides payment for services rendered by specialty mental health providers in accordance with statewide criteria.

Under the Medi-Cal Specialty Mental Health Services Consolidation program, MHPs are financed through a combination of state, federal and local funds. ~~However, only funding for specified outpatient specialty mental health services and inpatient psychiatric services is provided to MHPs.~~ MHPs receive no specific Medi-Cal funding for physical health services or any mental health services not specifically covered by the Consolidation program.

Unless otherwise excluded by contract, Plans are capitated for physical health care services, including but not limited to, those services described on pages 7 through 15 and mental health services that are within the primary care physician's scope of practice. Consistent with Plan contracts, some Plans may also receive capitation for specific mental health services such as psychologist and psychiatrist professional services, psychiatric inpatient hospital services, and long-term care services including nursing facility services for Plan members whose need for such services is based on mental illness.

As the state agency responsible for the development and implementation of local Medi-Cal managed mental health care, the California Department of Mental Health (DMH) has adopted emergency regulations entitled, "Medi-Cal Specialty Mental Health Services." These regulations are at Title 9, Division 1, Chapter 11, California Code of Regulations (CCR). Chapter 11 incorporates existing rules governing the provision of Medi-Cal inpatient psychiatric services by MHPs and adds new standards for additional services. Chapter 11 also makes specific program requirements for provision of Medi-Cal outpatient specialty mental health services by MHPs.

Field Tests

Specialty mental health services are provided to Medi-Cal beneficiaries in two counties, San Mateo and Solano, through local MHPs operated by the county mental health departments under separate field test authority from HCFA.

San Mateo County is field testing the acceptance of additional financial risk of federal reimbursement based on all-inclusive case rates for Medi-Cal inpatient hospital and outpatient services. Additionally, the MHP in San Mateo County is responsible for pharmacy and related laboratory services prescribed by psychiatrists.

Solano County is field testing various managed care concepts as a subcontractor on a capitated basis to the County Organized Health System, while also providing Short-Doyle/Medi-Cal services to beneficiaries under the regular, non-waivered Medi-Cal program.

POLICY

Consistent with contract requirements, each Plan is required to enter into a memorandum of understanding (MOU) with the MHP in each county covered by the contract. Each Plan is contractually responsible for the arrangement and payment of all medically necessary Medi-Cal covered physical health care services not otherwise excluded to Medi-Cal members who require specialty mental health services.

Memorandum of Understanding Between the Plan and the MHP

The development of a written agreement that addresses the issues of interface in the delivery of Medi-Cal covered services to beneficiaries who are served by both parties is a shared Plan/MHP responsibility. Pursuant to contract requirements regarding local MHP coordination, Plans are required execute an MOU with the local MHP in each

county covered by the contract. Title 9, CCR, Section 1810.370, requires the MHP to execute an MOU with the Plan in each county served by the MHP.

The MOU is required to specify, consistent with contract requirements, the respective responsibilities of the Plan and the MHP in delivering medically necessary Medi-Cal covered physical health care services and specialty mental health services to beneficiaries. It is essential that circumstances that present a potential for unique operational difficulties be clearly addressed as components of the MOU.

It is suggested that Plans include a matrix of Plan/MHP responsibilities similar to the sample shown on Enclosure 3.

At a minimum, the MOU must address the following:

1. Referral protocols between plans, which must include:

   - How the Plan will provide a referral to the MHP when the Plan determines specialty mental health services covered by the MHP may be required;

   - How the MHP will provide a referral to a provider or provider organization outside the MHP, including the Plan, when the MHP determines that the beneficiary's mental illness does not meet the medical necessity criteria for coverage by the MHP or would be responsive to physical health care based treatment.

   - The availability of clinical consultation between a Plan and the MHP, which must include the availability of clinical consultation on a beneficiary's physical health condition. Such consultation must also include consultation by the Plan to the MHP on medications prescribed by the Plan for a Plan member whose mental illness is being treated by the MHP; and consultation by the MHP to the Plan on psychotropic drugs prescribed by the MHP for a Plan member whose mental illness is being treated by the Plan.

2. Procedures for the delivery of contractually required Medi-Cal covered inpatient and outpatient specialty mental health services through the MHP including but not limited to:

- The responsibility of the MHP relating to the prescription by MHP providers of mental heath drugs and related laboratory services that are the contractual obligation of the Plan to cover and reimburse.
- The MHP's obligation to provide the names and qualifications of the MHP's prescribing physicians to the Plan.
- Emergency room facility and related charges.
- Medical transportation services when the purpose of such transportation is to reduce the cost of psychiatric inpatient hospital services to the MHP.
- Specialty mental health services prescribed by a psychiatrist and delivered at the home of a beneficiary.
- Direct transfers between psychiatric inpatient hospital services and inpatient hospital services to address changes in a beneficiary's medical condition.

3. Procedures for the delivery by the Plan of Medi-Cal covered physical health care services that the Plan is contractually obligated to cover and are necessary for the treatment of mental health diagnoses covered by the MHP.

   These procedures must address, but are not limited to, provision of the following:

   - Outpatient mental health services within the primary care physician's scope of practice.
   - Covered ancillary physical health services to Plan members receiving psychiatric inpatient hospital services, including the history and physical required upon admission.
   - Prescription drugs and laboratory services.
   - The Plan's obligation to provide the procedures for obtaining timely authorization and delivery of prescribed drugs and laboratory services and a list of available pharmacies and laboratories to the MHP.
   - Emergency room facility and related services.

- Emergency and non-emergency medical transportation.
- Home health agency services.
- Long-term care services (to the extent that these services are included by Plan contract).
- Direct transfers between inpatient hospital services and psychiatric inpatient hospital services to address changes in a Plan member's mental health condition.

4. The appropriate management of Plan member care, including procedures for the exchange of medical records information, which maintain confidentiality in accordance with applicable state and federal laws and regulations.

5. A mutually satisfactory process for resolving disputes between the Plan and the MHP that includes a means for Plan members to receive medically necessary physical and mental health care services, including specialty mental health services and prescription drugs, while a dispute is being resolved.

   To the extent a Plan has not executed an MOU by the date of this letter or submitted an MOU to DHS for review and approval, the Plan must immediately submit documentation substantiating its good faith efforts to enter into an MOU with the MHP or provide justification for the delay in the submission of an MOU to DHS. The Plan shall submit monthly reports to DHS documenting the Plan's continuing good faith efforts to execute an MOU with the MHP, which provides justification for the delay in meeting this requirement. At its discretion, DHS may take steps to mediate closure to an impasse in the efforts of plan parties engaged in the MOU process.

   When enrollment in a Plan in any county is 2,000 beneficiaries or less, DHS may, at the request of the Plan or the MHP, grant a waiver from these requirements, provided that both the Plan and the MHP shall provide assurance that beneficiary care will be coordinated in compliance with Title 9, CCR, Section 1810.415.

Plan Responsibility For Medi-Cal Covered Physical Health Care Services

Medi-Cal covered services are those services set forth in Title 22, CCR, Chapter 3, Article 4, beginning with Section 51301, and Title 17, CCR, Division 1, Chapter 4, Subchapter 13, beginning with Section 6840.

Physical health care and physical health care based treatment ~~as defined by Title 9, CCR, Section 1810.231.1~~ means health care provided by health professionals, including non-physician medical practitioners, whose practice is predominately general medicine, family practice, internal medicine, pediatrics, obstetrics, gynecology, or whose practice is predominately a health care specialty area other than psychiatry or psychology. Physical health care does not include a physician service as described in Title 22, Section 51305, delivered by a psychiatrist, a psychologist service as described in Title 22, Section 51309, or an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) supplemental service as described in Title 22, Section 51340 or 51340.1, delivered by a licensed clinical social worker, a marriage, family and child counselor, or a masters level registered nurse for the diagnosis and treatment of mental health conditions of children under age 21.

Each Plan is contractually obligated to cover medical care needed by Medi-Cal members for mental health conditions that are within the primary care physician's scope of practice.

Each Plan is contractually obligated to assist Plan members needing specialty mental health services whose mental health diagnoses are covered by the MHP or whose diagnoses are uncertain, by referring such members to the local MHP. If a member's mental health diagnosis is not covered by the local MHP, the Plan is required to refer the member to an appropriate Medi-Cal FFS mental health provider, if known to the Plan, or to a resource in the community that provides assistance in identifying providers willing to accept Medi-Cal beneficiaries or other appropriate local provider or provider organization.

A Plan may negotiate with the MHP to provide specialty mental health services to Plan members, or through an arrangement made with the concurrence of the local MHP, DMH, and DHS, elect to include responsibility for some specialty mental health services in its contract with DHS.

Enclosure 1, Medi-Cal Managed Care Plan Specialty Mental Health Coverage Alternatives, outlines the unique arrangements some Plans have with a MHP regarding mental health services. Currently, coverage for specialty mental health services is excluded under most Plan contracts.

Plans are required to provide medical case management and cover and pay for all medically necessary Medi-Cal covered physical health care services not otherwise excluded by contract for a Plan member receiving specialty mental health services

including, but not limited to, the services listed below, and must coordinate these services with the MHP. Protocols for the delivery of these services must be addressed as a component of the MOU consistent with contract requirements. This section shall not be construed to preclude the Plan from requiring that covered services be provided through the Plan's provider network or applying utilization controls to these services, including prior authorization, consistent with the Plan's contractual obligation to provide covered services.

Physician Services

The Plan shall cover and pay for physician services as described in Title 22, Section 51305, except the physician services of mental health specialists, even if the services are provided to treat an included mental health diagnosis. The Plan is not required to cover and pay for physician services provided by psychiatrists, psychologists, licensed clinical social workers, marriage, family, and child counselors, or other specialty mental health providers. **When medically necessary, the Plan shall cover and pay for physician services provided by specialists such as neurologists.**

The Plan shall cover and pay for physician services related to the delivery of outpatient mental health services; which are within the primary care physician's scope of practice, for both Plan members with excluded mental health diagnoses and Plan members with included mental health diagnoses whose conditions do not meet the MHP medical necessity criteria.

Emergency Services and Care

The assignment of financial responsibility to the Plan or the MHP for charges resulting from ~~emergency~~ services to determine whether a psychiatric emergency exists under the conditions provided in Title 9, CCR, Section 1820.225, ~~and the care and treatment necessary to relieve or eliminate the emergent condition~~ is generally determined by:

- The diagnosis assigned to the emergent condition;
- The type of professional performing the services; and
- Whether such services result in the admission of the Plan member for psychiatric inpatient hospital services **at the same or a different facility**.

It is suggested that the assignment of financial responsibility for emergency room facility charges and professional services be addressed as a component of the MOU.

Emergency Room Facility Charges and Professional Services

Financial responsibility for charges resulting from the emergency services and care of a Plan member whose condition meets the medical necessity criteria for coverage by the MHP is contractually assigned as follows:

- The Plan shall cover and pay for the facility charges resulting from the emergency services and care of a Plan member whose condition meets MHP medical necessity criteria when such services and care do not result in the admission of the member for psychiatric inpatient hospital services **or when such services result in an admission of the member for psychiatric inpatient hospital services at a different facility**.

- The MHP ~~shall cover and pay~~ **is responsible** for the facility charges resulting from the emergency services and care of a Plan member whose condition meets MHP medical necessity criteria when such services and care do result in the admission of the member for psychiatric inpatient hospital services **at the same facility. The facility charge is not paid separately, but is included in the per diem rate for the inpatient stay.**

- ~~The Plan shall cover and pay for the facility charges resulting from the emergency services and care of a Plan member whose condition meets MHP medical necessity criteria at a hospital that does not provide psychiatric inpatient hospital services, when such services and care do result in the transfer and admission of the member to a hospital or psychiatric health facility that does provides psychiatric inpatient hospital services. The Plan is not responsible for the separately billable facility charges related to the professional services of a mental health specialist at the hospital of assessment. The MHP may pay this charge, depending on its arrangement with the hospital.~~

- **The MHP is responsible for facility charges directly related to the professional services of a mental health specialist provided in the emergency room when these services do not result in an admission of the member for psychiatric inpatient hospital services at that facility or any other facility.**

- ~~The Plan shall cover and pay for the medical professional services required for the emergency services and care of a member whose condition meets MHP medical necessity criteria when such services and care do not result in the admission of the member for psychiatric inpatient hospital services.~~

- The MHP shall cover and pay for the professional services of a mental health specialist ~~required for the emergency services and care of~~ provided in an emergency room to a Plan member whose condition meets MHP medical necessity criteria or when mental health specialist services are required to assess whether MHP medical necessity is met ~~when such services and care do result in the admission of the member for psychiatric inpatient hospital services.~~

- The Plan shall cover and pay for all professional services except the professional services of a mental health specialist, when required for the emergency services and care of a member whose condition meets MHP medical necessity criteria.

Payment responsibility for charges resulting from the emergency services and care of a Plan member with an excluded diagnosis or for a plan member whose condition does not meet MHP medical necessity criteria shall be assigned as follows:

- The Plan shall cover and pay for the facility charges and the medical professional services required for the emergency services and care of a Plan member with an excluded diagnosis or a Plan member whose condition does not meet MHP medical necessity criteria and such services and care do not result in the admission of the member for psychiatric inpatient hospital services.

- Payment for the professional services of a mental health specialist required for the emergency services and care of a Plan member with an excluded diagnosis is the responsibility of the Medi-Cal FFS system.

Note: Effective January 1, 2000, SB 349 (Chapter 544, Statutes of 1999), redefines the definition of emergency services and care as it applies only to health care service plans where coverage for mental health is included as a benefit. SB 349 redefines the Health and Safety Code definition of emergency services and care to include an additional screening, examination, and evaluation to determine if a psychiatric emergency medical condition exists, and the care and treatment necessary to relieve or eliminate the psychiatric medical condition, within the capability of the facility. The provisions of SB 349 are a clarification of the

definition of emergency services and care and a clarification of an existing responsibility and not the addition of a new responsibility. SB 349 does not change the assigned responsibilities of the Plan and the MHP to pay for emergency services as described above.

Pharmaceutical Services and Prescribed Drugs

Each Plan is contractually obligated to cover and pay for pharmaceutical services and prescribed drugs, either directly or through subcontracts, in accordance with all laws and regulations regarding the provision of pharmaceutical services and prescription drugs to Medi-Cal beneficiaries, including all medically necessary Medi-Cal covered psychotropic drugs, except when provided as inpatient psychiatric hospital-based ancillary services or otherwise excluded under the Plan contract.

Each Plan must cover and pay for psychotropic drugs not otherwise excluded by the Plan's contract prescribed by out-of-plan psychiatrists for the treatment of psychiatric conditions.

A Plan may apply established utilization review procedures when authorizing prescriptions written for enrollees by out-of-plan psychiatrists; however, application of utilization review procedures should not inhibit Plan member access to prescriptions. If the Plan requires that covered prescriptions written by out-of-plan psychiatrists be filled by pharmacies in the Plan's provider network, the Plan shall ensure that drugs prescribed by out-of-plan psychiatrists are not less accessible to Plan members than drugs prescribed by network providers. ~~This~~ These requirements should be addressed as a component of the MOU.

The Plan is not required to cover and pay for prescriptions for mental health drugs written by out-of-plan physicians who are not psychiatrists, unless these prescriptions are written by non-psychiatrists contracted by the MHP to provide mental health services in areas where access to psychiatrists is limited.

Enclosure 2 lists the prescription drugs that are currently excluded from most Plan contracts. Reimbursement to pharmacies for psychotropic drugs listed in Enclosure 2, and for new psychotropic drugs classified as antipsychotics and approved by the FDA, will be made through the Medi-Cal FFS system whether these drugs are provided by a pharmacy contracting with the Plan or by a FFS pharmacy provider.

Laboratory, Radiological, and Radioisotope Services

Each Plan must cover and pay for medically necessary laboratory, radiological, and radioisotope services described in Title 22, CCR, Section 51311.

The Plan must cover and pay for these services for a Plan member who requires the services of the MHP or a Medi-Cal FFS specialty mental health services provider when necessary for the diagnosis and treatment of the Plan member's mental health condition. The Plan must also cover and pay for services needed to monitor the health of members for side effects resulting from medications prescribed to treat the mental health diagnosis. The Plan must coordinate these services with the member's specialty mental health provider.

Home Health Agency Services

Each Plan must cover and pay for home health agency services as described in Title 22, CCR, Section 51337 **prescribed by a Plan provider** when medically necessary to meet the ~~physical health care~~ needs of homebound Plan members. A homebound Plan member as defined by Title 22, CCR, Section 51146 is one who is essentially confined to home due to illness or injury, and if ambulatory or otherwise mobile, is unable to be absent from his home except on an infrequent basis or for periods of relatively short duration.

The Plan is not obligated to provide home health agency services that would not otherwise be authorized by the Medi-Cal program, or when medication support services, case management services, crisis intervention services, or any other specialty mental health services as provided under Section 1810.247, are prescribed by a psychiatrist and are provided at the home of a beneficiary. **However, home health agency services prescribed by Plan providers to treat the mental health conditions of Plan members are the responsibility of the Plan.**

Medical Transportation Services

Each Plan must cover and pay for all medically necessary emergency and non-emergency medical transportation services as described in Title 22, CCR, Section 51323 for Plan members, including emergency and non-emergency medical transportation services required by members to access Medi Cal covered mental health services.

Each Plan must also cover and pay for medically necessary non-emergency medical transportation services when prescribed for a Plan member by a Medi-Cal mental health provider outside the MHP.

Each MHP must arrange and pay for medical transportation when the **MHP's** purpose ~~of~~ **for** the medical transportation service is to transport a Plan member receiving psychiatric inpatient hospital services from a hospital to another hospital or another type of 24-hour care facility because the services in the facility to which the beneficiary is being transported will result in lower costs to the MHP.

Hospital Outpatient Department Services

Each Plan must cover and pay for professional services and associated room charges for hospital outpatient department services consistent with medical necessity and the Plan's contracts with its subcontractors and DHS. **Separately billable outpatient services related to** ~~E~~electroconvulsive therapy, ~~and related services~~ **such as anesthesiologist services,** ~~provided on an outpatient basis~~ are also the contractual responsibility of the Plan.

Psychiatric Inpatient Hospital Services

Each Plan must cover and pay for all medically necessary professional services to meet the physical health care needs of Plan members who are admitted to the psychiatric ward of a general acute care hospital or to a freestanding licensed psychiatric inpatient hospital. These services include the initial health history and physical assessment required within 24 hours of admission and any medically necessary physical medicine consultations ~~and separately billable hospital-based ancillary services for which the Plan is otherwise contractually responsible. Such services may include, but are not limited to, prescription drugs (except antipsychotics), laboratory services, x-ray, electroconvulsive therapy and related services, and magnetic resonance imaging that are received by a Plan member admitted to a hospital or psychiatric health facility for psychiatric inpatient hospital services.~~

Plans are not required to cover and pay for room and board charges or mental health services associated with an enrollee's admission to a hospital or psychiatric health facility for psychiatric inpatient hospital services.

Nursing Facility Services

If long-term care is included by contract, a Plan must cover and pay for the room, board, and all medically necessary medical and other covered services provided to a Plan member in a nursing facility in accordance with the terms of the Plan's contract for coverage of long-term care.

Because long-term care is capitated to Plans as a service irrespective of diagnosis, this responsibility also includes coverage for Plan members whose need for nursing facility services is based on mental illness. Consistent with applicable contract requirements, Plans will initiate a disenrollment request for members whose projected length of stay in a nursing facility, including skilled nursing facilities with special treatment programs for the mentally disordered, or other long-term care residential treatment facility will exceed the term of the Plan's obligation for coverage of long-term care.

Each Plan is responsible for ensuring a member's orderly transfer to the Medi-Cal FFS system upon disenrollment, and must arrange and pay for all medically necessary contractually required Medi-Cal covered services until the disenrollment is effective.

Currently, MHPs are not contractually responsible for any nursing facility services, although consideration has been given to having MHPs cover skilled nursing facility services with special treatment programs for the mentally disordered. If MHPs assume this responsibility in the future, the Plan will continue to be contractually responsible to cover and pay for all medically necessary medical and other covered services not included under the per diem rate, consistent with a Plan's coverage obligations for long-term care.

Under current federal law, states are permitted to provide Medicaid coverage to individuals 21 years of age or under in psychiatric hospitals or to individuals 65 years of age or older in Institutions for Mental Diseases (IMD) that are psychiatric hospitals or nursing facilities. **Individuals who are receiving these services on their 21st birthday may continue to be covered until the earlier of their 22nd birthday or discharge.** The Medi-Cal program has elected to cover these services (psychiatric hospital services are covered by MHPs).

The Medi-Cal program also covers skilled nursing facility services with special treatment programs for the mentally disordered (these services are billed to the Medi-Cal FFS system using accommodation codes 11, 12, 31, and 32) for beneficiaries of any age in facilities that have not been designated as IMDs. Plans, therefore, are

responsible for these services in accordance with the terms of the Plan's contract for coverage of long-term care.

Under current federal law, states are not permitted to claim federal financial participation for any services provided to beneficiaries over the age of 21 and under the age of 65 residing in IMDs. The Medi-Cal program, however, does cover all services, except the nursing facility services themselves, as state-only Medi-Cal services (e.g., prescription drugs and doctor's visits). Plans are responsible for these services in accordance with the terms of the Plan's contract. MHPs provide medically necessary specialty mental health services (typically visits by psychiatrists and psychologists). Nursing facility services provided to individuals over the age of 21 and under the age of 65 in nursing facilities that are designated IMDs are funded by county realignment and other funds and are not Medi-Cal covered services.

When coverage for long-term care is excluded by Plan contract, or upon the expiration of the Plan's obligation under its contract to provide such services, payment is handled through the Medi-Cal FFS system.

MEDI-CAL COVERED SPECIALTY MENTAL HEALTH SERVICES

Medi-Cal covered specialty mental health services are those services defined in Title 9, CCR, Section 1810.247 ~~delivered by a person or entity who is licensed, certified, or otherwise recognized or authorized to provide specialty mental health services under state law governing the healing arts.~~

The scope of Medi-Cal covered specialty mental health services **covered by MHPs** is set forth in Title 9, CCR, Sections 1810.345 and 1810.350.

Access standards for Medi-Cal covered specialty mental health services **covered by MHPs** are set forth in Title 9, CCR, Section 1810.405.

Medical Necessity Criteria

Under the Medi-Cal Specialty Mental Health Services Consolidation program, each MHP is obligated to provide or arrange and pay for specialty mental health services to Medi-Cal beneficiaries of the county served by the MHP who meet specified medical necessity criteria and when specialty mental health services are required to assess whether the medical necessity criteria are met.

The medical necessity criteria are met when:

- a beneficiary has both an included diagnosis; *and*
- the beneficiaries' condition meets specified impairment and intervention criteria.

A copy of Title 9, CCR, Sections 1820.205, 1830.205, and 1830.210, which provide the medical necessity criteria for psychiatric inpatient hospital services, outpatient specialty mental health services, and specialty mental health services for beneficiaries under the age of 21 are included with this letter as Enclosure 4.

Referrals to the MHP may be received through beneficiary self-referral or through referral by another person or organization.

Beneficiaries, including Plan members, whose diagnoses are not included in the applicable listing of MHP covered diagnoses in Title 9, CCR, Section 1830.205(b)(1), may obtain specialty mental health services through the Medi-Cal FFS system under applicable provisions of Title 22, CCR, Division 3, Subdivision 1. However, under the Specialty Mental Health Services Consolidation program, beneficiaries, including Plan members, whose mental health diagnoses are covered by the MHP but whose conditions do not also meet the program impairment and intervention criteria are not eligible for specialty mental health care under the Medi-Cal program. These beneficiaries are only eligible for care from a primary care or other physical health provider. The Medi-Cal FFS program will deny claims from mental health professionals for such beneficiaries.

Plans can obtain additional information about the medical necessity criteria or the authorization and payment process for specialty mental health services by contacting the appropriate MHP.

<u>Specialty Mental Health Services Providers</u>

Specialty mental health services providers include, but are not limited to: licensed mental health professionals; masters level registered nurses providing EPSDT supplemental services; clinics; hospital outpatient departments; certified day treatment facilities; certified residential treatment facilities; skilled nursing facilities; psychiatric health facilities; psychiatric units of general acute care hospitals; and acute psychiatric hospitals. The Plan and the MHP are providers when employees of the Plan or the MHP provide direct services to beneficiaries.

Mental health professionals may continue to participate in the Medi-Cal FFS program, but the Medi-Cal program will only cover specialty mental health services related to mental health diagnoses that are not the responsibility of either the MHP or the Plan. Hospitals not affiliated with the MHP may provide psychiatric inpatient hospital services to Medi-Cal beneficiaries in emergency situations at FFS rates established by regulation.

Covered Specialty Mental Health Services

Covered specialty mental health services include:

- Rehabilitative Services, which include mental health services, medication support services, day treatment intensive, day rehabilitation, crisis intervention, crisis stabilization, adult residential treatment services, crisis residential services, and psychiatric health facility services;
- Psychiatric Inpatient Hospital Services;
- Targeted Case Management;
- Psychiatrist Services;
- Psychologist Services;
- EPSDT Supplemental Specialty Mental Health Services for children under the age of 21~~(including services to seriously emotionally and behaviorally disturbed children with substance abuse problems or whose emotional disturbance is related to family substance abuse)~~; and
- Psychiatric Nursing Facility Services. **(Currently, MHPs are not contractually required to provide any nursing facility services.)**

  ~~(Currently, MHPs are not contractually required to provide any nursing facility services.)~~

Many MHPs also provide services to seriously emotionally and behaviorally disturbed children with substance abuse problems or whose emotional or behavioral disturbance is related to family substance abuse.

Services Excluded From Coverage by the MHP

The MHP is not responsible to provide or arrange and pay for the services excluded from coverage by the MHP under Title 9, CCR, Section 1810.355. Plans may be responsible to arrange and pay for these services when contractually required.

Services excluded from coverage by the MHP are:

- Medi-Cal services, which are those services described in Title 22, CCR, Division 3, Subdivision 1, Chapter 3, that are not specialty mental health services for which the MHP is responsible pursuant to Title 9, CCR, Section 1810.345.

- Prescribed drugs as described in Title 22, CCR, Section 51313, and laboratory, radiological, and radioisotope services as described in Title 22, CCR, Section 51311, except when provided as hospital-based ancillary services. Medi-Cal beneficiaries may obtain Medi-Cal covered prescription drugs and laboratory, radiological, and radioisotope services prescribed by licensed mental health professionals acting within their scope of practice and employed by or contracting with the MHP under applicable provisions of Title 22, Division 3, Subdivision 1

- Medical transportation services as described in Title 22, CCR, Section 51323, except when the purpose of the medical transportation service is to transport a beneficiary receiving psychiatric inpatient hospital services from a hospital to another hospital or another type of 24-hour care facility because the services in the facility to which the beneficiary is being transported will result in lower costs to the MHP.

- Physician services as described in Title 22, CCR, Section 51305, that are not psychiatric services as defined in Title 9, CCR, Section 1810.240, even if the services are provided to treat a diagnosis included in Sections 1820.205 or 1830.205.

- Personal care services as defined in Title 22, CCR, Section 51183, and as may be defined by DHS as EPSDT supplemental services pursuant to Title 22, CCR, Section 51340(e)(3).

- Out-of-state specialty mental health services except when it is customary practice for a California beneficiary to receive medical services in a border community outside the State.

- Specialty mental health services provided by a hospital operated by DMH or the Department of Developmental Services.
- Specialty mental health services provided to a Medicare beneficiary eligible for Medicare mental health benefits.
- Specialty mental health services provided to a beneficiary enrolled in a Plan to the extent that specialty mental health services are covered by the Plan.
- Psychiatric inpatient hospital services received by a beneficiary when services are not billed to an allowable psychiatric accommodation code as specified in Title 9, CCR, Section 1820.100(a).
- Medi-Cal services that may include specialty mental health services as a component of a larger service package as follows:
  - Psychiatrist and psychologist services provided by adult day health centers pursuant to Title 22, CCR, Section 54325.
  - Home and community-based waiver services as defined in Title 22, CCR, Section 51176.
  - Specialty mental health services, other than psychiatric inpatient hospital services, authorized by the California Children Services (CCS) program to treat CCS eligible beneficiaries.
  - Local Education Agency services as defined in Title 22, CCR, Section 51190.4.
  - Specialty mental health services provided by Federally Qualified Health Centers, Indian Health Centers, and Rural Health Clinics.
  - Home health agency services as described in Title 22, CCR, Section 51337.

COORDINATION OF MEDI-CAL COVERED PHYSICAL HEALTH CARE SERVICES AND SPECIALTY MENTAL HEALTH SERVICES

Plan Responsibilities

The coordination of Medi-Cal covered physical health care services and specialty mental health services is a dual Plan/MHP responsibility. The Plan is responsible for arranging appropriate management of a Plan member's care between plans or with other health care providers or providers of specialty mental services as required by contract. Title 9, CCR, Section 1810.415 sets forth the requirements of the MHP in the coordination of physical and mental health care.

The Plan is responsible for the appropriate management of a Plan member's care which includes, but is not be limited to, the coordination of all medically necessary contractually required Medi-Cal covered services both within and outside the Plan's provider network, and:

- Assistance to Plan members needing specialty mental health services by referring such members to the MHP, or to an appropriate Medi-Cal FFS mental health provider or provider organization if the beneficiary is not eligible for MHP covered services or because the MHP has determined that the Plan member's mental health condition would be responsive to physical health care based treatment;

- The provision of clinical consultation and training to the MHP or other providers of mental health services on a Plan member's medical condition and on medications prescribed through Plan providers;

- Medical case management;

- The exchange of medical records information with the MHP and other providers of mental health care; and

- The coordination of discharge planning from inpatient facilities.

The Plan is required to maintain procedures for monitoring the coordination of care provided to a Plan member. When a Plan member is ineligible for MHP covered services because the member's diagnosis is not included in Title 9, CCR, Section 1830.205(b)(1), ~~or is included but the MHP determines that the beneficiary's mental health condition would be responsive to physical health care based~~

~~treatment~~ and the Plan initiates a referral to a local provider or provider organization outside the Plan, the Plan should document such referrals in the member's medical record. The Plan is not responsible for ensuring member access to such providers, but must maintain a current list of the names, addresses, and telephone numbers of local providers and provider organizations that is available to Plan enrollees. The MHP's role in providing or assisting the Plan in the development of this list should be addressed as a component of the MOU.

A list of such sources of referral to a local provider or provider organization may include:

- **County mental health departments**
- **County departments administering alcohol and drug programs**
- **The county health and human services agency**
- **CalWorks funded programs for mental illness or substance abuse**
- **Drug Medi-Cal substance abuse services, including outpatient Heroin detoxification providers**
- **The regional center for persons who are developmentally disabled**
- **The Area Agency on Aging for referrals to services for individuals aged 60 and over**
- **The local medical society**
- **The psychological association**
- **The mental health association**
- **Family services agencies**
- **Faith-based social services agencies**
- **Community employment and training agencies**

MHP Responsibilities

The MHP is required to make clinical consultation and training, including consultation and training on psychotropic medications, available to meet the needs of a beneficiary whose mental illness is not being treated by the MHP.

The MHP is responsible for coordinating with pharmacies and the Plan as appropriate to assist beneficiaries in receiving prescription drugs and laboratory services prescribed through the MHP, including ensuring that any medical justification required for approval of payment to the pharmacy or laboratory is provided to the authorizing entity in accordance with the authorizing entity's procedures. If a Plan requires the MHP to utilize the Plan's drug formulary when psychotropic drugs are prescribed through the MHP, such requirement should be addressed as a component of the MOU.

When **the MHP determines that** a Plan member is ineligible for MHP covered services because the member's diagnosis is not included in Title 9, CCR, Section 1830.205(b)(1), or is included but the MHP determines that the beneficiary's mental health condition would be responsive to physical health care based treatment, **the MHP is responsible to refer the member to the Plan for services covered by the Plan or to other sources of care or referral for care for services not covered by the Plan. ~~the beneficiary shall be referred to:~~ Other sources of care or referral may include:**

1. A provider outside the MHP which may include:

   - A provider with whom the beneficiary already has a patient-provider relationship;

   ~~The Plan in which the beneficiary is enrolled;~~

   - A provider in the area who has indicated a willingness to accept MHP referrals, including Federally Qualified Health Centers, Rural Health Clinics, and Indian Health Clinics; or

2. An entity that provides assistance in identifying providers willing to accept Medi-Cal beneficiaries, which may include where appropriate:

   - The Health Care Options program described in Welfare and Institutions Code Section 14016.5;

- The local Child Health and Disability Prevention program as described in Title 17, Section 6800 et seq.;
- Provider organizations;
- Other community resources available in the county served by the MHP, ~~which may include, but are not limited to:~~

  ~~County mental health departments~~

  ~~County departments administering alcohol and drug programs~~

  ~~The county health and human services agency~~

  ~~CalWorks funded programs for mental illness or substance abuse~~

  ~~Drug Medi-Cal substance abuse services, including outpatient Heroin detoxification providers~~

  ~~The regional center for persons who are developmentally disabled~~

  ~~The Area Agency on Aging for referrals to services for individuals aged 60 and over~~

  ~~The local medical society~~

  ~~The psychological association~~

  ~~The mental health association~~

  ~~Family services agencies~~

  ~~Faith-based social services agencies~~

  ~~Community employment and training agencies~~

The MHP is not required to ensure a beneficiary's access to **physical health care based treatment or to** treatment from licensed mental health professionals for diagnoses not covered in Title 9, CCR, Section 1830.205(b)(1). ~~When the situation generating a referral by the MHP to a provider or provider organization outside the MHP meets the criteria established in Title 9, Section 1850.210(i), a Notice of Action will be provided.~~

Confidentiality of Medical Records Information

The Plan and the MHP are responsible for the development of protocols to maintain the confidentiality of beneficiary medical records, including all information, data, and data elements collected and maintained for the operation of the contract and shared with the other party, in accordance with all applicable federal and state laws and regulations and contract requirements.

Note: Recently enacted legislation, SB 19 (Chapter 526, Statutes of 1999), and AB 416 (Chapter 527, Statutes of 1999), expand provisions related to the confidentiality of medical records information in both the Civil Code and the Health and Safety Code.

Resolution of Disputes

The resolution of disputes is a shared Plan/MHP responsibility. The Plan is responsible for establishing procedures for the resolution of disputes with the MHP as required by contract. As set forth in Title 9, CCR, Section 1810.370, the MHP is responsible for establishing procedures for the resolution of disputes with the Plan.

When a Plan has a dispute with a MHP that cannot be resolved to the satisfaction of the Plan concerning its contractual obligations, state Medi-Cal laws and regulations, or an MOU with the MHP, the Plan may submit a request for resolution to DHS in accordance with the rules governing the resolution of disputes in Title 9, CCR, Section 1850.505. A dispute between a Plan and a MHP shall not delay medically necessary specialty mental health services, physical health care services, or related prescription drugs and laboratory, radiological, or radioisotope services to Plan members.

Additional information regarding the Medi-Cal specialty mental health managed care program may be accessed via the Internet through DMH's Web site at http://www.dmh.cahwnet.gov.

The text of the emergency regulations governing the provision of Medi-Cal specialty mental health services, and other documents pertinent to DMH's rulemaking proceedings for these regulations may be accessed through the DMH, Office of Regulations Web site at http://www.dmh.cahwnet.gov/regulations/SPEC/rulemaking.htm. The regulations will remain in effect until July 1, 2000, or until they are made permanent, whichever occurs first. The public comment period for these regulations closed on December 20, 1999. After considering all the timely and relevant comments received, DMH may adopt these regulations, or may make modifications to the text with proper notice to the public.

Substantive changes between the text of the emergency regulations on which this policy letter is based and the permanent regulations adopted, if any, will be addressed in future communication to the Plans.

Should you have questions, or require additional information regarding the content of this policy letter, please contact your contract manager.

Susanne Hughes

Susanne M. Hughes
Acting Chief
Medi-Cal Managed Care Division

Enclosures

MEDI-CAL MANAGED CARE PLAN
SPECIALTY MENTAL HEALTH COVERAGE ALTERNATIVES

Primary Care Case Management	Positive HealthCare Foundation	Los Angeles	Covers outpatient specialty mental health services and prescription drugs including psychotropic drugs
County Organized Health System	Partnership Health Plan of California*	Solano	Covers inpatient and outpatient specialty mental health services and prescription drugs including psychotropic drugs
	Santa Barbara Health Initiative	Santa Barbara	Covers prescription drugs including psychotropic drugs
	Health Plan of San Mateo**	San Mateo	Excludes drugs and related labs prescribed by the MHP
Geographic Managed Care	Kaiser Foundation Health Plan, Inc.	Sacramento	Covers inpatient and outpatient specialty mental health services and prescription drugs including psychotropic drugs
	Western Health Advantage	Sacramento	Covers outpatient specialty mental health services and prescription drugs including psychotropic drugs

* Solano County Mental Health has been a subcontractor on a capitated basis to the County Organized Health System in Solano under separate field test authority from HCFA since 1994. Mental health services are excluded by Partnership Health Plan in Napa County.

** The MHP in San Mateo County is financially responsible for prescription drugs and related laboratory services prescribed by the MHP under separate field test authority from HCFA.

DRUGS EXCLUDED FROM PLAN COVERAGE

Amantadine HCL	Abacavir Sulfate (Ziagen)
Benztropine Mesylate	Amprenavir (Agenerase)
Biperiden HCL	Delaviridine Mesylate (Rescriptor)
Biperiden Lactate	Efavirenz (Sustiva)
Chlorpromazine HCL	Indinavir Sulfate (Crixivan)
Chlorprothixene	Lamivudine (Epivir)
Clozapine	Nelfinavir Mesylate (Viracept)
Fluphenazine Decanoate	Nevirapine (Viramune)
Fluphenazine Enanthate	Ritonavir (Norvir)
Fluphenazine HCL	Saquinavir (Fortovase)
Haloperidol	Saquinavir Mesylate (Invirase)
Haloperidol Decanoate	Stavudine (Zerit)
Haloperidol Lactate	Zidovudine/Lamivudine (Combivir)
Isocarboxazid	
Lithium Carbonate	
Lithium Citrate	
Loxapine HCL	
Loxapine Succinate	
Mesoridazine Besylate	
Molindone HCL	
Olanzapine	
Perphenazine	
Phenelzine Sulfate	
Pimozide	
Procyclidine HCL	
Promazine HCL	
Quetiapine	
Risperidone	
Thioridazine HCL	
Thiothixene	
Thiothixene HCL	
Tranylcypromine Sulfate	
Trifluoperazine HCL	
Triflupromazine HCL	
Trihexyphenidyl HCL	

SAMPLE

(For demonstration purposes only. Not intended to be inclusive of all services to be addressed in an MOU between a Plan and a MHP.)

MATRIX OF MANAGED CARE PLAN/ MENTAL HEALTH PLAN RESPONSIBILITIES

Psychiatric Inpatient Hospital Services - General Acute Hospitals	Facility Charges	MHP authorization EDS or MHP payment	No MHP, MCP, or EDS payment
	Psychiatric Professional Services	MHP	No MHP, MCP, or EDS payment
	Medical Professional Services	MCP	No MHP, MCP, or EDS payment
Institutions for Mental Diseases - Acute Psychiatric Hospitals	Facility Charges Patient aged 0 to 21	MHP authorization EDS or MHP payment	No MHP, MCP, or EDS payment
	Facility Charges Patient aged 22 to 64	No MHP, MCP, or EDS payment	No MHP, MCP, or EDS payment
	Facility Charges Patient aged 65 or over	MHP authorization EDS or MHP payment	No MHP, MCP, or EDS payment
	Psychiatric Professional Services	MHP	No MHP, MCP, or EDS payment
	Medical Professional Services	MCP	No MHP, MCP, or EDS payment

SAMPLE (continued)

MATRIX OF MANAGED CARE PLAN/ MENTAL HEALTH PLAN RESPONSIBILITIES

Emergency Departments	Facility Charges	MCP for initial triage and medical services MHP for any facility charges related to a covered psychiatric service Note: When a beneficiary is admitted to a psychiatric bed at the same facility, there is no separate payment for the ER by the MHP or the MCP	MCP	MCP
	Psychiatric Professional Services	MHP	EDS	No MHP, MCP, or EDS payment
	Medical Professional Services	MCP	MCP	MCP

California Code of Regulations
Title 9, Division 1, Chapter 11, Subchapter 3, Article 2

Section 1820.205. Medical Necessity Criteria for Reimbursement of Psychiatric Inpatient Hospital Services.

(a) For Medi-Cal reimbursement for an admission to a psychiatric inpatient hospital, the beneficiary shall meet medical necessity criteria set forth in (1) and (2) below:
(1) One of the following diagnoses in the Diagnostic and Statistical Manual, Fourth Edition, published by the American Psychiatric Association:
(A) Pervasive Developmental Disorders
(B) Disruptive Behavior and Attention Deficit Disorders
(C) Feeding and Eating Disorders of Infancy or Early Childhood
(D) Tic Disorders
(E) Elimination Disorders
(F) Other Disorders of Infancy, Childhood, or Adolescence
(G) Cognitive Disorders (only Dementias with Delusions, or Depressed Mood)
(H) Substance Induced Disorders, only with Psychotic, Mood, or Anxiety Disorder
(I) Schizophrenia and Other Psychotic Disorders
(J) Mood Disorders
(K) Anxiety Disorders
(L) Somatoform Disorders
(M) Dissociative Disorders
(N) Eating Disorders
(O) Intermittent Explosive Disorder
(P) Pyromania
(Q) Adjustment Disorders
(R) Personality Disorders
(2) A beneficiary must have both (A) and (B):
(A) Cannot be safely treated at a lower level of care; and
(B) Requires psychiatric inpatient hospital services, as the result of a mental disorder, due to indications in either 1 or 2 below:
1. Has symptoms or behaviors due to a mental disorder that (one of the following):
a. Represent a current danger to self or others, or significant property destruction.
b. Prevent the beneficiary from providing for, or utilizing, food, clothing or shelter.

c. Present a severe risk to the beneficiary's physical health.

d. Represent a recent, significant deterioration in ability to function.

2. Require admission for one of the following:

a. Further psychiatric evaluation.

b. Medication treatment.

c. Other treatment that can reasonably be provided only if the patient is hospitalized.

(b) Continued stay services in a psychiatric inpatient hospital shall only be reimbursed when a beneficiary experiences one of the following:

(1) Continued presence of indications which meet the medical necessity criteria as specified in (a).

(2) Serious adverse reaction to medications, procedures or therapies requiring continued hospitalization.

(3) Presence of new indications which meet medical necessity criteria specified in (a).

(4) Need for continued medical evaluation or treatment that can only be provided if the beneficiary remains in a psychiatric inpatient hospital.

(c) An acute patient shall be considered stable when no deterioration of the patient's condition is likely, within reasonable medical probability, to result from or occur during the transfer of the patient from the hospital.

NOTE

Authority cited: Section 14680, Welfare and Institutions Code. Reference: Sections 5777, 5778 and 14684, Welfare and Institutions Code.

California Code of Regulations
Title 9, Division 1, Chapter 11, Subchapter 3, Article 2

Section 1830.205. Medical Necessity Criteria for MHP Reimbursement of Specialty Mental Health Services.

(a) The following mental necessity criteria determine Medi-Cal reimbursement for specialty mental health services that are the responsibility of the MHP under this subchapter, except as specially provided.

(b) The beneficiary must meet criteria outlined in (1), (2), and (3) below to be eligible for services:

(1) Be diagnosed by the MHP with one of the following diagnoses in the Diagnostic and Statistical Manual, Forth Edition, published by the American Psychiatric Association:

(A) Pervasive Developmental Disorders, except Autistic Disorders

(B) Disruptive Behavior and Attention Deficit Disorders

(C) Feeding and Eating Disorders of Infancy and Early Childhood

(D) Elimination Disorders

(E) Other Disorders of Infancy, Childhood, or Adolescence

(F) Schizophrenia and other Psychotic Disorders

(G) Mood Disorders

(H) Anxiety Disorders

(I) Somatoform Disorders

(J) Factitious Disorders

(K) Dissociative Disorders

(L) Paraphilias

(M) Gender Identity Disorder

(N) Eating Disorders

(O) Impulse Control Disorders Not Elsewhere Classified

(P) Adjustment Disorders

(Q) Personality Disorders, excluding Antisocial Personality Disorder

(R) Medication-Induced Movement Disorders related to other included diagnoses.

(2) Must have at least one of the following impairments as a result of the mental disorder(s) listed in subdivision (1) above:

(A) A significant impairment in an important area of life functioning.

(B) A probability of significant deterioration in an important area of life functioning.

(C) Except as provided in Section 1830.210, a probability a child will not progress developmentally as individually appropriate. For the purpose of this section, a child is a person under the age of 21 years.

(3) Must meet each of the intervention criteria listed below:

(A) The focus of the proposed intervention is to address the condition identified in (2) above.

(B) The expectation is that the proposed intervention will:

1. Significantly diminish the impairment, or

2. Prevent significant deterioration in an important area of life functioning, or

3. Except as provided in Section 1830.210, allow the child to progress developmentally as individually appropriate.

(C) The condition would not be responsive to physical health care based treatment.

(c) When the requirements of this section are met, beneficiaries shall receive specialty mental health services for a diagnosis included in subsection (b)(1) even if a diagnosis that is not included in subsection (b)(1) is also present.

NOTE

Authority cited: Section 14680, Welfare and Institutions Code. Reference: Sections 5777 and 14684, Welfare and Institutions Code.

California Code of Regulations
Title 9, Division 1, Chapter 11, Subchapter 3, Article 2

Section 1830.210. Medical Necessity Criteria for MHP Reimbursement for Specialty Mental Health Services for Eligible Beneficiaries Under 21 Years of Age.

(a) For beneficiaries under 21 years of age who do meet the medical necessity requirements of Section 1830.205(b)(2) and (3), medical necessity criteria for specialty mental health services covered by this subchapter shall be met when all of the following exist:

(1) The beneficiary meets the diagnosis criteria in Section 1830.205(b)(1),

(2) The beneficiary has a condition that would not be responsive to physical health care based treatment, and

(3) The requirements of Title 22, Section 51340(e)(3) are met; or, for targeted case management services, the service to which access is to be gained through case management is medically necessary for the beneficiary under Section 1830.205 or under Title 22, Section 51340(e)(3) and the requirements of Title 22, Section 51340(f) are met.

(b) The MHP shall not approve a request for an EPSDT Supplemental Speciality Mental Health Service under this section if the MHP determines that the service to be provided is accessible and available in an appropriate and timely manner as another specialty mental health service covered by this subchapter.

(c) The MHP shall not approve a request for specialty mental health services under this section in home and community based settings if the MHP determines that the total cost incurred by the Medi-Cal program for providing such services to the beneficiary is greater than the total cost to the Medi-Cal program in providing medically equivalent services at the beneficiary's otherwise appropriate institutional level of care, where medically equivalent services at the appropriate level are available in a timely manner.

NOTE

Authority cited: Section 14680, Welfare and Institutions Code. Reference: Sections 5777, 14132 and 14684, Welfare and Institutions Code; and Title 42, Section 1396d(r), United States Code.

Attachment 1
Mental Health Services Description Chart for Medi-Cal Managed Care Members

DIMENSION	Medi-Cal [1]	MHP[2] OUTPATIENT	MHP INPATIENT
ELIGIBILITY	**Mild to Moderate Impairment in Functioning** A member is covered by the MCP for services if he or she is diagnosed with a mental health disorder as defined by the current DSM[3] resulting in mild to moderate distress or impairment of mental, emotional, or behavioral functioning: • Primary care providers identify the need for a mental health screening and refer to a specialist within their network. Upon assessment, the mental health specialists can assess the mental health disorder and the level of impairment and refer members that meet medical necessity criteria to the MHP for a Specialty Mental Health Services (SMHS) assessment. • When a member's condition improves under SMHS and the mental health providers in the MCP and MHP coordinate care, the member may return to the MH provider in the MCP network. *Note: Conditions that the current DSM identifies as relational problems are not covered, i.e. couples counseling or family counseling.*	**Significant Impairment in Functioning** A member is eligible for services if he or she meets all of the following medical necessity criteria: 1. Has an included mental health diagnosis;[4] 2. Has a significant impairment in an important area of life function, or a reasonable probability of significant deterioration in an important area of life function, or a reasonable probability of not progressing developmentally as individually appropriate; 3. The focus of the proposed treatment is to address the impairment(s) described in #2; 4. The expectation that the proposed treatment will significantly diminish the impairment, prevent significant deterioration in an important area of life function, and 5. The condition would not be responsive to physical health care-based treatment. *Note: For members under age 21 who meet criteria for EPSTD specialty mental health services, the criteria allow for a range of impairment levels[4] and include treatment that allows the child to progress developmentally as individually appropriate*	**Emergency and Inpatient** A member is eligible for services if he or she meets the following medical necessity criteria: 1. An included diagnosis; 2. Cannot be safely treated at a lower level of care; 3. Requires inpatient hospital services due to one of the following which is the result of an included mental disorder: a. Symptoms or behaviors which represent a current danger to self or others, or significant property destruction; b. Symptoms or behaviors which prevent the beneficiary from providing for, or utilizing, food, clothing, or shelter; c. Symptoms or behaviors which present a severe risk to the beneficiary's physical health; d. Symptoms or behaviors which represent a recent, significant deterioration in ability to function; e. Psychiatric evaluation or treatment which can only be performed in an acute psychiatric inpatient setting or through urgent or emergency intervention provided in the community or clinic; and f. Serious adverse reactions to medications, procedures or therapies requiring continued hospitalization.

[1] Medi-Cal Managed Care Plan
[2] County Mental Health Plan Medi-Cal Specialty Mental Health Services
[3] Current policy is based on DSM IV and will be updated to DSM 5 in the future
[4] As specified in regulations Title IX, Sections 1820.205 and 1830.205 for adults and 1830.210 for those under age 21

DIMENSION	Medi-Cal[5]	MHP[6] OUTPATIENT	MHP INPATIENT

SERVICES	Mental health services when provided by licensed mental health care professionals (as defined in the Medi-Cal provider bulletin) acting within the scope of their license:
	
	• Individual and group mental health evaluation and treatment (psychotherapy)
	• Psychological testing when clinically indicated to evaluate a mental health condition
	• Outpatient services for the purposes of monitoring medication therapy
	• Outpatient laboratory, medications, supplies, and supplements
	• Psychiatric consultation
		Medi-Cal Specialty Mental Health Services:
		
		• Mental Health Services
		  o Assessment
		  o Plan development
		  o Therapy
		  o Rehabilitation
		  o Collateral
		• Medication Support Services
		• Day Treatment Intensive
		• Day Rehabilitation
		• Crisis Residential
		• Adult Crisis Residential
		• Crisis Intervention
		• Crisis Stabilization
		• Targeted Case Management
			• Acute psychiatric inpatient hospital services
			• Psychiatric Health Facility Services
			• Psychiatric Inpatient Hospital Professional Services if the beneficiary is in fee-for-service hospital

[5] Medi-Cal Managed Care Plan
[6] County Mental Health Plan Medi-Cal Specially Mental Health Services

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COUNTY

DEPARTMENTS

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RCRC
REPRESENTING CALIFORNIA'S
RURAL COUNTIES

To: RCRC Board of Directors
RCRC Alternates
RCRC CAO's
RCRC Clerks of the Board

From: Greg Norton
President & CEO

Date: December 9, 2014

Re: Designation of RCRC and CHF Delegates and Alternates -
ACTION REQUIRED

The first RCRC Board Meeting of 2015 will be held on **January 21st** in Sacramento. Annually, RCRC and its affiliate joint powers authority - California Home Finance Authority (CHF) - require confirmation of each member county's Delegate and Alternate. In prior years, typically the county supervisor appointed as the RCRC Delegate and Alternate have also held the same position on the CHF Board of Directors.

Upon the official determination by the county, please provide confirmation of your county's election/appointment. Please forward the formal confirmation to RCRC as soon as possible. The confirmation can be sent via e-mail to sbolnik@rcrcnet.org, faxed to (916) 431-0101 and/or mailed to:

Rural County Representatives of California
1215 K Street, Suite 1650
Sacramento, CA 95814
Attn: Sarah Bolnik

Please do not hesitate to contact me at gnorton@rcrcnet.org or Patricia Megason, RCRC Executive Vice President, at pmegason@rcrcnet.org if you have any questions or require additional information. Thank you for your assistance in this matter.

Attachments

- RCRC Designation Form
- CHF Designation Form

Designation of 2015 Delegate and Alternate Supervisors for the

Rural County Representatives of California (RCRC) Board of Directors

Date: _____

County: _____

Delegate: **Supervisor** _____

Alternate: **Supervisor** _____

Authorization:

_____

The County of Yuba

Office of Clerk of the Board of Supervisors

To: Board of Supervisors

From: Donna Stottlemeyer, Clerk of the Board

Subject: **Fish and Game Advisory Commission – At large Representative**

Date: January 13, 2015

Recommendation

Consider appointing one individual to the Yuba County Fish and Game Advisory Commission as the at-large representative for a term to end January 13, 2019.

Background and Discussion

The Local Appointment List of all Boards/Commissions/Committees is continually posted indicating vacancies, appointees, terms of office, qualifications and meeting information and updated bi-monthly. This is a scheduled vacancy due to expiration of James M. Dousman term in November. Mr. Dousman has indicated he did not want to be reappointed. Two applications have been received, Mr. Dale Whitmore and Ms. Kaitlyn Irwin, and are attached for your review and consideration. Applications were provided to the Fish and Game Advisory Commission, and the Agriculture Commissioner has confirmed attendance at a Commission meeting.

In light of the expressed interest, it would be appropriate to appoint one individual.

Fiscal Impact

None. Committee service is voluntary.

Committee Action

None.

attachments

The County of Yuba

RECEIVED

Application for Board/Commission/Committee
Appointed by the Board of Supervisors

JUN 24 2014
OCT 10 2014
Clerk/Board of Supervisors

RETURN APPLICATION WITH ORIGINAL SIGNATURE TO:

CLERK OF THE BOARD OF SUPERVISORS
YUBA COUNTY GOVERNMENT CENTER
915 EIGHTH STREET, SUITE 109
MARYSVILLE, CA 95901
(530) 749-7510

BOARD/COMMISSION/COMMITTEE ON WHICH YOU WOULD LIKE TO SERVE: Yuba County Fish + Game Commission

APPLICANT NAME: Dale L. Whitmore

MAILING ADDRESS - (Street/P.O. Box, City, Zip): [redacted]

PHYSICAL ADDRESS (Street, City, Zip):

TELEPHONE: HOME: [redacted] WORK: [redacted]

EMAIL ADDRESS:

OCCUPATION/PROFESSION: Wildlife Biologist - California Dept of Fish + Wildlife - Retired (soon)

SUPERVISOR/ DISTRICT NUMBER: John Nicoletti - District 2

REASONS YOU WISH TO SERVE ON THIS BODY: See attached sheet

QUALIFICATIONS: See attached sheet

LIST PAST AND CURRENT PUBLIC POSITIONS HELD: See attached sheet

DO YOU HAVE ANY CRIMINAL CONVICTION THAT MAY BE CONSIDERED A CONFLICT OF INTEREST WITH THE COMMITTEE YOU WISH TO SERVE UPON? ☐ YES ☒ NO
IF YES, PLEASE EXPLAIN. NOTE: THAT A FELONY CONVICTION SHALL PRECLUDE YOU FROM SERVICE.

I UNDERSTAND THAT IF APPOINTED TO A BOARD/COMMISSION/COMMITTEE AND WHAT MAY BE CONSIDERED A CONFLICT OF INTEREST ARISES, THAT I HAVE A DUTY TO GIVE WRITTEN NOTICE OF SUCH TO THE COUNTY.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Dale L Whitmore
SIGNATURE

June 24, 2014
DATE

THIS SECTION FOR OFFICE USE ONLY

☐ NO VACANCY CURRENTLY EXISTS ON ABOVE-MENTIONED BODY. APPLICANT NOTIFIED.

☐ APPLICANT APPOINTED: _____

☐ OTHER: _____

Rev 07/12

Attachment to the Yuba County Fish and Game Commission Application – Dale Whitmore

Qualifications/Experience:

Occupation: Retired Wildlife Biologist

Education: Bachelor of Science degree in Wildlife Biology from the University of California at Davis

U.S. Marine Corps Veteran – Proudly served in Okinawa

Yuba County Fish and Game Commission – 22 years as the California Department of Fish and Wildlife, Wildlife Biologist, and/or volunteer since the commission's inaugural meeting in 1992. I have attended nearly all of the meetings. I was appointed to the Yuba County Fish and Game Commission in March 2012 but resigned a month later due to a conflict of interest with my employment as a Department of Fish and Wildlife employee.

Sutter County Fish and Game Commission - 30 years as the California Department of Fish and Wildlife, Wildlife Biologist, and/or volunteer since 1984. I have attended nearly all of the meetings.

Wildlife Biologist for the Department of Fish and Wildlife – 37 years. Thirty of my 37 years have been working for the sportsmen and wildlife in Yuba and Sutter Counties.

Nelson Slough Junior/Women's Pheasant Hunt Leader and volunteer for 24 of the past 26 years.

University of California Field Station at Browns Valley Junior Turkey Hunt Leader for the past 19 years.

Marysville Kiwanis Jim Watson Memorial Catfish Derby Coordinator for the past 4 years. Initiated the Rainbow Trout Tubs in 2013 as a new feature for the fishing derby.

Boy Scouts – I have assisted a least a dozen Eagle Scouts earn their Eagle Scout Award with the building of wood duck, bat, tree swallow, barn owl, and catfish boxes. One scout also built a half mile of cattle fence to improve deer habitat.

Ellis Lake in Marysville – I have taken a very active role in improving the management and maintenance of the lake and surrounding grounds for the past 4 years.

Marysville City Councilman – 2010-

Wildlife Habitat Improvement Projects:

I have lead volunteers on several fence building, wood duck box, bat box, tree swallow box, fish habitat improvement using Christmas trees, and wildlife area cleanup projects on state wildlife areas. Habitat improvement and land acquisition are very important for the preservation of wildlife, and hunting/fishing as cultural activities.

Wildlife Area Creations and Additions:

Daugherty Hill Wildlife Area – Yuba County – Major role in the creation of this 6500+ acre wildlife area and the adjoining 2700+ acre conservation easement.

Feather River Wildlife Area – Yuba and Sutter Counties – Major role in the addition of 1600 acres to this 2600 acre wildlife area.

Fremont Weir Wildlife Area – Yolo and Sutter Counties – Major role in the addition of 1300 acres to this 1500 acre wildlife area.

Reasons I Wish to Serve on this Commission:

1. I have had a lifelong interest in the youth, hunting, fishing, habitat improvement, community service and other outdoor community activities programs in Yuba and Sutter Counties.

2. I believe that the Yuba County Fish and Game Commission should encourage participation and input from volunteers outside of the commission to strengthen our community programs.

Dale L Whitmore

Dale L. Whitmore

The County of Yuba

RECEIVED
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Clerk/Board of Supervisors

Application for Board/Commission/Committee Appointed by the Board of Supervisors

RETURN APPLICATION WITH ORIGINAL SIGNATURE TO:

CLERK OF THE BOARD OF SUPERVISORS
YUBA COUNTY GOVERNMENT CENTER
915 EIGHTH STREET, SUITE 109
MARYSVILLE, CA 95901
(530) 749-7510

BOARD/COMMISSION/COMMITTEE ON WHICH YOU WOULD LIKE TO SERVE: Yuba County Fish and Game

APPLICANT NAME: Kaitlyn Irwin

MAILING ADDRESS - (Street/P.O. Box, City, Zip): [redacted]

PHYSICAL ADDRESS (Street, City, Zip): Wheatland CA 95692

TELEPHONE: HOME: [redacted] WORK: [redacted]

EMAIL ADDRESS: [redacted]

OCCUPATION/PROFESSION: CNA / Staffing Clerk at Rideout Hospital

SUPERVISOR/ DISTRICT NUMBER:

REASONS YOU WISH TO SERVE ON THIS BODY: I enjoy both hunting and fishing and I would love to get involved with the community in this aspect.

QUALIFICATIONS:

LIST PAST AND CURRENT PUBLIC POSITIONS HELD: N/A

DO YOU HAVE ANY CRIMINAL CONVICTION THAT MAY BE CONSIDERED A CONFLICT OF INTEREST WITH THE COMMITTEE YOU WISH TO SERVE UPON? ☐ YES ☒ NO

IF YES, PLEASE EXPLAIN. NOTE: THAT A FELONY CONVICTION SHALL PRECLUDE YOU FROM SERVICE.

I UNDERSTAND THAT IF APPOINTED TO A BOARD/COMMISSION/COMMITTEE AND WHAT MAY BE CONSIDERED A CONFLICT OF INTEREST ARISES, THAT I HAVE A DUTY TO GIVE WRITTEN NOTICE OF SUCH TO THE COUNTY.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE: Kaitlyn Irwin DATE: 11/10/14

THIS SECTION FOR OFFICE USE ONLY

☐ NO VACANCY CURRENTLY EXISTS ON ABOVE-MENTIONED BODY. APPLICANT NOTIFIED.

☐ APPLICANT APPOINTED: _____

☐ OTHER: _____

Rev 07/12

11/12/14 Provided to F&G

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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Wildlife Branch
1812 Ninth Street
Sacramento, CA 95811
(916)445-3406

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director

12-15

December 2, 2014

Yuba County Board of Supervisors
915 8TH Street Suite 109
Marysville, CA 95901

Dear Supervisors:

This is to inform you of the Department of Fish and Wildlife's intent to recommend to the Fish and Game Commission the following 2015-16 deer hunt(s):

- G-19 Sutter-Yuba Wildlife Areas Either-Sex Deer Hunt
- J-8 Daugherty Hill Wildlife Area Apprentice Either-Sex Deer Hunt
- J-16 Bucks Mountain-Nevada City Apprentice Either-Sex Deer Hunt
- J-17 Blue Canyon Apprentice Either-Sex Deer Hunt

The 2014 tag quota for the subject hunt(s) were as follows: G-19 = 25; J-8 = 15; J-16 = 75; J-17 = 25. The recommendation for the attached proposal(s) will be formally received by the Commission at its December 3, 2014 meeting. Please note that the recommendation(s) do not identify a specific tag quota but rather a range of tags at this time. A final recommendation (within this range of tags) based on herd performance and harvest results will be provided to the Fish and Game Commission for adoption at its April, 2015 meeting.

Pursuant to sections 458 and 459 of the Fish and Game Code, you are hereby notified of the Department's recommendation affecting your county. In order to object or modify the proposal, the Board of Supervisors must accept public testimony or other information at a public hearing prior to February 1 to assist in the decision making process. Any objections or recommendations for change must be by resolution and received in writing by the Department no later than January 31. Any objections or recommendations for change received after this date will not be considered. If the Board does not wish to exercise this veto authority, it is not necessary to hold a public hearing in consideration of this matter. If no response is received by this date, the Department will consider the proposal approved and proceed with the regulatory process to implement the hunt.

Attached is the proposed regulatory language for above described hunt(s). If you have any questions regarding this recommendation, please contact Mary Sommer at (916) 445-3549 or at the letterhead address above. Comments and recommendations related to the proposal(s) may be provided to the Fish and Game Commission at 1416 Ninth Street, Sacramento, California 95814.

We look forward to your cooperation in managing our deer resources.

Sincerely,

Craig Stowers for

Eric Loft, Chief
Wildlife Branch

Conserving California's Wildlife Since 1870

Attachment(s)

cc: Fish and Game Commission
Sacramento, California

ec: Tina Bartlett, Regional Manager
Department of Fish and Wildlife
Rancho Cordova, California

§360. Deer.
Except as otherwise provided in this Title 14, deer may be taken only as follows:

(c) Additional Hunts

(11) G-19 (Sutter-Yuba Wildlife Areas Either-Sex Deer Hunt).
(A) Area: Those portions of Yuba and Sutter counties within the exterior boundaries of: (1) the Feather River Wildlife Area, and (2) the Sutter Bypass Wildlife Area (as defined in Section ~~550~~551, Title 14, CCR).
(B) Season: The season for additional hunt G-19 (Sutter-Yuba Wildlife Areas Either-Sex Deer Hunt) shall open on the fourth Saturday in September and extend through December 31.
(C) Bag and Possession Limit: One either-sex deer (see subsection 351(c)) per tag.
(D) Number of Tags: ~~25~~10-50.
(E) Special Conditions: Only archery equipment and crossbows (as specified in Section 354) and shotguns and ammunition (as specified in Section 353) may be used.

§360. Deer.
Except as otherwise provided in this Title 14, deer may be taken only as follows:

(c) Additional Hunts

(30) J-8 (Daugherty Hill Wildlife Area Apprentice Either-Sex Deer Hunt).
(A) Area: That portion of Yuba County within the exterior boundaries of the Daugherty Hill Wildlife Area (as defined in Section ~~550~~551, Title 14, CCR).
(B) Season: The season for additional hunt J-8 (Daugherty Hill Wildlife Area Apprentice Either-Sex Deer Hunt) shall open on the first Saturday in December and extend through December 31.
(C) Bag and Possession Limit: One either-sex deer (see subsection 351(c)) per tag.
(D) Number of Tags: ~~15~~10-20.
(E) Special Conditions:
1. Only junior license holders shall apply (see subsection 708.2).
2. Tagholders shall be accompanied by an adult chaperon 18 years of age or older while hunting.

§360. Deer.
Except as otherwise provided in this Title 14, deer may be taken only as follows:

(c) Additional Hunts

(38) J-16 (Bucks Mountain-Nevada City Apprentice Either-Sex Deer Hunt).
(A) Area: Excluding Butte, Colusa and Glenn Counties, in those portions of Nevada, Placer, Plumas, Sierra, Sutter and Yuba Counties within the area described as zone D-3 (see subsection 360(a)(4)(A)1).
(B) Season: The season for additional hunt J-16 (Bucks Mountain-Nevada City Apprentice Either-Sex Deer Hunt) shall be concurrent with the zone D-3 general season as defined in subsection 360(a)(4)(B).
(C) Bag and Possession Limit: One either-sex deer (see subsection 351(c)) per tag.
(D) Number of Tags: 10-75.
(E) Special Conditions:
1. Only junior license holders shall apply (see subsection 708.2).
2. Tagholders shall be accompanied by an adult chaperon 18 years of age or older while hunting.

§360. Deer.
Except as otherwise provided in this Title 14, deer may be taken only as follows:

(c) Additional Hunts

(39) J-17 (Blue Canyon Apprentice Either-Sex Deer Hunt).
(A) Area: Excluding Colusa County, in those portions of Nevada, Placer, Sacramento, Sutter, Yolo and Yuba Counties within the area described as zone D-4 (see subsection 360(a)(4)(A)2).
(B) Season: The season for additional hunt J-17 (Blue Canyon Apprentice Either-Sex Deer Hunt) shall be concurrent with the zone D-4 general season as defined in subsection 360(a)(4)(B).
(C) Bag and Possession Limit: One either-sex deer (see subsection 351(c)) per tag.
(D) Number of Tags: 5-25.
(E) Special Conditions:
1. Only junior license holders shall apply (see subsection 708.2).
2. Tagholders shall be accompanied by an adult chaperon 18 years of age or older while hunting.

Stottlemeyer, Donna

From: Stottlemeyer, Ashley
Sent: Monday, January 05, 2015 11:21 AM
To: Stottlemeyer, Donna
Subject: FW: Certified Letter from Dept. of Fish & Wildlife
Attachments: YubaCoLetterWithAttachment.pdf

Does this belong to you Donna?

From: Hillegass, Donna
Sent: Monday, January 05, 2015 11:11 AM
To: Stottlemeyer, Ashley
Subject: FW: Certified Letter from Dept. of Fish & Wildlife

Sent with Good (www.good.com)

-----Original Message-----
From: Sommer, Mary@Wildlife [Mary.Sommer@wildlife.ca.gov]
Sent: Monday, January 05, 2015 11:00 AM Pacific Standard Time
To: County Clerk
Subject: Certified Letter from Dept. of Fish & Wildlife

Dear Mr./Ms. Hansen,

The California Department of Fish and Wildlife sent your office a certified letter in early December regarding either-sex deer hunts proposed in your county for 2015. Unfortunately the address on the envelope included a room number that was incorrect, and the letter was returned to our office.

Due to the time sensitive nature of the letter, this message is an effort to get the letter to you as quickly as possible. A file is attached that includes both the letter and attachments that were originally mailed to you.

If you have any questions, please feel free to contact me.
Thank you,

Mary Sommer
Big Game Program
Wildlife Branch
California Department of Fish and Wildlife
1812 9th Street
Sacramento, CA 95811
(916) 445-3549
Mary.Sommer@wildlife.ca.gov
www.wildlife.ca.gov

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The County of Yuba

Office of the County Administrator

Robert Bendorf, County Administrator

TO: Yuba County Board of Supervisors
FROM: Robert Bendorf, County Administrator RB/tc
RE: Tenant Improvements to Sheriff's Yuba Street Facility
DATE: January 13, 2015

RECOMMENDATION

It is recommended that the Board of Supervisors receive a presentation regarding the financing of a portion of the project costs for the Sheriff's Yuba Street Facility and provide direction as appropriate.

BACKGROUND

The County is considering developing the building it purchased in 2011 as a Sheriff Facility, including office space and sharing of radio tower for the Yuba County Water Agency. The development will include tenant improvements costing approximately $10 million. The County has received bids for construction, and will soon be requesting the Board award the construction contract.

Prior to making the award, the County has requested Jeff Small of Capitol Public Finance Group to provide the Board with a presentation of the County's financing options. At the conclusion of the presentation, the Board will be asked to provide direction on whether it would like to proceed with approving the financing at the Board meeting scheduled on January 27, and provide feedback on the desired financing structure.

DISCUSSION

California counties typically finance non-voter approved public infrastructure using a debt instrument known as Certificates of Participation (COPs). COPs will allow the County to obtain proceeds to fund the project amount, pay costs of issuance, and, if required, fund a reserve equal to an annual debt service payment. The presentation will provide detail on the sizing of the COP.

The interest rate on the COP is established based on criteria including the County's credit rating, the availability of bond insurance, the bond structure (see alternatives below) and

market conditions at the time of sale. The County maintains an issuer credit rating of "A+" from Standard & Poor's Rating Service, and an "A" COP credit rating. The proposed COP is not expected to change the County's current credit ratings.

The County anticipates applying funding beyond the proceeds of the COP, depending on the contract award amount. The two primary sources of funding will come from the General Fund Capital Outlay and Criminal Justice Capital Facility Impact Fees and financing a project deposit of approximately $6 million for the remaining cost. Based on the estimated bond sizing, market interest rates, and thirty year term, the County can expect annual debt payments to be in the following range:

- Estimated Insured COP
  - Years 1-5: $290,000 – Years 6-30: $410,000
  - The County has applied for insurance, which allows the County to borrow at lower interest rates and avoid borrowing to fund a cash reserve
  - If the County qualifies for insurance, the COPs can be sold at a "AA" credit rating
  - The Insured COP is further described below.
- Estimated Uninsured COP
  - Years 1-5: $315,000 – Years 6-30: $445,000
  - If the County does not qualify for insurance, it can sell the COPs at its "A" credit rating, and will need to borrow for a cash reserve, which can make the final payment

The above insured COP involves interest only payments for Years 1-5 with principal amortized over the remaining years. If principal payments are made during the first five years, the years 6-30 payments may be reduced.

The County plans to make annual COP payments from the following sources:

Ongoing Funding Sources (Per Year)	
General Government Impact Fees	$140,000*
Lease Payments from Water Agency	$50,000
Public Safety Sales Tax	$75,000
County General Fund	$25,000 - $285,000
*These fees are available until the total contribution reaches $2,654,142, which is in approximately 19 years. The contribution from the General Fund will increase after the General Governement Impact Fees is reached.	

The County is retaining flexibility regarding its allocation of debt payments. This is important since the General Government Impact Fees may vary from year to year and are subject to development cycles within the County. Staff believes that the debt payments on the upper end are affordable should annual debt payments be on higher end of the estimate.

Should the County decide to proceed with the financing, staff will bring back a resolution and financing documents to be approved on January 27. Project funds will be available on or before February 26, 2015.

ALTERNATIVES

The County can structure the COPs to maintain future flexibility using a Premium Interest Rate Structure with a prepayment date in 5 years and interest only payments for 5 years. This will enable the County to prepay or refinance the COPs in 5 years with a lower principal amount. This structure should be used if the County is relatively certain that it will prepay the COP in 5 years. With this structure, the County would receive a large premium from bond investors enabling the County to size the COP at approximately $5.7 million, thus minimizing the borrowing amount. Annual payments are consistent with the Insured COP described earlier. However, if such flexibility is unnecessary, the County may save additional funds by directing staff to incorporate a 10 year prepayment provision without the Premium Rate Structure.

The Premium Rate Structure is not included in the legal structure, and therefore the Board is not required to make a decision at the meeting. The direction should be focused on whether the COPs should include a provision that will allow for a 5 year or 10 year prepayment option. Staff is recommending a 5 year prepayment option in order to retain future flexibility. Direction on the prepayment provision can be given on January 27. Feedback from the Board will assist staff in carrying out its objective. The above options can also be applied to an uninsured COP in the event insurance is unavailable.

FISCAL IMPACT

Annual debt service will be covered from the above sources.

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Administrative Services Memorandum

To: Board of Supervisors
CC: Robert Bendorf, County Administrator
From: Doug McCoy, Director, Administrative Services
Date: January 13, 2015
Re: Tentative contract award for new Sheriff Facility

Recommendation

The Board approves the conditional award of a contract to Randy Hill Construction, Inc. of Chico for the construction of the new sheriff facility pending final approval of the financing for the project.

Further, the Board approves the attached resolution to allow final execution of the contract to the Purchasing Agent once the financing is in place, final negotiations are complete, and upon the approval of the agreement by County Counsel.

Background

Administrative Services and the Office of the Sheriff have been in development and design of the proposed new Sheriff facility to be located at 720 Yuba Street in Marysville for the last several years. In November, the Board authorized the release of a Request for Proposal for the development of this facility, and the solicitation closed on December 16th.

Discussion

Randy Hill Construction was the apparent low bidder for the construction of the Sheriff Facility. The bid *for construction only* came in at $8.01 million, and is subject to further clarifications and discussion. Randy Hill's response included a number of local providers and subcontractors which made it even more compelling. The have a good track record and have received positive references.

The next lowest bidder was Bobo Construction of Sacramento. If the County is unable to reach an agreement with Randy Hill, we would come back to your Board for award to the next lowest bidder.

Financial Impact

The project financing shall be handled as a separate matter and will be brought before your Board soon (anticipated to be January 27th). Any costs incurred in the interim, between this award and actual financing approval will be funded from the #200 capital account and is expected to be minimal.

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BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA

RESOLUTION	)	**RESOLUTION NO. _____**
THE BOARD DELEGATES FINAL	)	
EXECUTION OF THE CONTRACT WITH	)	
RANDY HILL CONSTRUCTION TO THE	)	
PURCHASING AGENT ONCE THE	)	
FINANCING IS IN PLACE, FINAL	)	
NEGOTIATIONS ARE COMPLETE, AND	)	
UPON THE APPROVAL OF THE	)	
AGREEMENT BY COUNTY COUNSEL.	)	

WHEREAS, Yuba County has determined it is critical for the operations of our Sheriff to have a base of operations that is conducive to serving the public and to accomplish their mission of public service; and

WHEREAS, the County of Yuba acquired the existing building at 720 Yuba Street for the purposes of developing it into a new location for the Office of the Sheriff; and

WHEREAS, Administrative Services and the Office for the Sheriff have been facilitating the design and development of this facility for the last several years; and

WHEREAS, a design is now complete that will meet the current and future needs of the Sheriff and their operations; and

WHEREAS, a Request for Proposal solicitation was distributed to the construction community in November of this year and nine (9) responses received December 16th; and

WHEREAS, an apparent low bidder has been selected to perform the construction / tenant improvement of this facility.

NOW, THEREFORE, BE IT RESOLVED, The Yuba County Board of Supervisors hereby conditionally awards the contract for construction of the facility at 720 Yuba Street to Randy Hill Construction of Chico, CA. This contract to be conditional until such time as the Board approves the financing for said project (anticipated to be presented to your Board January 27th).

The Board further authorizes the Purchasing Agent to execute the contract with Randy Hill Construction only upon final Board approval of the project financing, upon final contract negotiations with Randy Hill Construction, and upon final approval by County Counsel.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Yuba, State of California on the _____ day of _____, 2015 by the following vote:

AYES:

NOES:

ABSENT:

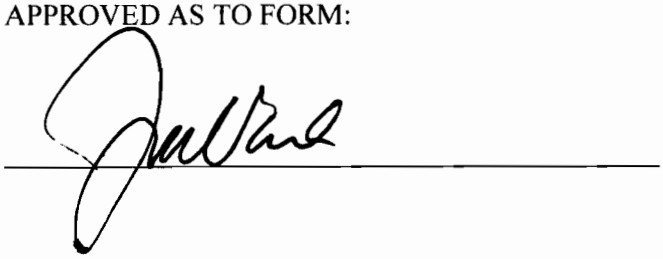
ABSTAIN:

_____
Chairman

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

_____

ANGIL P. MORRIS-JONES
YUBA COUNTY COUNSEL
APPROVED AS TO FORM:



ORDINANCES
AND
PUBLIC HEARINGS

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524-14

The County of Yuba

Community Development & Services Agency

Kevin Mallen, Director
Phone - (530) 749-5430 • Fax - (530) 749-5434
915 8th Street, Suite 123
Marysville, California 95901
www.co.yuba.ca.us

BUILDING
749-5440 • Fax 749-5616

CODE ENFORCEMENT
749-5455 • Fax 749-5464

ENVIRONMENTAL HEALTH • CUPA
749-5450 • Fax 749-5454

HOUSING AND COMMUNITY SERVICES
749-5460 • Fax 749-5464

PLANNING
749-5470 • Fax 749-5434

PUBLIC WORKS • SURVEYOR
749-5420 • Fax 749-5424

TO: Board of Supervisors

FROM: Michael G. Lee, Director of Public Works

SUBJECT: Update Ordinance Code Chapter 10.30, Floodplain Management

DATE: November 18, 2014

Recommendation

That the Board repeal and re-enact Ordinance Code Title X, Chapter 10.30 in its entirety to better address the requirements of the National Flood Insurance Program and the Community Rating System.

Background

The National Flood Insurance Program (NFIP) provides flood insurance and disaster relief to property owners who live in participating communities. Participation in the NFIP is voluntary; Yuba County joined the NFIP in 1983. Participants in the NFIP have to meet certain minimum standards for construction and floodplain management, and also have to adopt a floodplain management ordinance that specifies the County's floodplain management requirements. The State of California provides a template for floodplain management ordinances; this template reflects the minimum standards required by the NFIP.

Discussion

The NFIP also encourages communities to implement higher standards under the Community Rating System (CRS) program. The CRS program provides incentives in the form of premium discounts for communities to go beyond the minimum floodplain management requirements by developing extra flood protection measures. A community's CRS classification determines the premium discount for policyholders. There are ten CRS classifications: Class "1" requires the most credit points and gives the greatest premium discount (45%); while Class "10" receives no discount. Yuba County is a Class "6" community, and receives a 20% discount on flood insurance premiums. The standards for achieving discounts changed in 2013, so Yuba County needs to adjust its floodplain management standards accordingly. The proposed changes clarify NFIP minimum requirements, remove the existing prohibition against having enclosed

areas below the lowest floor elevation, update references, and remove other minor inconsistencies within the chapter.

Committee Action:

The Land and Public Works Committee reviewed this request on October 28, 2014 and recommended approval.

Fiscal Impact:

The fiscal impact of updating ordinance code chapter 10.30 is anticipated to be negligible.

ORDINANCE NO. _____

Forma

AN ORDINANCE AMENDING TITLE X, CHAPTER 10.30 OF THE YUBA COUNTY ORDINANCE CODE BY REPEALING AND REENACTING CHAPTER 10.30 AS AMENDED RELATING TO FLOODPLAIN MANAGEMENT

The following ordinance consisting of three (3) sections was duly and regularly passed and adopted by the Board of Supervisors of the County of Yuba, State of California, at a regular meeting of the Board of Supervisors held on _____ day of _____, 20____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Chairman of the Board of Supervisors
of the County of Yuba, State of California

ATTEST: DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

By:_____

APPROVED AS TO FORM
ANGIL MORRIS-JONES
Yuba County Counsel

By:_____

THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA DOES ORDAIN AS FOLLOWS:

Section 1. This ordinance shall take effect Thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Chapter 10.30 of Title X of the Yuba County Ordinance Code is hereby repealed and Chapter 10.30 is hereby reenacted as amended and set forth herein below:

CHAPTER 10.30

FLOODPLAIN MANAGEMENT

Sections

10.30.010 STATUTORY AUTHORIZATION
10.30.020 FINDINGS OF FACT
10.30.030 STATEMENT OF PURPOSE
10.30.040 METHODS OF REDUCING FLOOD LOSSES
10.30.050 DEFINITIONS
10.30.060 GENERAL PROVISIONS
10.30.070 ADMINISTRATION
10.30.080 PROVISIONS FOR FLOOD HAZARD REDUCTION
10.30.090 VARIANCE PROCEDURES

10.30.010 STATUTORY AUTHORIZATION. The Legislature of the State of California has in Government Code Sections 65302, 65560, and 65800 conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the County of Yuba does hereby adopt the following floodplain management regulations.

10.30.020 FINDINGS OF FACT.

(a) The flood hazard areas of Yuba County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses are caused by uses that are inadequately elevated, floodproofed, or

protected from flood damage. The cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities also contributes to flood losses.

10.30.030 STATEMENT OF PURPOSE. It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by legally enforceable regulations applied uniformly throughout the community to all publicly and privately owned land within flood prone, mudslide [i.e. mudflow] or flood related erosion areas. These regulations are designed to:

(a) Protect human life and health;

(b) Minimize expenditure of public money for costly flood control projects;

(c) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(d) Minimize prolonged business interruptions;

(e) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard;

(f) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;

(g) Ensure that potential buyers are notified that property is in an area of special flood hazard; and

(h) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

10.30.040 METHODS OF REDUCING FLOOD LOSSES. In order to accomplish its purposes, this ordinance includes regulations to:

(a) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;

(b) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction, and mitigated to prevent future losses for existing structure;

(c) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;

(d) Control filling, grading, dredging, and other development which may increase flood

damage; and

(e) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

10.30.050 DEFINITIONS. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

(a) "A zone" - see "Special flood hazard area".

(b) "Accessory structure" means a structure that is either:

i. Solely for the parking of no more than 2 cars; or

ii. A small, low cost shed for limited storage, less than 450 square feet and $2,500 in value.

(c) "Accessory use" means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

(d) "Alluvial fan" means a geomorphologic feature characterized by a cone or fan-shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and which is subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.

(e) "Apex" means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

(f) "Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

(g) "Area of shallow flooding" means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

(h) "Area of special flood hazard" - See "Special flood hazard area."

(i) "Base flood" means a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood"). Base flood is the term used throughout this ordinance.

(j) "Base flood elevation" (BFE) means the elevation shown on the Flood Insurance Rate

Map for Zones AE, AH, A1-30, VE and V1-V30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

(k) "Basement" means any area of the building having its floor subgrade - i.e., below ground level - on all sides.

(l) "Building" - see "Structure".

(m) "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. For the purposes of this ordinance, the following activities shall not be considered development:

1. Normal farming activities; or
2. Residential and commercial landscape maintenance.

(n) "Encroachment" means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

(o) "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before May 17, 1982.

(p) "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

(q) "Flood, flooding, or flood water" means:

i. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e., mudflows); and

ii. The condition resulting from flood-related erosion.

(r) "Flood Boundary and Floodway Map (FBFM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the floodway.

(s) "Flood Insurance Rate Map (FIRM)" means the official map on which the Federal

Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

(t) "Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

(u) "Floodplain or flood-prone area" means any land area susceptible to being inundated by water from any source - see "Flooding."

(v) "Floodplain Administrator" is the community official designated by title to administer and enforce the floodplain management regulations.

(w) "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

(x) "Floodplain management regulations" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other application of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof which provide standards for preventing and reducing flood loss and damage.

(y) "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. For guidelines on dry and wet floodproofing, see FEMA Technical Bulletins TB 1-93, TB 3-93, and TB 7-93.

(z) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as "Regulatory Floodway."

(aa) "Floodway fringe" is that area of the floodplain on either side of the "Regulatory Floodway" where encroachment may be permitted.

(bb) "Fraud and victimization" as related to Section 10.30.090 of this ordinance, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the County of Yuba will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty to one-hundred years. Buildings that are permitted to be constructed

below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

(cc) "Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

(dd) "Governing body" is the local governing unit, i.e. county or municipality, that is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

(ee) "Hardship" as related to Section 10.30.090 of this ordinance means the exceptional hardship that would result from a failure to grant the requested variance. The County of Yuba requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

(ff) "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

(gg) "Historic structure" means any structure that is:

i. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

ii. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

iii. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

iv. Individually listed on a local inventory of historic places in communities with

historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs.

(hh) "Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

(ii) "Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

(jj) "Lowest floor" means the lowest floor of the lowest enclosed area, including basement (see "Basement" definition).

i. An unfinished or flood resistant enclosure below the lowest floor that is usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor provided it conforms to applicable non-elevation design requirements, including, but not limited to:

1. The flood openings standard in Section 10.30.080(a)(iii)(3);

2. The anchoring standards in Section 10.30.080(a)(i);

3. The construction materials and methods standards in Section 10.30.080(a)(ii); and

4. The standards for utilities in Section 10.30.080(b).

ii. For residential structures, all subgrade enclosed areas are prohibited as they are considered to be basements (see "Basement" definition). This prohibition includes below-grade garages and storage areas.

(kk) "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does <u>not</u> include a "recreational vehicle".

(ll) "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

(mm) "Market value" shall be determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation which has accrued since the structure was constructed.

i. The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry.

ii. The amount of depreciation shall be determined by taking into account the age and physical deterioration of the structure and functional obsolescence as approved by the Floodplain Administrator, but shall not include economic or other forms of external obsolescence.

Use of replacement costs or accrued depreciation factors different from those contained in recognized building cost estimating guides may be considered only if such factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

(nn) "Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

(oo) "New construction", for floodplain management purposes, means structures for which the "start of construction" commenced on or after May 17, 1982, and includes any subsequent improvements to such structures.

(pp) "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after May 17, 1982.

(qq) "Normal Farming Activities" means plowing, seeding, cultivating, minor drainage, harvesting, field leveling outside defined watercourses, contouring, and planting.

(rr) "Obstruction" includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

(ss) "One-hundred-year flood" or "100-year flood" - see "Base flood."

(tt) "Program deficiency" means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations.

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(uu) "Public safety and nuisance" as related to Section 10.30.090 of this ordinance, means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

(vv) "Recreational vehicle" means a vehicle which is:

i. Built on a single chassis;

ii. 400 square feet or less when measured at the largest horizontal projection;

iii. Designed to be self-propelled or permanently towable by a light-duty truck; and

iv. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(ww) "Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

(xx) "Remedy a violation" means to bring the structure or other development into compliance with State or local floodplain management regulations, or if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing State or Federal financial exposure with regard to the structure or other development.

(yy) "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

(zz) "Sheet flow area" - see "Area of shallow flooding."

(aaa) "Special flood hazard area (SFHA)" means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on an FBFM or FIRM as Zone A, AO, A1-A30, AE, A99, AR or, AH.

(bbb) "Start of construction" includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing,

grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

(ccc) "Structure" means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home. For the purposes of this ordinance, "walled and roofed" means that the structure has two or more rigid walls and a fully secured roof.

(ddd) "Substantial damage" means:

i. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred; or

ii. Flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. This is also known as "repetitive loss."

(eee) "Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

i. Any project for improvement of a structure to correct existing violations or state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

ii. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

(fff) "Variance" means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

(ggg) "Violation" means the failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

(hhh) "Water surface elevation" means the height, in relation to the National Geodetic

Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(iii) "Watercourse" means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

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10.30.060 GENERAL PROVISIONS.

(a) LANDS TO WHICH THIS ORDINANCE APPLIES. This ordinance shall apply to all areas of special flood hazards within the jurisdiction of Yuba County.

(b) BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD. The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the "Flood Insurance Study (FIS) for Yuba County, California" dated November 17, 1981 or subsequent versions currently effective, with accompanying Flood Insurance Rate Maps (FIRM's) and Flood Boundary and Floodway Maps (FBFM's), dated May 17, 1982 or subsequent versions currently effective, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this ordinance. This FIS and attendant mapping is the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the County of Yuba by the Floodplain Administrator. The study, FIRM's and FBFM's are on file at the Community Development and Services Agency, 915 8th Street, Marysville, CA.

(c) COMPLIANCE. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards) shall constitute a misdemeanor. Nothing herein shall prevent the County of Yuba from taking such lawful action as is necessary to prevent or remedy any violation.

(d) ABROGATION AND GREATER RESTRICTIONS. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(e) INTERPRETATION. In the interpretation and application of this ordinance, all provisions shall be:

i. Considered as minimum requirements;

ii. Liberally construed in favor of the governing body; and

iii. Deemed neither to limit nor repeal any other powers granted under state statutes.

(f) WARNING AND DISCLAIMER OF LIABILITY. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Yuba County, any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

(g) SEVERABILITY. This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

10.30.070 ADMINISTRATION.

(a) DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR. The Community Development and Services Agency Director or designee is hereby appointed to administer, implement, and enforce this ordinance by granting or denying development permits in accord with its provisions.

(b) DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR. The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

i. Permit Review.

Review all development permits to determine:

1. Permit requirements of this ordinance have been satisfied, including determination of substantial improvement and substantial damage of existing structures;

2. All other required state and federal permits have been obtained;

3. The site is reasonably safe from flooding;

4. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. This means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than 1 foot at any point within the County of Yuba nor adversely affect adjacent property owners; and

5. All Letters of Map Revision (LOMR's) for flood control projects are approved prior to the issuance of building permits. Building Permits must not be issued based on Conditional Letters of Map Revision (CLOMR's). Approved CLOMR's allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.

ii. Development of Substantial Improvement and Substantial Damage Procedures.

The County shall utilize FEMA publication FEMA P-758,"Substantial Improvement / Substantial Damage Desk Reference" or its successor document for identifying and administering requirements relating to substantial improvement and substantial damage.~~The County shall utilize FEMA publication FEMA 213, "Answers to Questions About Substantially Damaged Buildings," for indentifying and administering requirements for substantial improvement and substantial damage.~~

iii. Review, Use and Development of Other Base Flood Data.

When base flood elevation data has not been provided by FEMA in accordance with Section 10.30.060(b), the Floodplain Administrator shall require the development permit applicant to present for review base flood elevation and floodway data from a federal or state agency, or other source, in order to administer Section 10.30.080. If a base flood elevation is not available, a base flood elevation shall be developed by the applicant using the detailed methods as described in the most current edition of FEMA publication, FEMA 265, "Managing Floodplain Development in Approximate Zone A Areas – A Guide for Obtaining and Developing Base (100-year) Flood Elevations". The simplified methods presented in FEMA 265 may be utilized for projects less than 5 acres or 50 lots, whichever is lesser, or for development permit applications for agricultural uses. If the floodplain administrator determines that developing data to establish the base flood elevation would be excessively expensive, the floodplain administrator may at his/her discretion alternatively approve a lowest floor elevation which is five feet above the highest adjacent grade.

iv. Notification of Other Agencies.

1. Alteration or relocation of a watercourse:

   a. Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation;

   b. Submit evidence of such notification to the Federal Emergency Management Agency; and

   c. Assure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.

2. Base Flood Elevation changes due to physical alterations:

Within 6 months of information becoming available or project completion, whichever comes first, the Floodplain Administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter of Map Revision (LOMR).

3. Changes in corporate boundaries:

   Notify FEMA in writing whenever the corporate boundaries have been modified by annexation or other means and include a copy of a map of the community clearly delineating the new corporate limits.

v. Documentation of Floodplain Development.

Obtain and maintain for public inspection and make available as needed the following:

1. Certification required by Section 10.30.080(a)(iii)(1) and Section 10.30.080(d) (Lowest floor elevation of r~~R~~esidential ~~Construction~~ structures);

2. Certification required by Section 10.30.080(a)(iii)(2) (Lowest floor elevation or floodproofing of n~~N~~onresidential ~~Construction~~structures);

~~2.~~3. Certification required by Section 10.30.080(d) (Lowest floor elevation of manufactured homes).

~~3.~~4. Certification required by Section 10.30.080(a)(iii)(3) (Flood Openings);

~~4.~~5. Certification of elevation required by Section 10.30.080(c)(i)(3) (Subdivisions and Other Proposed Development);

~~5.~~6. Certification required by Section 10.30.080(f)(ii) (Floodways); and

~~6.~~7. Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.

vi. Map Determination.

Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 10.30.090.

vii. Remedial Action.

Take action to remedy violations of this ordinance as specified in Section 10.30.060(c).

viii. Planning.

Assure Yuba County General Plan is consistent with floodplain management objectives contained in Chapter 10.30.

ix. Non-conversion of Enclosed~~Enclosed~~ Areas Below the Lowest Floor.

Non-Conversion of Enclosed Areas below Lowest Floor: As a condition of receiving a building permit, owners of proposed structures with enclosed areas below the lowest floor must sign a non-conversion agreement, promising not to improve, finish, or otherwise convert the area below the lowest floor and granting the County of Yuba the right to inspect the enclosed area upon prior notice of at least 72 hours.~~All areas below the BFE are prohibited from being enclosed, and T~~~~to~~ To ensure that the areas below the BFE shall not be ~~enclosed, used solely for parking vehicles, limited storage, or access to the building and not be finished for use as human habitation without first becoming fully compliant with the floodplain management ordinance in effect at the time of conversion,~~finished for use as human habitation, the Floodplain Administrator shall:

1. Determine which applicants for new construction and/or substantial improvements have ~~fully enclosed~~ areas below the lowest floor that are ~~5~~4 (four) feet or higher;

2. Enter into a "NON-~~ENCLOSURE~~CONVERSION~~CONVERSION~~ AGREEMENT FOR CONSTRUCTION WITHIN FLOOD HAZARD AREAS" or equivalent with the County of Yuba. The agreement shall be recorded with the Yuba County Recorder as a deed restriction~~, and prohibit any building enclosures, including breakaway walls, below the BFE~~. The ~~non-conversion~~NON-CONVERSION~~ENCLOSURE~~ agreement shall be in a form acceptable to the Floodplain Administrator and County Counsel; and

3. Have the authority to inspect any area of a structure below the base flood elevation to ensure compliance upon prior notice of at least 72 hours.

(c) DEVELOPMENT PERMIT. A development permit shall be obtained before any construction or other development, including manufactured homes, within any area of special flood hazard established in Section 10.30.060. Application for a development permit shall be made on forms furnished by the County of Yuba. The applicant shall provide the following minimum information:

i. Plans in duplicate, drawn to scale, showing:

1. Location, dimensions, and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;

2. Proposed locations of water supply, sanitary sewer, and other utilities;
3. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;
4. Location of the regulatory floodway when applicable;
5. Base flood elevation information as specified in Section 10.30.060 or Section 10.30.070(b)(iii);
6. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures; and
7. Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed, as required in Section 10.30.080(a)(iii)(2) of this ordinance and detailed in FEMA Technical Bulletin TB 3-93.

ii. Certification from a registered civil engineer or architect that the nonresidential floodproofed building meets the floodproofing criteria in Section 10.30.080(a)(iii)(2).

iii. For a crawl-space foundation, location and total net area of foundation openings as required in Section 10.30.080(a)(iii)(3) of this ordinance and detailed in FEMA Technical Bulletins 1-93 and 7-93.

iv. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

v. All appropriate certifications listed in Section 10.30.070(b)(v) of this ordinance.

~~v.~~vi. For improvements and repairs to existing structures with the lowest floor below the BFE in a Special Flood Hazard Area (SFHA), applicant must provide evidence that such proposed improvements or repairs do not constitute substantial improvements or repairs to the structure prior to obtaining a building permit. For repairs to structures damaged by flood, fire, or other disasters, such evidence must be in accordance with FEMA P-758 "Substantial Improvement / Substantial Damage Desk Reference."

(d) APPEALS. The Board of Supervisors of Yuba County shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

Any person who wishes to appeal the decision of the Floodplain Administrator may, within ~~fifteen~~ ten (10~~5~~) days after such decision is rendered, file an appeal with the Clerk of the Board of Supervisors. The appeal shall be in writing and shall set forth the grounds upon which relief is requested. The decision of the Board of Supervisors shall be final with respect to any variance of appeal.

10.30.080 PROVISIONS FOR FLOOD HAZARD REDUCTION.

(a) STANDARDS OF CONSTRUCTION. In all areas of special flood hazards the following standards are required:

i. Anchoring.

All new construction and substantial improvements of structures, including manufactured homes, shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

ii. Construction Materials and Methods.

All new construction and substantial improvements of structures, including manufactured homes, shall be constructed:

1. With flood resistant materials, and utility equipment resistant to flood damage for areas ~~below~~ less than one foot above the base flood elevation;

2. Using methods and practices that minimize flood damage;

3. With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and

4. Within Zones AH or AO, so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

~~4.~~5. If fill is placed at a site to elevate a building pad above the base flood elevation, then buildings constructed within flood hazard areas must be constructed on compacted fill in accordance with the construction specifications or at least 90 density per ASTM-D698 or equivalent, and extending at least five feet beyond the building foundation walls before dropping below the base flood elevation and shall include appropriate protection from erosion and scour. The design of the fill must be approved by a registered professional engineer.

iii. Elevation and Floodproofing.

1. Residential Construction. All new construction or substantial improvements of residential structures shall have the lowest floor, including basement:

a. In AE, AH, A1-30 Zones, elevated one foot above the base flood elevation.

b. In an AO zone, elevated above the highest adjacent grade to a height one foot

above the depth number specified in feet on the FIRM, or elevated at least three feet above the highest adjacent grade if no depth number is specified.

c. In an A zone, without BFE's specified on the FIRM (unnumbered A zone), elevated one foot above the base flood elevation, as determined under Section 10.30.070(b)(iii). If the floodplain administrator determines that developing data to establish the base flood elevation would be excessively expensive, the floodplain administrator may at his/her discretion alternatively approve a lowest floor elevation which is five feet above the highest adjacent grade.~~In an A zone, without BFE's specified on the FIRM (unnumbered A zone), elevated one foot above the base flood elevation, as determined under Section 10.30.070(b)(iii).~~

Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered civil engineer or licensed land surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be in the form of a National Flood Insurance Program – Elevation Certificate and shall be provided to the Floodplain Administrator.~~Such certification and verification shall be provided to the Floodplain Administrator.~~

2. Nonresidential Construction. All new construction or substantial improvements of nonresidential structures shall either be elevated to conform with Section 10.30.080(a)(iii)(1) or:

   a. Be floodproofed, together with attendant utility and sanitary facilities, below the elevation recommended under Section 10.30.080(a)(iii)(1), so that the structure is watertight with walls substantially impermeable to the passage of water;

   b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

   c. Be certified by a registered civil engineer or architect that the standards of Sections 10.30.080(a)(iii)(2)(a&b) are satisfied. Such certification shall be provided to the Floodplain Administrator.

3. Flood Openings. All new construction and substantial improvements of structures with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet the following minimum criteria:

   a. For non-engineered openings:

1. Have a minimum of two openings on different sides having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

2. The bottom of all openings shall be no higher than one foot above grade;

~~2.~~3. Openings must be located so that the portion of the opening intended to allow for inflow and outflow is below the BFE;

~~3.~~4. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater. The measurement of the net open area must take into consideration any coverings that have solid obstructions, such as grilles, fixed louvers, or faceplates; and

~~4.~~5. Buildings with more than one enclosed area must have openings on exterior walls for each area to allow flood water to directly enter; or

b. Be certified by a registered civil engineer or architect.

4. Manufactured homes.

a. See Section 10.30.080(d).

iv. Garages and low cost accessory structures.

1. Attached garages.

a. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry of flood waters. See 10.30.080(a)(iii)(3). Areas of the garage below the BFE must be constructed with flood resistant materials. See Section 10.30.080(a)(ii).

b. A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed. For guidance on below grade parking areas, see FEMA Technical Bulletin TB-6.

2. Detached garages and accessory structures.

a. "Accessory structures" used solely for parking (2 car detached garages or smaller) or limited storage (small, low-cost sheds), as defined in Section 10.30.050, may be constructed such that its floor is below the base flood elevation (BFE), provided the structure is designed and constructed in accordance with the following requirements:

1. Use of the accessory structure must be limited to parking or limited storage;

2. The portions of the accessory structure located below the BFE must be built using flood-resistant materials;

3. The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;

4. Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed ~~to or~~at least one foot above the BFE;

5. The accessory structure must comply with floodplain encroachment provisions in Section 10.30.080(f);

~~5.~~6. The owner has first obtained a wet-floodproofing variance for the accessory structure, except that no variance is required for small, low-cost sheds; and

~~6.~~7. The accessory structure must be designed to allow for the automatic entry of flood waters in accordance with Section 10.30.080(a)(iii)(3).

b. Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in Section 10.30.080(a).

v. Agricultural structures

1. Agricultural structures shall be elevated or dry-floodproofed to at least one foot above the BFE. Agricultural structures may be constructed such that its floor is below the BFE provided the owner applies for and receives a wet-floodproofing variance in accordance with Section 10.30.090.

(b) STANDARDS FOR UTILITIES.

i. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:

1. Infiltration of flood waters into the systems; and

2. Discharge from the systems into flood waters.

ii. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.

(c) STANDARDS FOR SUBDIVISIONS AND OTHER PROPOSED DEVELOPMENT.

i. All new subdivision proposals and other proposed development, including proposals

for manufactured home parks and subdivisions, greater than 50 lots or 5 acres, whichever is the lesser, shall:

1. Identify the Special Flood Hazard Areas (SFHA) and Base Flood Elevations (BFE).

2. Identify the elevations of lowest floors of all proposed structures and pads on the final plans.

3. If the site is filled above the base flood elevation, the following as-built information for each structure shall be certified by a registered civil engineer or licensed land surveyor and provided as part of an application for a Letter of Map Revision based on Fill (LOMR-F) to the Floodplain Administrator:

   a. Lowest floor elevation.

   b. Pad elevation.

   c. Lowest adjacent grade.

ii. All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.

iii. All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

iv. All subdivisions and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.

(d) <u>STANDARDS FOR MANUFACTURED HOMES</u>.

i. All manufactured homes that are placed or substantially improved, on sites located: (1) outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall:

   1. Within Zones A1-30, AH, and AE on the community's Flood Insurance Rate Map, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot above the base flood elevation and be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

ii. All manufactured homes to be placed or substantially improved on sites in an existing

manufactured home park or subdivision within Zones A1-30, AH, and AE on the community's Flood Insurance Rate Map that are not subject to the provisions of Section 10.30.080(d)(i) will be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, and be elevated so that either the:

1. Lowest floor of the manufactured home is at least one foot above the base flood elevation; or

2. Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade.

Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered civil engineer or licensed land surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be in the form of a National Flood Insurance Program – Elevation Certificate and shall be provided to the Floodplain Administrator.~~Such certification and verification shall be provided to the Floodplain Administrator.~~

(e) STANDARDS FOR RECREATIONAL VEHICLES.

i. All recreational vehicles placed in Zones A1-30, AH, and AE will either:

1. Be on the site for fewer than 180 consecutive days; or

2. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

3. Meet the permit requirements of Section 10.30.070(c) of this ordinance and the elevation and anchoring requirements for manufactured homes in Section 10.30.080(d)(i).

(f) FLOODWAYS. Since floodways are an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

i. Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within Zones A1-30 and AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than 1 foot at any point within the County of Yuba.

ii. Within an adopted regulatory floodway, the County of Yuba shall prohibit encroachments, including fill, new construction, substantial improvements, and other development, unless certification by a registered civil engineer is provided demonstrating that the proposed encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

iii. If Sections 10.30.080(f)(i & ii) are satisfied, all new construction, substantial improvement, and other proposed new development shall comply with all other applicable flood hazard reduction provisions of Section10.30.080.

10.30.090 VARIANCE PROCEDURE.

(a) NATURE OF VARIANCES. The issuance of a variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance.

The variance criteria set forth in this section of the ordinance are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the Yuba County Board of Supervisors to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

(b) CONDITIONS FOR VARIANCES.

i. Generally, variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing that the procedures of Sections 10.30.070 and 10.30.080 of this ordinance have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

ii. Variances to allow wet floodproofing of new or substantially improved non-

residential structures may be issued for the following categories of structures:

1. Structures functionally dependent upon close proximity to water;
2. Accessory structures used solely for parking (two-car detached garages or smaller) or limited storage; and
3. Agricultural structures used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, storage of agricultural equipment, or providing temporary shelter for livestock.

iii. Variances may be issued for the repair or rehabilitation of "historic structures" (as defined in Section 10.30.050 of this ordinance) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

iv. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.

v. Variances shall only be issued upon a determination that the variance is the "minimum necessary" considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this ordinance. For example, in the case of variances to an elevation requirement, this means the Yuba County Board of Supervisors need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the Yuba County Board of Supervisors believes will both provide relief and preserve the integrity of the local ordinance.

vi. Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage, and

2. Such construction below the base flood level increases risks to life and property. It is recommended that a copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Yuba County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

vi. The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.

(c) ~~APPEAL~~ BOARD GUIDELINES.

i. In hearing requests for variances, the Yuba County Board of Supervisors shall consider all technical evaluations, all relevant factors, standards specified in other

sections of this ordinance, and the:

1. Danger that materials may be swept onto other lands to the injury of others;

2. Danger of life and property due to flooding or erosion damage;

3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;

4. Importance of the services provided by the proposed facility to the community;

5. Necessity to the facility of a waterfront location, where applicable;

6. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

7. Compatibility of the proposed use with existing and anticipated development;

8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9. Safety of access to the property in time of flood for ordinary and emergency vehicles;

10. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and

11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water system, and streets and bridges.

ii. Variances shall only be issued upon a:

1. Showing of good and sufficient cause;

2. Determination that failure to grant the variance would result in exceptional "hardship" to the applicant; and

3. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (see "Public safety and nuisance"), cause "fraud and victimization" of the public, or conflict with existing local laws or ordinances.

iii. Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use

provided that the provisions of Sections 10.30.090(c)(i) through 10.30.090(c)(iv) are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.

Upon consideration of the factors of Section 10.30.090(b)(i) and the purposes of this ordinance, the Yuba County Board of Supervisors may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

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CORRESPONDENCE

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Commissioners
Michael Sutton, President
Monterey
Jack Baylis, Vice President
Los Angeles
Jim Kellogg, Member
Discovery Bay
Richard Rogers, Member
Santa Barbara
Jacque Hostler-Carmesin, Member
McKinleyville

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Fish and Game Commission

Sonke Mastrup, Executive Director
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RECEIVED
DEC 15 2014
Clerk/Board of Supervisors

December 12, 2014

NOTICE OF PROPOSED EMERGENCY ACTION

List the Tricolored Blackbird as an Endangered Species

Pursuant to the requirements of Government Code section 11346.1(a)(1), the Fish and Game Commission (Commission) is providing notice of proposed emergency action with regards to the above-entitled emergency regulation.

SUBMISSION OF COMMENTS

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at OAL within five days after the Commission submits the emergency regulations to OAL for review.

Please reference submitted comments as regarding "Tricolored Blackbird" addressed to:

Mailing Address:	Reference Attorney Office of Administrative Law 300 Capitol Mall, Suite 1250 Sacramento, CA 95814	California State Fish and Game Commission Attn: Sheri Tiemann 1416 Ninth Street, Rm. 1320 Sacramento, CA 95814
E-mail Address:	staff@oal.ca.gov	fgc@fgc.ca.gov
Fax No.:	916-323-6826	916-653-5040

For the status of the Commission's submittal to OAL for review, and the end of the five-day written submittal period, please consult OAL's website at http://www.oal.ca.gov under the heading "Emergency Regulations."

CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to Amend Section 670.5
Title 14, California Code of Regulations
Re: Animals of California Declared to be Endangered or Threatened

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

The population of tricolored blackbirds (*Agelaius tricolor*), which occur mainly in California, is diminishing rapidly and the decline is accelerating due to many factors causing direct mortality and preventing the birds from reproducing successfully.

The Fish and Game Commission (Commission) therefore finds that a biological emergency exists that justifies our immediate action to list the tricolored blackbird as endangered under the California Endangered Species Act.

This action is based on the following findings of fact:

Rapid Population Decline: Recent statewide tricolored blackbird population surveys have documented a steep decline in abundance. The approximately 145,000 birds counted in 2014 represented a 44 percent decline from 2011 and a 64 percent decline from 2008.

Along the coast, the numbers of tricolored blackbirds are down 91 percent in six years, to less than 700 individuals in a six county region stretching from San Francisco to Santa Barbara. The numbers are down 78 percent in six years in the San Joaquin Valley, where the birds used to breed in greatest numbers.

This year, no breeding colonies were found in Colusa County, likely the first time in the species' evolutionary history that no breeding occurred there. As recently as 2008 there were colonies of 80,000 breeding birds in Colusa County, which illustrates just how quickly the birds have declined.

These population declines were documented despite an increase in survey effort in terms of volunteers participating and sites visited this year.

Diminishing Colony Size: The tricolored blackbird has evolved to breed in large colonies for reproductive success but its colony sizes have declined dramatically in the past 10 years. The ten largest colonies now represent a lower proportion of the overall population as a result of this decline.

The species last produced enough young to replace dying adults in 2006, and has experienced far greater mortality than recruitment each year since then. The past three breeding seasons have been the worst for recruitment ever recorded.

Habitat Destruction: The species has declined largely as a result of land conversions to agricultural crops, primarily nut orchards and vineyards in the Central Valley.

Land conversion has reduced and eliminated wetlands habitat the species needs for breeding and foraging, particularly in the San Joaquin Valley, causing widespread, chronic reproductive failures.

In Southern California, the biggest threats are urbanization and alternative energy development. There are no more than a few thousand birds left in Southern California, where the species was reported to be the most abundant bird a century ago.

This year, approximately 40 percent of the state's population of tricolored blackbirds nested in dairy wheat fields (triticale), where nestlings are at risk because harvest can occur before fledging.

Ineffective Voluntary Programs: While voluntary incentive programs have compensated farmers for delaying harvest, not all farmers with tricolored blackbird colonies on their lands elect to participate, resulting in significant mortality of nestlings.

Other Threats: Concerns exist about potential mortality from shooting of depredating blackbirds on rice fields in early fall and the effects of insecticide use on the species' food sources, although these sources of mortality are not yet well documented.

Identification of Reports or Documents Supporting Regulation Change: A petition was submitted by the Center for Biological Diversity and the Wild Nature Institute to take emergency action to list the Tricolored Blackbird as an endangered species.

Benefits of Listing: CESA listing will provide much needed protections for this declining species and will direct agency focus towards its recovery.

Without protections from harvest-caused mortality the tricolored blackbird could experience declines that further reduce its range in the State, further diminish its abundance, and drop its colony sizes to levels that cannot be successful.

II. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(b) Nondiscretionary Costs/Savings to Local Agencies:

None.

(c) Programs Mandated on Local Agencies or School Districts:

None.

(d) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

III. Authority and Reference

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by sections 240, 2070, 2075.5 and 2076.5 of the Fish and Game Code and to implement, interpret, or make specific sections 1755, 2055, 2062, 2067, 2070, 2074.6, 2075.5, 2077, 2080, 2081 and 2835, of said Code.

IV. Section 240 Finding

Pursuant to Section 240 of the Fish and Game Code, the Commission made the finding that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof.

Informative Digest (Plain English Overview)

Under existing law the Fish and Game Commission (Commission) may designate an animal species as threatened or endangered. The Commission has authority to add or remove a species from the list if the Commission finds, upon the receipt of sufficient scientific information, that the action is warranted. Further, Section 2076.5 provides that the Commission may adopt a regulation which adds a species to the list of endangered or threatened species as an emergency regulation if the Commission finds that there is any emergency posing a significant threat to the continued existence of the species. The proposed regulation would provide that tricolored blackbirds (*Agelaius tricolor)* are listed as endangered. CESA defines an "endangered species" as a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes. (Fish & G. Code § 2062.)

The population of tricolored blackbirds, which occur mainly in California, is diminishing rapidly and the decline is accelerating due to many factors causing direct mortality and preventing the birds from reproducing successfully.

The Commission therefore finds that a biological emergency exists that justifies our immediate action to list the tricolored blackbird as endangered under the California Endangered Species Act.

This action is based on the following findings of fact:

Rapid Population Decline: Recent statewide tricolored blackbird population surveys have documented a steep decline in abundance. The approximately 145,000 birds counted in 2014 represented a 44 percent decline from 2011 and a 64 percent decline from 2008.

Along the coast, the numbers of tricolored blackbirds are down 91 percent in six years, to less than 700 individuals in a six county region stretching from San Francisco to Santa Barbara. The numbers are down 78 percent in six years in the San Joaquin Valley, where the birds used to breed in greatest numbers.

This year, no breeding colonies were found in Colusa County, likely the first time in the species' evolutionary history that no breeding occurred there. As recently as 2008 there were colonies of 80,000 breeding birds in Colusa County, which illustrates just how quickly the birds have declined.

These population declines were documented despite an increase in survey effort in terms of volunteers participating and sites visited this year.

Diminishing Colony Size: The tricolored blackbird has evolved to breed in large colonies for reproductive success but its colony sizes have declined dramatically in the past 10 years. The ten largest colonies now represent a lower proportion of the overall population as a result of this decline.

Regulatory Language

Subsection (a)(5) of Section 670.5, Title 14, CCR is amended to read:

§670.5. Animals of California Declared to Be Endangered or Threatened.
The following species and subspecies are hereby declared to be endangered or threatened, as indicated:

... [No changes to subsection (a)(1) through (a)(4)]

(5) Birds:
(A) California condor *(Gymnogyps californianus)*
(B) Bald eagle *(Haliaeetus leucocephalus)*
(C) California clapper rail *(Rallus longirostris obsoletus)*
(D) Light-footed clapper rail *(Rallus longirostris levipes)*
(E) California least tern *(Sterna antillarum browni)*
(F) Western yellow-billed cuckoo *(Coccyzus americanus occidentalis)*
(G) Elf owl *(Micrathene whitneyi)*
(H) Great gray owl *(Strix nebulosa)*
(I) Least Bell's vireo *(Vireo bellii pusillus)*
(J) Inyo California towhee *(Pipilo crissalis eremophilus)*
(K) Willow flycatcher *(Empidonax traillii)*
(L) Arizona Bell's vireo *(Vireo bellii arizonae)*
(M) Gila woodpecker *(Melanerpes uropygialis)*
(N) Gilded northern flicker *(Colaptes auratus chrysoides)*
(O) Belding's savannah sparrow *(Passerculus sandwichensis beldingii)*
(P) Marbled murrelet *(Brachyramphus marmoratus)*
(Q) Tricolored blackbird (*Agelaius tricolor*)
(6) Mammals:
(A) Riparian brush rabbit *(Sylvilagus bachmani riparius)*
(B) Morro Bay kangaroo rat *(Dipodomys heermanni morroensis)*
(C) Giant kangaroo rat *(Dipodomys ingens)*
(D) Tipton kangaroo rat *(Dipodomys nitritoides nitratoides)*
(E) Fresno kangaroo rat *(Dipodomys nitritoides exilis)*
(F) Salt-marsh harvest mouse *(Reithrodontomys raviventris)*
(G) Amargosa vole *(Microtus californicus scirpensis)*
(H) California bighorn sheep *(Ovis canadensis californiana)*

... [No changes to subsection (b)]
Note: Authority cited: Sections 240, 2070, 2075.5 and 2076.5 Fish and Game Code. Reference: Sections 1755, 2055, 2062, 2067, 2070, 2074.6, 2075.5, 2077, 2080, 2081 and 2835, Fish and Game Code.

The species last produced enough young to replace dying adults in 2006, and has experienced far greater mortality than recruitment each year since then. The past three breeding seasons have been the worst for recruitment ever recorded.

Habitat Destruction: The species has declined largely as a result of land conversions to agricultural crops, primarily nut orchards and vineyards in the Central Valley. Land conversion has reduced and eliminated wetlands habitat the species needs for breeding and foraging, particularly in the San Joaquin Valley, causing widespread, chronic reproductive failures.

In Southern California, the biggest threats are urbanization and alternative energy development. There are no more than a few thousand birds left in Southern California, where the species was reported to be the most abundant bird a century ago.

This year, approximately 40 percent of the State's population of tricolored blackbirds nested in dairy wheat fields (triticale), where nestlings are at risk because harvest can occur before fledging.

Ineffective Voluntary Programs: While voluntary incentive programs have compensated farmers for delaying harvest, not all farmers with tricolored blackbird colonies on their lands elect to participate, resulting in significant mortality of nestlings.

Other Threats: We are also concerned about potential mortality from shooting of depredating blackbirds on rice fields in early fall and the effects of insecticide use on the species' food sources, although these sources of mortality are not yet well documented.

Benefits of Listing: The regulations will benefit the environment in that it will provide much needed protections for this declining species and will direct agency focus towards its recovery.

Without protections from harvest-caused mortality the tricolored blackbird could experience declines that further reduce its range in the state, further diminish its abundance, and drop its colony sizes to levels that cannot be successful.

The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to animals of California declared to be endangered or threatened.

Commissioners
Michael Sutton, President
Monterey
Jack Baylis, Vice President
Los Angeles
Jim Kellogg, Member
Discovery Bay
Richard Rogers, Member
Santa Barbara
Jacque Hostler-Carmesin, Member
McKinleyville

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Fish and Game Commission

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RECEIVED
JAN 5 2014
Clerk/Board of Supervisors

January 2, 2015

This is to provide you with a copy of the notice of proposed regulatory action relative to amending Section 7.50, Title 14, California Code of Regulations, relating to the proposed changes in Central Valley Salmon Sport Fishing regulations, which are published in the California Regulatory Notice Register on January 2, 2015.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Additional information and all associated documents may be found on the Fish and Game Commission website at www.fgc.ca.gov.

Karen Mitchell, Senior Environmental Scientist, Fisheries Branch, phone (916) 445-0826, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Jon D. Snellstrom
Associate Governmental Program Analyst

Attachment

TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315 and 316.5; reference sections 200, 202, 205, 206, 215 and 316.5, Fish and Game Code; proposes to Amend subsections (b)(5), (b)(68), and (b)(156.5) of Section 7.50, Title 14, California Code of Regulations (CCR), relating to Central Valley Salmon Sport Fishing.

Informative Digest/Policy Statement Overview

The current sport fishing regulations allow for salmon fishing in the American, Feather and Sacramento rivers. The Department of Fish and Wildlife (Department) is proposing new Chinook salmon bag and possession limits in the American, Feather, and Sacramento rivers.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of recreational and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The PFMC will develop the annual Pacific coast ocean salmon fisheries regulatory options for public review at their March 2015 meeting and develop the final PFMC regulatory recommendations for adoption by the NMFS at their April 2015 meeting. Based on the action taken by the NMFS, the Department will propose specific bag and possession limits for the American, Feather, and Sacramento rivers which will:

(1) align the inland salmon sport fishing possession limit with the ocean salmon sport fishing possession limit;

(2) allow for additional harvest of salmon if low instream flow conditions persist due to the existing drought to reduce impacts to spawning habitat; and

(3) increase or decrease the current salmon bag and possession limits based on the PFMC salmon abundance estimates and recommendations for ocean harvest for the coming season.

Proposed Regulations

At this time, a range [shown in brackets] of bag and possession limits are proposed to continue salmon fishing in the American, Feather and Sacramento rivers. The proposed range of bag and possession limits for Central Valley fall-run Chinook salmon stocks are as follows:

In the American River subsections 7.50(b)(5):

- (A) and (D) a season of July 16 through December 31 with a bag limit of [0-4] Chinook salmon and a possession limit of [0-8] Chinook salmon.
- (B) a season of July 16 through August 15 with a bag limit of [0-4] Chinook salmon and a possession limit of [0-8] Chinook salmon.
- (C) a season of July 16 through October 31 with a bag limit of [0-4] Chinook salmon and a possession limit of [0-8] Chinook salmon.
- (E) a season of July 16 through December 16 with a bag limit of [0-4] Chinook salmon and a possession limit of [0-8] Chinook salmon.

Feather River, subsections 7.50(b)(68)

- (D) a season of July 16 through October 15 with a bag limit of [0-4] Chinook salmon and a possession limit of [0-8] Chinook salmon.
- (E) a season of July 16 through December 16 with a bag limit of [0-4] Chinook salmon and a possession limit of [0-8] Chinook salmon.

Sacramento River below Keswick Dam, subsection 7.50(b)(156.5)

- (C) a season of August 6 through December 16 with a bag limit of [0-4] Chinook salmon and a possession limit of [0-8] Chinook salmon.
- (E) a season of July 16 through December 16 with a bag limit of [0-4] Chinook salmon and a possession limit of [0-8] Chinook salmon.
- (F) a season of July 16 through December 16 with a bag limit of [0-4] Chinook salmon and a possession limit of [0-8] Chinook salmon.

Benefits of the regulations

As set forth in Fish and Game Code section 1700 it is "the policy of the state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the state for the benefit of all the citizens of the state and to promote the development of local fisheries and distant-water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the oceans and other waters under the jurisdiction and influence of the state. This policy shall include [as applicable to inland fisheries] all of the following objectives:

(a) The maintenance of sufficient populations of all species of aquatic organisms to insure their continued existence.

(b) The maintenance of a sufficient resource to support a reasonable sport use, where a species is the object of sport fishing, taking into consideration the necessity of regulating individual sport fishery bag limits to the quantity that is sufficient to provide a satisfying sport.

(c) The management, on a basis of adequate scientific information promptly promulgated for public scrutiny, of the fisheries under the state's jurisdiction, and the participation in the management of other fisheries in which California fishermen are engaged, with the objective of maximizing the sustained harvest."

Adoption of scientifically-based Central Valley salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of salmon to ensure their continued existence. The benefits of the proposed regulations are concurrence with Federal law, sustainable management of the Central Valley salmon resources, and promotion of businesses that rely on Central Valley salmon sport fishing.

Non-monetary benefits to the public

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

Consistency with State or Federal Regulations

Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate recreational fishing in waters of the state (Fish & Game Code, §§ 200, 202, 205). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to recreational fishing seasons, bag and possession limits. Further, the Commission has determined that the proposed regulations are neither incompatible nor inconsistent with existing federal regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Thursday, February 12, 2015, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be at the Flamingo Conference Resort & Spa

2777 Fourth Street, Santa Rosa, California, on Wednesday, April 8, 2015, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before April 2, 2014 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 2, 2015. All comments must be received no later than April 9, 2015 at the hearing in Santa Rosa. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Jon Snellstrom at the preceding address or phone number. **Karen Mitchell, Fisheries Branch, phone 916-445-0826, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.fgc.ca.gov.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The minor variations in the bag and possession limits as may be established in the regulations are, by themselves, unlikely to impact business.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a salmon sport fishery encourages consumption of a nutritious food. The Commission anticipates benefits to the environment by the sustainable management of California's salmon resources.

The Commission does not anticipate any non-monetary benefits to worker safety.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

(h) Effect on Housing Costs:

None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: December 9, 2014

Commissioners
Michael Sutton, President
Monterey
Jack Baylis, Vice President
Los Angeles
Jim Kellogg, Member
Discovery Bay
Richard Rogers, Member
Santa Barbara
Jacque Hostler-Carmesin, Member
McKinleyville

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Fish and Game Commission

Sonke Mastrup, Executive Director
1416 Ninth Street, Room 1320
Sacramento, CA 95814
(916) 653-4899
(916) 653-5040 Fax
www.fgc.ca.gov

RECEIVED
DEC 26 2014
Clerk/Board of Supervisors

December 26, 2014

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to sections 1.73 and 27.75, and subsection (c) of Section 27.80, Title 14, California Code of Regulations, relating to ocean salmon sport fishing, which will be published in the California Regulatory Notice Register on December 26, 2014.

This is the first of two notices relating to ocean salmon sport fishing and pertains to the ocean salmon sport fishing regulations for April 2015(subsection 27.80(c)), recovery of coded-wire tags from salmon heads (Section 1.73) and coordinates of ocean salmon fishery closures around river mouths (Section 27.75). A separate notice pertaining to the remainder of the 2015 ocean salmon sport fishing regulations will also be published in the California Regulatory Notice Register on December 26, 2014.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Dr. Craig Shuman, Regional Manager of the Marine Region, at (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sherrie Fonbuena

Sherrie Fonbuena
Associate Governmental Program Analyst

Attachment

TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 220, 240, 316.5, and 2084 of the Fish and Game Code, and to implement, interpret or make specific sections 200, 202, 205, 215, 220, 316.5, 2084, and 7060 of said Code, proposes to amend sections 1.73 and 27.75, and subsection (c) of Section 27.80, Title 14, California Code of Regulations, relating to ocean salmon recreational fishing – April season, recovery of coded-wire tag from salmon heads, and ocean salmon fishery closures around river mouths.

Informative Digest/Policy Statement Overview

The Pacific Fishery Management Council (PFMC) coordinates west coast management of recreational and commercial ocean salmon fisheries in the federal fishery management zone (three to 200 miles offshore) along the coasts of Washington, Oregon and California. The annual PFMC ocean salmon regulation recommendations are subsequently implemented by the National Marine Fisheries Service (NMFS) effective on May 1 of each year.

California's recreational salmon fishing regulations need to conform to the federal regulations to achieve optimum yield in California under the Federal Salmon Fishery Management Plan. The Fish and Game Commission (Commission) adopts regulations for the ocean salmon recreational fishery in State waters (zero to three miles offshore) which are consistent with these federal fishery management goals.

Present Regulations
Regulations for 2014 [subsections 27.80 (c) and (d)] authorized ocean salmon recreational fishing seven days per week north of Horse Mountain including Humboldt Bay from May 10 to September 7, 2014. Between Horse Mountain and Pigeon Point, ocean salmon recreational fishing was authorized seven days per week from April 5 to November 9, 2014. Areas south of Pigeon Point had an ocean salmon recreational fishing season seven days per week from April 5 to October 5, 2014. The bag limit for all areas in 2014 was two fish per day (all species except coho). The area north of Horse Mountain and the areas south of Pigeon Point had a minimum size limit of 24 inches total length. The area between Horse Mountain and Point Arena had a minimum size limit of 20 inches total length. The area between Point Arena and Pigeon Point had a minimum size limit of 24 inches total length through June 30, 2014 and 20 inches total length thereafter

On May 1, 2014, NMFS implemented the 2014 federal ocean salmon regulations, which included the PFMC's recommendation to open the California ocean salmon recreational fishing season south of Horse Mountain on April 4, 2015. While federal waters south of Horse Mountain will open on April 4, 2015, State waters in this area will not open unless the Commission takes regulatory action to do so.

Present regulations in Section 1.73 define salmon, at the species level, as Chinook, coho, pink, chum and sockeye.

Present regulations in Section 27.75 specify that salmon may not be taken within 3 nm north, south and west of the mouths the Smith and Klamath rivers; that salmon may not be taken in August and September within 2 nm north, south and west of the mouth of the Eel River; and that

salmon may not be taken in August within 6 nm north and south and 3 nm west of the mouth of the Klamath River.

Proposed Regulations

Two separate Commission actions are necessary to conform the State regulations to federal rules that will apply in 2015. The current proposed action would amend subsection 27.80 (c), establishing salmon fishing regulations for the month of April 2015. Recreational salmon fishing regulations for May 1 through the end of 2015 will be considered in the second rulemaking action, tentatively scheduled for adoption in April 2015.

For public notice purposes to facilitate Commission discussion, the Department of Fish and Wildlife (Department) is proposing the following regulations to encompass the range of federal ocean salmon regulations that are expected to be in effect April 4 through April 30, 2015. This approach will allow the Commission to adopt State ocean salmon recreational fishing regulations to conform to those in effect in federal ocean waters.

(1) North of Horse Mountain and in Humboldt Bay: The fishery shall remain closed in this area during April. The remainder of the 2015 season will be decided in April by the PFMC and Commission and the section will be amended pursuant to the regulatory process.

(2) South of Horse Mountain: The season, if any, may open on a date within the range of April 4 through April 30, 2015. The proposed daily bag limit will be from zero to two fish, and the proposed minimum size will be from 20 to 26 inches total length. The exact opening dates, along with daily bag limit, minimum size, and days of the week open may be different for each subarea and will be determined by the Commission, considering federal regulations applicable to each subarea for April 2015.

The proposed regulations in Section 1.73 will add a requirement to relinquish the head of any recreationally caught salmon, upon request by an authorized agent or employee of the Department.

The proposed regulations in Section 27.75 will include specific latitude and longitude coordinates that define existing river mouth area closures of the Smith, Klamath, and Eel rivers to ocean salmon fishing.

Other changes are proposed to clarify the existing regulations.

The benefits of the proposed regulations are concurrence with federal law, sustainable management of ocean salmon resources, regulatory clarity, and promotion of businesses that rely on recreational ocean salmon fishing.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The legislature has delegated authority to the Commission to adopt sport fishing regulations in general (Sections 200, 202 and 205, Fish and Game Code) and salmon sport fishing regulations specifically (Section 316.5, Fish and Game Code). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR) and with general sport fishing regulations in chapters 1 and 4 of subdivision 1 of Division 1, Title 14, CCR. Commission staff has searched the California Code of Regulations and has found no other State regulations related to the recreational take of salmon in the ocean.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Wednesday, February 11, 2015, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a teleconference originating in the Fish and Game Commission conference room, 1416 Ninth Street, Suite 1320, Sacramento, California, on Monday, March 16, 2015, at 8:30 a.m., or as soon thereafter as the matter may be heard. Interested persons may also participate at the following locations: Department of Fish and Wildlife, Conference Room, 50 Ericson Court, Arcata, California; Department of Fish and Wildlife, Conference Room, 20 Lower Ragsdale Drive, Suite 100, Monterey, California; Department of Fish and Wildlife, Conference Room, 1933 Cliff Drive, Suite 9, Santa Barbara, California; and Department of Fish and Wildlife, Conference Room, 4665 Lampson Avenue, Los Alamitos, California. Written comments may be submitted at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on March 13, 2015. All comments must be received no later than March 16, 2015, at one of the teleconference hearing locations listed above. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sherrie Fonbuena at the preceding address or phone number. **Dr. Craig Shuman, Region Manager of the Marine Region, Department of Fish and Wildlife, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.fgc.ca.gov.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commission anticipates status quo fishing levels for April 2015 as compared to the April 2014 ocean salmon sport fishing season.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate that the proposed regulations will have any impact on the creation or elimination of jobs, the creation or elimination of businesses or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Salmon sport fishing contributes to increased mental health of its practitioners, provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of California's natural resources.

The Commission anticipates benefits to the State's environment in the sustainable management of salmon resources.

Additional benefits of the proposed regulations are concurrence with federal law, and promotion of businesses that rely on recreational ocean salmon fishing.

The Commission does not anticipate benefits to worker safety.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: December 16, 2014

Commissioners
Michael Sutton, President
Monterey
Richard Rogers, Vice President
Santa Barbara
Jim Kellogg, Member
Discovery Bay
Jack Baylis, Member
Los Angeles
Jacque Hostler-Carmesin, Member
McKinleyville

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Fish and Game Commission

Sonke Mastrup, Executive Director
1416 Ninth Street, Room 1320
Sacramento, CA 95814
(916) 653-4899
(916) 653-5040 Fax
www.fgc.ca.gov

January 2, 2015

This is to provide you with a copy of the notice of proposed regulatory action relative to Amending Sections 360, 361, 362, 363, 364, 702, 708.5, 708.11 and 713 Title 14, California Code of Regulations, relating to Mammal Hunting Regulations for the 2015-2016 season, which are published in the California Regulatory Notice Register on January 2, 2015.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Additional information and all associated documents may be found on the Fish and Game Commission website at www.fgc.ca.gov.

Mr. Craig Stowers, Department of Fish and Wildlife, phone (916) 445-3553, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Jon D. Snellstrom
Associate Governmental Program Analyst

Attachment

TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 203, 215, 219, 220, 331, 332, 460, 713, 1050, 1055, 1055.1, 1572, 3452, 3453, 4302, 4304, 4331, 4334, 4336, 4340, 4657, 4753, 4902 and 10502; reference sections 200, 202, 203, 203.1, 207, 210, 215, 219, 220, 331, 332, 458, 459, 460, 713, 1050, 1055, 1055.1, 1570, 1571, 1572, 1573, 1575, 2005, 3452, 3453, 3950, 3951, 4302, 4304, 4330, 4331, 4332, 4333, 4334, 4336, 4340, 4341, 4652, 4653, 4654, 4655, 4657, 4750, 4751, 4752, 4753, 4754, 4755, 4902, 10500 and 10502, Fish and Game Code; proposes to Amend sections 360, 361, 362, 363, 364, 702, 708.5, 708.11 and 713; and Add Section 364.1, Title 14, California Code of Regulations (CCR), relating to Mammal Hunting Regulations for the 2015-2016 season.

Informative Digest/Policy Statement Overview

Subsection 360(a)
Deer A, B, C and D Zone Hunts

Existing regulations provide for the number of license tags available for the A, B, C, and D Zones. This regulatory proposal changes the number of tags for all existing zones to a series of ranges presented in the table below. These ranges are necessary because the final number of tags cannot be determined until spring herd data are collected in March/April. Because severe winter conditions can have an adverse effect on herd recruitment and over-winter adult survival, final tag quotas may fall below the proposed range into the "Low Kill" alternative identified in the most recent Environmental Document Regarding Deer Hunting.

	Deer: § 360(a) A, B, C and D Zone Hunts Tag Allocations		
§	Zone	Current 2014	Proposed 2015 [Range]
(1)	A	65,000	30,000-65,000
(2)	B	35,000	35,000-65,000
(3)	C	8,150	5,000-15,000
(4)	D3-5	33,000	30,000-40,000
(5)	D-6	6,000	6,000-16,000
(6)	D-7	9,000	4,000-10,000
(7)	D-8	8,000	5,000-10,000
(8)	D-9	2,000	1,000-2,500
(9)	D-10	700	400-800
(10)	D-11	5,500	2,500-6,000
(11)	D-12	950	100-1,500
(12)	D-13	4,000	2,000-5,000
(13)	D-14	3,000	2,000-3,500
(14)	D-15	1,500	500-2,000
(15)	D-16	3,000	1,000-3,500
(16)	D-17	500	100-800

	Deer: § 360(a) A, B, C and D Zone Hunts Tag Allocations		
§	Zone	Current 2014	Proposed 2015 [Range]
(17)	D-19	1,500	500-2,000

Subsection 360(b)
Deer X-Zone Hunts

Existing regulations provide for the number of deer hunting tags for the X zones. The proposal changes the number of tags for all existing zones to a series of ranges presented in the table below. These ranges are necessary at this time because the final number of tags cannot be determined until spring herd data are collected in March/April. Because severe winter conditions can have an adverse effect on herd recruitment and over-winter adult survival, final tag quotas may fall below the proposed range into the "Low Kill" alternative identified in the most recent Environmental Document Regarding Deer Hunting.

	Deer: § 360(b) X-Zone Hunts Tag Allocations		
§	Zone	Current 2014	Proposed 2015 [Range]
(1)	X-1	770	1,000-6,000
(2)	X-2	150	50-500
(3)	X-3a	275	100-1,200
(4)	X-3b	795	200-3,000
(5)	X-4	385	100-1,200
(6)	X-5a	65	25-200
(7)	X-5b	50	50-500
(8)	X-6a	320	100-1,200
(9)	X-6b	305	100-1,200
(10)	X-7a	225	50-500
(11)	X-7b	135	25-200
(12)	X-8	210	100-750
(13)	X-9a	650	100-1,200
(14)	X-9b	325	100-600
(15)	X-9c	325	100-600
(16)	X-10	400	100-600
(17)	X-12	680	100-1,200

Subsection 360(c)
Additional Deer Hunts

Existing regulations provide for the number of deer hunting tags in the Additional Hunts. The proposal provides a range of tag numbers for each hunt from which a final number will be determined, based on the post-winter status of each deer herd. These ranges are necessary at this time because the final number of tags cannot be determined until spring herd data are collected in March/April. If severe winter conditions adversely affect herd recruitment and over-winter adult survival, the final recommended quotas may fall below the current proposed range into the "Low Kill" alternative identified in the most recent Environmental Document Regarding Deer Hunting.

Existing regulations for Additional Hunts G-8 (Fort Hunter Liggett Antlerless Deer Hunt) and J-10 (Fort Hunter Liggett Apprentice Either-Sex Deer Hunt) provide for hunting to begin on October 4 and continue for two (2) consecutive days and reopen on October 11 and continue for three (3) consecutive days in order to accommodate for Base operations and other hunt opportunities. The proposal would modify the season to account for the annual calendar shift by changing the season opening dates to October 3 and October 10 for 2 and 3 consecutive days respectively, in order to accommodate for Base operations. In addition, Fort Hunter Liggett has requested the mandatory hunter orientation meeting required for Hunt J-10 be deleted from the Special Conditions due to insufficient staffing levels.

Minor editorial changes are necessary to provide consistency in subsection numbering, spelling, grammar, and clarification.

The proposal changes the number of tags for all existing hunts to a series of ranges as indicated in the table below.

	Deer: § 360(c) Additional Hunts Tag Allocations		
§	**Hunt Number (and Title)**	**Current 2014**	**Proposed 2015 [Range]**
(1)	G-1 (Late Season Buck Hunt for Zone C-4)	2,710	500-5,000
(2)	G-3 (Goodale Buck Hunt)	35	5-50
(3)	G-6 (Kern River Deer Herd Buck Hunt)	50	25-100
(4)	G-7 (Beale Either-Sex Deer Hunt)	20 Military*	20 Military*
(5)	G-8 (Fort Hunter Liggett Antlerless Deer Hunt)	20 Tags Total* (10 Military & 10 Public)	20 Tags Total* (10 Military and 10 Public)
(6)	G-9 (Camp Roberts Antlerless Deer Hunt)	0	30 Tags Total* (Military and Public splits TBD)
(7)	G-10 (Camp Pendleton Either-Sex Deer Hunt)	400 Military*	400 Military*
(8)	G-11 (Vandenberg Either-Sex Deer Hunt)	250 Military*, DOD and as Authorized by the Installation Commander**	250 Military*, DOD and as Authorized by the Installation Commander**
(9)	G-12 (Gray Lodge Shotgun Either-Sex Deer Hunt)	30	10-50
(10)	G-13 (San Diego Antlerless Deer Hunt)	300	50-300
(11)	G-19 (Sutter-Yuba Wildlife Areas Either-Sex Deer Hunt)	25	10-50

	Deer: § 360(c) Additional Hunts Tag Allocations		
§	Hunt Number (and Title)	Current 2014	Proposed 2015 [Range]
(12)	G-21 (Ventana Wilderness Buck Hunt)	25	25-100
(13)	G-37 (Anderson Flat Buck Hunt)	25	25-50
(14)	G-38 (X-10 Late Season Buck Hunt)	300	50-300
(15)	G-39 (Round Valley Late Season Buck Hunt)	5	5-150
(16)	M-3 (Doyle Muzzleloading Rifle Buck Hunt)	20	10-75
(17)	M-4 (Horse Lake Muzzleloading Rifle Buck Hunt)	10	5-50
(18)	M-5 (East Lassen Muzzleloading Rifle Buck Hunt)	5	5-50
(19)	M-6 (San Diego Muzzleloading Rifle Either-Sex Deer Hunt)	80	25-100
(20)	M-7 (Ventura Muzzleloading Rifle Either-Sex Deer Hunt)	150	50-150
(21)	M-8 (Bass Hill Muzzleloading Rifle Buck Hunt)	20	5-50
(22)	M-9 (Devil's Garden Muzzleloading Rifle Buck Hunt)	15	5-100
(23)	M-11 (Northwestern California Muzzleloading Rifle Buck Hunt)	20	20-200
(24)	MA-1 (San Luis Obispo Muzzleloading Rifle/Archery Either-Sex Deer Hunt)	150	20-150
(25)	MA-3 (Santa Barbara Muzzleloading Rifle/Archery Buck Hunt)	150	20-150
(26)	J-1 Lake Sonoma Apprentice Either-Sex Deer Hunt)	25	10-25
(27)	J-3 (Tehama Wildlife Area Apprentice Buck Hunt)	15	15-30
(28)	J-4 Shasta-Trinity Apprentice Buck Hunt)	15	15-50
(29)	J-7 (Carson River Apprentice Either-Sex Deer Hunt)	15	10-50
(30)	J-8 (Daugherty Hill Wildlife Area Apprentice Either-Sex Deer Hunt)	15	10-20
(31)	J-9 (Little Dry Creek Apprentice Shotgun Either-Sex Deer Hunt)	5	5-10
(32)	J-10 (Fort Hunter Liggett Apprentice Either-Sex Deer Hunt)	85 Tags Total* (20 Military & 65 Public)	75 Tags Total* (15 Military & 60 Public)
(33)	J-11 (San Bernardino Apprentice Either-Sex Deer Hunt)	40	10-50
(34)	J-12 (Round Valley Apprentice Buck Hunt)	10	10-20
(35)	J-13 (Los Angeles Apprentice Either-Sex Deer Hunt)	40	25-100
(36)	J-14 (Riverside Apprentice Either-Sex Deer Hunt)	30	15-75
(37)	J-15 (Anderson Flat Apprentice Buck Hunt)	10	5-30
(38)	J-16 (Bucks Mountain-Nevada City Apprentice Either-Sex Deer Hunt)	75	10-75
(39)	J-17 (Blue Canyon Apprentice Either-Sex Deer Hunt)	25	5-25

	Deer: § 360(c) Additional Hunts Tag Allocations		
§	Hunt Number (and Title)	Current 2014	Proposed 2015 [Range]
(40)	J-18 (Pacific-Grizzly Flat Apprentice Either-Sex Deer Hunt)	75	10-75
(41)	J-19 (Zone X-7a Apprentice Either-Sex Deer Hunt)	25	10-40
(42)	J-20 (Zone X-7b Apprentice Either-Sex Deer Hunt)	20	5-20
(43)	J-21 (East Tehama Apprentice Either-Sex Deer Hunt)	50	20-80

**Specific numbers of tags are provided for military hunts through a system which restricts hunter access to desired levels and ensures biologically conservative hunting programs.*

***DOD = Department of Defense and eligible personnel as authorized by the Installation Commander.*

Section 361
Archery Deer

Existing regulations provide for the number of deer hunting tags for existing area-specific archery hunts. The proposal changes the number of tags for existing hunts to a series of ranges presented in the table below. These ranges are necessary at this time because the final number of tags cannot be determined until spring herd data are collected in March/April. Because severe winter conditions can have an adverse effect on herd recruitment and over-winter adult survival, final tag quotas may fall below the proposed range into the "Low Kill" alternative identified in the most recent Environmental Document Regarding Deer Hunting.

	Archery Deer Hunting: § 361(b) Tag Allocations		
§	Hunt Number (and Title)	Current 2014	Proposed 2015 [Range]
(1)	A-1 (C Zones Archery Only Hunt)	1,945	150-3,000
(2)	A-3 (Zone X-1 Archery Hunt)	130	50-1,000
(3)	A-4 (Zone X-2 Archery Hunt)	10	5-100
(4)	A-5 (Zone X-3a Archery Hunt)	30	10-300
(5)	A-6 (Zone X-3b Archery Hunt)	70	25-400
(6)	A-7 (Zone X-4 Archery Hunt)	110	25-400
(7)	A-8 (Zone X-5a Archery Hunt)	10	15-100
(8)	A-9 (Zone X-5b Archery Hunt)	5	5-100
(9)	A-11 (Zone X-6a Archery Hunt)	50	10-200
(10)	A-12 (Zone X-6b Archery Hunt)	90	10-200
(11)	A-13 (Zone X-7a Archery Hunt)	45	10-200
(12)	A-14 (Zone X-7b Archery Hunt)	25	5-100
(13)	A-15 (Zone X-8 Archery Hunt)	40	5-100

	Archery Deer Hunting: § 361(b) Tag Allocations		
§	Hunt Number (and Title)	Current 2014	Proposed 2015 [Range]
(14)	A-16 (Zone X-9a Archery Hunt)	140	50-500
(15)	A-17 (Zone X-9b Archery Hunt)	300	50-500
(16)	A-18 (Zone X-9c Archery Hunt)	350	50-500
(17)	A-19 (Zone X-10 Archery Hunt)	100	25-200
(18)	A-20 (Zone X-12 Archery Hunt)	100	50-500
(19)	A-21 (Anderson Flat Archery Buck Hunt)	25	25-100
(20)	A-22 (San Diego Archery Either-Sex Deer Hunt)	1,000	200-1,500
(21)	A-24 (Monterey Archery Either-Sex Deer Hunt)	100	25-200
(22)	A-25 (Lake Sonoma Archery Either-Sex Deer Hunt)	35	20-75
(23)	A-26 (Bass Hill Archery Buck Hunt)	30	10-100
(24)	A-27 (Devil's Garden Archery Buck Hunt)	5	5-75
(25)	A-30 (Covelo Archery Buck Hunt)	40	20-100
(26)	A-31 (Los Angeles Archery Either-Sex Deer Hunt)	1,000	200-1,500
(27)	A-32 (Ventura/Los Angeles Archery Late Season Either-Sex Deer Hunt)	250	50-300
(28)	A-33 (Fort Hunter Liggett Late Season Archery Either-Sex Deer Hunt)	50 Tags Total* (25 Military & 25 Public)	50 Tags Total* (25 Military & 25 Public)

* *Specific numbers of tags are provided for military hunts through a system which restricts hunter access to desired levels and ensures biologically conservative hunting programs.*

Subsection 362
Nelson Bighorn Sheep

The existing regulation in subsection 362(d), Title 14, CCR, provides for limited hunting of 14 Nelson bighorn rams in specified areas of the State. The proposed change is intended to adjust the number of tags based on Department's annual population estimates in the management units. The number of tags allocated for each of the nine hunt zones is based on the results of the Department's estimate of the bighorn sheep population in each zone. Tag allocations are proposed to ensure the take of no more than 15 percent of the mature rams estimated in each zone. Final tag quota determinations will be completed by April of 2015 pending completion of population surveys and associated analyses.

The following proposed number of tags was determined using the procedure described in Fish and Game Code Section 4902:

§ 362(d) HUNT ZONE	Current 2014 Tag Allocation	Proposed 2015 Tag Allocation [Range]
Zone 1 - Marble/Clipper Mountains	4	0-4
Zone 2 - Kelso Peak/Old Dad Mountains	0	0-4
Zone 3 - Clark/Kingston Mountain Ranges	1	0-2

Zone 4 - Orocopia Mountains	2	0-2
Zone 5 - San Gorgonio Wilderness	2	0-3
Zone 6 - Sheep Hole Mountains	0	0-2
Zone 7 – White Mountains	1	0-5
Zone 8 - South Bristol Mountains	1	0-3
Zone 9 – Cady Mountains	2	0-4
Open Zone Fund-raising Tag	1	0-1
Marble/Clipper/South Bristol Mountains Fund-raising Tag	0	0-1
Kelso Peak/Old Dad Mountains Fund-raising Tag	0	0-1
TOTAL	14	0-32

Subsection 363
Pronghorn Antelope

Existing regulations provide for the number of pronghorn antelope hunting tags for each hunt zone. This proposed regulatory action would provide for tag allocation ranges for most hunt zones pending final tag quota determinations based on winter survey results that should be completed by March of 2015. The final tag quotas will provide for adequate hunting opportunities while allowing for a biologically appropriate harvest of bucks and does in specific populations.

The proposed 2015 tag allocation ranges for the hunt zones are as set forth below.

2015 Pronghorn Antelope Tag Allocations [Ranges]						
Hunt Area	*Archery-Only Season*		*General Season*			
			Period 1		*Period 2*	
	Buck	*Doe*	*Buck*	*Doe*	*Buck*	*Doe*
Zone 1 – Mount Dome	0-10	0-3	0-60	0-20	0	0
Zone 2 – Clear Lake	0-10	0-3	0-80	0-25	0	0
Zone 3 – Likely Tables	0-20	0-7	0-150	0-50	0-130	0-50
Zone 4 – Lassen	0-20	0-7	0-150	0-50	0-150	0-50
Zone 5 – Big Valley	0-15	0-5	0-150	0-50	0	0
Zone 6 – Surprise Valley	0-10	0	0-25	0-7	0	0
Big Valley Apprentice Hunt	N/A		0-15 Either-Sex		0	
Lassen Apprentice Hunt	N/A		0-15 Either-Sex		0	
Surprise Valley Apprentice Hunt	N/A		0-4 Either-Sex		0	
Likely Tables Apprentice Hunt	N/A		0-5 Either-Sex		0	
Fund-Raising Hunt	N/A		0-10 Buck			

Section 364
Elk

Existing regulations specify elk license tag quotas for each hunt. In order to achieve elk herd management goals and objectives and to maintain hunting quality, it is periodically necessary to adjust quotas in response to dynamic environmental and biological conditions. The proposed amendments to Section 364 will establish final tag quotas within each hunt adjusting for annual fluctuations in population number; adjust season dates/tag distribution for hunts on Fort Hunter Liggett and in the Northwestern Roosevelt Hunt area; as well as make minor editorial changes.

Preliminary tag quota ranges [shown in brackets] are indicated pending final 2015 tag allocations in accordance with elk management goals and objectives based on the results of survey data collected in January – March 2015. The proposed elk tag quota ranges for 2015 are as follows:

	2015 Proposed Elk Tag Allocation [shown in ranges]				
§	**Section 364 Elk**	**Bull**	**Antlerless**	**Either-Sex**	**Spike**
a	**General Roosevelt Elk Hunts**				
1	Siskiyou	0-30	0-30		
2	Big Lagoon	0-10	0-10		
3	Northwestern California	0-10	0-35	0-45	
4	Klamath	0-20	0-20		
5	Del Norte	0-15	0-20		
6	Marble Mountains	0-70	0-30		
b	**General Rocky Mountain Elk Hunts**				
1	Northeastern California	0-30	0-10		
c	**General Roosevelt/Tule Elk Hunts**				
1	Mendocino	0-4	0-4		
d	**General Tule Elk Hunts**				
1	Cache Creek	0-4	0-4		
2	La Panza Period 1	0-12	0-10		
	La Panza Period 2	0-12	0-12		
3	Bishop Period 3	0-10	0-30		
	Bishop Period 4	0-10	0-30		
	Bishop Period 5	0-10	0-30		
4	Independence Period 2	0-10	0-30		
	Independence Period 3	0-10	0-30		
	Independence Period 4	0-10	0-30		
	Independence Period 5	0-10	0-30		
5	Lone Pine Period 2	0-10	0-30		
	Lone Pine Period 3	0-10	0-30		
	Lone Pine Period 4	0-10	0-30		
	Lone Pine Period 5	0-10	0-30		
6	Tinemaha Period 2	0-10	0-30		
	Tinemaha Period 3	0-10	0-30		
	Tinemaha Period 4	0-10	0-30		
	Tinemaha Period 5	0-10	0-30		
7	West Tinemaha Period 1	0-10	0-30		
	West Tinemaha Period 2	0-10	0-30		
	West Tinemaha Period 3	0-10	0-30		
	West Tinemaha Period 4	0-10	0-30		
	West Tinemaha Period 5	0-10	0-30		
8	Tinemaha Mountain Period 1	0-8			
	Tinemaha Mountain Period 2	0-8			
	Tinemaha Mountain Period 3	0-8			
	Tinemaha Mountain Period 4	0-8			
	Tinemaha Mountain Period 5	0-8			
9	Whitney Period 2	0-4	0-10		
	Whitney Period 3	0-4	0-10		
	Whitney Period 4	0-4	0-10		
	Whitney Period 5	0-4	0-10		
10	Grizzly Island Period 1	0-3	0-12		0-6
	Grizzly Island Period 2	0-3	0-12		0-6
	Grizzly Island Period 3	0-3	0-12		0-6
	Grizzly Island Period 4	0-2	0-12		0-6
	Grizzly Island Period 5	0-2	0-12		0-6
11	Fort Hunter Liggett Period 1		0-16		
	Fort Hunter Liggett Period 2		0-14		
	Fort Hunter Liggett Period 3	0-14			
12	East Park Reservoir	0-4	0-8		
13	San Luis Reservoir	0-10	0-10	0-10	
14	Bear Valley	0-4	0-2		

	2015 Proposed Elk Tag Allocation [shown in ranges]				
§	**Section 364 Elk**	**Bull**	**Antlerless**	**Either-Sex**	**Spike**
15	Lake Pillsbury	0-4	0-4		
16	Santa Clara	0-4			
17	Alameda	0-4			
e	**Apprentice Hunts**				
1	Marble Mountains			0-4	
2	Northeastern CA			0-4	
3	Cache Creek	0-2			
4	La Panza Period 1	0-2	0-2		
5	Bishop Period 2	0-10	0-30		
6	Grizzly Island Period 1		0-4		0-4
	Grizzly Island Period 2				0-4
7	Fort Hunter Liggett	0-2	0-8		
f	**Archery Only Hunts**				
1	Northeastern California Archery Only			0-20	
2	Owens Valley Multiple Zone Archery Only	0-10	0-10		
3	Lone Pine Archery Only Period 1	0-10	0-30		
4	Tinemaha Archery Only Period 1	0-10	0-30		
5	Whitney Archery Only Period 1	0-10	0-30		
6	Fort Hunter Liggett Archery Only		0-10	0-6	
g	**Muzzleloader Only Hunts**				
1	Bishop Muzzleloader Only Period 1	0-10	0-30		
2	Independence Muzzleloader Only Period 1	0-10	0-10		
3	Fort Hunter Liggett Muzzleloader Only	0-6			
h	**Muzzleloader/Archery Only Hunts**				
1	Marble Mountains Muzzleloader/Archery Only			0-10	
i	**Fund Raising Tags**				
1	Multi-zone	1			
2	Grizzly Island	1			
3	Owens Valley	1			
j	**Military Only Elk Tags**				
1	Fort Hunter Liggett Military Early Season	0-2	0-2		
	Fort Hunter Liggett Military Period 1		0-16		
	Fort Hunter Liggett Military Period 2		0-14		
	Fort Hunter Liggett Military Period 3	0-14			
2	Fort Hunter Liggett Military Apprentice	0-2	0-8		
3	Fort Hunter Liggett Military Archery Only		0-10	0-6	
4	Fort Hunter Liggett Military Muzzleloader Only	0-6			

Add Section 364.1
SHARE Elk Hunts

The Shared Habitat Alliance for Recreational Enhancement (SHARE) program was established in the Fish and Game Code (§§1570-1574) to encourage private landowners to voluntarily make their land available to the public for wildlife-dependent recreational activities. Due to the prevalence of private land in many of the elk zones, managing population numbers with regulated hunting is becoming more challenging. Under the SHARE program, participating landowners receive compensation and liability protection in exchange for allowing access to or through their land for public recreational use and enjoyment of wildlife. SHARE is funded with application fees for access permits. These regulations will establish SHARE elk hunts with separate seasons and tag quotas under the provisions of the 2010 Final Environmental Document Regarding Elk Hunting. Tag issuance will be through the SHARE program utilizing the programs existing tag distribution procedures.

364.1(c)	2015 SHARE Elk Tag Allocation [Proposed Ranges]

§	Hunt Name and Type	Bull	Antlerless	Either-sex	Spike
(1)	Siskiyou	[0-30]	[0-30]		
(2)	Big Lagoon	[0-10]	[0-10]		
(3)	Northwestern California	[0-10]	[0-35]	[0-45]	
(4)	Klamath	[0-20]	[0-20]		
(5)	Del Norte	[0-15]	[0-20]		
(6)	Marble Mountains	[0-70]	[0-30]		
(7)	Northeastern California	[0-30]	[0-10]		
(8)	Mendocino	[0-4]	[0-4]		
(9)	Cache Creek	[0-4]	[0-4]		
(10)	La Panza	[0-24]	[0-24]		
(11)	Bishop	[0-50]	[0-150]		
(12)	Independence	[0-50]	[0-150]		
(13)	Lone Pine	[0-50]	[0-150]		
(14)	Tinemaha	[0-50]	[0-150]		
(15)	West Tinemaha	[0-50]	[0-150]		
(16)	Tinemaha Mountain	[0-40]	-		
(17)	Whitney	[0-26]	[0-50]		
(18)	Grizzly Island	[0-13]	[0-66]		[0-38]
(19)	Fort Hunter Liggett	[0-22]	[0-48]	[0-6]	
(20)	East Park Reservoir	[0-4]	[0-8]		
(21)	San Luis Reservoir	[0-10]	[0-10]	[0-10]	
(22)	Bear Valley	[0-4]	[0-2]		
(23)	Lake Pillsbury	[0-4]	[0-4]		
(24)	Santa Clara	[0-4]	-		
(25)	Alameda	[0-4]	-		

Section 702
Fees

The proposed amendment establishes in subsection 702(c)(1)(W) a new $20.00 Deer Harvest Non-reporting Fee, to be collected at the time the subsequent year's deer tag or deer tag drawing application is purchased, for all deer hunters who fail to report their hunting results by the established deadline as required in amended Section 708.5.

Cost Estimate for Non-Reporting of Deer Harvest per Year										
Estimated Average 168 hour per month				Benefit Rate = 46.79%		28,000		Average # tags sold		
Task	Hourly Rate	# of Hours	Salaries Cost	Benefits 46.79%	Total Salaries + Benefits	STD OE&E	Unit Cost	Units*	Postage	Total
Meat Locker Booklets							$5.00	250	$0	$1,250
Meat Locker Data Entry (1 Scientific Aid for 2 months)	$13	336	$4,368	$2,044	$6,412	$4,667			$0	$11,078
Meat Locker Data Validation (1 Environmental Scientist for 1 month)	$26	168	$4,368	$2,044	$6,412	$2,333			$0	$8,745

Cost Estimate for Non-Reporting of Deer Harvest per Year										
Estimated Average 168 hour per month				Benefit Rate = 46.79%		28,000		Average # tags sold		
Task	Hourly Rate	# of Hours	Salaries Cost	Benefits 46.79%	Total Salaries + Benefits	STD OE&E	Unit Cost	Units*	Postage	Total
Report Preparation (1 Environmental Scientist for 1 month)	$26	168	$4,368	$2,044	$6,412	$2,333			$0	$8,745
Data Entry for mailed in report cards (3 Sci. Aides, 2 months each)	$13	1008	$13,104	$6,131	$19,235	$14,000			$0	$33,235
LRB costs to implement and manage non-return fee (1 AGPA for 2 months; postage for non-report mailing notifications)	$30	336	$10,080	$4,716	$14,796	$4,667	$0.42	183,997	$81,945	$96,742
		2016								$159,796
					5% Est of Non-reporting Tag Holders:				9200	$17.37
				Based on the Proposed Rate of $20.00 for the non-reporting fee, it covers the projected costs and a small buffer for misc. and unanticipated costs.						$20.00
										$184,000

Section 708.5
Deer Tagging and Reporting Requirements

According to the current regulations in Section 708.5, deer tag holders are required to fill out harvest report cards and return them to the Department within 30 days of harvesting a deer. Hunters unsuccessful in taking a deer are not required to report.

Report cards are an important tool to collect deer harvest information and provide an enforcement mechanism for limiting deer harvest to within acceptable levels established by population surveys and analyses. However, harvest report cards for deer currently have very poor return rates, historically less than 25% overall (although they are variable depending upon zone). Such low return rates may potentially lead to proposed management actions without adequate data to justify them. In addition, existing regulations do not incorporate new procedures for electronic reporting via the Department's website and utilizing the Department's Automated License Data System (ALDS) in the collection of this important harvest data.

The low rate of return for report cards results in increased effort by the Department for managing the hunting programs through additional data collection and analysis to fill data gaps, outreach to remind hunters to return report cards, and other enforcement activities. The cost of this additional effort will be offset by the proposed Deer Harvest Non-reporting Fee.

Proposed Regulations

The proposed amendments will require deer tag holders to report the harvest result, whether successful or unsuccessful, either through ALDS or by mail, or be subject to a fee applied at the time of later purchases of licenses or tags. The objectives of the proposed regulations are to:

- ensure continued hunting opportunities for hunters in California by providing the Department with more accurate and comprehensive data on deer hunter success and harvest levels by zone;
- establish a process and specify a date by which all harvest reports, including those where no deer was taken, must be made; and
- recover the increased cost of management of deer due to the non-reporting of harvest data regardless of success.

These objectives are proposed to be achieved through the following amendments:

- Amend Section 708.5 to require all deer tag holders to report within 30 days of harvest or by January 31, whichever date is first, either through ALDS or by mail to the address specified on the harvest report card.

- Amend Section 708.5 to require all deer tag holders that are unsuccessful, whether they hunted or not, to report their 'no harvest' results by January 31, either through ALDS or by mail to the address specified on the harvest report card.

- Amend Section 708.5 to establish a Deer Harvest Non-reporting Fee (set at $20.00 in Section 702(c)(1)(W)) to be collected at the time the subsequent year's deer tag or deer tag drawing application is purchased, for all deer hunters who failed to report their hunting results by the established deadline.

Section 708.11
Elk License Tags, Applications, Distribution and Reporting Procedures

Existing regulations specify license tags shall be attached to the antler of an antlered elk, or to the ear of an antlerless elk immediately after killing. However, it can be difficult to transport the elk carcass from the harvest location when the head, with ear, is required to be attached along with the useable parts of the kill. Many hunters bone out the meat or quarter the animal to reduce the amount of weight that must be transported from the harvest location. Allowing a new option for the tag to be attached to the leg, or remain with the largest portion of meat provides flexibility during transport while still implementing tagging requirements.

The current regulations do not specify evidence of sex for antlerless elk, only that the tag be attached to the ear (and therefore the head). Modifying the regulation to allow a new option to maintain evidence of sex attached to the kill will result in a reliable means to identify sex of the animal.

Additionally, the regulations for elk do not currently specify the length of time an elk tag must be retained. Antelope, Bear, and Deer all specify the tag must be retained for 15 days after the close of the season. In order to clarify regulations and maintain consistency among species, the proposed regulation implements a tag retention requirement of 15 days after the close of the season.

Hunting is no longer permitted on Santa Rosa Island. The property is now a National Monument administered by the National Park Service.

<u>Proposed Regulations</u>

- Amend subsection 708.11(c) to optionally allow elk tags to be attached to the leg, or largest portion of meat; and, provide evidence of the sex of the animal when the head of an antlerless elk is not retained.

- Amend subsection 708.11(c) to require that elk tags be kept for 15 days after the close of the season.

- Delete subsection 708.11(d) removing the reference to Santa Rosa Island.

Section 713
Tag Replacement for Carcass Condemnation

Existing regulations identify a process by which a hunter can have a diseased, injured, or chemically immobilized big-game carcass condemned. Following the condemnation by a department employee, the hunter currently has the following options under subsection 713(c):

(1) Purchase and use a duplicate tag subject to the fees established in Section 702 for the remainder of the current season under which the animal was taken;
(2) Upon payment of duplicate tag fee, receive the same tag for the next approved hunting season;
(3) Participate in the next big-game drawing for that species with one additional point added to the number of preference points the hunter had when they obtained the original tag, or;
(4) Receive a refund for the tag and have their preference point total for that species restored to the amount they had when the tag was awarded.

Under the department's Automated License Data System (ALDS), big-game tags are issued annually using "quota splits", with a portion of the available tags issued based on the applicant's point total and the remainder issued on a random basis. Unfortunately, the ALDS system is unable to reserve a tag for the next year as provided in option (2); and option (4) does not create an advantage in the drawing system that would assure receiving a tag in the following hunting season. Eliminating options #2 and #4 will streamline the programming process for ALDS and the remaining options (1) and (3) will assure a simple process to provide a hunter who has had a big-game carcass condemned in one year a tag in the same zone/hunt in the following year.

Proposed Regulations

Delete from subsection 713(c) subparagraphs (2) and (4).

Benefits of the regulations

The big game herd management plans specify objective levels for the proportion of Deer (sections 360 and 361), Nelson Big Horn Sheep (Section 362), Pronghorn Antelope (Section 363), and Elk (Section 364). These ratios are maintained and managed in part by annually modifying the number of tags. The final values for the license tag numbers will be based upon findings from the annual harvest and herd composition counts. The addition of private lands in the SHARE program, to be implemented in new Section 364.1 within the Elk hunt areas, benefits both the landowner and the state through better herd management and cooperation.

Non-monetary benefits to the public

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

Consistency with State or Federal Regulations

The Fish and Game Commission, pursuant to Fish and Game Code Sections 200, 202 and 203, has the sole authority to regulate deer hunting in California. Commission staff has searched the California Code of Regulations and has found the proposed changes pertaining to deer tag allocations are consistent with Sections 361, 701, 702, 708.5 and 708.6 of Title 14. Therefore the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Thursday, February 12, 2015, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be at the Flamingo Conference Resort & Spa
2777 Fourth Street, Santa Rosa, California, on Thursday, April 9, 2015, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before April 2, 2014 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 2, 2015. All comments must be received no later than April 9, 2015 at the hearing in Santa Rosa. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Jon Snellstrom at the preceding address or phone number. **Craig Stowers, Wildlife Branch, phone (916) 445-3553, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.fgc.ca.gov.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and following initial determinations relative to the required statutory categories have been made.

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed action adjusts tag quotas for existing deer hunts. Given the number of tags available and the area over which they are distributed, these proposals are economically neutral to business.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission anticipates benefits to the health and welfare of California residents and to the state's environment. Hunting provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of the State's resources. These proposals also contribute to the sustainable management of natural resources and benefits to the State's environment because the proposed regulations will assist the Department in the sustainable management of California's big game populations.

Sections 360, 361, 362, 363 and 364: The proposed action will not have significant impacts on jobs or business within California. The proposed action adjusts tag quotas for existing hunts based on herd performance criteria and merely establish mandatory reporting requirements for all deer hunters and an administrative fee for non-reporting. Given the number of tags historically available, the minimal adjustments in tag numbers that are anticipated for the 2015-2016 hunting season, and the area over which they are distributed

(c) Cost Impacts on Representative Private Persons/Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None

(e) Other Nondiscretionary Costs/Savings to Local Agencies:

None

(f) Programs Mandated on Local Agencies or School Districts:

None

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4:

None

(h) Effect on Housing Costs:

None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: December 23, 2014

Commissioners
Michael Sutton, President
Monterey
Jack Baylis, Vice President
Los Angeles
Jim Kellogg, Member
Discovery Bay
Richard Rogers, Member
Santa Barbara
Jacque Hostler-Carmesin, Member
McKinleyville

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

Fish and Game Commission

Sonke Mastrup, Executive Director
1416 Ninth Street, Room 1320
Sacramento, CA 95814
(916) 653-4899
(916) 653-5040 Fax
www.fgc.ca.gov

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DEC 26 2014
Clerk/Board of Supervisors

December 23, 2014

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a Notice of Findings regarding the Clear Lake hitch which will be published in the California Regulatory Notice Register on December 26, 2014.

Sincerely,

Sheri Tiemann
Associate Governmental Program Analyst

Attachment

NOTICE OF FINDINGS

Clear Lake Hitch

(*Lavinia exilicaudachi chi*)

NOTICE IS HEREBY GIVEN that the California Fish and Game Commission ("Commission"), at its August 6, 2014 meeting in San Diego, California, made a finding pursuant to Fish and Game Code section 2075.5, that the petitioned action to add the Clear Lake hitch (*Lavinia exilicaudachi chi*) ("CLH") to the list of threatened species under the California Endangered Species Act ("CESA") (Fish & G. Code, § 2050 et seq.) is warranted. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i).)

I. Background and Procedural History

On September 25, 2012, the Commission received the "Petition to List the Clear Lake Hitch (*Lavinia exilicaudachi chi*) as Threatened under the California Endangered Species Act" (September 25, 2012; hereafter, the "Petition"), as submitted by the Center for Biological Diversity ("Petitioners"). Commission staff transmitted the Petition to the Department of Fish and Wildlife ("Department") pursuant to Fish and Game Code section 2073 on September 26, 2012, and the Commission published formal notice of receipt of the Petition on October 12, 2012 (Cal. Reg. Notice Register 2012, Vol. 41-Z, p.1502). The Commission granted a 30-day extension to the Department for completion of the Department's initial review of the Petition. After evaluating the Petition on its face and in relation to other relevant information it possessed or received, the Department prepared its January 2013 "Report to the Fish and Game Commission: Evaluation of the Petition from the Center for Biological Diversity to List Clear Lake Hitch (*Lavinia exilicauda chi*) as a Threatened Species under the California Endangered Species Act" ("Petition Evaluation Report") and, pursuant to Fish and Game Code section 2073.5, recommended to the Commission, based on the information in the Petition, that there was sufficient scientific information to indicate the petitioned action may be warranted, and that the Petition should be accepted. At a noticed public hearing in Mount Shasta, California on March 6, 2013, the Commission determined the petitioned action may be warranted and accepted the Petition for further review. (Fish & G. Code, § 2074.2, subd. (e)(2).) The Commission published notice of the designation of CLH as a candidate species under CESA on March 22, 2013. (Cal. Reg. Notice Register 2013, Vol. 12-Z p. 488; see also Fish & G. Code, §§ 2068, 2080, 2085.)

Following the Commission's designation of the CLH as a candidate species, the Department notified affected and interested parties, and solicited data and comments on the petitioned action pursuant to Fish and Game Code section 2074.4. (See also Cal. Code Regs., tit. 14, § 670.1(f)(2).) Subsequently, the Department commenced its review of the status of the species in California. On May 28, 2014 the Department

Director submitted its "Report to the Fish and Game Commission: A Status Review of the Clear Lake Hitch (*Lavinia exilicauda chi*)," dated May 2014 ("Status Review"), to the Commission pursuant to Fish and Game Code section 2074.6, including a recommendation based upon the best scientific information available that, in the Department's independent judgment, the petitioned action was warranted. The Department's report also included a preliminary identification of habitat that may be essential to the continued existence of CLH and management recommendations. In preparing its report the Department sought independent and competent peer review on its draft Status Review from scientists with acknowledged relevant expertise An appendix to the final Status Review contains the specific input provided to the Department by the individual peer reviewers, a brief explanation and evaluation of that input by the Department, and a description of related revisions included in the final Status Review transmitted to the Commission. (See generally Fish & G. Code § 2074.6; Cal. Code Regs., tit. 14, § 670.1(f)(2).)

On August 6, 2014, at a noticed meeting in San Diego, California, the Commission held a public hearing regarding the Petition after receiving related testimony and other information, and began its deliberations regarding the petitioned action.

Species Description

CLH is a member of the cyprinid family, growing to 35 centimeters (cm) standard length (SL), and with laterally compressed bodies, small heads and upward pointing mouths (Moyle et al. 1995). They are separated from other California minnows by their long anal fin consisting of 11 to 14 rays. The dorsal fin (10 to12 rays) originates behind the origin of the pelvic fins. Juvenile CLH are silvery with a black spot at the base of the tail. As CLH grow older the spot is lost and they appear yellow-brown to silvery-white on the back. The body becomes deeper in color as the length increases (Hopkirk 1973; Moyle 2002). CLH show little change in pigmentation during the breeding season (Hopkirk 1973). The deep, compressed body, small upturned mouth, and numerous long slender gill rakers (26 to 32) reflect the zooplankton-feeding strategy of a limnetic (well-lit, surface waters away from shore) forager (Moyle 2002). This lake adapted subspecies also has larger eyes and larger scales than other hitch subspecies.

Federal Status

On September 25, 2012 the Center for Biological Diversity petitioned the U.S. Fish and Wildlife Service (USFWS) to list CLH as endangered or threatened under the federal Endangered Species Act (ESA). As of the preparation of these Findings, there has been no action taken on the petition by USFWS.

The U.S. Forest Service (USFS) lists CLH as a sensitive species. USFS sensitive species are those plant and animal species identified by a regional forester that are not

listed or proposed for listing under the federal ESA for which population viability is a concern.

II. STATUTORY AND LEGAL FRAMEWORK

The Commission, as established by the California Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, § 2070). The CESA listing process for CLH began in the present case with the Petitioners' submittal of the Petition to the Commission on September 25, 2012. Pursuant to Fish and Game Code section 2073, on September 26, 2012 the Commission transmitted the petition to the Department for review pursuant to Fish and Game Code section 2073.5. The regulatory process that ensued is described in some detail in the preceding section above, along with related references to the Fish and Game Code and controlling regulation. The CESA listing process generally is also described in some detail in published appellate case law in California, including:

- *Mountain Lion Foundation v. California Fish and Game Commission* (1997) 16 Cal.4th 105, 114-116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal.App.4th 1535, 1541-1542;
- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600; and
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4th 1104, 1111-1116.

The "is warranted" determination at issue here for CLH stems from Commission obligations established by Fish and Game Code section 2075.5. Under this provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process; namely, whether the petitioned action is warranted or is not warranted. Here, with respect to CLH, the Commission made the finding under Fish and Game Code section 2075.5, subdivision (e)(2), that the petitioned action is warranted.

The Commission was guided in making this determination by statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as "a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease." (Fish & G. Code, § 2062.) Similarly, the Fish and Game Code defines a threatened species under CESA as "a native species or subspecies of a bird, mammal, fish, amphibian, reptile or

plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter." (*Id.*, § 2067.)

The Commission also considered Title 14 of the California Code of Regulations, section 670.1, subdivision (i)(1)(A), in making its determination regarding CLH. This provision provides, in pertinent part, that a species shall be listed as endangered or threatened under CESA if the Commission determines that the species' continued existence is in serious danger or is threatened by any one or any combination of the following factors:

1. Present or threatened modification or destruction of its habitat;

2. Overexploitation;

3. Predation;

4. Competition;

5. Disease; or

6. Other natural occurrences or human-related activities.

Fish and Game Code section 2070 provides similar guidance. This section states that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides policy direction not specific to the Commission per se, indicating that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and shall utilize their authority in furtherance of the purposes of CESA (Fish & G. Code, § 2055). This policy direction does not compel a particular determination by the Commission in the CESA listing context. Nevertheless, as the Court of Appeal for the Third Appellate District underscored in the CESA listing context specifically, "'[l]aws providing for the conservation of natural resources' such as the CESA 'are of great remedial and public importance and thus should be construed liberally." (*California Forestry Association v. California Fish and Game Commission*, *supra*, 156 Cal. App.4th at pp. 1545-1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish & G. Code, §§ 2051, 2052.)

Finally in considering these factors, CESA and controlling regulations require the Commission to actively seek and consider related input from the public and any interested party (see, e.g., *Id.*, §§ 2071, 2074.4, 2078; Cal. Code Regs., tit. 14, § 670.1, subd. (h)). The related notice obligations and public hearing opportunities before the Commission are also considerable. (Fish & G. Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; Cal. Code Regs., tit. 14, § 670.1, subds. (c), (e), (g), (i); see also Gov. Code, § 11120 et seq.) All of these obligations are in addition to the requirements

prescribed for the Department in the CESA listing process, including its initial evaluation of the petition and a related recommendation regarding candidacy, and a review of the candidate species' status in California culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science. (Fish & G. Code, §§ 2073.4, 2073.5, 2074.4, 2074.6; Cal. Code Regs., tit. 14, § 670.1, subds. (d), (f), (h).)

III. Factual and Scientific Bases for the Commission's Final Determination

The factual and scientific bases for the Commission's determination that designating CLH as a threatened species under CESA is warranted are set forth in detail in the Commission's record of proceedings including the Petition, the Department's 2013 Petition Evaluation Report, the Department's 2014 Status Review, written and oral comments received from members of the public, the regulated community, members and representatives of Clear Lake Native American tribes, the scientific community and other evidence included in the Commission's record of proceedings as it exists up to and including the Commission meeting in San Diego, California on August 6, 2014. The administrative record also includes these findings.

The Commission determines that substantial evidence highlighted in the preceding paragraph, along with other evidence in the administrative record, supports the Commission's determination that CLH in the State of California, while not presently threatened with extinction, is likely to become an endangered species in the foreseeable future, absent the special protections and management efforts required by CESA, and that it is in serious danger or threatened by one or a combination of the following factors as required by the California Code of Regulations, Title 14, section 670.1, subdivision (i)(1)(A):

1. Present or threatened modification or destruction of its habitat;
2. Predation;
3. Competition; or
4. Other natural occurrences or human-related activities.

The Commission also determines that the information in the Commission's record constitutes the best scientific information available and establishes that designating CLH as a threatened species under CESA is warranted. Similarly, the Commission determines that the CLH is likely to be in serious danger of becoming extinct throughout all, or a significant portion, of its range within the foreseeable future in the absence of CESA's protections, due to one or more causes.

The following sections highlight in more detail some of the scientific and factual information and other evidence in the administrative record of proceedings that support the Commission's determination that designating CLH as a threatened species under CESA is warranted. The issues addressed in these findings represent some, but not all of the evidence, issues, and considerations affecting the Commission's final determination. Other issues aired before and considered by the Commission are addressed in detail in the record before the Commission, which record is incorporated herein by reference.

Background

Threats

Present or Threatened Modification or Destruction of Habitat

Beginning with the arrival of European settlers in the mid-1800s, alterations to habitats in the watershed have directly impacted the ability of CLH to survive. Habitats necessary for both spawning and rearing have been reduced or severely decreased in suitability in the past century resulting in an observable decrease in the overall abundance of CLH and its habitat. Throughout the expansion of European settlement around the lake, wetland habitat was drained and filled to provide urban and agricultural lands. Wetland habitat provides critical rearing habitat for juvenile fishes native to the lake. Comparisons of historical versus current wetland habitat reveal a loss of approximately 85 percent, from 9,000 acres in 1840 to 1,500 acres by 1977. Spawning tributaries have been physically altered by a combination of dams, diversions, and mining operations that have altered the course and timing of spring flows and the amount and quality of spawning habitat available for CLH. Dams create barriers to CLH passage that reduce the amount of available spawning habitat while altering the natural flow regime of tributaries. Water diversions on tributaries have resulted in decreased flows during critical spawning migrations for CLH. Loss of eggs, juvenile, and adult fish due to desiccation and stranding from water diversions are likely a significant impact on CLH populations. Gravel mining removed large amounts of spawning substrate during peak operations in the mid-1900s. Spawning substrate has been restored slowly after gravel mining was discontinued in the majority of the watershed.

Water quality impacts to the watershed have resulted in Clear Lake being listed as an impaired water body and led to the establishment of Total Maximum Daily Load (TMDL) limits for both mercury and nutrients for the lake. It is unclear to what extent the water quality impacts are affecting CLH populations. The increase in nutrient loads entering the lake has led to significant cyanobacteria blooms that plague the lake during warmer months. Primary producers such as epiphyton, benthic algae, and rooted vascular

plants form the base of the food chain in the lake. The cyanobacteria blooms reduce the amount of light penetration in the water column and cause a reduction in producers because they cannot reposition themselves to gain more light. The loss of function for primary producers results in significant alterations to the nutrient cycle and food web for the lake. The lake's food web continued to be altered as Clear Lake gnats were targeted for control with various pesticides. Clear Lake gnat, once the primary food source for CLH, were reduced through the use of pesticides from a population estimated in the millions to only a few thousand.

Modification and destruction of habitat is a significant threat to the continued existence of CLH.

Overexploitation

Harvest of CLH has occurred by both Native American tribes and commercial fishery operators at Clear Lake. Historical accounts from tribal members indicate that significant amounts of CLH were harvested during spawning runs. In recent years, the amount of harvest by the Pomo has been minimal, and the CLH are primarily used for educational and cultural reasons. Since the early 1990s commercial fishery operations have been required to return all CLH captured to the lake. Prior to that, CLH had not been regularly harvested for sale. It is likely that incidental catch during commercial harvest operations resulted in mortality of some CLH. However, there is no information indicating that overexploitation threatens the continued existence of CLH. There are currently no commercial fishing permits issued for operations on Clear Lake. The last commercial fishing operation was discontinued in 2007.

Predation

Direct predation of CLH by fish, birds, and mammals is known to occur in occupied habitats within the watershed. Spawning runs are vulnerable to predation from birds and mammals as fish migrate upstream and become stranded at various locations. Stranding occurs both naturally and as a result of habitat modifications described above. Non-native fishes prey directly on different life stages of CLH and represent an introduced impact to the population. CLH have been found during stomach content analyses of largemouth bass. Incidental observations indicate that largemouth bass may target CLH as they stage at the entrance to spawning tributaries in early spring. Other introduced fishes, such as catfish, also prey on CLH. A detailed diet study on selected introduced fishes is necessary to determine the extent of predation from introduced fishes. There is evidence suggesting that predation by introduced fishes threatens the continued existence of CLH.

Competition

The extent of impacts on CLH from competition with other aquatic species is poorly understood. Studies conducted on diet analysis of CLH indicate that there is competition between CLH and other zooplankton consuming fish species, primarily Mississippi silversides and threadfin shad. Observations by Department biologists and others indicate that CLH populations fluctuate on alternating cycles with Mississippi silverside and threadfin shad populations with CLH being more abundant in years with decreased Mississippi silverside and threadfin shad abundance. CLH directly compete with other native and non-native fishes for juvenile rearing habitat. Many fishes in Clear Lake utilize near shore wetland habitat as juveniles and adults. With the decrease in wetland habitat over the past century, there is increased competition for the remaining habitat. Although no formal studies have been completed, it is likely that competition for resources threatens the continued existence of CLH.

Disease

There are no known diseases that are significant threats to the continued existence of CLH.

Other Natural Occurrences or Human-related Activities

Numerous recreational activities such as angling, water skiing, wakeboarding, jet skiing, kayaking, and canoeing take place in Clear Lake each year. The majority of recreational activities pose no significant threat to the survival of CLH. It is believed that recreational and tournament anglers' capture CLH incidentally, however the occurrence is considered rare. The significance of the impact to CLH from angling is unknown, but likely does not threaten the continued existence of CLH.

IV. ADDITIONAL CONSIDERATIONS INFORMING THE COMMISSION'S FINAL DETERMINATION

Various additional considerations inform the Commission's determination that designating CLH as a threatened species under CESA is warranted. In general, the Fish and Game Code contemplates a roughly twelve-month long CESA listing process before the Commission, including multiple opportunities for public and Department review and input and peer review (see generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.). From the initial receipt of the Petition in September 2012 through the Commission's decision on August 6, 2014 that listing is warranted, the Department and the Commission received numerous comments and other significant public input regarding the status of CLH from biological, scientific and cultural resources

standpoints and with respect to the petitioned action under CESA. The Commission, as highlighted below, was informed by and considered all of these issues, among others, in making its final determination that designating CLH as a threatened species under CESA is warranted. (See Fish & G. Code, § 2075.5, subd. (e)(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).).

V. FINAL DETERMINATION BY THE COMMISSION

The Commission has weighed and evaluated the information for and against designating CLH as a threatened species under CESA. This information includes scientific and other general evidence in the Petition; the Department's Petition Evaluation Report; the Department's Status Review; the Department's related recommendations; written and oral comments received from members of the public, members and representatives of Clear Lake Native American tribes, the regulated community, various public agencies, and the scientific community; and other evidence included in the Commission's record of proceedings. Based upon the evidence in the record the Commission has determined that the best scientific information available indicates that the continued existence of the CLH is in serious danger or threatened by present or threatened modifications or destruction of the species' habitat, predation, competition, or other natural occurrences or human-related activities, where such factors are considered individually or in combination. (See generally Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A); Fish & G. Code, §§ 2062, 2067.) The Commission determines that there is sufficient scientific information to indicate that designating the CLH as a threatened species under CESA is warranted at this time and that with adoption and publication of these findings the CLH for purposes of its legal status under CESA and further proceedings under the California Administrative Procedure Act, shall be listed as threatened.

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DEC 12 2014

Clerk/Board of Supervisors

YUBA SUTTER
Regional Conservation Plan

NOTICE OF PREPARATION

RECEIVED BY EACH
BOARD MEMBER

Date: December 12, 2014

To: Interested Parties

From: Danelle Stylos, Development Services Director, Sutter County Development Services Department

Subject: Notice of Preparation for an Environmental Impact Report for the Yuba–Sutter Regional Conservation Plan and Scoping Meeting

Public Comment Period: December 12, 2014, through January 26, 2015

Public Scoping Meetings

Two scoping meetings will be held for the public and the agencies to provide input on the scope and content of the EIS/EIR. The scoping meetings will be on **January 6, 2015,** from 3:00 p.m. to 5:00 p.m. and from 6:00 p.m. to 8:00 p.m., at the Yuba County Government Center, Wheatland Room, 915 8th Street, Marysville, California, 95901.

Submitting Comments

Comments and suggestions regarding the scope of the EIS/EIR analysis are invited from all interested parties. Please submit your comments in writing (emails are acceptable) to the contact provided below by 5:00 p.m. on January 26, 2015. Please include the contact person's full name and address if you wish to be added to the mailing list for future EIS/EIR-related notices.

Please send your comments in response to this notice to:

Danelle Stylos, Director
Sutter County Development Services Department
1130 Civic Center Boulevard, Suite A
Yuba City, California 95993
e-mail at: dstylos@co.sutter.ca.us

BOS CORRESPONDENCE B

INTRODUCTION

Sutter County will be the lead agency for the preparation of an environmental impact report (EIR) for the proposed Yuba–Sutter Regional Conservation Plan (YSRCP) (Proposed Project). The EIR is being prepared in compliance with the requirements set forth in the California Environmental Quality Act (CEQA). Pursuant to CEQA, the lead agency must issue a Notice of Preparation (NOP) to inform trustee and local agencies and the public that an EIR will be prepared. The EIR will evaluate the potential environmental impacts of the Proposed Project and recommend mitigation measures for any significant impact, as required. The environmental document will be prepared to meet federal requirements as an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) and is therefore referred to as an EIS/EIR. The U.S. Fish and Wildlife Service (USFWS) is also publishing a Notice of Intent similar to this NOP in the Federal Register in accordance with NEPA requirements.

This NOP has been sent to responsible and trustee agencies and involved federal agencies pursuant to Section 15082 of the CEQA Guidelines (14 CCR 15000 et seq.). The purpose of this NOP is to provide information describing the Proposed Project and its potential environmental effects to enable comments regarding the scope and content of the information to be addressed in the EIS/EIR. Agencies should comment on the scope and content of the environmental information that is germane to the agencies' statutory responsibilities in connection with the Proposed Project. Due to the time limits mandated by state law, your response must be sent at the earliest possible date, but not later than 30 days after receipt of this notice.

The YSRCP has not been finalized or distributed for agency or public review. Requests for details beyond the enclosed project description or other specific questions about the project may be directed to Danelle Stylos, Sutter County Development Services Director, at 530.822.7400. This notice and other items related to the YSRCP can be found on the program website: www.yubasutterrcp.com.

Project Background

During planning for improvements to State Routes 70 and 99 in Yuba and Sutter Counties (Counties), the USFWS recommended preparation of a habitat conservation plan (HCP) to ensure compliance with the federal Endangered Species Act to which the Counties and Caltrans agreed. A working group (Counties, USFWS, California Department of Fish and Game (CDFG; now the California Department of Fish and Wildlife (CDFW)),[1] and Caltrans) was formed, conservation planning approaches were evaluated, and grant funding was pursued. The working group agreed to

[1] Effective January 2013, the California Department of Fish and Game (CDFG) officially changed its name to the California Department of Fish and Wildlife (CDFW). In this document, references to the department before the official name change use CDFG, whereas references to the department after 2012 use CDFW.

address the California Endangered Species Act as well as the federal Endangered Species Act by preparing a combined Natural Communities Conservation Plan/HCP. Development of the YSRCP is still in progress.

The YSRCP is intended to provide an effective framework to protect and enhance agricultural and natural resources in Yuba and Sutter Counties, while improving and streamlining the environmental permitting process for projects that may result in impacts on threatened and endangered species. The YSRCP will allow the Counties; the Cities of Wheatland, Yuba City, and Live Oak; and the Plan Implementing Entity (collectively, the Plan Applicants with the intent of becoming the Plan Permittees) to control threatened and endangered species permitting for activities and projects in specifically defined areas of the counties. The YSRCP will also serve to provide comprehensive species and ecosystem conservation and contribute to the recovery of threatened and endangered species in Northern California. The YSRCP will help focus and streamline project-by-project endangered species permitting, which is generally costly and time consuming for applicants and often results in uncoordinated and biologically ineffective mitigation; moreover, it will contribute to long-term, biologically sound local land use decisions.

Project Location

The Plan Area generally includes the Counties of Sutter and Yuba; however, the Plan Area does not include the Sutter Buttes, portions of Southern Sutter County within the Natomas Basin HCP, portions of Eastern Yuba County that are dominated by oak woodlands, and the City of Marysville.

Project Permittees (Partners)

Sutter County
Yuba County
City of Yuba City
City of Wheatland
City of Live Oak

PROJECT DESCRIPTION

The proposed YSRCP will include a conservation strategy to compensate for impacts on covered species and provide for the conservation and management of the covered species and their habitats within the Plan Area. In accordance with the YSRCP and its conservation strategy, the USFWS and CDFW would issue take permits to the local participating jurisdictions under the federal Endangered Species Act, the California Endangered Species Act, and the Natural Community Conservation Planning Act, while complying with other applicable laws. The USFWS and CDFW would also provide assurances to local jurisdictions and Plan Permitees that no further commitments of funds, land, or water would be required to address impacts on covered species beyond those described in the YSRCP. The local

jurisdictions will then be able to use those permits to mitigate identified impacts of maintenance, development, and other activities within areas designated in the YSRCP. Key elements of the YSRCP are described below.

Covered Species

Table 1 lists the species proposed for inclusion in the YSRCP and their current status. Species may be added or deleted from this list as the YSRCP is developed.

Table 1
Yuba–Sutter Regional Conservation Plan Covered Species

Species	Scientific Name	Status		
		Federal	*State*	*CNPS CRPR*
	Invertebrates			
Vernal pool fairy shrimp	*Branchinecta lynchi*	FT	—	—
Vernal pool tadpole shrimp	*Lepidurus packardi*	FE	—	—
Valley elderberry longhorn beetle	*Desmocerus californicus dimorphus*	FT	—	—
	Amphibians and Reptiles			
Giant gartersnake	*Thamnophis gigas*	FT	ST	—
Western spadefoot	*Scaphiopus hammondii*	—	SSC	—
Western pond turtle	*Actinemys marmorata*	—	SSC	—
	Birds			
Swainson's hawk	*Buteo swainsoni*	—	ST	—
Western yellow-billed cuckoo	*Coccyzus americanus occidentalis*	—	SE	—
Bank swallow	*Riparia riparia*	—	ST	—
California black rail	*Laterallus jamaicensis*	—	ST	—
Greater sandhill crane	*Grus canadensis tabida*	—	ST	—
Bald eagle	*Haliaeetus leucocephalus*	FD	SE, SFP	—
Western burrowing owl	*Athene cunicularia hypugaea*	—	SSC	—
Tricolored blackbird	*Agelaius tricolor*	—	SSC	—
	Plants			
Boggs Lake hedge-hyssop	*Gratiola heterosepala*	—	SE	1B.2
Dwarf downingia	*Downingia pusilla*	—	—	2.2
Ahart's dwarf rush	*Juncus leiospermus* var. *ahartii*	—	—	1B.2
Legenere	*Legenere limosa*	—	—	1B.1

Status Key
Federal
FE = listed as endangered under the federal Endangered Species Act
FT = listed as threatened under the federal Endangered Species Act
FD = delisted
— = no listing
State
SE = listed as endangered under the California Endangered Species Act
ST = listed as threatened under the California Endangered Species Act
SSC = species of special concern
SFP = fully protected

— = no listing
R = Listed as rare under the California Native Plant Protection Act. This category is no longer used for newly listed plants, but some plants previously listed as rare retain the designation.
California Native Plant Society (CNPS) California Rare Plant Rank (CRPR)
1B = rare, threatened, or endangered in California and elsewhere
2 = rare, threatened, or endangered in California but more common elsewhere
.1 = seriously threatened in California
.2 = moderately threatened in California
.3 = not very threatened in California

Covered Activities

Covered activities are those activities for which incidental take authorization would be requested by the Plan Permittees. The YSRCP describes specific projects, activities, and categories of activities for which state and federal take permits would be sought. These covered activities would include private projects and actions that permit applicants anticipate may adversely affect sensitive biological resources.

Incidental take for covered activities carried out by the Permittees, or by third-party developers acting under the authority of a development permit issued by the participating cities or counties, would be granted under the YSRCP permit and would be subject to the avoidance, minimization, and mitigation measures prescribed by the YSRCP.

Covered activities fall into nine general categories:

1. Residential, commercial, industrial, and commercial agricultural facilities
2. Recreational facilities
3. Transportation facilities
4. Public and private utilities
5. Mining and mineral extraction
6. Water supply and delivery facilities
7. Flood control maintenance and other stream-related facilities
8. Wastewater and waste management facilities
9. Activities within the YSRCP reserves.

Some activities will not be covered by the YSRCP, including the following:

1. Routine and Ongoing Agricultural Activities. Routine agricultural activities are defined broadly as activities that occur in the normal course of existing farming or ranching operations, such as crop planting, crop conversions from one type to another, crop harvesting, livestock management, and pesticide application. These routine agricultural activities are not covered by the YSRCP and do not typically

require take coverage. Accordingly, the wildlife agencies do not currently issue permits for these types of activities.

2. Conversion of Natural Lands to Agricultural Lands: These activities are not proposed for coverage because there are no discretionary permits issued by the Plan Permittees to regulate these types of land cover changes.
3. Activities of Non-Participating Cities. Urbanization of non-participating cities is not covered under the YSRCP. However, in instances where non-participating cities annex land from Yuba and Sutter Counties through the Local Agency Formation Commission, annexations will need to be consistent with the YSRCP conservation strategy and will require an appropriate contribution to the conservation strategy to appropriately offset potential effects on species.

Conservation Strategy

The YSRCP's Conservation Strategy would provide a regional approach for the long-term conservation of Covered Species and natural communities within the YSRCP Plan Area while allowing for compatible future land use and development under county and city general plan updates and the regional transportation plans. The YSRCP identifies and addresses the Covered Activities that would be carried out by the Permittees that could result in take of Covered Species within the YSRCP Plan Area. The proposed YSRCP is consistent with and is intended to support compliance with other Federal and State wildlife and related laws and regulations, other local conservation planning efforts, and county and city general plans. The YSRCP is designed to streamline and coordinate existing processes for review and permitting of public and private activities that potentially affect protected species. To meet this goal, the YSRCP sets out a conservation strategy that includes measures to ensure that impacts on Covered Species and their habitat related to Covered Activities are avoided, minimized, or mitigated, as appropriate. These Covered Activities encompass the range of existing and future activities that are associated with much of the regional economy

It should be noted that a Neighboring Landowners Protection Program is planned for inclusion in the YSRCP to provide relief to landowners in the area who could be subject to increased regulatory restrictions as a result of implementation of the YSRCP. The implementation of conservation measures included in the YSRCP could increase populations of covered species within YSRCP reserves. As a result, some individuals could disperse to neighboring private lands where the presence of listed species could inhibit routine agricultural activities. Protections for neighboring landowners are described in the YSRCP, as are methods for establishing and estimating incidental take. With certain provisions and restrictions, agricultural lands within 1 mile of the reserve system boundary would be eligible for take coverage during the course of routine agricultural activities, during the permit term, and for take beyond the baseline condition that existed prior to the establishment of the neighboring YSRCP reserves.

Potential Environmental Effects

The environmental analyses presented in the Draft EIS/EIR will describe the existing conditions in the Plan Area and surrounding areas. Relevant federal, state, and local laws and regulations will be summarized. The methods of analysis and any assumptions that are important to understand the conclusions of the analysis will be described along with the standards of significance used to determine impacts of the Propose Project. Feasible mitigation measures will be identified for each significant impact. At this time, it is anticipated that the following issues/technical sections will be addressed in the EIS/EIR:

- Agricultural Resources
- Air Quality
- Biological Resources
- Climate Change
- Cultural Resources
- Hydrology and Water Quality
- Hazardous Materials
- Land Use
- Public Services and Facilities
- Recreation
- Soils, Geology, and Mining
- Transportation and Circulation.

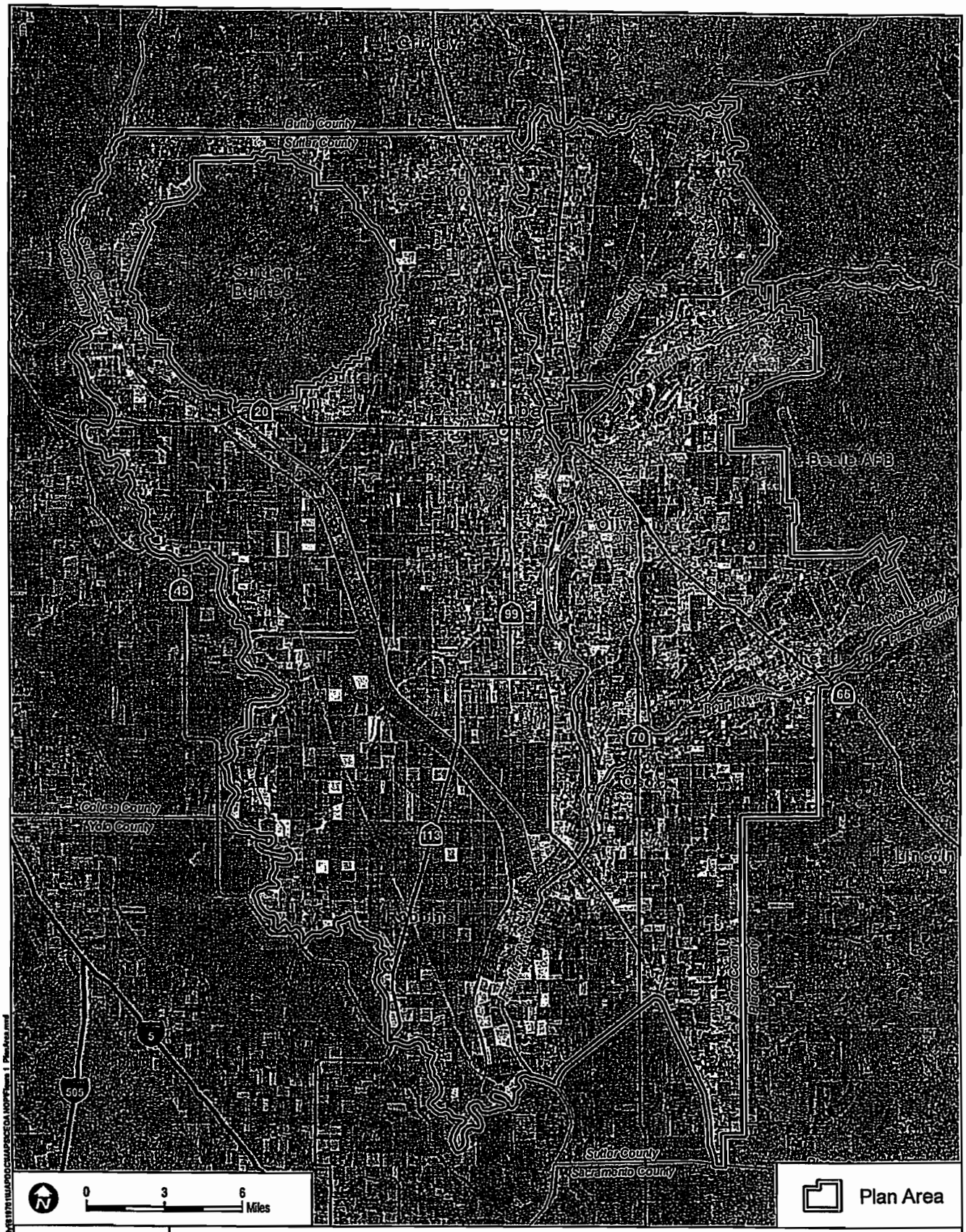
In addition to the elements required in an EIR prepared pursuant to CEQA, as described above, two key items will be included to comply with the USFWS guidelines for preparing an EIS pursuant to NEPA: (1) a Socioeconomics and Environmental Justice technical analysis and (2) the co-equal level of analysis for all alternatives, including the No Project/No Action Alternative against which all remaining alternatives would be compared.

Intended Uses of the EIS/EIR

The Plan Applicants, including Yuba and Sutter Counties and the Cities of Wheatland, Yuba City, and Live Oak, are seeking concurrent and parallel authorizations from federal and state regulatory programs for covered activities authorized through the YSRCP and the associated incidental take permits. The EIS/EIR will serve as the environmental document for actions taken by the federal, state, and local agencies.

Responsible Agencies

- U.S. Fish and Wildlife Service
- California Department of Fish and Wildlife
- Sutter County
- Yuba County
- City of Live Oak
- City of Wheatland
- City of Yuba City.



DUDEK

8197

SOURCE: BING 2014, USGS NHD 2012

FIGURE 1
Plan Area

YUBA-SUTTER REGIONAL CONSERVATION PLAN DRAFT EIS/EIR NOTICE OF PREPARATION

The County of Yuba

18-15

C.

Auditor-Controller

Richard Eberle, CPA
Yuba County Government Center
915 8th Street, Suite 105
Marysville, CA 95901

Phone: (530) 749-7810
Fax: (530) 749-7814
Email: reberle@co.yuba.ca.us

December 9, 2014

COPY OF REFERENCED DOCUMENT ON FILE WITH CLERK OF THE BOARD

RECEIVED

DEC 17 2014

Clerk/Board of Supervisors

Board of Supervisors
County of Yuba
915 8th Street Suite 109
Marysville CA 95901

Honorable Members:

An Independent Audit of the financial records for the following agency has been completed for the year(s) specified:

WHEATLAND CEMETERY DISTRICT JUNE 30, 2013

Yours truly,

C. Richard Eberle
Auditor-Controller

CRE/kmd
Original Copy attached

BOS CORRESPONDENCE C.

The County of Yuba

Auditor-Controller

Richard Eberle, CPA
Yuba County Government Center
915 8th Street, Suite 105
Marysville, CA 95901

Phone: (530) 749-7810
Fax: (530) 749-7814
Email: reberle@co.yuba.ca.us

RECEIVED
DEC 18 2014
Clerk/Board of Supervisors

December 18, 2014

Board of Supervisors
County of Yuba
915 8th Street Suite 109
Marysville CA 95901

Honorable Members:

An Independent Audit of the financial records for the following agency has been completed for the year(s) specified:

BROWNS VALLEY IRRIGATION DISTRICT DECEMBER 31, 2013

Yours truly,

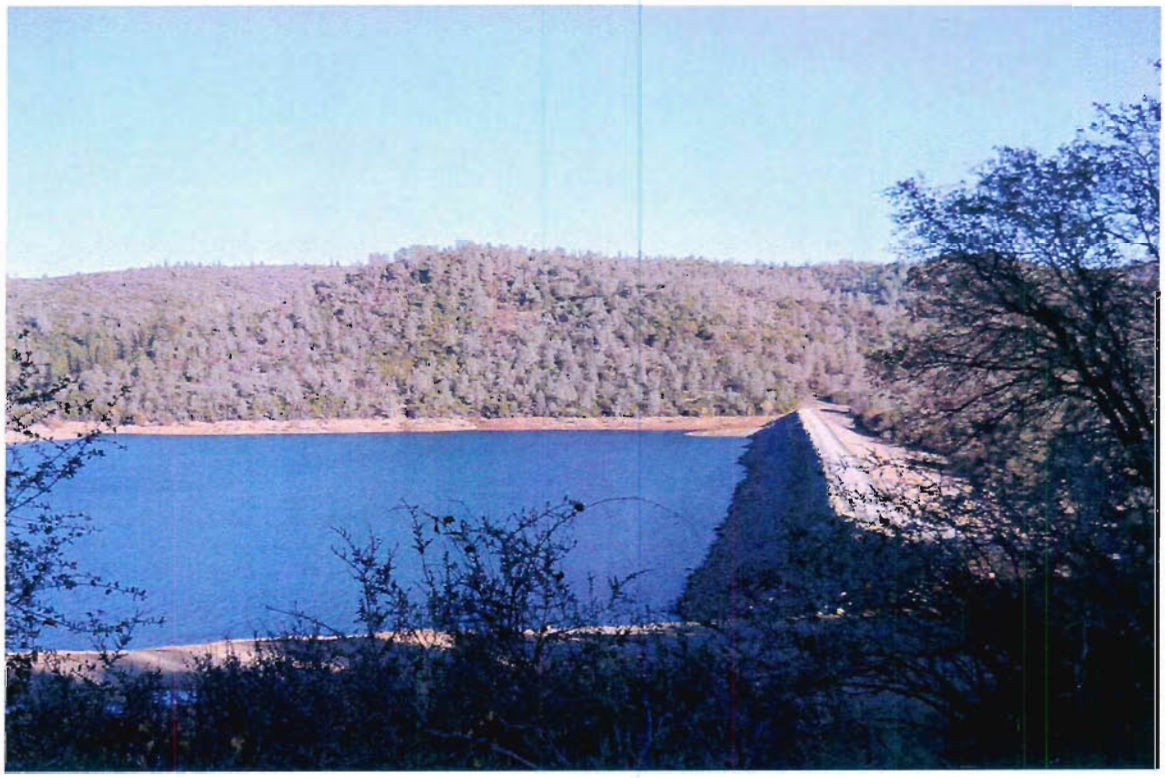
C. Richard Eberle
Auditor-Controller

CRE/kmd
Submitted electronically

BOS CORRESPONDENCE

Browns Valley Irrigation District

Financial Statements
and
Independent Auditor's Reports
2013



BROWNS VALLEY IRRIGATION DISTRICT

Financial Statements

December 31, 2013

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BROWNS VALLEY IRRIGATION DISTRICT

Management's Discussion and Analysis
December 31, 2013

This discussion and analysis is intended to be a summarized analysis and interpretation of the Browns Valley Irrigation District's financial activities for the year ended December 31, 2013, based on currently known facts, decisions or conditions.

Even though 2013 was a dry year, Collins Lake filled and BVID had a normal water season, ending the year with the Lake about 23% full. At the Board's request, we made major changes to the billing system in 2013 that, for the most part worked well. Those changes will remain in place for at least the next few years. The District remains financially sound with cash-on-hand on December 31st increasing by over $400,000 as compared to the end of 2012 (due to an out-of-District water sale).

Basic Financial Statements:

The District's basic financial statements include four components:

- Statement of Net Position
- Statement of Activities, Expenses and Changes in Net Position
- Statement of Cash Flows
- Notes to the Financial Statements

The statement of net position includes all of the District's assets and liabilities, with the difference between the two reported as net position.

The statement of net position provides the basis for evaluating the capital structure of the District and assessing its liquidity and financial flexibility.

The statement of activities and changes in net position presents information, which shows how, the District's net position changed during each year. All of the year's revenues and expenses are recorded when the underlying transaction occurs, regardless of the timing of the related cash flows. The statement of activities and changes in net position measure the success of the District's operations during the year and determine whether the District has recovered its costs through user fees and other charges.

The statement of cash flows provides information regarding the District's cash receipts and cash disbursements during the year. This statement reports cash activity in four categories:

- Operating
- Non-capital financing
- Capital financing and related financing
- Investing

Basic Financial Statement: (Continued)

This statement differentiates from the statement of activities and changes in net position by only accounting for transactions that result in cash receipts or cash disbursements.

The notes to the financial statements provide a description of the accounting policies used to prepare the financial statements and present material disclosures required by generally accepted accounting principles that are not otherwise present in the financial statements.

District Financial Statements:

The statement of net position includes all the District's assets and liabilities and provides information about the nature and amount of investments in resources and the obligation to creditors. This statement provides the basis for evaluating the capital structure and assessing the liquidity and the financial flexibility of the District.

A summary of the District's statement of net position is presented as follows:

Statement of Net Position

	12/31/13	12/31/12	Dollar Change	Percent Change
Current Assets	$ 2,943,128	$ 2,483,982	$ 459,146	18.48%
Capital Assets	7,429,578	7,607,471	(177,893)	-2.34%
Construction in Progress	1,264,564	1,062,878	201,686	18.98%
Total Assets	$ 11,637,270	$ 11,154,331	$ 482,939	4.33%
Liabilities	$ 437,070	$ 387,791	$ 49,279	12.71%
Net Position:				
Invested in Capital Assets	8,694,142	8,670,349	23,793	0.27%
Unrestricted/Unassigned	2,506,058	2,096,191	409,867	19.55%
Total Liabilities and Net Position	$ 11,637,270	$ 11,154,331	$ 482,939	4.33%

A summary of the District's statement of activities is presented on page 3.

District Financial Statements (Continued)

Condensed Statement of Activities and Changes in Net Position

	12/31/13	12/31/12	Dollar Change	Percent Change
Operating Revenues	$ 2,281,204	$ 2,057,727	$ 223,477	10.86%
Less Operating Expenses	(1,236,467)	(1,153,074)	83,393	7.23%
Less Administrative Expenses	(594,641)	(596,011)	1,370	0.23%
Less Depreciation	(226,801)	(227,809)	1,008	0.44%
Add Non-Operating Revenues (Expenses)	210,465	462,034	(251,569)	54.45%
Increase (Decrease) in Net Position	433,760	542,867	(109,107)	20.10%
Net Position - Beginning of year	10,766,540	10,223,673	542,867	5.31%
Prior Period Adjustment	(100)	-	-	
Net Position - End of year	$ 11,200,200	$ 10,766,540	$ 433,760	4.03%

During the year ended December 31, 2013 the District's operating revenues increased by 10.86% due to an increase in District's water sales to other water districts and increased power sales.

Financial Highlights

- The assets of the District exceeded its liabilities at the close of the year ended December 31, 2013 by $11,200,200. Of this amount, $1,965,617. is in *Unrestricted/Unassigned Net Position.*

- The District's total net position increased by $433,660 from the previous year.

- The District's operating expenses totaled $1,831,108 for the current year an increase of $82,023 over last year.

- The District's current year total revenues decreased compared to the prior year by $33,598 to a total of $2,491,669 for the year ended December 31, 2013. Total revenue for the prior year was $2,525,267. *Out of District Water Sales* increased by $146,628 in 2013 compared to the prior year. No grant revenues were received during 2013.

- The cash and investment balance available at the end of the current year was

$2,763,774, an increase of $416,013 from the prior period.

Overview of the Financial Statements

This discussion and analysis is intended to serve as an introduction to the District's basic financial statements. The District's basic financial statements are comprised of the following components: 1) Independent Auditor's Report, 2) Management's Discussion and Analysis, 3) Statement of Net Position, 4) Statement of Activities, 5) Statement of Cash Flows, and 6) Notes to the Financial Statements. This report also contains other supplementary information in addition to the basic financial statements. Items 3, 4, 5 and the supplemental statement of operating expenses are in comparative format, showing both the current year and the prior year.

Notes to the Financial Statements: The notes provide additional information that is essential to a full understanding of the data provided in the financial statements. The notes to the financial statements can be found on pages 12-18 of this report.

Supplemental Information: In addition to the basic financial statements and accompanying notes, this report also presents certain required supplementary information: 1) Schedule of Operating Expenses and 2) Statement of Revenue and Expenditures -Budget and Actual. These reports can be found on pages 19 and 20.

Budgetary Highlights

- Total revenues of the District were under the budgeted revenues by $113,451 mainly due to not realizing grant revenues.

- Management and General Expense exceeded the budgeted expenses by $3,344, due mainly to *Water Sales out of District Expense* exceeding the budgeted amount by $49,840. Partially offset by decrease in other budget categories.

- Operations Expenses were lower than the budgeted expenses by $425,180. Previously due to lower capital project expenses.

Capital Assets

The District owns real property at its office and yard location on Browns Valley School Road. The District also owns the Collins Lake recreation area, including the dam and powerhouse. Also owned is a fish screen and a pumping facility on the Yuba River, miscellaneous booster pumps, a hydro powered lift pump, and an open ditch and pipeline delivery system. In addition, the District owns a considerable amount of vehicles and district maintenance equipment. These fixed assets, along with additions, deletions, and accumulated depreciation, are detailed in the Notes to the Financial Statements, Note 3.

Additions to the fixed assets during the year included the purchase of 2013 F-150 pickup $16,945, 2014 Ford Escape $24,975 and a hydraulic powered Angle Broom for $6,988. Construction in progress additions for 2013 included expense for Peoria pipeline of $47,347. Dry Creek of $110,437 and Tennessee Ditch Hydro of $43,902.

The Table below provides a comparative Summary.

Capital Asset Activity:

	Capital Assets			
Description	Balance December 31, 2013	Balance December 31, 2012	Dollar Change	Percent Change
Property and Equipment:				
Distribution System	$ 11,046,078	$ 11,046,078	$ -	0.00%
Building/Equipment	1,674,542	1,625,634	48,908	3.01%
Recreation Property	11,508	11,508	-	0.00%
Fish Screens	204,819	204,819		
Construction in Progress	1,264,564	1,062,878	201,686	18.98%
Accumulated Depreciation	(5,507,369)	(5,280,568)	(226,801)	4.30%
Total Property, Plant and Equipment - Net	$ 8,694,142	$ 8,670,349	$ 23,793	0.27%

Capital Debt:

At December 31, 2013, the District had no bonds outstanding. The District has no expected need for future capital debt.

Economic Factors:

The District shows a net position increase of $433,660 for the calendar year ended December 31, 2013.

Debt Administration

Long-term debt: The final payment of $100,000 was made on the Districts General Obligation Bonds during year 2012, bringing the balance to zero. There was no new

debt incurred during the current year.

Requests for Information

This financial report is designed to provide a general overview of the District's finances for all those with an interest. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the Browns Valley Irrigation District, Walter Cotter, General Manager at P.O. Box 6, Browns Valley, CA 95918.

Blomberg & Griffin Accountancy Corporation
Certified Public Accountant

INDEPENDENT AUDITOR'S REPORT

Board of Directors
Browns Valley Irrigation District
Browns Valley, California

Report on the Financial Statements

We have audited the accompanying financial statements of Browns Valley Irrigation District as of and for the year ended December 31, 2013 and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents. The financial reports for the year ended December 31, 2012 are presented for comparative purposes only and are not covered by this audit report.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

1013 North California Street, Stockton, California 95202 • (209) 466-3894 • Fax (209) 466-5545

Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the Browns Valley Irrigation District, as of December 31, 2013, and the respective changes in financial position, and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America

Other Matters
Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 1 through 6 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by Government Auditing Standards

In accordance with Government Auditing Standards, we have also issued our report dated August 28, 2014, on our consideration of the Browns Valley Irrigation District's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards in considering Browns Valley Irrigation District's internal control over financial reporting and compliance.

Blomberg & Griffin A.C.

Blomberg & Griffin A.C.
Stockton, CA
August 28, 2014

BROWNS VALLEY IRRIGATION DISTRICT

Statement of Net Position

December 31, 2013 and 2012

ASSETS

	2013	2012
CURRENT ASSETS		
Cash & Investments (Note 2)	$ 2,763,774	$ 2,347,761
Accounts Receivable	47,321	30,622
Interest Receivable	4,330	4,187
Inventory	91,456	60,860
Prepaid Insurance	36,247	40,552
Total Current Assets	2,943,128	2,483,982
Property and Equipment - Net of Accumulated		
Depreciation (Note 3)	8,694,142	8,670,349
Total Assets	$ 11,637,270	$ 11,154,331

LIABILITIES AND NET POSITION

CURRENT LIABILITIES		
Accounts Payable & Accrued Payroll	$ 49,797	$ 59,021
Accord Conjunctive Liability (Note 4)	95,127	53,465
Compensated Absences	292,146	266,336
Deferred Compensation (Note 6)	-	8,969
Total Current Liabilities	437,070	387,791
NET POSITION		
Contributed Capital (Note 7)	540,440	540,440
Invested in Capital Assets, Net of Related Debt (Note 7)	8,694,143	8,670,349
Unrestricted/Unassigned	1,965,617	1,555,751
Total Net Position	11,200,200	10,766,540
Total Liabilities and Net Position	$ 11,637,270	$ 11,154,331

See accompanying notes to financial statements.

BROWNS VALLEY IRRIGATION DISTRICT

Statement of Activities and Changes in Net Position

For the Years Ended December 31, 2013 and 2012

	2013	2012
OPERATING REVENUES:		
Water Sales:		
Other Water Agencies	$ 726,505	$ 579,879
Accord Conjunctive Use	7,980	7,980
Landowners	751,725	751,213
Hydro-electric Sales	740,751	681,584
Standby Charges	3,000	8,200
Pipeline Income	51,243	28,871
Total Operating Revenues	2,281,204	2,057,727
Operating Expenses	1,831,108	1,749,085
Operating Income (Loss) Before Depreciation	450,096	308,642
Depreciation	(226,801)	(227,809)
Total Operating Income (Loss)	223,295	80,833
NON-OPERATING REVENUE AND EXPENSE		
Grant Income	-	155,652
Interest Income	19,573	18,946
Taxes and Assessments	99,665	199,094
Rental Income	9,745	10,120
Miscellaneous Income	6,178	6,428
Spring Valley Project	7,720	15,440
Recreation	65,884	61,860
Sale of Assets	1,700	-
Interest Expense	-	(5,506)
Net Non-Operating Revenue and Expenses	210,465	462,034
Net Income	433,760	542,867
Net Position - Beginning of Year	10,766,540	10,223,673
Prior Period Adjustment	(100)	-
Net Position - End of Year	$ 11,200,200	$ 10,766,540

See accompanying notes to financial statements.

BROWNS VALLEY IRRIGATION DISTRICT

Statement of Cash Flow

December 31, 2013 and 2012

	2013	2012
CASH FLOWS FROM OPERATING ACTIVITIES:		
Operating Income (Loss)	$ 223,295	$ 80,833
Non-Cash Items Included in Operating Income:		
Depreciation	226,801	227,809
Changes in Current Assets and Liabilities:		
(Increase) Decrease in Receivables	(16,943)	(3,730)
(Increase) Decrease in Prepaid Insurance	4,306	(8,884)
(Increase) Decrease in Inventory	(30,596)	24,100
Increase (Decrease) in Accounts and Payroll Payables	(9,224)	25,348
Increase (Decrease) in Accord Groundwater Liability	41,662	1,485
Increase (Decrease) in Compensated Absences	25,810	17,804
Increase (Decrease) in Deferred Compensation	(8,969)	-
Net Cash Provided (Used) by Operating Activities	456,142	364,765
CASH FLOWS FROM NON-CAPITAL ACTIVITIES:		
Interest Income	19,573	18,946
Cash Flows From Non-Capital Financing Activities:		
Grant Income	-	155,652
Taxes and Assessments	99,665	199,094
Rental Income	9,745	10,120
Miscellaneous Income	6,178	6,428
Spring Valley Project	7,720	15,440
Recreation Property Income	65,884	61,860
Net Cash Flows Provided by Non-Capital Financing Activities	189,192	448,594
CASH FLOWS FROM CAPITAL FINANCING ACTIVITIES:		
Payment on Long-Term Debt	-	(100,000)
Purchases of Fixed Assets	(250,594)	(157,296)
Interest Expense	-	(5,506)
Proceeds from the Sale of Assets	1,700	-
Net Cash Provided by (Used in) Capital Financing Activities	(248,894)	(262,802)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Increase (Decrease) in Cash and Cash Equivalents	416,013	569,503
Cash and Cash Equivalent at Beginning of Year	2,347,761	1,778,258
Cash and Cash Equivalent at End of Year	$2,763,774	$2,347,761

See accompanying notes to financial statements.

NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The following is a summary of the significant accounting policies of the Browns Valley Irrigation District (the District), all of which conform to generally accepted accounting principles as applicable to government units:

Reporting Entity: The District was established in 1888 to provide irrigation services in Yuba County, California. The District serves water to pasture and orchard lands as well as family orchards and gardens over an area of 55,000 acres, with 200 miles of open ditch and 70 miles of pipeline.

The financial reporting entity (the District) includes all funds of the District. As a Special District, Browns Valley Irrigation District is self-governed by an elected board of directors.

The State of California, The County of Yuba, the Public Employees Retirement System (PERS), and various school and other districts provide services within the District. Each of these agencies is dependent on an independently elected board other than the Board of Directors of the District. As a result, financial information for these agencies is not included within the scope of these financial statements.

Government-Wide Statements: The government-wide financial statements (i.e. the statement of net position and the statement of activities) report information of the District's activities as a whole. The District only engages in enterprise activities, which are normally supported by sales revenue and supplemented by county tax revenues.

The statement of activities demonstrates the degree to which the direct expenses of a given function are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function. Program revenues include: 1) charges to customers within the District or other districts/users who purchase, use, or directly benefit from goods, services or privileges provided by a given function or segment, and 2) grants and contributions that are restricted to meeting the operational or capital requirement of a particular function or segment. Taxes and other items not properly included among program revenues are reported instead as general revenues.

Measurement Focus and Basis of Accounting: The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. All events and transactions that occurred during the fiscal period being reported that affect the economic condition of the entity are recorded in that fiscal period. Revenues are reported when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year for which they are levied.

NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

Net position are reported as restricted when constraints placed on net position use are either externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other government entities or imposed by law through enabling legislature. When both restricted and unrestricted resources are available for use, it is the District's policy to use restricted resources first, then unrestricted resources as they are needed.

During the year 2013, the District adopted the provision of GASB statement number 45 and 63 in the reporting of net equity position (fund balance). The Governing Board has not delegated authority to either submit of assign fund balance.

Budgets and Budgetary Accounting: The District's Governing Board must adopt a final budget no later than April 30 of the current fiscal year. The budget is revised by the District during the year to give recognition to unanticipated income or expenditures.

Cash and Cash Equivalents: For purposes of the statement of cash flows, the District considers all temporary cash investments with a maturity of three months or less to be cash equivalents.

Accounts Receivable: The District uses the direct write-off method for bad debts. The method does not materially differ from the allowance method.

Capital Assets: Capital assets purchased by the District are recorded at historical cost or estimated historical cost when the original cost in not available. Donated capital assets are recorded at market value on the date donated. Repair and maintenance items that do not significantly extend the useful life of an asset are expensed when incurred.

Capital improvements to the distribution system can be under construction for multiple years. Improvements or additions to the distribution system that are partially completed at the end of the fiscal year are capitalized in Construction in Progress. When the project is completed, the total costs, minus any unused inventory, are removed from Construction in Progress, capitalized in the Distribution System account and depreciated over the life of the asset.

Depreciation of capital assets is computed and recorded on the straight-line method. Estimated useful lives of the various classes of depreciable capital assets are as follows:

Distribution System	30 - 100 Years
Buildings	10 - 40 Years
Equipment	7 - 15 Years
Vehicles	7 - 10 Years

NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Inventory: Inventory is valued at cost using the First in/First out (FIFO) method.

General Liability Insurance: The District is a member of Association of California Water Agencies (ACWA) under a Joint Powers Insurance Authority (JPIA). The authority provides general liability insurance under a self-insured program.

Workers Compensation Insurance: The District is covered as a member of ACWA-JPIA for workers compensation insurance. The authority provides a funding pool for self-insurance for workers compensation insurance for ACWA members.

Vacation and Sick Pay: Vacation pay is vested to the employees as it accrues and is payable upon retirement or termination. Sick leave does not vest to the employees until employed for ten years and is payable only when sick leave is taken. There is no maximum on sick leave. One half of any unused accumulated sick leave can be converted to additional service credit after retirement in PERS. The District pays 50% of accrued, but unpaid sick leave upon termination or retirement.

NOTE 2: CASH AND INVESTMENTS

At December 31, cash and investments consisted of the following:

	2013	2012
Petty Cash	$ 200	$ 200
General Checking	180,172	558,014
County Treasurer Savings	1,980,684	1,334,740
Investments in Certificates of Deposit	126,797	400,042
Deferred Compensation	-	8,969
Money Market Accounts	475,921	45,796
Unrestricted Cash and Investments	$ 2,763,774	$ 2,347,761

Funds of the District deposited in the general checking and savings are insured by federal depository insurance up to $250,000, and collateralized for the remainder of the total deposits. The funds held by the Yuba County Treasurer consist of a pooled fund of diversified investments in accordance with investment policies complying with the California Government Code. Pooled funds are not required to be categorized by risk. There was no restricted cash as of December 31, 2013.

Collateral for Deposits

Under the provisions for the California Government Code, California banks and savings and loan associations are required to secure a District's deposits by pledging government securities as collateral. The market value of the pledged securities must equal at least 110% of a District's deposits. California law also allows financial institutions to secure deposits by pledging first trust deed mortgage notes having a value of 150% of a District's total deposits.

NOTE 2: CASH AND INVESTMENTS (Continued)

Authorized Investments

In accordance with California Government Code Section 53601, the District may invest in the following types of investments:

- Bonds issued by the State of California and/or any local agency within the State of California.
- Securities of the U.S. Government, or its agencies
- Certificates of Deposit (or Time Deposits) placed with commercial banks or savings and loan companies.
- Negotiable Certificates of Deposit
- Bankers Acceptance
- Commercial Acceptances
- Local Agency Investment Fund (State Pool) Demand Deposits
- Repurchase Agreements

NOTE 3: PROPERTY AND EQUIPMENT

A summary of changes in capital assets for the year ended December 31, 2013 follows:

	12/31/2012	Additions	Deletions	12/31/2013
Distribution System	$ 11,046,078	$ -	$ -	$ 11,046,078
Building/Equipment	1,625,634	48,908	-	1,674,542
Recreation Property	11,508	-	-	11,508
Fish Screens	204,819	-	-	204,819
Construction in Progress	1,062,878	201,686	-	1,264,564
Total	13,950,917	250,594	-	14,201,511
Less Accumulated Depreciation	(5,280,568)	(226,801)	-	(5,507,369)
Net Capital Assets	$ 8,670,349	$ 23,793	$ -	$ 8,694,142

Depreciation in the amount of $226,801 was charged to operating expense for the year ended December 31, 2013.

NOTE 4: ACCORD CONJUNCTIVE FUNDS RECEIVABLE/LIABILITY

The District entered into an agreement known as the Yuba Accord Conjunctive Use Agreement to implement the District's groundwater substitution water transfer program. The agreement also provides for groundwater pumping by Member Units of the District when required to implement the Sacramento Valley Water Management Agreement. Under the agreement, the District receives funds from the Yuba County Water Agency to distribute to landowners in the District who participate in the pumping program. The District also participates in the pumping program and receives income for the number of acre-feet of water it pumps and a fee based on the total water pumped for administering the program.

NOTE 5: PENSION PLAN

Plan Description

The District contributes to the California Public Employees' Retirement System (PERS), and agent multiple-employer public employee retirement system that acts as a common investment and administrative agent for participating public entities within the state of California. All full- time employees of the District are eligible to participate in PERS. PERS is a defined benefit plan based on the member's age at retirement, service, and final compensation. Benefits vest after five years of service. The minimum retirement age is 50 years. PERS also provides disability, death, and health benefits. The benefit provisions and all other requirements are established by state statutes. California Government, Part 3, sections 20000-21600 governs PERS. PERS issues a separate comprehensive annual financial report. Copies of the PERS annual financial report may be obtained from the PERS Executive Office, 400 P Street, San Francisco, CA 95814.

Funding Policy

The rate of employee contribution is established by statute at 7% of employee compensation. The District is required to contribute the remaining amounts necessary to fund the benefits for its members, using the accrual basis adopted by the PERS board of Administration. The rate for the District was determined to be 14.922% for the year ended December 31, 2013.

Annual Pension Costs

Employer contributions are calculated in conformance with the provisions of GASB Statements No. 27 as a percentage of covered payrolls. Therefore, the contributions transmitted to the System are equal to the Annual Required Contribution (ARC), and there is no Net Pension Obligation (NPO) required. For the fiscal year ended December 31, 2013, the District's annual pension cost of $ 110,542 was equal to the required and actual contributions of the District. The required contribution was determined as part of the June 30, 2012 actuarial valuation using the entry age actuarial cost method. Significant actuarial assumptions used in the valuation include an actuarially assumed investment return of 7.5% per annum, (B) salary increases based on a scale that assumes salary increases vary by length of service, (C) an assumed inflation rate of 2.75% in future years and (D) a 3.0% across the board increase and merit increases that vary by length of service.

NOTE 5: PENSION PLAN (Continued)

Five-Year Trend Information for PERS

Year	Cost (APC)	APC Contributed	Obligation
6/30/2009	80,399	100%	-
6/30/2010	90,702	100%	-
6/30/2011	98,996	100%	-
6/30/2012	95,797	100%	-
6/30/2013	110,542	100%	-

Required Supplementary Information
Funded Status of Plan Pool

Valuation Date	Normal Accrued Liability (Per $1,000)	Actuarial Value of Assets (Per $1,000)	Unfunded Liability/ (Excess Assets) (Per $1,000)	Funded Status
6/30/2008	2,780,281	2,547,324	232,957	91.6%
6/30/2009	3,104,798	2,758,511	346,287	88.9%
6/30/2010	3,309,605	2,946,408	362,656	89.0%
6/30/2011	3,619,836	3,203,215	416,621	88.5%
6/30/2012	4,175,139	3,686,598	488,541	88.3%

NOTE 6: DEFERRED COMPENSATION

The District sponsors an IRS Code Section 457 Plan ("Plan") for all eligible employees. The Plan is administered by CalPERS. The District matches employee contributions by 10%.

NOTE 7: NET POSITION (FUND BALANCES)

Fund Equity - 2013

Fund equity was segregated as follows for the year ended December 31, 2013:

Description Segregated Amounts	Contributed Capital	Invested In Capital Assets	Unrestricted	Total
Connection Fees	$ 234,676	$ -	$ -	$ 234,676
Grant for Mahle Ditch	305,764	-	-	305,764
Investment in Fixed Assets	-	8,694,143	-	8,694,143
Remaining Unreserved Balance	-	-	1,965,617	1,965,617
Total Fund Equity	$ 540,440	$ 8,694,143	$1,965,617	$ 11,200,200

Fund Equity–2012

Fund equity was segregated as follows for the year ended December 31, 2012:

Description Segregated Amounts	Contributed Capital	Invested In Capital Assets	Unrestricted	Total
Connection Fees	$ 234,676	$ -	$ -	$ 234,676
Grant for Mahle Ditch	305,764	-	-	305,764
Investment in Fixed Assets	-	8,670,349	-	8,670,349
Remaining Unreserved Balance	-	-	1,555,751	1,555,751
Total Fund Equity	$ 540,440	$8,670,349	$1,555,751	$ 10,766,540

Effective October 1, 1979, the District adopted a self-funded group liability property program administered by the Joint Power Insurance Authority (JPIA). The District also purchased workers compensation and unemployment coverage from JPIA. The District is insured by the pool for the first $1,000,000 on each general liability, $1,000,000 for each property claim and $100,000 for fidelity coverage against the District. Amounts in excess of this are covered by other insurance carriers purchased by the pool up to a maximum amount of $60,000,000 for liability, and $60,000,000 for property. Workers Compensation coverage is provided up to $2,000,000 by the pool and from $2,000,000 to statutory limits by outside carriers. The District management has determined that there is no need for a reserve at year end for any potential liability of the District.

BROWNS VALLEY IRRIGATION DISTRICT

Schedules of Operating Expenses

For the Years Ended December 31, 2013 and 2012

	2013	2012
Management and General:		
Management and Administrative Payroll	$ 241,983	$ 247,247
Payroll Burden	144,178	143,457
Consulting	10,513	10,224
Directors Fee **(1)**	30,000	30,000
Dues and Memberships	57,377	53,189
Annexation	-	218
Insurance	41,362	27,350
Legal and Accounting	26,754	37,031
Miscellaneous Employee Expense	10,349	10,860
Office Maintenance	3,352	4,472
Office Supplies	18,562	19,074
Office Utilities	10,211	12,763
Yuba County Tax	-	126
Total Management and General	594,641	596,011
Operations:		
Operations Payroll	462,761	419,946
Payroll Burden	245,493	248,627
Water Sales Costs	53,840	33,081
Spring Valley Project	-	122
Purchased Water	18,335	18,335
Delta Expense	18,666	47,703
Hydro Expense	129,875	83,343
Fuel and Oil	54,095	58,667
Repairs and Maintenance	102,456	105,318
Small Tools	1,183	1,236
Utilities	149,216	136,472
Radio Expense	547	224
Total Operations	1,236,467	1,153,074
Total Operating Expenses (Excluding Depreciation)	$ 1,831,108	$ 1,749,085

(1) Directors fee reclassified to payroll in 2013.

See independent auditor's report

BROWNS VALLEY IRRIGATION DISTRICT

Statement of Revenue and Expenditures-Budget vs Actual

2013

		Budget	Actual	Over (Under) Budget
REVENUES:	Water Sales-In District	$ 744,700	$ 751,725	$ 7,025
	Water sales-Out of District	6,900	726,505	719,605
	Accord Conjunction Use	9,200	7,980	(1,220)
	Hydro-Electric Sales	772,100	740,751	(31,349)
	Standby Charges	4,200	3,000	(1,200)
	Pipeline Income	38,000	51,243	13,243
	Interest Income	14,800	19,573	4,773
	Taxes and Assessments	101,000	99,665	(1,335)
	Rental Income	10,800	9,745	(1,055)
	Miscellaneous Income/Refunds	14,900	6,178	(8,722)
	Recreation	62,800	65,884	3,084
	Spring Valley Project	7,720	7,720	-
	Grant Income	810,000	-	(810,000)
	Sale of Assets	8,000	1,700	(6,300)
	Total Revenues	$ 2,605,120	$ 2,491,669	$ (113,451)
EXPENSES:	Management & General:			
	Management and Administrative Payroll	$ 247,565	$ 271,983	$ 24,418
	Payroll Burden	122,238	144,178	21,940
	Consulting	10,000	10,513	513
	Dues and Memberships	61,000	57,377	(3,623)
	Annexation/LAFCO	1,000	-	(1,000)
	Insurance	92,000	41,362	(50,638)
	Legal and Accounting	41,000	26,754	(14,246)
	Miscellaneous Employee Expense	11,000	10,349	(651)
	Office Maintenance	3,000	3,352	352
	Office Supplies	18,000	18,562	562
	Office Utilities	13,000	10,211	(2,789)
	Delta Issues	40,000	18,666	(21,334)
	Water Sales Out of District	4,000	53,840	49,840
		663,803	667,147	3,344
	Operations:			
	Operational Payroll	473,435	462,761	(10,674)
	Payroll Burden	233,762	245,493	11,731
	Maintenance-Equipment	5,000	10,259	5,259
	Maintenance-Pumps	2,000	6,454	4,454
	Maintenance-Trucks	7,000	7,021	21
	Distribution Maintenance	55,000	78,722	23,722
	Hydro Expense	81,000	129,875	48,875
	Utilities - Electric Pumps	145,000	149,216	4,216
	Fuel and Oil	55,000	102,456	47,456
	Small Tools	1,000	1,183	183
	Radio Expense	200	547	347
	Water Purchases	18,000	18,335	335
	Depreciation	-	226,801	226,801
	Capital Projects	1,038,500	250,594	(787,906)
		2,114,897	1,689,717	(425,180)
	Total Expense	2,778,700	2,356,864	(421,836)
	Excess of Revenue Over (Under) Expense	$ (173,580)	$ 134,805	$ 308,385

Blomberg & Griffin Accountancy Corporation
Certified Public Accountant

REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

Board of Directors
Browns Valley Irrigation District
Browns Valley, CA

We have audited the business-type activities of the Browns Valley Irrigation District as of and for the year ended December 31, 2013, which collectively comprise the District's basic financial statements and have issued our report thereon dated August 28, 2014. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the Browns Valley Irrigation District's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of Browns Valley Irrigation District's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Browns Valley Irrigation District's internal control over financial reporting.

A *control deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected and corrected by Browns Valley Irrigation District's internal controls on a timely basis.

1013 North California Street, Stockton, California 95202 • (209) 466-3894 • Fax (209) 466-5545

Browns Valley Irrigation District-Report on Internal Controls-Page 2

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Browns Valley Irrigation District financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matter that is required to be reported under *Government Auditing Standards.*

This report is intended solely for the information and use of management, Board of Directors, others within the entity, and federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Blomberg & Griffin A.C.

Blomberg & Griffin A.C.
Stockton, CA
August 28, 2014

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AFTERNOON

SESSION

1:30 P.M.

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The County of Yuba

Community Development & Services Agency

Kevin Mallen, Director
Phone - (530) 749-5430 • Fax - (530) 749-5434
915 8th Street, Suite 123
Marysville, California 95901
www.co.yuba.ca.us

BUILD
749-5440 • Fa

CODE ENFORCEMENT
749-5455 • Fax 749-5464

ENVIRONMENTAL HEALTH • CUPA
749-5450 • Fax 749-5454

HOUSING AND COMMUNITY SERVICES
749-5460 • Fax 749-5464

PLANNING
749-5470 • Fax 749-5434

PUBLIC WORKS • SURVEYOR
749-5420 • Fax 749-5424

FINANCE AND ADMINISTRATION
749-5430 • Fax 749-5434

DATE: January 13, 2015

TO: Board of Supervisors

FROM: Community Development & Services Agency, Code Enforcement Division
Jeremy Strang, Division Manager
John Jacenich, Code Enforcement Officer JJ

SUBJECT: Accounting Hearing to Determine Costs of Abatement to be Assessed Against Property Located at 10137 Clark Ranch Way, Dobbins, CA and to Authorize Recording an Abatement Lien.

RECOMMENDATION: Confirm the attached Cost Accounting and adopt Findings of Fact, Conclusions of Law and Orders authorizing the assessment of administrative and abatement costs and penalties and the recording of a lien regarding the subject address.

BACKGROUND: On July 29, 2014, property owner Karen Ungles Robins along with the cultivator, Gary McQuary were served with a Notice and Order to Abate Public Nuisance ordering them to correct or remove code violations consisting of marijuana cultivation in violation of the provisions set forth in Chapter 7.40 of the Yuba County Ordinance Code; utilizing accessory structures without first establishing a primary use; construction of accessory structures without permits; emplacement and occupancy of travel trailer.

Neither Karen Ungles Robins, nor Gary McQuary requested a hearing to show cause why the use of the property should not be found to be a public nuisance and abated pursuant to the Yuba County Ordinance Code, nor did they abate the nuisance as ordered. On August 12, 2014, an inspection completed by Code Enforcement Officer John Jacenich confirmed that the marijuana plants have been removed.

The demand for payment sent to Karen Ungles Robins and Gary McQuary remains unpaid, the total due now being $114,804.84. Please refer to Attachment A for the Cost Accounting.

Karen Ungles Robins has been given written notice of this Accounting Hearing, a copy of which is attached hereto marked as Attachment B.

DISCUSSION: This hearing has been scheduled to allow evidence and testimony to be presented and heard on the sole questions of whether the accounting of the costs and penalties reflected in Attachment A are accurate and reasonable and whether such costs and penalties should be assessed and a lien recorded.

COMMITTEE ACTION: None required.

FISCAL IMPACT: Implementing the requested recommendation will facilitate cost recovery and reimbursement of appropriate funds and accounts.

HEARING TO ASSESS PROPERTY AND RECORD
NOTICE OF ABATEMENT LIEN
BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA

COUNTY OF YUBA,	)	CASE NO.	MMJ14-0052
	)		
Plaintiff,	)	RE:	10137 Clark Ranch Way Dobbins, CA
	)		
vs.	)		
	)	APN:	006-140-032
Karen Ungles Robins	)		
Gary McQuary	)	FINDINGS OF FACT	
	)	CONCLUSIONS OF LAW	
Defendant.	)	ORDERS OF THE BOARD OF SUPERVISORS	

FINDINGS OF FACT

1. Assessor's Parcel # 060-140-032 is located at 10137 Clark Ranch Way, Dobbins, CA 95935, and is owned by Karen Ungles Robins.

2. On July 29, 2014, property owner Karen Ungles Robins along with the cultivator, Gary McQuary were served with a Notice and Order to Abate Public Nuisance ordering them to correct or remove code violations consisting marijuana cultivation in violation of the provisions set forth in Chapter 7.40 of the Yuba County Ordinance Code; utilizing accessory structures without first establishing a primary use; construction of accessory structures without permits; emplacement and occupancy of travel trailer.

3. Neither Karen Ungles Robins, nor Gary McQuary requested a hearing to show cause why the use of the property should not be found to be a public nuisance and abated pursuant to the Yuba County Ordinance Code, nor did they abate the nuisance as ordered.

4. On August 12, 2014, an inspection completed by Code Enforcement Officer John Jacenich confirmed that the marijuana plants have been removed.

5. The property owner Karen Ungles Robins was served with written notice of this hearing.

6. A Hearing was held on January 13, 2015 to assess the costs of abating the public nuisances and to determine if the administrative and abatement costs and penalties should be made a lien on said property.

(a) A one-page memorandum along with supporting documentation marked as Attachment A (Cost Accounting) and Attachment B (Notice of Hearing) was submitted at the Hearing by Jeremy Strang, Code Enforcement Division Manager.

(b) Roberto Marquez, who represents Karen Ungles Robins was ( ) was not ( ) present.

7. The administrative and abatement costs and penalties incurred total: $114,804.84.

CONCLUSIONS OF LAW

1. Karen Ungles Robins was properly notified to appear before the Board of Supervisors on January 13, 2015 at 1:30p.m. to show cause, if any, why the administrative and abatement costs and penalties for the property located at 10137 Clark Ranch Way, Dobbins, CA, APN 060-140-032, abated pursuant to the Notice and Order to Abate Public Nuisance, should not be assessed against the property and why a Notice of Abatement Lien should not be recorded.

2. Administrative and abatement costs and penalties regarding APN 060-140-032 were properly incurred in the amount of $114,804.84 and the property and its owner bear the costs of same.

ORDERS

1. It is hereby found and ordered that the administrative and abatement costs and penalties to date incurred by the County of Yuba in the amount of $114,804.84 shall be an assessment against the property located at 10137 Clark Ranch Way, Dobbins, CA, APN 060-140-032.

2. It is hereby found and ordered that administrative and abatement costs and penalties shall be assessed against the property as provided by Government Code Section 25845 (d) and that a Notice of Abatement Lien of administrative and abatement costs and penalties shall be recorded as authorized by Government Code Section 25845(e).

3. Payment pursuant to these orders shall have 90% of the total amount paid deposited into Trust Account 254-0000-371-98-99 and 10% of the total amount deposited into Trust Account 256-0000-371-98-99.

4. These Orders may be recorded by the Director of Yuba County Community Development & Services Agency.

5. Notice of these Orders shall be mailed with a Proof of Service to the owner of the property.

6. This decision is final. The time within which judicial review of this decision may be sought is governed by California Code of Civil Procedure, Section 1094.6 and the Yuba County Ordinance Code Chapter 1.16. Any petition seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision was made; however, if within ten (10) days after the decision was made, a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to you or your attorney of record.

PASSED AND ADOPTED at the regular meeting of the Board of Supervisors of the County of Yuba held on the 13th day of January 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairperson of the Board of Supervisors
County of Yuba, State of California

ATTEST: Donna Stottlemeyer
Clerk of the Board of Supervisors

APPROVED AS TO FORM: Angil Morris-Jones
County Counsel

YUBA COUNTY CODE ENFORCEMENT
COST ACCOUNTING

Date: January 13, 2015

Case #: MMJ14-0052 APN: 060-140-032

Owner: Karen Ungles Robins
Situs: 10137 Clark Ranch Way, Dobbins CA

Date	Reason for Charge	Hours	Total
7/25/2014	Received Additional Complaint	.50	$ 73.50
7/25/2014	Initial Inspection	1.0	147.00
8/12/2014	Inspection, Verify Marijuana Removed	1.0	0.00
8/26/2014	Prepare Demand for Payment & Cover Letter	.50	73.50
	Total Staff Hours Billed	**2.0**	**$ 294.00**
7/29/2014	Notice and Order to Abate Public Nuisance		1,470.00
7/29/2014	CDSA Support Fee (6%)		105.84
7/29/2014	Administrative Penalties @ $7,400.00 Per Day @ 15 Days		111,000.00
	(July 29, 2014 to August 12, 2014)		
9/8/2014	Notice of NonCompliance		0.00
1/13/2015	Cost Accounting Hearing, Before Board of Supervisors		1,470.00
1/13/2015	Release of Abatement Lien		147.00
1/13/2015	CDSA Processing Fee		73.50
1/13/2015	Notice of Compliance		147.00
1/13/2015	CDSA Processing Fee		73.50
1/13/2015	Recordation Fee, Two Documents		24.00
		Total	**$114,804.84**

Attachment A

The County Of Yuba

Community Development & Services Agency

CODE ENFORCEMENT

Telephone: (530) 749-5455 Fax: (530) 749-5434

915 8th Street, Suite 123, Marysville, California 95901

Karen Ungles Robins
16644 George Way
Grass Valley CA 95949

NOTICE OF HEARING TO ASSESS PROPERTY AND RECORD ABATEMENT LIEN

YOU ARE HEREBY NOTIFIED to appear before the Yuba County Board of Supervisors at 915 8th Street, Marysville, California, in the Board of Supervisors Chambers, on January 13, 2015, at the hour of 1:30 p.m., or as soon thereafter as the matter may be heard, to show cause, if any there may be, why the administrative and abatement costs and penalties for the property located at 10137 Clark Ranch Way, Dobbins CA, APN 060-140-032, abated pursuant to the Notice and Order to Abate Public Nuisance, should not be assessed against the property and why an abatement lien should not be recorded thereby.

If you fail to appear at the hearing or if you fail to raise any defense or assert any relevant points at the hearing, the County will assert that you have waived all rights to assert such defenses or rights.

At the hearing, you may present evidence and witnesses in your behalf, and you may examine any witnesses who present evidence.

You may appear personally or have a representative appear at the hearing in your behalf and be heard on the sole questions of whether the accounting of the costs and penalties reflected in Attachment A are accurate and reasonable and whether such costs and penalties should be assessed and a lien recorded.

Dated: December 30, 2014

Certified Mail # 7013 1090 0000 2901 2858

Enclosure: Attachment A, Cost Accounting

CODE ENFORCEMENT OFFICER FOR THE COUNTY OF YUBA

BY: _____
Jeremy Strang

Attachment B

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BOARD OF SUPERVISORS

WORKSHOP

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The County Of Yuba

OFFICE OF THE COUNTY COUNSEL

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ANGIL P. MORI 545-14
COUNTY CO.

JOHN R. VACEK
CHIEF DEPUTY

JOHN C. WHIDDEN
DEPUTY

BOBBIE ROSS TODD
DEPUTY

ERIKA J. STEDMAN
LEGAL SERVICES COORDINATOR

Date: January 13, 2015

To: Yuba County Board of Supervisors

From: John Vacek, Chief Deputy County Counsel
Jeremy Strang, Chief Code Enforcement Officer

Subject: Supplemental Staff Memorandum
Potential Changes to Chapter 7.40, Marijuana Cultivation

On December 9, 2014 staff presented, for consideration by the Yuba County Board of Supervisors, three potential ordinances amending the County's marijuana cultivation ordinance. Substantial public comment was received, both at the December 9, Board of Supervisors' meeting and in written material submitted to the Board. The Board deferred any action on the marijuana cultivation ordinance and directed staff to further research potential revisions in light of the public comment and submitted written materials. On December 16, 2014 staff addressed the Board at the regular Board of Supervisors meeting and requested some direction as to what the Board wanted in terms of revisions or amendments to the ordinance. Members of the Board made a number of comments and suggestions and provided guidance to staff. Based upon those comments and directions, staff has prepared a fourth potential marijuana cultivation ordinance revision and submits this memorandum supplementing the previous submissions to the Board.

Each of the proposed ordinances is similar in their preamble and enforcement provisions. As discussed at the December 9, meeting, minor "cleanup" changes have been made to the present ordinance in the provisions dealing with administration and enforcement of the ordinance, including the Board's ability to preside over hearings and the elimination of any distinction, for plant count purposes, between "mature" and "immature" marijuana plants. The differences lie in what constitutes a public nuisance and more specifically the number of plants to be allowed, and whether to require indoor or outdoor cultivation, or some combination of the two.

The fourth proposal, a copy of which accompanies this memorandum, is essentially a revision of the County's present marijuana cultivation ordinance. Staff perceived the directions from the Board to be that the maximum allowable marijuana plant count needed to be scaled back and that the graduated maximum plant count, based on parcel size, is difficult to enforce, has encouraged what are essentially "commercial" marijuana grows, and needs to be eliminated. The attached

ordinance revision therefore scales back the maximum allowable plant count to 12 plants and eliminates the graduated parcel size scheme that presently exists. It is important to note that the maximum allowable plant count of 12 is simply a number that was mentioned by Board Members during the December 16th discussions; the Board has full discretion to modify that number. Twelve plants would, however, be consistent with the Attorney General's guidelines and consistent with various legislative findings as to the number of plants conducive to sustaining a legitimate medical marijuana user's needs.

Under this fourth proposal both indoor and outdoor cultivation would be allowable. To ameliorate some of the nuisance aspects of outdoor cultivation, the setback and fencing requirements of the present ordinance are retained and cultivation would continue to be prohibited in proximity to certain sensitive locations (e.g., schools, parks, youth-oriented facilities). For both indoor and outdoor grows, the cultivation must occur on a parcel with a legally established residence and the person doing the cultivation must occupy the residence and be either a qualified patient or a primary caregiver of a qualified patient. This proposal also contains a provision that, if the cultivator is not the actual property owner, he or she must provide a notarized letter from the property owner that the owner is aware of, and consents to, the cultivation of marijuana on the property.

Taking into consideration all public comment, written materials received, and directions from the Board, a new section requiring registration is being presented for consideration as part of the fourth proposal. If the Board wishes to move forward with a different ordinance proposal, this section can apply to any proposal of the Board's choosing. This provision is modeled after registration provisions presently in place in Tehama County and in the City of South Lake Tahoe. The section requires an annual registration fee which would be set by Board resolution. The registration fee may potentially recover part of the County's costs of administering and enforcing marijuana cultivation regulations. The amount of an annual registration fee should reflect the County's actual administrative and enforcement costs (ie., it cannot be arbitrarily set at $10,000, for example) and staff feels that existing data could easily justify an annual fee of at least four or five hundred dollars (South Lake Tahoe's initial registration fee is $350, with an annual feel thereafter of $217).

Staff believes that the administrative and enforcement components of each of the proposed ordinances attempt to remedy a number of issues that have been realized with the previous three growing seasons. Regardless of the ordinance proposal the Board chooses, the Board may place whatever plant count limit, either higher or lower, that they feel is appropriate to reduce or eliminate a public nuisance from occurring. As pointed out in the previous submission to the Board, staff is reasonably confident that a complete ban on marijuana cultivation could be legally defensible, if that is the direction the Board chose to go. Finally, staff reiterates a point made a number of times in the discussion of amending the County's marijuana cultivation ordinance—that a commitment of enforcement of the ordinance, in whatever form it ultimately takes, is necessary for the ordinance to work.

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ERIKA J. STEDMAN
LEGAL SERVICES COORDINATOR

Date: December 9, 2014

To: Yuba County Board of Supervisors

From: John Vacek, Chief Deputy County Counsel
Jeremy Strang, Chief Code Enforcement Officer

Subject: Potential Changes to Chapter 7.40, Marijuana Cultivation

After the Yuba County Board of Supervisors, sitting as an adjudicatory body, had heard quite a number of nuisance abatement hearings and nuisance abatement cost accounting hearings, and after the Board of Supervisors had heard many citizen complaints and had received hundreds of signatures on a petition complaining about the County's present marijuana cultivation ordinance, staff was directed to prepare several draft ordinance modifications for the Board's consideration. Directions to staff were to prepare several ordinances for review, all of them to be substantially more restrictive than the present ordinance. At the regular Board of Supervisors meeting on November 18, 2014 several ordinances were discussed by the Board, including recent revisions in Butte County, Fresno County, Sacramento County, Shasta County, and the City of Live Oak.

Staff has prepared three draft ordinances, one based on the Shasta County ordinance that recently has gone into effect after rejection of a voter referendum that would have invalidated the ordinance, a second based upon a recently enacted Sacramento County ordinance, and a third based upon the total ban on cultivation seen in a recent ordinance in Fresno County. To simplify and summarize, the Shasta County model bans outdoor grows entirely, but allows limited (up to 12 plants) in a single permitted accessory structure (accessory to a residence, that is). Cultivation in a residence is not allowed in the Shasta model. In the Sacramento County model, outdoor grows are prohibited, but limited indoor (up to 9 plants) residential cultivation is allowed. Under the Fresno model, marijuana cultivation, indoors or outdoors, is prohibited. It should be noted that the numbers of plants in each of the draft ordinances that allow limited cultivation are simply the numbers from the county ordinance upon which the draft is modeled—those numbers are consistent, however, with the California Attorney General's guildelines on an appropriate number of plants for individual medical use (Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, August 2008).

Background

In 2012 Yuba County adopted its first attempt at a marijuana cultivation ordinance. Adopted originally as Ordinance No. 1518, the ordinance was amended by Ordinance No. 1522 and integrated into the Yuba County Ordinance Code as Chapter 7.40. The Ordinance allows marijuana cultivation, both indoors and outdoors, with allowable plant counts dependent upon the parcel size. For parcels exceeding 20 acres, as many as 99 marijuana plants are allowed under the ordinance.

When the Ordinance was adopted, the Board of Supervisors took a "wait and see" approach—the continuance of the Ordinance in its present form would depend upon the level of compliance with the Ordinance and the overall effect it had on the welfare of the County. Since the Ordinance has been in effect, the effect on the County has been overwhelming. Compliance with the Ordinance has been abysmal, the County has been overwhelmed with the volume of complaints, and the County has acquired the reputation as a haven for marijuana growers. Since the Ordinance has been in place the number of marijuana grows, both in the foothills and on the valley floor, has increased. Staff has observed that many of those grows are not in compliance with the Ordinance. Many are not on parcels with a permitted residence, and many exceed allowable plant counts, sometimes by hundreds of plants.

Staff has observed illegal grading and illegal streambed diversions associated with marijuana grows. Attached is documentation of an example, a State of California, Department of Fish and Wildlife report on an illegal grow near Oregon House. Recent scientific research has documented the environmental damage associated with marijuana grows. See, for example, *Silent Forests,* The Wildlife Professional, Spring 2013, p. 47, an article on the devastating effects of the use of pesticides and rodenticides in marijuana cultivation. As evidenced by the presentation from the State Water Resources Control Board, marijuana cultivation has a significant deleterious effect on water quantity and water quality in Northern California. In addition the Board of Supervisors has heard evidence that land in Yuba County is being specifically marketed for the purpose of large scale marijuana cultivation. One man testified at a code abatement hearing on an illegal grow that he had moved his cultivation operation to Yuba County based on its reputation as being "pot friendly" and he had been assured by the seller of his property that his clearly illegal grow site would be "all good". In another abatement case, the property had clearly been marketed as a site for marijuana grow, even though it was completely out of compliance with the Ordinance.

The Yuba County Sheriff has advised the Board, since the adoption of the Ordinance, that some grow sites are being operated by persons that came from out of state for the sole purpose of growing marijuana. In the Sheriff's view, many of the marijuana grows in the County are being operated for commercial purposes. The Sheriff has also advised of numerous instances of thefts, burglaries, and robberies associated with marijuana grows in the County.

At the Board of Supervisors meeting on November 18, 2014 a group of citizens appeared and addressed the Board, expressing their extreme displeasure with the County's current Ordinance. The citizen's group advised the Board of the effect of marijuana cultivation on their neighborhoods and the quality of their lives and the lives of their families. A petition,

purportedly with hundreds of signatures, was provided to the Board requesting a change in the County's Ordinance. The citizen's group also indicated that the petition was still circulating and that hundreds more signatures could be expected.

The County's present Ordinance was passed, in part, to settle some pending litigation over the County's previous laws and policies concerning marijuana cultivation. Since the Ordinance was enacted the legal landscape has significantly changed and clarified. Several recent California Supreme Court or Court of Appeals cases have made it clear that local governments have the authority to restrict, or even prohibit, marijuana cultivation under their land use authority. In *Browne v. County of Tehama*, 213 Cal. App. 4th 704 (2013), the California Court of Appeal stated that "Neither the Compassionate Use Act nor the Medical Marijuana Program grants . . . anyone . . . an unfettered right to cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute." Similarly, in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*, 56 Cal. 4th 729 (2013), the California Supreme Court concurred that "Nothing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land . . ." Additionally, in *Maral v. City of Live Oak* (2013), 221 Cal.App. 4th 975, 983, review denied 2014 Cal. LEXIS 2402 (March 26, 2014), the same Court of Appeal held that "there is no right—and certainly no constitutional right—to cultivate medical marijuana . . ." The Court in *Live Oak* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority. Any legal uncertainty that existed in 2012, uncertainty that may have been some impetus to settle the litigation with the passage of the Ordinance, is now largely gone. Essentially every Court that has looked at the issue has ruled in favor of the ability of local governments to regulate and restrict the cultivation of marijuana.

As the law has clarified, many counties in Northern California have modified their ordinances to restrict marijuana cultivation. In January of 2014 Shasta County passed an ordinance, discussed in more detail below, restricting cultivation. The implementation of that ordinance was placed on hold awaiting the results of the vote on a referendum seeking to invalidate the ordinance. That referendum was defeated in the November election by a wide margin and Shasta will be implementing its ordinance. Tehama County passed a restrictive cultivation ordinance that was upheld by the Court of Appeals in the case referenced above. Butte County had two competing ballot measures on the November ballot; one that would restrict cultivation and one that would liberalize cultivation laws within the county. The restrictive provision passed by a wide margin; the liberalization provision was defeated by an even wider margin. Sacramento County recently passed an ordinance (also discussed below) prohibiting outdoor grows and significantly limiting indoor grows. Lake County passed a restrictive cultivation ordinance (prohibition on cultivation on parcels less than one acre; maximum 6 mature or 12 immature plants on larger parcels). A "cultivation friendly" referendum failed at the November election in Lake. A cultivation liberalization provision (Measure S) failed at the polls in the November election in Nevada County, leaving the restrictions on cultivation at 100 contiguous square feet indoors or 150 square feet outdoors on parcels less than two acres. From a regional perspective, other counties are taking a substantially more restrictive

approach to marijuana cultivation, with the overwhelming support of the electorate. Yuba County's present Ordinance is clearly the most liberal in the region and, if it remains unchanged, will likely continue to present an attraction to marijuana cultivators from other areas.

Ordinance Proposals

Against that background and upon instructions from the Board of Supervisors, staff has prepared three draft ordinances for the Board's consideration. This is certainly not to suggest that these are the only options—there are many ordinances or "variations on a theme" that could be passed under the County's land use authority, either more restrictive or more liberal than these proposals. Staff submits these proposals as they are based on the models previously discussed by the Board, and, further they are in keeping with the regional model discussed above. The order in which the proposals are presented has no significance in terms of preference.

Ordinance Proposal No. 1

Proposal No. 1 is based upon the recently implemented Shasta County ordinance (No. SCC 2014-02). This proposal prohibits outdoor marijuana cultivation entirely. It would allow limited (up to 12 plants) indoor cultivation in a detached permitted residential accessory structure. The accessory building must be located on the same parcel as the residence of the qualified patient or primary caregiver. The accessory structure has to meet all applicable Yuba County Code requirements in terms of building codes and set backs. An adequate air filtration system is required. If the accessory structure is a greenhouse with transparent walls, opaque fencing is required. The physicians recommendation or medical marijuana card for the occupant of the residence and any other person for whom the marijuana is being grown must be posted on the premises, or immediately available to enforcing officers.

Ordinance Proposal No. 2

Proposal No. 2 is based upon Sacramento ordinances (Chapters 6.88 and 6.89 of the Sacramento County Code). In this proposal outdoor marijuana cultivation is prohibited entirely. Limited indoor residential cultivation (up to 9 plants) is allowed. The indoor cultivation is limited to a single family dwelling where the qualified patient or caregiver resides on a full-time basis. Any cultivation must be screened or concealed so that it is not visible from the exterior of the property or from neighboring properties or public rights-of-way.

Ordinance Proposal No. 3

Proposal No. 3 is based upon the ordinances adopted by the County of Fresno (Ordinance No. 14-001). It is the simplest of the proposals in that it simply prohibits the cultivation of marijuana in the County.

Provisions common to the foregoing proposals

In the proposals allowing limited cultivation, no distinction is made between an "immature

plant" and a "mature plant". For enforcement purposes, a plant is a plant. For all the proposals staff submits, pursuant to Title 14 of the California Code of Regulations, Sections 15060(c)(2), 15060(c)(3), and 15061(b)(3), that the proposal is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment. Further, in addition to the foregoing general exemptions, the categorical exemptions found in Sections 15308 and 15321 also apply.

State of California
Department of Fish and Wildlife

Memorandum

Date: July 14, 2014

To: Sean Pirtle, Wildlife Officer
Department of Fish and Wildlife

From: Tanya Sheya, Environmental Scientist
California Department of Fish and Wildlife
North Central Region
1701 Nimbus Road
Rancho Cordova, CA 95670

Subject: Streambed Alteration and Sediment Impacts on Property at 9691 Frenchtown-Dobbins Road, Oregon House, CA 95962

On June 23, 2014, you forwarded me photographs of the property at 9691 Frenchtown-Dobbins Road, Oregon House, CA 95962. On July 1, 2014, per your request, I met with you, Wildlife Officer Cody Gamble, and members of the Yuba County Sheriff's Department. The Sheriff's Department was enforcing the County's ordinance regarding marijuana cultivation and I attended to evaluate potential impacts to natural resources at the property. Based on my review of your photographs and my site evaluation on July 1, 2014, I am providing this supplemental report which includes my opinion regarding natural resources damages on the property.

Photographs of the unnamed stream that you provided to me on June 23, 2014 show loose soils adjacent to the stream and building materials within the stream. Water was not present in the photographs. Photographs I collected on July 1, 2014 (see Photo Log attached) show plastic piping, concrete, metal poles, pieces of metal and trash and debris in and around the stream on the property. I used a global positioning system handheld device (Garmin Oregon 450t) to mark observation locations (waypoints) on the property. An aerial view with the waypoint locations is attached showing the property, stream, and violation locations. It appeared that the stream had been diverted from its natural path to allow for a roadway and an excavated pond-like structure. The photographs show several culverts in the stream and pipes leading into the stream. I observed loose soils on the property from what appeared to be recent earth-moving and grading activity. I observed and documented erosion rills leading to the stream and loose soils within the stream. Cobble in the stream was visible and observed upstream of loose soil areas and altered portion of the stream. Cobble was either coated with sediment or completely buried under loose soils within the altered portions of the stream.

Placement of plastic piping, concrete, metal poles, pieces of metal and trash and debris in and around the stream on the property is also a violation of California Fish and Game Code (FGC) 5652(a) which states: It is unlawful to deposit, permit to pass into, or place where it can pass into the waters of the state, or to abandon, dispose of, or throw away, within 150 feet of the high water mark of the waters of the state, any cans, bottles, garbage, motor vehicle or parts thereof, rubbish, litter, refuse, waste, debris, or the viscera or carcass of any dead mammal, or the carcass of any dead bird.

Furthermore, the placement of loose soils on the bank or where it can pass into State waters is subject to FGC section 5650(a)(6), which prohibits the placement of any material deleterious to fish, plant life, mammals or bird life, in or where it can pass into State waters. Loose soils placed in the stream can cause sedimentation in the stream and smother streambed aquatic life and habitat.

Environment at Risk

The unnamed stream on the property has been altered such that flow will be captured in the pond-like structure that was excavated. In its previously unaltered condition, the stream would flow to Dry Creek, thence Lake Mildred. Small stream systems contribute to the hydrological, biogeochemical, and ecological health of the watershed. Plant communities along ephemeral and intermittent streams provide structural elements of food, cover, nesting and breeding habitat, and movement/migration corridors for wildlife. Functional services of these communities include moderating soil and air temperatures, stabilizing channel banks and seed banking, and trapping of natural silt favorable to the establishment of diverse floral and faunal species (Levick et al, 2008). Macroinvertebrates such as mayflies, caddisflies, and stoneflies are found in streams where there is adequate habitat and nutrients to sustain them. Small streams provide nutrients such as minerals and aquatic insects to local and downstream ecosystems. Mineral nutrients, such as calcium for mollusk shell development, are important for aquatic organisms in the local area and downstream; and aquatic insects serve as food for fish, herons, kingfishers, frogs, and other wildlife. During dry periods, aquatic life is dormant in ephemeral stream systems, often residing below the streambed surface, re-emerging into the stream when water returns during the rainy season.

Sensitive species found in the vicinity include Western pond turtle (*Emys marmorata*), California black rail (*Laterallus jamaicensis coturniculus),* and Bald eagle *(Haliaeetus leucocephalus).* (CDFW BIOS, 2014)

Water Quality Impacts from Stream Alteration, Sediment Discharge, and Water Diversion

Erosion and Sedimentation: Excessive sediment, generated as anthropogenic waste, often overwhelms the assimilative capacity of a stream and damages its biological components. Sedimentation in small streams affects biotic communities, reduces diversity of fish and other animal communities, and lowers the productivity of aquatic populations (Waters, 1995). The deposition of sands, silts, or clays, around and on top of streambed rubble, reduces the area upon which aquatic insects develop, and impairs the turbulence required for effective feeding (Phillips, 1971).

Other aquatic species can be equally and adversely affected by the deposition of fine particulates. Salamanders, amphibians, fish fry, incubating eggs, and a host of insect species can become physically entrapped beneath fine sediments that become compacted between gravels and rocks (Branson and Batch, 1972). Silt that is churned up into suspended particles in the water column can seriously compromise respiratory tissues of aquatic organisms.

Turbidity and Suspended Solids: Turbidity is a measure of water clarity and how much the material suspended in the water decreases the passage of light through the water. By excluding light, turbidity makes it difficult for fish to find food. At high concentrations, the particulate matter that produces turbidity can be directly lethal to fish and other aquatic life. Turbidity modifies the temperature structure of ponds, and bottom temperatures are generally lower in turbid ponds than clear ones. In many ponds, lower temperatures mean lower productivity (McKee and Wolf, 1971). Additionally, the near surface waters are heated because of the greater heat absorbency of the particulate material, and this tends to stabilize the water column and prevents vertical mixing. Such mixing reductions decrease the dispersion of dissolved oxygen and nutrients to lower portions of the water (EPA, 1986). Silt that is churned up into suspended particles in the water column can seriously compromise respiratory tissues. Natural weathered sediments tend to clog spaces between sensitive gill tissue, while unweathered mineral solids coat the actual gill filaments, and thus impede water contact and proper gas exchange, resulting in asphyxiation (Sherk, 1971).

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause a nuisance or adversely affect beneficial uses. Waters shall not contain substances in concentrations which result in the deposition of material that causes nuisance or adversely affects beneficial uses (Water Quality Control Plan, 1998).

Diversion: Diversion of water from the stream decreases water available for the downstream ecosystems. Negative impacts of ponds include change in downstream water temperature regimes, water quality, and bed load movement, as well as upstream channel degradation and destruction of riparian habitat. Ponds can act as a heat sink during warmer months, discharging warmer water downstream. Stream temperature is one of the central organizing features of aquatic communities (Sweeney 1984), and affects the rates of detrital processing, respiration, and bacterial growth, as well as the timing of reproduction, molting and drift for aquatic organisms. Stream warming also fundamentally alters macroinvertebrate species composition (particularly so for stoneflies and caddisflies).

Conclusion

In my opinion, the loose soils and debris placed in and where the materials can enter the stream degraded water quality, harmed aquatic organisms, and is a violation of FGC 5652(a) and FGC 5650(a)(6), which prohibits the placement of any material deleterious to aquatic life in or where it can enter state waters. Streambed alteration including land grading, removal of riparian vegetation, excavation of the pond-like structure, and placing debris in and where it can enter the stream, caused harm to the stream ecosystem and riparian habitat.

Stream and bank alteration caused sedimentation in the stream reducing the available habitat for macroinvertebrates, thus food for downstream fish. Harm to the food base may also negatively impact sensitive wildlife in the vicinity, such as western pond turtle, black rail, and Bald eagle. Sedimentation contributes to higher water temperatures, turbidity, algal growth, and establishment of non-native invasive species. Potential for continued and/or increased sediment pollution of state waters exists at the property from rain events which cause sediment discharge downstream from erosion and loose soils.

Please contact me at (916) 358-2953 if you have any questions.

Regards,

Tanya Sheya

Tanya Sheya
Environmental Scientist

Attachment 1: Aerial View
Attachment 2: Photo Log

cc: Isabel Baer, Senior Environmental Scientist (Supervisory)
Isabel.Baer@wildlife.ca.gov

REFERENCES

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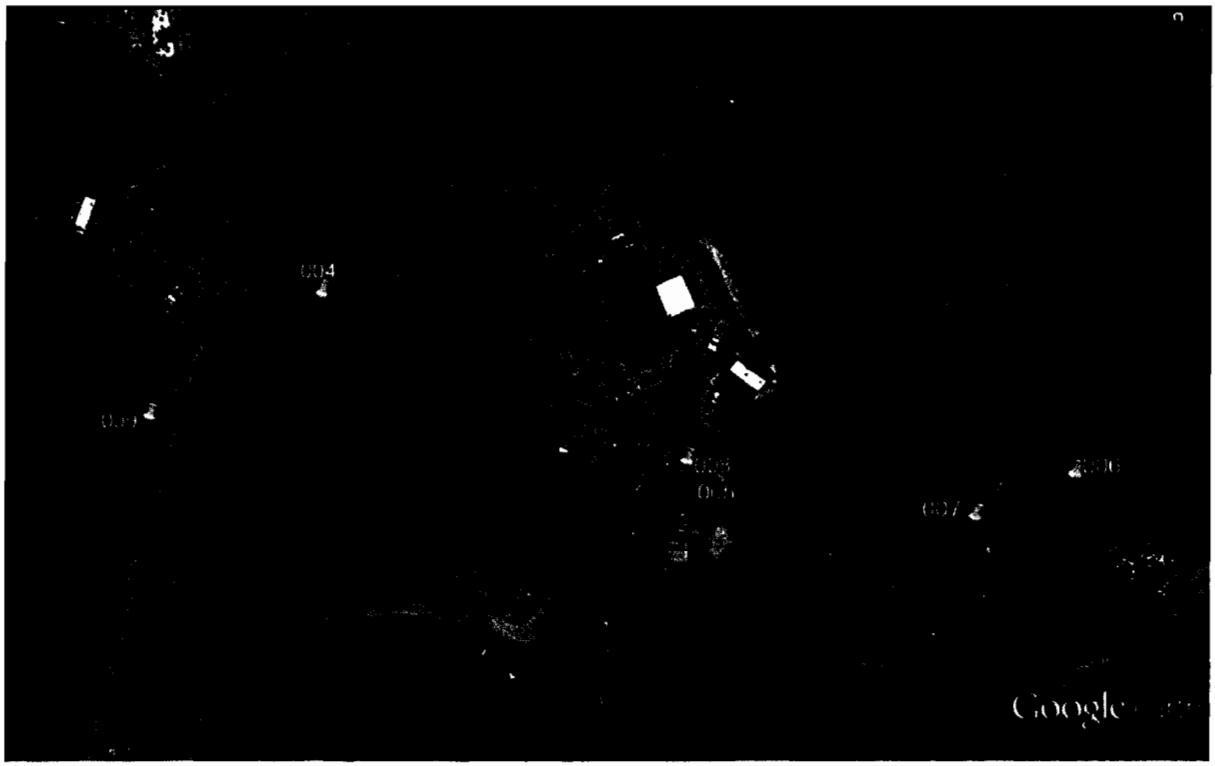
Attachment 1: Aerial View



Attachment 2: Photo Log

Photo Number	Waypoint Number	Location (Lat/Long)	Notes
2	004		On road leading to residence, facing south
3	004		On road leading to residence, facing west
4	004		On road leading to residence, facing north. Vegetation stockpile
5		39° 23" 07'N, 121° 15" 07'W	Loose soils near stream
6	005	39° 23" 07'N, 121° 15" 05'W	plastic piping, concrete, metal poles, pieces of metal and trash and debris in and around the stream
7	006	39° 23" 07'N, 121° 15" 03'W	
8	006	39° 23" 07'N, 121° 15" 03'W	
9	006	39° 23" 07'N, 121° 15" 03'W	Upstream of diversion
10	006	39° 23" 07'N, 121° 15" 03'W	
11		39° 23" 06'N, 121° 15" 03'W	
12	007	39° 23" 07'N, 121° 15" 03'W	
13		39° 23" 07'N, 121° 15" 04'W	
14		39° 23" 06'N, 121° 15" 05'W	Erosion along road
15		39° 23" 07'N, 121° 15" 05'W	Start of diversion
16	005	39° 23" 07'N, 121° 15" 05'W	Looking upstream at start of diversion
17	005	39° 23" 07'N, 121° 15" 05'W	Looking downstream at start of diversion, debris in stream
18	005	39° 23" 07'N, 121° 15" 05'W	Looking toward south west corner of property
19	008	39° 23" 07'N, 121° 15" 06'W	Road crossing stream, debris in stream
20	008	39° 23" 07'N, 121° 15" 06'W	Sediment in stream, culvert for road crossing
21		39° 23" 07'N, 121° 15" 07'W	Sediment and debris in stream
22		39° 23" 07'N, 121° 15" 07'W	In side green house on property
23		39° 23" 07'N, 121° 15" 07'W	
24		39° 23" 07'N, 121° 15" 07'W	
25		39° 23" 07'N, 121° 15" 07'W	Sediment in stream
26		39° 23" 07'N, 121° 15" 09'W	Excavated pond-like structure
27	009	39° 23" 07'N, 121° 15" 10'W	Outlet toward neighboring pond
28		39° 23" 07'N, 121° 15" 11'W	
29		39° 23" 07'N, 121° 15" 11'W	Excavated pond-like structure
30		39° 23" 08'N, 121° 15" 11'W	Neighboring pond, that flows into Dry Creek
31		39° 23" 07'N, 121° 15" 09'W	Trash and loose soils near and in stream
32		39° 23" 07'N, 121° 15" 09'W	Pipe leading into stream
33		39° 23" 07'N, 121° 15" 09'W	Culvert from pond-like structure to neighboring pond
34		39° 23" 07'N, 121° 15" 09'W	Removed vegetation
35		39° 23" 07'N, 121° 15" 09'W	Loose soils covering vegetation
36		39° 23" 07'N, 121° 15" 08'W	Removed vegetation

Draft Proposal #1
Shasta County Model

COUNTY OF YUBA

SUMMARY OF PROPOSED ORDINANCE
REPEALING AND REENACTING AS AMENDED CHAPTER 7.40
OF THE YUBA COUNTY ORDINANCE CODE
RELATING TO MARIJUANA CULTIVATION

The following is a summary of an ordinance proposed to be adopted by the Board of Supervisors of the County of Yuba on_____ day of _____20__.

The proposed ordinance would repeal and reenact as amended Chapter 7.40 of the Yuba County Ordinance Code relating to Marijuana Cultivation.

The complete text of the proposed ordinance may be reviewed in the Office of the Clerk of the Board of Supervisors of Yuba County.

DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

By:_____

THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA DOES ORDAIN AS FOLLOWS:

Section 1.This ordinance shall take effect thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Chapter 7.40 of Title VII of the Yuba County Ordinance Code is hereby amended to read as follows:

CHAPTER 7.40

MARIJUANA CULTIVATION

Sections

7.40.100 Authority
7.40.110 Purpose & Intent
7.40.120 Findings
7.40.130 Scope
7.40.140 Responsibilities
7.40.150 Private Right of Action
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ARTICLE I
GENERAL PROVISIONS

7.40.100 Authority
Pursuant to authority granted by Article XI Section 7 of the California Constitution, Section 11362.83(c) of the California Health and Safety Code and Section 25845 of the California Government Code, the Yuba County Board of Supervisors does hereby enact this Chapter.

7.40.110 Purpose & Intent
The purpose and intent in adopting this Chapter is to acknowledge State law as it relates to medical marijuana and to reduce conditions that create public nuisances through enacting these regulations including without limitation, restrictions as to location of cultivation, the number of marijuana plants, and the use of screening and security structures, to more effectively control the adverse impacts associated with marijuana cultivation as stated herein, while considering the desires of qualified patients and primary caregivers, in furtherance of the public necessity, health, safety, convenience, and general welfare within the Board's jurisdictional limits. Nothing in this Chapter shall be construed to authorize any use, possession, cultivation, or distribution of marijuana for non-medical purposes or that is in violation of state or federal law.

7.40.120 Findings

a. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision.
b. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act

contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.

c. Division 10 of the California Health and Safety Code, Uniform Substance Control Act, makes it unlawful, under State law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana.

d. In 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act", (codified as Health and Safety Code Section 11362.5) which was intended to decriminalize cultivation and possession of medical marijuana by a seriously ill patient, or the patient's primary caregiver, for the patient's personal use, and to create a limited defense to the crimes of possessing or cultivating marijuana. The Act further provided that nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.

e. The State enacted SB 420 in 2004 (known as the "Medical Marijuana Program Act", codified as Health and Safety Code Section 11362.7 et seq.) to expand and clarify the scope of The Compassionate Use Act of 1996 by creating the medical marijuana Identification Card program, creating reasonable regulations for cultivating, processing, transporting and administering marijuana, as well as limiting the amount marijuana a qualified individual may possess. The Medical Marijuana Program Act defines a "primary caregiver" as an individual who is designated by a qualified patient or by a person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person and is further defined in the California Supreme Court decision *People v. Mentch* (2008) 45 Ca1.4th 274.

f. The County's geographic and climatic conditions, which include dense forested areas receiving substantial precipitation, provide conditions that are favorable to outdoor marijuana cultivation, thus growers can achieve a high per-plant yield. The Federal Drug Enforcement Administration reports that various types of marijuana plants under various planting conditions may yield averages of 236 grams, or about one-half (1/2) pound, to 846 grams, or nearly two (2) pounds.

g. The strong distinctive odor of marijuana plants creates an attractive nuisance, alerting persons to the location of the valuable plants, and has resulted in burglary, robbery and armed robbery.

h. The strong and distinctive odor of marijuana plants creates a need to ensure that smells that disrupt the use of adjacent properties are minimized, much in the same way that the County has ordinances currently in place to minimize the smells associated with raising livestock.

i. Children (minor under the age of 18) are particularly vulnerable to the effects of marijuana use and the presence of marijuana plants is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children (including schools, parks, and other similar locations).

j. The unregulated cultivation of marijuana in the unincorporated area of Yuba County can

adversely affect the health, safety, and well-being of the County, its residents and environment. Comprehensive civil regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

k. The indoor Cultivation of substantial amounts of Marijuana within a residence presents potential health and safety risks to those living in the residence, especially to children, including, but not limited to, increased risk of fire from grow light systems, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence.

l. Comprehensive restriction of premises used for marijuana cultivation is proper and necessary to address the risks and adverse impacts as stated herein, that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

m. Outdoor marijuana cultivation, especially within the foothills, is creating devastating impacts to California's surface and groundwater resources. The State Water Resources Control Board, the North Coast Regional Water Quality Control Board, the Central Valley Regional Water Quality Control Board and the Department of Fish and Wildlife have seen a dramatic increase in the number of marijuana gardens, and corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash and human waste. The sources of these impacts result from unpermitted and unregulated timber clearing, road development, stream diversion for irrigation, land grading, erosion of disturbed surfaces and stream banks, and temporary human occupancy without proper sanitary facilities.

n. The immunities from certain prosecution provided to qualified patients and their primary caregivers under State law to cultivate marijuana plants for medical purposes does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the County will achieve a significant reduction in the complaints of odor and the risks of fire, crime and pollution caused or threatened by the unregulated cultivation of marijuana in the unincorporated area of Yuba County.

o. Nothing in this Chapter shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State law. No provision of this Chapter shall be deemed a defense or immunity to any action brought against any person by the County of Yuba, Yuba County District Attorney, the Attorney General of State of California, or the United States of America.

p. In *Browne v. County of Tehama*, 213 Cal. App. 4th 704 (2013), the California Court of Appeal stated that "Neither the Compassionate Use Act nor the Medical Marijuana Program grants . . . anyone . . . an unfettered right to cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute." Similarly, in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*, 56 Cal. 4th 729 (2013), the California Supreme Court concurred that "Nothing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land . . ." Additionally, in *Maral v. City of Live Oak* (2013), 221 Cal.App. 4th 975, 983, review denied 2014 Cal. LEXIS 2402 (March 26, 2014), the same Court of Appeal held that "there is no right—and certainly no constitutional right—to cultivate medical marijuana . . ." The Court in *Live Oak* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

q. On May 1, 2012, the Board of Supervisors adopted Ordinance No. 1518 to regulate marijuana cultivation. On December 18, 2012, Ordinance 1522 was adopted revising Ordinance 1518 to modify enforcement procedures and requirements to a specific plant count based on property size from square foot of area for cultivation. The provisions of both Ordinances have proven to be inadequate to control the negative impacts of marijuana cultivation. Since the adoption of Ordinance No. 1522, there has been increased Marijuana Cultivation throughout the unincorporated areas of the County in violation of the provisions of that ordinance. In addition, the graduated areas for cultivation, based on parcel size, have proven cumbersome and problematic to administer and enforce. For example, the original limits were based on square feet of total Cultivation area, leading to uncertainty in measurement when the plants were not cultivated in a defined contiguous area, and the need for multiple inspections throughout the grow season. The current revisions contained in this ordinance are intended to address the aforementioned concerns, and simplify the regulations to be more readily understood by those affected, to expedite the code enforcement process and to more effectively control the adverse impacts associated with marijuana cultivation as stated herein, while considering the desires of Qualified Patients and their Primary Caregivers.

7.40.130 Scope

The provisions of this Chapter shall apply generally to all property throughout the unincorporated area of the County of Yuba.

7.40.140 Responsibilities

a. Regardless of whether an owner is in actual possession of his or her real property, it is the duty of every owner of real property within the unincorporated area of Yuba County to prevent a public nuisance from arising on, or from existing upon, his or her real

property.

b. No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance as defined in this Chapter to exist upon any property within their control and shall not cause a public nuisance to exist upon any other property within the unincorporated limits of the County of Yuba. It shall be the duty of every owner, occupant, and person that controls any land or interest therein within the unincorporated area of the County of Yuba to remove, abate and prevent the reoccurrence of any public nuisance upon such land.

7.40.150 Private Right of Action

Nothing contained in this Chapter shall be construed to prohibit the right of any person or public or private entity damaged by any violation of this Chapter to institute a civil proceeding for injunctive relief against such violation, for money damages, or for whatever other or additional relief the court deems appropriate. The remedies available under this Chapter shall be in addition to, and shall not in any way restrict other rights or remedies available under law.

ARTICLE 2
DEFINITIONS

7.40.200 Definitions

Except where the context otherwise requires, the following definitions shall govern the construction of this Chapter:

a. "Accessory Structure" means a separate and permitted building located on the same parcel as the residence or an attached garage separated by a firewall.
b. "Code" means the Yuba County Ordinance Code
c. "Code Enforcement Officer" means any person employed by the County of Yuba and appointed to the position of code enforcement officer.
d. "Costs of Enforcement" or "Enforcement Costs" means all costs, direct or indirect, actual or incurred related to the performance of various administrative acts required pursuant to the enforcement of this Chapter, which include but are not limited to: administrative overhead, salaries and expenses incurred by County Officers, site inspections, investigations, notices, telephone contacts and correspondence, conducting hearings, as well as time expended by County staff in calculating the above expenses. The costs also include the cost of time and expenses associated with bringing the matter to hearing, the costs associated with any appeals from any decision rendered by any hearing body, the costs of judicially abating a violation and all costs associated with removing, correcting or otherwise abating any violation including administrative penalties of this Chapter.

e. "County" means the County of Yuba
f. "Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.
g. "Defined Area of Cultivation" means a single, indoor, area wherein all portions of cultivation are within one accessory structure completely screening the cultivation from public view.
h. "Dwelling" means a building intended for human habitation that has been legally established, permitted and certified as a single-family or multi-family dwelling.
i. "Enforcement Official" means the Code Enforcement Officer or the Sheriff, or the authorized deputies or designees of either, each of whom is independently authorized to enforce this Chapter.
j. "Fence" means a solid wall or a barrier connected by boards (redwood or cedar), masonry, rails, panels, or any other materials typically utilized for residential fences (subject to the approval of the Community Development and Services Agency) for the purpose of enclosing, securing, and screening space from public view. The term "Fence" does not include retaining walls.
k. "Indoors" means within a fully enclosed structure, with a solid roof, floor, and walls. The structure must be securable against unauthorized entry and constructed of solid materials such as 3/8" or thicker plywood, glass, or equivalent materials. Shade-cloth covered and plastic sheeting covered, regardless of gauge, or similar products do not satisfy this requirement.
l. "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
m. "Marijuana plant" means any mature or immature marijuana plant including the stalks of the plant, or any marijuana seedling, that is capable of producing marijuana. A "mature" marijuana plant is one whose sex can be determined by visual inspection.
n. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.
o. "Parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (commencing with Section 66410 of the Government Code) and also means parcels that are described, recorded and kept in official County records specifically including documents and maps used by the County Assessor's Office, the County Tax Collector's Office and the County Recorder's Office.
p. "Primary Caregiver" shall have the same meaning as "primary caregiver" as defined in the California Health and Safety Code, commencing with Section 11362.7(d), and as

further defined in the California Supreme Court decision *People v. Mentch* (2008) 45 Ca1.4th 274.

q. "Public View" shall mean as viewed at ground level, without the use of a ladder or similar device, from any place the general public has a lawful right to be including the public right of way, a public way or neighboring premises.
r. "Qualified Patient" shall have the same meaning as "qualified patient" as defined in the California Health and Safety Code, commencing with Section 11362.7(f).
s. "Residence" shall have the same meaning as "Dwelling"
t. "Sheriff" or "Sheriff's Office" means the Yuba County Sheriff's Office or the authorized representatives thereof.

ARTICLE 3
RESTRICTIONS AND REQUIREMENTS

7.40.300 Cultivation Restrictions

a. Outdoor cultivation on any Parcel is prohibited.
b. Cultivation within a Dwelling or any other structure used or intended for human occupancy is prohibited.
c. Cultivation of more than twelve (12) marijuana plants on any Parcel is prohibited. The foregoing limitation shall be imposed regardless of the number of qualified patients or primary caregivers residing on the Parcel or participating directly or indirectly in the cultivation. Further, this limitation shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana are the primary caregiver(s) for qualified patients or that such person(s) are collectively or cooperatively cultivating marijuana.
d. All persons and entities engaging in the cultivation of marijuana shall:
    1. Have a legal water source on the Parcel,
    2. Not engage in unlawful or unpermitted surface drawing of water for such cultivation, and
    3. Not permit illegal discharges of water from the parcel.
e. Marijuana cultivation shall not adversely affect the environment or the public health, safety, or general welfare by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, or vibration, by the use or storage of plant or animal poisons, or hazardous materials, processes, products or wastes, or by any other way.

7.40.310 Cultivation Requirements

a. Cultivation may only occur on a Parcel improved with an occupied, legally established, Dwelling in conformance with this Chapter. The cultivation shall be contained within the Defined Area of Cultivation in one, single, residential accessory structure affixed to the real property that:

1. Meets the definition of "Indoor,"
2. That is located on the same Parcel as the Dwelling of a qualified patient(s) or a primary caregiver(s), and
3. That complies with all of the provisions of the Yuba County Code relating to accessory structures including, but not limited to, the County's Development Code in Title XI, and construction codes in Title X of the Yuba County Ordinance Code. Where the provisions of this Chapter are more restrictive than other portions of the Yuba County Code the provisions of this Chapter shall govern.

7.40.320 Accessory Structures

Accessory structures used for cultivation shall meet all of the following criteria:

a. The accessory structure shall be legally constructed with all applicable permits including, but not limited to, grading, structural, electrical, mechanical and plumbing approved by the applicable authorities prior to any cultivation activity. The conversion of any existing accessory structure, or portion thereof, for cultivation shall be subject to these same permit requirements and must be inspected for compliance by the applicable authorities prior to any cultivation.
b. The accessory structure shall not be built or placed within any mandatory setback required by the Yuba County Ordinance Code.
c. The accessory structure shall be equipped with a permanently installed and permitted odor control filtration and ventilation system adequate to prevent an odor, humidity, or mold problem within the structure, on the Parcel, or adjacent parcels.
d. If the accessory structure is a greenhouse, the construction shall be solid glass and should be opaque or obscure for security and visual screening purposes. Where glass is not obscure, the greenhouse shall be surrounded by a secure solid fence as described in Section 7.40.330 below.

7.40.330 Fencing

Cultivation within a greenhouse without opaque or obscure glass shall be fully surrounded by a solid fence at least six (6) feet but not greater than (8) feet in height with a locking gate and conform to the following:

a. Fencing materials shall be in compliance with Section 7.40.200j, and
b. Location of fence shall meet zoning setback and height requirements, and
c. Fences over seven (7) feet in height will require proof of an approved building permit, and
d. The fence and gate must be adequately secure to prevent unauthorized entry and keep the area out of reach of minors.
e. Bushes or hedgerows alone shall not constitute an adequate fence under this Chapter. However, for parcels greater than 5 acres in size, a combination of mature vegetation or natural topography that keep the cultivation out of public view in

combination with a securable six foot tall chain link fence may be substituted for a solid fence.

ARTICLE 4
PUBLIC NUISANCE

7.40.400 Conditions Creating Public Nuisance

A public nuisance shall be deemed to exist when any of the following conditions or circumstances is present:

a. Any person owning, leasing, occupying or having charge or possession of any Parcel within the unincorporated area of the County to cause or allow such Parcel to be used for the cultivation of marijuana in violation of the provisions contained herein or any provisions set forth in Division 10 of the California Health and Safety Code.
b. The cultivation of marijuana on a Parcel that does not have an occupied legally established Dwelling in conformance with this Chapter.
c. The cultivation of marijuana on a Parcel by anyone other than a qualified patient or a primary caregiver. A physician's recommendation shall be kept onsite at all times and shall be posted in plain view for inspection. Where multiple people are cultivating, each physician recommendation shall be posted.
d. Marijuana plants in public view as defined in Section 7.40.200 of this Chapter.
e. The cultivation of marijuana in a manner that exceeds 12 plants.
f. The improper use, storage and/or disposal (per the manufacturer's instructions and/or any law that governs same) of chemicals, fertilizers, gas products (CO2, butane, etc.) or any other products or equipment associated with the cultivation of marijuana.
g. Any violation of any Ordinance or State law or any public nuisance defined or known at common law or in equity jurisprudence.

ARTICLE 5
ENFORCEMENT

7.40.500 Enforcement Authority

The Office of the Yuba County Sheriff and/or the Director of the County Department that has been assigned responsibility for administration of Code Enforcement services are hereby designated to enforce this Chapter.

7.40.510 Right of Entry/Inspection

To enforce the provision of this Code, an Enforcement Officer may at a reasonable time request inspection of any parcel suspected of cultivating marijuana. If the person owning or occupying the parcel refuses the request for an inspection, the Enforcement Officer shall have recourse to every remedy provided by law to secure entry, including obtaining an inspection warrant.

7.40.520 Violations

a. It is unlawful and a violation of this Chapter for any person to permit a public nuisance to exist upon real property in which such person has an ownership or possessory interest.
b. It shall be unlawful and a violation of this Chapter to do anything in contrary to the guidelines set forth in this Chapter.
c. Each person violating this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, which any violation of any provision of this Chapter is committed, continued, or permitted by any such person. Any violation which persists for more than one day is deemed a continuing violation.

7.40.530 Remedies

a. Any violation of this Chapter shall be deemed a public nuisance and is subject to any enforcement process authorized by law or as outlined in this Code.
b. Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County of Yuba or any other governmental entity to enforce County ordinances, to abate any and all nuisances, or employ any remedy available at law or equity.

7.40.540 Notice and Order to Abate

a. Upon making a determination that a public nuisance exists, the Enforcement Official shall notify the owner and/or the alleged violator that a public nuisance exists upon such owner's property. As to an owner, the Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner directs. As to an alleged violator whom the Enforcement Official has determined directly or indirectly contributed to the condition creating the nuisance, the Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, to the last known address of the alleged violator. In addition, the Notice and Order to Abate shall be delivered by first class mail, with postage prepaid, addressed to the owner and/or alleged violator at the same addresses. A copy shall also be posted on the property. The Enforcement Official shall complete a proof of service.
b. The Notice and Order to Abate shall describe the use or condition which constitutes the public nuisance; and shall order that the uses or conditions constituting the nuisance be

abated by demolition, securing, removal, cleanup, repair or other means within a reasonable time certain as determined necessary for such abatement by the Enforcement Official based upon the nature and complexity of the abatement process, normally being three (3) days, or less, from the date such notice is mailed and/or posted.

7.40.550 Administrative Penalties

a. Any person who violates this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, the violation is committed, permitted or continued. In addition to the actual abatement and/or administrative costs incurred by the County any person who has been issued a Notice and Order to Abate Public Nuisance shall be assessed an Administrative Penalty as follows:
    1. A penalty of $100.00 for each violation of this Code per day as set forth in the Notice and Order to Abate.
    2. A penalty of $200.00 for each violation of this Code per day when a second violation of this Code occurs within eighteen (18) months of a previously issued Notice and Order to Abate.
    3. A penalty of $500.00 for each violation of this Code per day for each subsequent violation of this Code beyond the second when the violation occurs within thirty-six (36) months of the original Notice and Order to Abate.
b. For the purpose of calculating the daily Administrative Penalty, each offense of any Section of this Chapter shall be charged as a separate violation; in addition, each marijuana plant in violation of this Chapter shall be charged as a separate violation.
c. The Administrative Penalty, pursuant to this Section, shall be assessed immediately upon the issuance of a Notice and Order to Abate Public Nuisance and shall continue to accrue until the date compliance with the Order has been met and verified by the Enforcing Officer. In the event an appeal has been properly filed with the County, the appeal shall have no affect on the Administrative Penalty and said Penalty shall continue to accrue during the pendency of the hearing. At the conclusion of the hearing the Yuba County Board of Supervisors is authorized to modify or waive the Administrative Penalty for cause and shall make express findings into the record for such modification or waiver.

7.40.560 Enforcement Costs

a. All costs and penalties associated with the enforcement of this Chapter are the responsibility of the owner(s) of any parcel(s) on which a nuisance has been found to exist and such costs shall be paid within 30 days of the date of demand thereof.
b. Where costs and penalties go unpaid beyond 30 days, the Enforcement Official shall take action to confirm the costs, record a lien and place a special tax assessment pursuant to procedures as set forth in Chapter 7.36 of the Yuba County Ordinance Code.

ARTICLE 6
APPEALS AND UNIFORM HEARINGS AND PROCEDURES

7.40.600 Appeal
Any person who has received a Notice and Order to Abate Public Nuisance may request an appeal before the Yuba County Board of Supervisors within 10 calendar days of the date of the Notice and Order to Abate. The request for appeal shall be in writing and must be accompanied by a deposit for costs as enumerated in Title XIII of this Code.

7.40.605 Appeal Hearings
Abatement hearings and hearings to determine administrative penalties shall be heard by the Yuba County Board of Supervisors. The Board of Supervisors, in its discretion, may appoint a hearing officer or commissioner to hear and preside over such hearings.

7.40.610 Notice of Hearing
If the owner or alleged violator requests a hearing within ten (10) calendar days of the date of the Notice and Order to Abate, the Enforcement Official shall schedule a hearing and provide notice to the owner or alleged violator of the time and place the hearing will take place. Notice of the hearing shall be delivered by personal service or by Certified Return Receipt mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner or alleged violator provides. In addition, the Notice of Hearing shall be delivered by first class mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner or alleged violator provides. The Enforcement Official shall complete a proof of service. The hearing shall be set for a date that is not less than five (5) and not more than thirty (30) days from the date that the request for hearing is filed with the Enforcement Official.

7.40.620 Powers of the Yuba County Board of Supervisors
The Yuba County Board of Supervisors shall have the power to conduct the hearing, the power to decide a matter upon which a hearing has been held, the power to make findings of fact and conclusions of law required for the decision, the power to issue subpoenas, the power to receive evidence, the power to administer oaths, the power to rule on questions of law and the admissibility of evidence, the power to continue the hearing from time to time, and the power to prepare a record of the proceedings.

7.40.630 Fairness of Hearings
Hearings shall be conducted in a manner suitable to ensure fundamental fairness to all parties concerned, limited by the need to secure relevant information necessary to render a decision without unnecessary delay.

7.40.635 Evidentiary Rules
The hearing need not be conducted according to technical rules relating to evidence. Any evidence may be presented if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but may be rejected if deemed to be unreliable. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at a hearing. Unduly repetitious or irrelevant evidence shall be excluded at the discretion of the Yuba County Board of Supervisors.

7.40.640 Order of Proceeding at Hearing
The Yuba County Board of Supervisors shall ordinarily proceed in the following order when conducting hearings:

a. The Enforcement Official's presentation shall proceed first. It should include identification of the file and property, a summary of the history and matters at issue, a staff analysis of the legal and factual issues involved, permitted uses to which the property was and is subject, and accounting of enforcement costs relating to the property, and a recommended decision.
b. A presentation by or on behalf of the appellant shall next proceed.
c. Tenants or other occupants of the subject property shall speak third.
d. Individuals who are not appealing but own property immediately contiguous to the subject property shall speak fourth.
e. Other interested parties shall speak fifth.
f. The appellant shall be entitled to rebuttal.

7.40.645 Speakers' Presentation
Each speaker shall approach the microphone and give his or her full name and address for the record.

a. Each speaker's presentation shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate, but, if used, shall become part of the public record and the property of the County. The Yuba County Board of Supervisors may establish a time limit for presentations; provided, however, that at least ten minutes shall be allowed for each speaker. Speakers shall, at the discretion of the Yuba County Board of Supervisors, be allowed to speak for longer than ten minutes if that speaker represents a group of individuals, the remainder of which chose not to speak. Speakers with lengthy presentations are encouraged to submit them in writing. There shall be no limitation upon length of written statements.
b. The Yuba County Board of Supervisors shall hear testimony and receive written and/or documentary evidence relating to the alleged violation. The parties may be represented by legal counsel. Testimony shall be taken on oath or affirmation. Each party shall have

the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues presented; to impeach any witness; and to rebut evidence. Witnesses shall be subject to cross-examination by the Yuba County Board of Supervisors.

c. Subject to the Yuba County Board of Supervisors' right to accept a motion to conclude the taking of all testimony or to close the public hearing when a reasonable opportunity to present all questions and points of view has been allowed, any person wishing to speak shall be heard. Except for rebuttal allowed, each speaker shall speak only once.
d. The Yuba County Board of Supervisors shall preserve all photographs and other documentary evidence introduced at the time of the hearing. After all of the testimony is taken, the Yuba County Board of Supervisors shall close the public hearing unless he or she deems it necessary to continue the hearing for the receipt of additional evidence or an ordinance interpretation from the Affected Department.

7.40.650 Submission of Additional Written Evidence and Argument

At any time before or after the hearing up to the point the hearing is closed by the Yuba County Board of Supervisors, any interested party may submit written evidence or argument. In the event the Yuba County Board of Supervisors concludes the hearing and continues the decision to another time, the Yuba County Board of Supervisors may, in their discretion, set a deadline for submission of written argument. Except for the receipt of written argument, no ex parte communications, either direct or indirect, shall be received by the Yuba County Board of Supervisors during the period of a continuance or after the public hearing has been closed.

7.40.655 Field Trips

Whenever the Yuba County Board of Supervisors deems it necessary to take a field trip to view the site in question, the Yuba County Board of Supervisors may conduct a site visit. Unless the site visit is tape recorded, the Yuba County Board of Supervisors shall not talk to any members of the public during the conduct of such site visit. After the conduct of a site visit, the Yuba County Board of Supervisors shall place into the record the visual observations made and the conclusions drawn as a result of such visit.

7.40.660 Recording

All proceedings shall be recorded. If a verbatim transcript is desired, the person requesting the transcript shall have the responsibility for arranging for the appearance of a court reporter to transcribe the hearing. In the event that a court reporter is present at the request of an interested party, the party retaining the court reporter shall provide a copy of the reporter's written transcript to the Yuba County Board of Supervisors at no charge to the County.

7.40.670 Decision

The decision of the Yuba County Board of Supervisors is final. The time within which judicial review of this decision may be sought is governed by California Code of Civil Procedure,

Section 1094.6 and the Yuba County Ordinance Code Chapter 1.16.

7.40.680 Severability
If any section, subsection, sentence, clause, or phrase of this Chapter, is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any or all other portions of this Chapter.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Draft Proposal #2
Sacramento County Model

COUNTY OF YUBA

SUMMARY OF PROPOSED ORDINANCE
REPEALING AND REENACTING AS AMENDED CHAPTER 7.40
OF THE YUBA COUNTY ORDINANCE CODE
RELATING TO MARIJUANA CULTIVATION

The following is a summary of an ordinance proposed to be adopted by the Board of Supervisors of the County of Yuba on_____ day of _____20__.

The proposed ordinance would repeal and reenact as amended Chapter 7.40 of the Yuba County Ordinance Code relating to Marijuana Cultivation.

The complete text of the proposed ordinance may be reviewed in the Office of the Clerk of the Board of Supervisors of Yuba County.

DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

By:_____

THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA DOES ORDAIN AS FOLLOWS:

Section 1.This ordinance shall take effect thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Chapter 7.40 of Title VII of the Yuba County Ordinance Code is hereby amended to read as follows:

CHAPTER 7.40

MARIJUANA CULTIVATION

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ARTICLE I
GENERAL PROVISIONS

7.40.100 Authority
Pursuant to authority granted by Article XI Section 7 of the California Constitution, Section 11362.83(c) of the California Health and Safety Code and Section 25845 of the California Government Code, the Yuba County Board of Supervisors does hereby enact this Chapter.

7.40.110 Purpose & Intent
The purpose and intent in adopting this Chapter is to acknowledge State law as it relates to medical marijuana and to reduce conditions that create public nuisances through enacting these regulations including without limitation, restrictions as to location of cultivation, the number of marijuana plants, and the use of screening and security structures, to more effectively control the adverse impacts associated with marijuana cultivation as stated herein, while considering the desires of qualified patients and primary caregivers, in furtherance of the public necessity, health, safety, convenience, and general welfare within the Board's jurisdictional limits. Nothing in this Chapter shall be construed to authorize any use, possession, cultivation, or distribution of marijuana for non-medical purposes or that is in violation of state or federal law.

7.40.120 Findings

a. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision.
b. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.

c. Division 10 of the California Health and Safety Code, Uniform Substance Control Act, makes it unlawful, under State law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana.
d. In 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act", (codified as Health and Safety Code Section 11362.5) which was intended to decriminalize cultivation and possession of medical marijuana by a seriously ill patient, or the patient's primary caregiver, for the patient's personal use, and to create a limited defense to the crimes of possessing or cultivating marijuana. The Act further provided that nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.
e. The State enacted SB 420 in 2004 (known as the "Medical Marijuana Program Act", codified as Health and Safety Code Section 11362.7 et seq.) to expand and clarify the scope of The Compassionate Use Act of 1996 by creating the medical marijuana Identification Card program, creating reasonable regulations for cultivating, processing, transporting and administering marijuana, as well as limiting the amount marijuana a qualified individual may possess. The Medical Marijuana Program Act defines a "primary caregiver" as an individual who is designated by a qualified patient or by a person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person and is further defined in the California Supreme Court decision *People v. Mentch* (2008) 45 Ca1.4th 274.
f. The County's geographic and climatic conditions, which include dense forested areas receiving substantial precipitation, provide conditions that are favorable to outdoor marijuana cultivation, thus growers can achieve a high per-plant yield. The Federal Drug Enforcement Administration reports that various types of marijuana plants under various planting conditions may yield averages of 236 grams, or about one-half (1/2) pound, to 846 grams, or nearly two (2) pounds.
g. The strong distinctive odor of marijuana plants creates an attractive nuisance, alerting persons to the location of the valuable plants, and has resulted in burglary, robbery and armed robbery.
h. The strong and distinctive odor of marijuana plants creates a need to ensure that smells that disrupt the use of adjacent properties are minimized, much in the same way that the County has ordinances currently in place to minimize the smells associated with raising livestock.
i. Children (minor under the age of 18) are particularly vulnerable to the effects of marijuana use and the presence of marijuana plants is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children (including schools, parks, and other similar locations).
j. The unregulated cultivation of marijuana in the unincorporated area of Yuba County can adversely affect the health, safety, and well-being of the County, its residents and environment. Comprehensive civil regulation of premises used for marijuana

cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

k. The indoor Cultivation of substantial amounts of marijuana within a residence presents potential health and safety risks to those living in the residence, especially to children, including, but not limited to, increased risk of fire from grow light systems, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence. In recognition of the goals of the Compassionate Use Act, the allowance of the cultivation of a limited, well regulated, amount of marijuana will reduce the health and safety risks pose by such cultivation.

l. Comprehensive restriction of premises used for marijuana cultivation is proper and necessary to address the risks and adverse impacts as stated herein, that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

m. Outdoor marijuana cultivation, especially within the foothills, is creating devastating impacts to California's surface and groundwater resources. The State Water Resources Control Board, the North Coast Regional Water Quality Control Board, the Central Valley Regional Water Quality Control Board and the Department of Fish and Wildlife have seen a dramatic increase in the number of marijuana gardens, and corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash and human waste. The sources of these impacts result from unpermitted and unregulated timber clearing, road development, stream diversion for irrigation, land grading, erosion of disturbed surfaces and stream banks, and temporary human occupancy without proper sanitary facilities.

n. The immunities from certain prosecution provided to qualified patients and their primary caregivers under State law to cultivate marijuana plants for medical purposes does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the County will achieve a significant reduction in the complaints of odor and the risks of fire, crime and pollution caused or threatened by the unregulated cultivation of marijuana in the unincorporated area of Yuba County.

o. Nothing in this Chapter shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State law. No provision of this Chapter shall be deemed a defense or immunity to any action brought against any person by the County of Yuba, Yuba County District Attorney, the Attorney General of State of California, or the United States of America.

p. In *Browne v. County of Tehama*, 213 Cal. App. 4th 704 (2013), the California Court of Appeal stated that "Neither the Compassionate Use Act nor the Medical Marijuana Program grants . . . anyone . . . an unfettered right to cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute." Similarly, in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*, 56 Cal. 4th 729 (2013), the California Supreme Court concurred that "Nothing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land . . ." Additionally, in *Maral v. City of Live Oak* (2013), 221 Cal.App. 4th 975, 983, review denied 2014 Cal. LEXIS 2402 (March 26, 2014), the same Court of Appeal held that "there is no right—and certainly no constitutional right—to cultivate medical marijuana . . ." The Court in *Live Oak* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

q. On May 1, 2012, the Board of Supervisors adopted Ordinance No. 1518 to regulate marijuana cultivation. On December 18, 2012, Ordinance 1522 was adopted revising Ordinance 1518 to modify enforcement procedures and requirements to a specific plant count based on property size from square foot of area for cultivation. The provisions of both Ordinances have proven to be inadequate to control the negative impacts of marijuana cultivation. Since the adoption of Ordinance No. 1522, there has been increased Marijuana Cultivation throughout the unincorporated areas of the County in violation of the provisions of that ordinance. In addition, the graduated areas for cultivation, based on parcel size, have proven cumbersome and problematic to administer and enforce. For example, the original limits were based on square feet of total Cultivation area, leading to uncertainty in measurement when the plants were not cultivated in a defined contiguous area, and the need for multiple inspections throughout the grow season. The current revisions contained in this ordinance are intended to address the aforementioned concerns, and simplify the regulations to be more readily understood by those affected, to expedite the code enforcement process and to more effectively control the adverse impacts associated with marijuana cultivation as stated herein, while considering the desires of Qualified Patients and their Primary Caregivers.

7.40.130 Scope

The provisions of this Chapter shall apply generally to all property throughout the unincorporated area of the County of Yuba.

7.40.140 Responsibilities

a. Regardless of whether an owner is in actual possession of his or her real property, it is the duty of every owner of real property within the unincorporated area of Yuba County to prevent a public nuisance from arising on, or from existing upon, his or her real

property.

b. No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance as defined in this Chapter to exist upon any property within their control and shall not cause a public nuisance to exist upon any other property within the unincorporated limits of the County of Yuba. It shall be the duty of every owner, occupant, and person that controls any land or interest therein within the unincorporated area of the County of Yuba to remove, abate and prevent the reoccurrence of any public nuisance upon such land.

7.40.150 Private Right of Action

Nothing contained in this Chapter shall be construed to prohibit the right of any person or public or private entity damaged by any violation of this Chapter to institute a civil proceeding for injunctive relief against such violation, for money damages, or for whatever other or additional relief the court deems appropriate. The remedies available under this Chapter shall be in addition to, and shall not in any way restrict other rights or remedies available under law.

ARTICLE 2
DEFINITIONS

7.40.200 Definitions

Except where the context otherwise requires, the following definitions shall govern the construction of this Chapter:

a. "Accessory Structure" means a separate and permitted building located on the same parcel as the residence or an attached garage separated by a firewall.
b. "Code" means the Yuba County Ordinance Code
c. "Code Enforcement Officer" means any person employed by the County of Yuba and appointed to the position of code enforcement officer.
d. "Costs of Enforcement" or "Enforcement Costs" means all costs, direct or indirect, actual or incurred related to the performance of various administrative acts required pursuant to the enforcement of this Chapter, which include but are not limited to: administrative overhead, salaries and expenses incurred by County Officers, site inspections, investigations, notices, telephone contacts and correspondence, conducting hearings, as well as time expended by County staff in calculating the above expenses. The costs also include the cost of time and expenses associated with bringing the matter to hearing, the costs associated with any appeals from any decision rendered by any hearing body, the costs of judicially abating a violation and all costs associated with removing, correcting or otherwise abating any violation including administrative penalties of this Chapter.
e. "County" means the County of Yuba
f. "Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

g. "Defined Area of Cultivation" means a single, indoor, area wherein all portions of cultivation are within one dwelling completely screening the cultivation from public view.
h. "Dwelling" means a building intended for human habitation that has been legally established, permitted and certified as a single-family or multi-family dwelling.
i. "Enforcement Official" means the Code Enforcement Officer or the Sheriff, or the authorized deputies or designees of either, each of whom is independently authorized to enforce this Chapter.
j. "Fence" means a solid wall or a barrier connected by boards (redwood or cedar), masonry, rails, panels, or any other materials typically utilized for residential fences (subject to the approval of the Community Development and Services Agency) for the purpose of enclosing, securing, and screening space from public view. The term "Fence" does not include retaining walls.
k. "Indoors" means within a dwelling and does shall not include any accessory structure or any other structure other than the dwelling.
l. "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
m. "Marijuana plant" means any mature or immature marijuana plant including the stalks of the plant, or any marijuana seedling, that is capable of producing marijuana. A "mature" marijuana plant is one whose sex can be determined by visual inspection.
n. "Minor" means a person less than 18 years of age.
o. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.
p. "Parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (commencing with Section 66410 of the Government Code) and also means parcels that are described, recorded and kept in official County records specifically including documents and maps used by the County Assessor's Office, the County Tax Collector's Office and the County Recorder's Office.
q. "Primary Caregiver" shall have the same meaning as "primary caregiver" as defined in the California Health and Safety Code, commencing with Section 11362.7(d), and as further defined in the California Supreme Court decision *People v. Mentch* (2008) 45 Ca1.4th 274.
r. "Public View" shall mean as viewed at ground level, without the use of a ladder or similar device, from any place the general public has a lawful right to be including the public right of way, a public way or neighboring premises.
s. "Qualified patient" shall have the same meaning as "qualified patient" as defined in the

California Health and Safety Code, commencing with Section 11362.7(f).

t. "Residence" shall have the same meaning as "Dwelling"

u. "Sheriff" or "Sheriff's Office" means the Yuba County Sheriff's Office or the authorized representatives thereof.

ARTICLE 3
RESTRICTIONS AND REQUIREMENTS

7.40.300 Cultivation Restrictions

a. Outdoor cultivation on any Parcel is prohibited.

b. Indoor cultivation is prohibited, unless:

1. The cultivation is within the Defined Area of Cultivation of an occupied, legally established, Dwelling in conformance with this Chapter.
2. The number of plants being cultivated within the Dwelling does not exceed nine (9). The foregoing limitation shall be imposed regardless of the number of qualified patients or primary caregivers residing on the Parcel or participating directly or indirectly in the cultivation. Further, this limitation shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana are the primary caregiver(s) for qualified patients or that such person(s) are collectively or cooperatively cultivating marijuana.
3. The marijuana is cultivated by a qualified patient(s) or primary caregiver(s) for medicinal purposes.
4. At least one qualified patient or primary caregiver resides on the Parcel on a full-time basis.
5. The area used for the cultivation complies with Chapter 10.05, Building Standards Construction, of the Yuba County Ordinance Code. No portion of the Dwelling shall be altered unless a building permit has been obtained and final approval has been granted.
6. The cultivation does not otherwise create a nuisance or any fire/life/safety hazard.

ARTICLE 4
PUBLIC NUISANCE

7.40.400 Conditions Creating Public Nuisance

A public nuisance shall be deemed to exist when any of the following conditions or circumstances is present:

a. Any person owning, leasing, occupying or having charge or possession of any Parcel within the unincorporated area of the County to cause or allow such Parcel to be used for the cultivation of marijuana in violation of the provisions contained herein or any provisions set forth in Division 10 of the California Health and Safety Code.

b. The cultivation of marijuana on a Parcel that does not have an occupied legally established Dwelling in conformance with this Chapter.
c. The cultivation of marijuana on a Parcel by anyone other than a qualified patient or a primary caregiver. A physician's recommendation shall be kept onsite at all times and shall be posted in plain view for inspection. Where multiple people are cultivating, each physician recommendation shall be posted.
d. Marijuana plants in public view as defined in Section 7.40.200 of this Chapter.
e. The cultivation of marijuana in a manner that exceeds 9 plants.
f. The improper use, storage and/or disposal (per the manufacturer's instructions and/or any law that governs same) of chemicals, fertilizers, gas products (CO2, butane, etc.) or any other products or equipment associated with the cultivation of marijuana.
g. Any violation of any Ordinance or State law or any public nuisance defined or known at common law or in equity jurisprudence.

ARTICLE 5
ENFORCEMENT

7.40.500 Enforcement Authority
The Office of the Yuba County Sheriff and/or the Director of the County Department that has been assigned responsibility for administration of Code Enforcement services are hereby designated to enforce this Chapter.

7.40.510 Right of Entry/Inspection
To enforce the provision of this Code, an Enforcement Officer may at a reasonable time request inspection of any parcel suspected of cultivating marijuana. If the person owning or occupying the parcel refuses the request for an inspection, the Enforcement Officer shall have recourse to every remedy provided by law to secure entry, including obtaining an inspection warrant.

7.40.520 Violations
a. It is unlawful and a violation of this Chapter for any person to permit a public nuisance to exist upon real property in which such person has an ownership or possessory interest.
b. It shall be unlawful and a violation of this Chapter to do anything in contrary to the guidelines set forth in this Chapter.
c. Each person violating this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, which any violation of any provision of this Chapter is committed, continued, or permitted by any such person. Any violation which persists for more than one day is deemed a continuing violation.

7.40.530 Remedies

a. Any violation of this Chapter shall be deemed a public nuisance and is subject to any enforcement process authorized by law or as outlined in this Code.
b. Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County of Yuba or any other governmental entity to enforce County ordinances, to abate any and all nuisances, or employ any remedy available at law or equity.

7.40.540 Notice and Order to Abate

a. Upon making a determination that a public nuisance exists, the Enforcement Official shall notify the owner and/or the alleged violator that a public nuisance exists upon such owner's property. As to an owner, the Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner directs. As to an alleged violator whom the Enforcement Official has determined directly or indirectly contributed to the condition creating the nuisance, the Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, to the last known address of the alleged violator. In addition, the Notice and Order to Abate shall be delivered by first class mail, with postage prepaid, addressed to the owner and/or alleged violator at the same addresses. A copy shall also be posted on the property. The Enforcement Official shall complete a proof of service.
b. The Notice and Order to Abate shall describe the use or condition which constitutes the public nuisance; and shall order that the uses or conditions constituting the nuisance be abated by demolition, securing, removal, cleanup, repair or other means within a reasonable time certain as determined necessary for such abatement by the Enforcement Official based upon the nature and complexity of the abatement process, normally being three (3) days, or less, from the date such notice is mailed and/or posted.

7.40.550 Administrative Penalties

a. Any person who violates this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, the violation is committed, permitted or continued. In addition to the actual abatement and/or administrative costs incurred by the County any person who has been issued a Notice and Order to Abate Public Nuisance shall be assessed an Administrative Penalty as follows:
    1. A penalty of $100.00 for each violation of this Code per day as set forth in the Notice and Order to Abate.
    2. A penalty of $200.00 for each violation of this Code per day when a second violation of this Code occurs within eighteen (18) months of a previously issued Notice and Order to Abate.
    3. A penalty of $500.00 for each violation of this Code per day for each subsequent

violation of this Code beyond the second when the violation occurs within thirty-six (36) months of the original Notice and Order to Abate.

b. For the purpose of calculating the daily Administrative Penalty, each offense of any Section of this Chapter shall be charged as a separate violation; in addition, each marijuana plant in violation of this Chapter shall be charged as a separate violation.
c. The Administrative Penalty, pursuant to this Section, shall be assessed immediately upon the issuance of a Notice and Order to Abate Public Nuisance and shall continue to accrue until the date compliance with the Order has been met and verified by the Enforcing Officer. In the event an appeal has been properly filed with the County, the appeal shall have no affect on the Administrative Penalty and said Penalty shall continue to accrue during the pendency of the hearing. At the conclusion of the hearing the Yuba County Board of Supervisors is authorized to modify or waive the Administrative Penalty for cause and shall make express findings into the record for such modification or waiver.

7.40.560 Enforcement Costs

a. All costs and penalties associated with the enforcement of this Chapter are the responsibility of the owner(s) of any parcel(s) on which a nuisance has been found to exist and such costs shall be paid within 30 days of the date of demand thereof.
b. Where costs and penalties go unpaid beyond 30 days, the Enforcement Official shall take action to confirm the costs, record a lien and place a special tax assessment pursuant to procedures as set forth in Chapter 7.36 of the Yuba County Ordinance Code.

ARTICLE 6
APPEALS AND UNIFORM HEARINGS AND PROCEDURES

7.40.600 Appeal

Any person who has received a Notice and Order to Abate Public Nuisance may request an appeal before the Yuba County Board of Supervisors within 10 calendar days of the date of the Notice and Order to Abate. The request for appeal shall be in writing and must be accompanied by a deposit for costs as enumerated in Title XIII of this Code.

7.40.605 Appeal Hearings

Abatement hearings and hearings to determine administrative penalties shall be heard by the Yuba County Board of Supervisors. The Board of Supervisors, in its discretion, may appoint a hearing officer or commissioner to hear and preside over such hearings.

7.40.610 Notice of Hearing

If the owner or alleged violator requests a hearing within ten (10) calendar days of the date of the Notice and Order to Abate, the Enforcement Official shall schedule a hearing and provide notice to the owner or alleged violator of the time and place the hearing will take place. Notice of the hearing shall be delivered by personal service or by Certified Return Receipt mail, with postage

prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner or alleged violator provides. In addition, the Notice of Hearing shall be delivered by first class mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner or alleged violator provides. The Enforcement Official shall complete a proof of service. The hearing shall be set for a date that is not less than five (5) and not more than thirty (30) days from the date that the request for hearing is filed with the Enforcement Official.

7.40.620 Powers of the Yuba County Board of Supervisors

The Yuba County Board of Supervisors shall have the power to conduct the hearing, the power to decide a matter upon which a hearing has been held, the power to make findings of fact and conclusions of law required for the decision, the power to issue subpoenas, the power to receive evidence, the power to administer oaths, the power to rule on questions of law and the admissibility of evidence, the power to continue the hearing from time to time, and the power to prepare a record of the proceedings.

7.40.630 Fairness of Hearings

Hearings shall be conducted in a manner suitable to ensure fundamental fairness to all parties concerned, limited by the need to secure relevant information necessary to render a decision without unnecessary delay.

7.40.635 Evidentiary Rules

The hearing need not be conducted according to technical rules relating to evidence. Any evidence may be presented if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but may be rejected if deemed to be unreliable. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at a hearing. Unduly repetitious or irrelevant evidence shall be excluded at the discretion of the Yuba County Board of Supervisors.

7.40.640 Order of Proceeding at Hearing

The Yuba County Board of Supervisors shall ordinarily proceed in the following order when conducting hearings:

a. The Enforcement Official's presentation shall proceed first. It should include identification of the file and property, a summary of the history and matters at issue, a staff analysis of the legal and factual issues involved, permitted uses to which the property was and is subject, and accounting of enforcement costs relating to the property, and a recommended decision.

b. A presentation by or on behalf of the appellant shall next proceed.
c. Tenants or other occupants of the subject property shall speak third.
d. Individuals who are not appealing but own property immediately contiguous to the subject property shall speak fourth.
e. Other interested parties shall speak fifth.
f. The appellant shall be entitled to rebuttal.

7.40.645 Speakers' Presentation

Each speaker shall approach the microphone and give his or her full name and address for the record.

a. Each speaker's presentation shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate, but, if used, shall become part of the public record and the property of the County. The Yuba County Board of Supervisors may establish a time limit for presentations; provided, however, that at least ten minutes shall be allowed for each speaker. Speakers shall, at the discretion of the Yuba County Board of Supervisors, be allowed to speak for longer than ten minutes if that speaker represents a group of individuals, the remainder of which chose not to speak. Speakers with lengthy presentations are encouraged to submit them in writing. There shall be no limitation upon length of written statements.
b. The Yuba County Board of Supervisors shall hear testimony and receive written and/or documentary evidence relating to the alleged violation. The parties may be represented by legal counsel. Testimony shall be taken on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues presented; to impeach any witness; and to rebut evidence. Witnesses shall be subject to cross-examination by the Yuba County Board of Supervisors.
c. Subject to the Yuba County Board of Supervisors' right to accept a motion to conclude the taking of all testimony or to close the public hearing when a reasonable opportunity to present all questions and points of view has been allowed, any person wishing to speak shall be heard. Except for rebuttal allowed, each speaker shall speak only once.
d. The Yuba County Board of Supervisors shall preserve all photographs and other documentary evidence introduced at the time of the hearing. After all of the testimony is taken, the Yuba County Board of Supervisors shall close the public hearing unless he or she deems it necessary to continue the hearing for the receipt of additional evidence or an ordinance interpretation from the Affected Department.

7.40.650 Submission of Additional Written Evidence and Argument

At any time before or after the hearing up to the point the hearing is closed by the Yuba County Board of Supervisors, any interested party may submit written evidence or argument. In the event the Yuba County Board of Supervisors concludes the hearing and continues the decision to another time, the Yuba County Board of Supervisors may, in their discretion, set a deadline for

submission of written argument. Except for the receipt of written argument, no ex parte communications, either direct or indirect, shall be received by the Yuba County Board of Supervisors during the period of a continuance or after the public hearing has been closed.

7.40.655 Field Trips

Whenever the Yuba County Board of Supervisors deems it necessary to take a field trip to view the site in question, the Yuba County Board of Supervisors may conduct a site visit. Unless the site visit is tape recorded, the Yuba County Board of Supervisors shall not talk to any members of the public during the conduct of such site visit. After the conduct of a site visit, the Yuba County Board of Supervisors shall place into the record the visual observations made and the conclusions drawn as a result of such visit.

7.40.660 Recording

All proceedings shall be recorded. If a verbatim transcript is desired, the person requesting the transcript shall have the responsibility for arranging for the appearance of a court reporter to transcribe the hearing. In the event that a court reporter is present at the request of an interested party, the party retaining the court reporter shall provide a copy of the reporter's written transcript to the Yuba County Board of Supervisors at no charge to the County.

7.40.670 Decision

The decision of the Yuba County Board of Supervisors is final. The time within which judicial review of this decision may be sought is governed by California Code of Civil Procedure, Section 1094.6 and the Yuba County Ordinance Code Chapter 1.16.

7.40.680 Severability

If any section, subsection, sentence, clause, or phrase of this Chapter, is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any or all other portions of this Chapter.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Draft Proposal #3
Fresno County Model

COUNTY OF YUBA

SUMMARY OF PROPOSED ORDINANCE
REPEALING AND REENACTING AS AMENDED CHAPTER 7.40
OF THE YUBA COUNTY ORDINANCE CODE
RELATING TO MARIJUANA CULTIVATION

The following is a summary of an ordinance proposed to be adopted by the Board of Supervisors of the County of Yuba on_____ day of _____20__.

The proposed ordinance would repeal and reenact as amended Chapter 7.40 of the Yuba County Ordinance Code relating to Marijuana Cultivation.

The complete text of the proposed ordinance may be reviewed in the Office of the Clerk of the Board of Supervisors of Yuba County.

DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

By:_____

THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA DOES ORDAIN AS FOLLOWS:

Section 1.This ordinance shall take effect thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Chapter 7.40 of Title VII of the Yuba County Ordinance Code is hereby amended to read as follows:

CHAPTER 7.40
MARIJUANA CULTIVATION

Sections

7.40.100 Authority
7.40.110 Purpose & Intent
7.40.120 Findings
7.40.130 Scope
7.40.140 Responsibilities
7.40.150 Private Right of Action
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7.40.300 Cultivation Restrictions
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7.40.320 Accessory Structures
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7.40.400 Conditions Creating Public Nuisance
7.40.500 Enforcement Authority
7.40.510 Right of Entry/Inspection
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7.40.550 Administrative Penalties
7.40.570 Enforcement Costs
7.40.600 Appeal
7.40.605 Appeal Hearings
7.40.610 Notice of Hearing
7.40.620 Powers of the Yuba County Board of Supervisors
7.40.625 Questions of Ordinance Interpretation
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7.40.635 Evidentiary Rules
7.40.640 Order of Proceeding at Hearing
7.40.645 Speakers' Presentation
7.40.650 Submission of Additional Written Evidence and Argument
7.40.655 Field Trips
7.40.660 Recording
7.40.670 Decision
7.40.680 Severability

ARTICLE I
GENERAL PROVISIONS

7.40.100 Authority
Pursuant to authority granted by Article XI Section 7 of the California Constitution, Section 11362.83(c) of the California Health and Safety Code and Section 25845 of the California Government Code, the Yuba County Board of Supervisors does hereby enact this Chapter.

7.40.110 Purpose & Intent
The purpose and intent in adopting this Chapter is to acknowledge State law as it relates to medical marijuana and to reduce conditions that create public nuisances through enacting these regulations including without limitation, restrictions as to location of cultivation, the number of marijuana plants, and the use of screening and security structures, to more effectively control the adverse impacts associated with marijuana cultivation as stated herein, while considering the desires of qualified patients and primary caregivers, in furtherance of the public necessity, health, safety, convenience, and general welfare within the Board's jurisdictional limits. Nothing in this Chapter shall be construed to authorize any use, possession, cultivation, or distribution of marijuana for non-medical purposes or that is in violation of state or federal law.

7.40.120 Findings

a. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision.
b. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or

possession of marijuana for medical purposes.

c. Division 10 of the California Health and Safety Code, Uniform Substance Control Act, makes it unlawful, under State law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana.
d. In 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act", (codified as Health and Safety Code Section 11362.5) which was intended to decriminalize cultivation and possession of medical marijuana by a seriously ill patient, or the patient's primary caregiver, for the patient's personal use, and to create a limited defense to the crimes of possessing or cultivating marijuana. The Act further provided that nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.
e. The State enacted SB 420 in 2004 (known as the "Medical Marijuana Program Act", codified as Health and Safety Code Section 11362.7 et seq.) to expand and clarify the scope of The Compassionate Use Act of 1996 by creating the medical marijuana Identification Card program, creating reasonable regulations for cultivating, processing, transporting and administering marijuana, as well as limiting the amount marijuana a qualified individual may possess. The Medical Marijuana Program Act defines a "primary caregiver" as an individual who is designated by a qualified patient or by a person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person and is further defined in the California Supreme Court decision *People v. Mentch* (2008) 45 Ca1.4th 274.
f. The County's geographic and climatic conditions, which include dense forested areas receiving substantial precipitation, provide conditions that are favorable to outdoor marijuana cultivation, thus growers can achieve a high per-plant yield. The Federal Drug Enforcement Administration reports that various types of marijuana plants under various planting conditions may yield averages of 236 grams, or about one-half (1/2) pound, to 846 grams, or nearly two (2) pounds.
g. The strong distinctive odor of marijuana plants creates an attractive nuisance, alerting persons to the location of the valuable plants, and has resulted in burglary, robbery and armed robbery.
h. The strong and distinctive odor of marijuana plants creates a need to ensure that smells that disrupt the use of adjacent properties are minimized, much in the same way that the County has ordinances currently in place to minimize the smells associated with raising livestock.
i. Children (minor under the age of 18) are particularly vulnerable to the effects of marijuana use and the presence of marijuana plants is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children (including schools, parks, and other similar locations).
j. The unregulated cultivation of marijuana in the unincorporated area of Yuba County can adversely affect the health, safety, and well-being of the County, its residents and

environment. Comprehensive civil regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

k. The indoor Cultivation of any amount of Marijuana within a residence presents potential health and safety risks to those living in the residence, especially to children, including, but not limited to, increased risk of fire from grow light systems, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence.

l. Comprehensive restriction of premises used for marijuana cultivation is proper and necessary to address the risks and adverse impacts as stated herein, that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

m. Outdoor marijuana cultivation, especially within the foothills, is creating devastating impacts to California's surface and groundwater resources. The State Water Resources Control Board, the North Coast Regional Water Quality Control Board, the Central Valley Regional Water Quality Control Board and the Department of Fish and Wildlife have seen a dramatic increase in the number of marijuana gardens, and corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash and human waste. The sources of these impacts result from unpermitted and unregulated timber clearing, road development, stream diversion for irrigation, land grading, erosion of disturbed surfaces and stream banks, and temporary human occupancy without proper sanitary facilities.

n. The immunities from certain prosecution provided to qualified patients and their primary caregivers under State law to cultivate marijuana plants for medical purposes does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the County will achieve a significant reduction in the complaints of odor and the risks of fire, crime and pollution caused or threatened by the unregulated cultivation of marijuana in the unincorporated area of Yuba County.

o. Nothing in this Chapter shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State law. No provision of this Chapter shall be deemed a defense or immunity to any action brought against any person by the County of Yuba, Yuba County District Attorney, the Attorney General of State of California, or the United States of America.

p. In *Browne v. County of Tehama*, 213 Cal. App. 4th 704 (2013), the California Court of Appeal stated that "Neither the Compassionate Use Act nor the Medical

Marijuana Program grants . . . anyone . . . an unfettered right to cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute." Similarly, in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*, 56 Cal. 4th 729 (2013), the California Supreme Court concurred that "Nothing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land . . ." Additionally, in *Maral v. City of Live Oak* (2013), 221 Cal.App. 4th 975, 983, review denied 2014 Cal. LEXIS 2402 (March 26, 2014), the same Court of Appeal held that "there is no right—and certainly no constitutional right—to cultivate medical marijuana . . ." The Court in *Live Oak* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

q. On May 1, 2012, the Board of Supervisors adopted Ordinance No. 1518 to regulate marijuana cultivation. On December 18, 2012, Ordinance 1522 was adopted revising Ordinance 1518 to modify enforcement procedures and requirements to a specific plant count based on property size from square foot of area for cultivation. The provisions of both Ordinances have proven to be inadequate to control the negative impacts of marijuana cultivation. Since the adoption of Ordinance No. 1522, there has been increased Marijuana Cultivation throughout the unincorporated areas of the County in violation of the provisions of that ordinance. In addition, the graduated areas for cultivation, based on parcel size, have proven cumbersome and problematic to administer and enforce. For example, the original limits were based on square feet of total Cultivation area, leading to uncertainty in measurement when the plants were not cultivated in a defined contiguous area, and the need for multiple inspections throughout the grow season. The current revisions contained in this ordinance are intended to address the aforementioned concerns, and simplify the regulations to be more readily understood by those affected, to expedite the code enforcement process and to more effectively control the adverse impacts associated with marijuana cultivation as stated herein, while considering the desires of Qualified Patients and their Primary Caregivers.

7.40.130 Scope

The provisions of this Chapter shall apply generally to all property throughout the unincorporated area of the County of Yuba.

7.40.140 Responsibilities

a. Regardless of whether an owner is in actual possession of his or her real property, it is the duty of every owner of real property within the unincorporated area of Yuba County to prevent a public nuisance from arising on, or from existing upon, his or her real property.

b. No person or entity shall cause, permit, maintain, conduct or otherwise allow a public

nuisance as defined in this Chapter to exist upon any property within their control and shall not cause a public nuisance to exist upon any other property within the unincorporated limits of the County of Yuba. It shall be the duty of every owner, occupant, and person that controls any land or interest therein within the unincorporated area of the County of Yuba to remove, abate and prevent the reoccurrence of any public nuisance upon such land.

7.40.150 Private Right of Action

Nothing contained in this Chapter shall be construed to prohibit the right of any person or public or private entity damaged by any violation of this Chapter to institute a civil proceeding for injunctive relief against such violation, for money damages, or for whatever other or additional relief the court deems appropriate. The remedies available under this Chapter shall be in addition to, and shall not in any way restrict other rights or remedies available under law.

ARTICLE 2
DEFINITIONS

7.40.200 Definitions

Except where the context otherwise requires, the following definitions shall govern the construction of this Chapter:

a. "Accessory Structure" means a separate and permitted building located on the same parcel as the residence or an attached garage separated by a firewall.
b. "Code" means the Yuba County Ordinance Code
c. "Code Enforcement Officer" means any person employed by the County of Yuba and appointed to the position of code enforcement officer.
d. "Costs of Enforcement" or "Enforcement Costs" means all costs, direct or indirect, actual or incurred related to the performance of various administrative acts required pursuant to the enforcement of this Chapter, which include but are not limited to: administrative overhead, salaries and expenses incurred by County Officers, site inspections, investigations, notices, telephone contacts and correspondence, conducting hearings, as well as time expended by County staff in calculating the above expenses. The costs also include the cost of time and expenses associated with bringing the matter to hearing, the costs associated with any appeals from any decision rendered by any hearing body, the costs of judicially abating a violation and all costs associated with removing, correcting or otherwise abating any violation including administrative penalties of this Chapter.
e. "County" means the County of Yuba
f. "Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.
g. "Enforcement Official" means the Code Enforcement Officer or the Sheriff, or

the authorized deputies or designees of either, each of whom is independently authorized to enforce this Chapter.

h. "Fence" means a solid wall or a barrier connected by boards (redwood or cedar), masonry, rails, panels, or any other materials typically utilized for residential fences (subject to the approval of the Community Development and Services Agency) for the purpose of enclosing, securing, and screening space from public view. The term "fence" does not include retaining walls.

i. "Indoors" means within a fully enclosed structure, with a solid roof, floor, and walls. "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

j. "Marijuana plant" means any mature or immature marijuana plant including the stalks of the plant, or any marijuana seedling, that is capable of producing marijuana. A "mature" marijuana plant is one whose sex can be determined by visual inspection.

k. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

l. "Parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (commencing with Section 66410 of the Government Code) and also means parcels that are described, recorded and kept in official County records specifically including documents and maps used by the County Assessor's Office, the County Tax Collector's Office and the County Recorder's Office.

m. "Primary Caregiver" shall have the same meaning as "primary caregiver" as defined in the California Health and Safety Code, commencing with Section 11362.7(d), and as further defined in the California Supreme Court decision *People v. Mentch* (2008) 45 Ca1.4th 274.

n. "Public View" shall mean as viewed at ground level, without the use of a ladder or similar device, from any place the general public has a lawful right to be including the public right of way, a public way or neighboring premises.

o. "Qualified Patient" shall have the same meaning as "qualified patient" as defined in the California Health and Safety Code, commencing with Section 11362.7(f).

p. "Residence" shall mean the habitable portion of a building designed for and occupied exclusively for living purposes, including one-family, two-family, mobile home within a mobile home park, and multifamily dwellings, but not including hotels, motels, trailers, tents, converted transit vehicles, boarding or lodging houses, or any type of temporary structures.

q. "Sheriff" or "Sheriff's Office" means the Yuba County Sheriff's Office or the authorized representatives thereof.

ARTICLE 3
RESTRICTIONS

7.40.300 Cultivation Restrictions

a. Cultivation of marijuana is prohibited in all unincorporated areas of Yuba County.
b. Outdoor cultivation on any Parcel is prohibited.
c. Indoor cultivation on any Parcel, either within a Residence or any other structure, is prohibited.

ARTICLE 4
PUBLIC NUISANCE

7.40.400 Conditions Creating Public Nuisance

A public nuisance shall be deemed to exist when any of the following conditions or circumstances is present:

a. Any person owning, leasing, occupying or having charge or possession of any parcel of land within the unincorporated area of the County to cause or allow such parcel of land to be used for the cultivation of marijuana in violation of the provisions contained herein or any provisions set forth in Division 10 of the California Health and Safety Code.
b. Any violation of any Ordinance or State law or any public nuisance defined or known at common law or in equity jurisprudence.

ARTICLE 5
ENFORCEMENT

7.40.500 Enforcement Authority

The Office of the Yuba County Sheriff and/or the Director of the County Department that has been assigned responsibility for administration of Code Enforcement services are hereby designated to enforce this Chapter.

7.40.510 Right of Entry/Inspection

To enforce the provision of this Code, an Enforcement Officer may at a reasonable time request inspection of any parcel suspected of cultivating marijuana. If the person owning or occupying the parcel refuses the request for an inspection, the Enforcement Officer shall have recourse to every remedy provided by law to secure entry, including obtaining an inspection warrant.

7.40.520 Violations

a. It is unlawful and a violation of this Chapter for any person to permit a public nuisance to exist upon real property in which such person has an ownership or possessory interest.
b. It shall be unlawful and a violation of this Chapter to do anything in contrary to the guidelines set forth in this Chapter.
c. Each person violating this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, which any violation of any provision of this Chapter is committed, continued, or permitted by any such person. Any violation which persists for more than one day is deemed a continuing violation.

7.40.530 Remedies

a. Any violation of this Chapter shall be deemed a public nuisance and is subject to any enforcement process authorized by law or as outlined in this Code.
b. Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County of Yuba or any other governmental entity to enforce County ordinances, to abate any and all nuisances, or employ any remedy available at law or equity.

7.40.540 Notice and Order to Abate

a. Upon making a determination that a public nuisance exists, the Enforcement Official shall notify the owner and/or the alleged violator that a public nuisance exists upon such owner's property. As to an owner, the Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner directs. As to an alleged violator whom the Enforcement Official has determined directly or indirectly contributed to the condition creating the nuisance, the Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, to the last known address of the alleged violator. In addition, the Notice and Order to Abate shall be delivered by first class mail, with postage prepaid, addressed to the owner and/or alleged violator at the same addresses. A copy shall also be posted on the property. The Enforcement Official shall complete a proof of service.
b. The Notice and Order to Abate shall describe the use or condition which constitutes the public nuisance; and shall order that the uses or conditions constituting the nuisance be abated by demolition, securing, removal, cleanup, repair or other means within a reasonable time certain as determined necessary for such abatement by the Enforcement Official based upon the nature and complexity of the abatement process, normally being three (3) days, or less, from the date such notice is mailed and/or posted.

7.40.550 Administrative Penalties

a. Any person who violates this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, the violation is committed, permitted or continued. In addition to the actual abatement and/or administrative costs incurred by the County any person who has been issued a Notice and Order to Abate Public Nuisance shall be assessed an Administrative Penalty as follows:
    1. A penalty of $100.00 for each violation of this Code per day as set forth in the Notice and Order to Abate.
    2. A penalty of $200.00 for each violation of this Code per day when a second violation of this Code occurs within eighteen (18) months of a previously issued Notice and Order to Abate.
    3. A penalty of $500.00 for each violation of this Code per day for each subsequent violation of this Code beyond the second when the violation occurs within thirty-six (36) months of the original Notice and Order to Abate.
b. For the purpose of calculating the daily Administrative Penalty, each offense of any Section of this Chapter shall be charged as a separate violation; in addition, each marijuana plant shall be charged as a separate violation.
c. The Administrative Penalty, pursuant to this Section, shall be assessed immediately upon the issuance of a Notice and Order to Abate Public Nuisance and shall continue to accrue until the date compliance with the Order has been met and verified by the Enforcing Officer. In the event an appeal has been properly filed with the County, the appeal shall have no affect on the Administrative Penalty and said Penalty shall continue to accrue during the pendency of the hearing. At the conclusion of the hearing the Yuba County Board of Supervisors is authorized to modify or waive the Administrative Penalty for cause and shall make express findings into the record for such modification or waiver.

7.40.560 Enforcement Costs

a. All costs and penalties associated with the enforcement of this Chapter are the responsibility of the owner(s) of any parcel(s) on which a nuisance has been found to exist and such costs shall be paid within 30 days of the date of demand thereof.
b. Where costs and penalties go unpaid beyond 30 days, the Enforcement Official shall take action to confirm the costs, record a lien and place a special tax assessment pursuant to procedures as set forth in Chapter 7.36 of the Yuba County Ordinance Code.

ARTICLE 6
APPEALS AND UNIFORM HEARINGS AND PROCEDURES

7.40.600 Appeal

Any person who has received a Notice and Order to Abate Public Nuisance may request an

appeal before the Yuba County Board of Supervisors within 10 calendar days of the date of the Notice and Order to Abate. The request for appeal shall be in writing and must be accompanied by a deposit for costs as enumerated in Title XIII of this Code.

7.40.605 Appeal Hearings
Abatement hearings and hearings to determine administrative penalties shall be heard by the Yuba County Board of Supervisors. The Board of Supervisors, in its discretion, may appoint a hearing officer or commissioner to hear and preside over such hearings.

7.40.610 Notice of Hearing
If the owner or alleged violator requests a hearing within ten (10) calendar days of the date of the Notice and Order to Abate, the Enforcement Official shall schedule a hearing and provide notice to the owner or alleged violator of the time and place the hearing will take place. Notice of the hearing shall be delivered by personal service or by Certified Return Receipt mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner or alleged violator provides. In addition, the Notice of Hearing shall be delivered by first class mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner or alleged violator provides. The Enforcement Official shall complete a proof of service. The hearing shall be set for a date that is not less than five (5) and not more than thirty (30) days from the date that the request for hearing is filed with the Enforcement Official.

7.40.620 Powers of the Yuba County Board of Supervisors
The Yuba County Board of Supervisors shall have the power to conduct the hearing, the power to decide a matter upon which a hearing has been held, the power to make findings of fact and conclusions of law required for the decision, the power to issue subpoenas, the power to receive evidence, the power to administer oaths, the power to rule on questions of law and the admissibility of evidence, the power to continue the hearing from time to time, and the power to prepare a record of the proceedings.

7.40.625 Questions of Ordinance Interpretation
In those instances where an Yuba County Board of Supervisors is presented with a legal question regarding the interpretation of the provisions of the Yuba County Ordinance Code, the Yuba County Board of Supervisors may either: (a) take evidence bearing upon the issue of such interpretation and make his or her decision regarding the intent of the ordinance; or (b) make his or her decision regarding the intent of the ordinance; or (c) request, through the affected Department, an opinion of its interpretation, which opinion may be incorporated by the Yuba County Board of Supervisors in reaching their decision.

7.40.630 Fairness of Hearings
Hearings shall be conducted in a manner suitable to ensure fundamental fairness to all parties concerned, limited by the need to secure relevant information necessary to render a decision without unnecessary delay.

7.40.635 Evidentiary Rules
The hearing need not be conducted according to technical rules relating to evidence. Any evidence may be presented if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but may be rejected if deemed to be unreliable. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at a hearing. Unduly repetitious or irrelevant evidence shall be excluded at the discretion of the Yuba County Board of Supervisors.

7.40.640 Order of Proceeding at Hearing
The Yuba County Board of Supervisors shall ordinarily proceed in the following order when conducting hearings:

a. The Enforcement Official's presentation shall proceed first. It should include identification of the file and property, a summary of the history and matters at issue, a staff analysis of the legal and factual issues involved, permitted uses to which the property was and is subject, and accounting of enforcement costs relating to the property, and a recommended decision.
b. A presentation by or on behalf of the appellant shall next proceed.
c. Tenants or other occupants of the subject property shall speak third.
d. Individuals who are not appealing but own property immediately contiguous to the subject property shall speak fourth.
e. Other interested parties shall speak fifth.
f. The appellant shall be entitled to rebuttal.

7.40.645 Speakers' Presentation
Each speaker shall approach the microphone and give his or her full name and address for the record.

a. Each speaker's presentation shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate, but, if used, shall become part of the public record and the property of the County. The Yuba County Board of Supervisors may establish a time limit for presentations; provided, however, that at least ten minutes shall be allowed for each speaker. Speakers shall, at the discretion of the Yuba County Board of Supervisors, be allowed to speak for longer than ten minutes if that speaker represents a group of individuals, the remainder of which chose not to speak. Speakers with lengthy presentations are encouraged to submit them in writing. There shall be no

limitation upon length of written statements.

b. The Yuba County Board of Supervisors shall hear testimony and receive written and/or documentary evidence relating to the alleged violation. The parties may be represented by legal counsel. Testimony shall be taken on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues presented; to impeach any witness; and to rebut evidence. Witnesses shall be subject to cross-examination by the Yuba County Board of Supervisors.
c. Subject to the Yuba County Board of Supervisors' right to accept a motion to conclude the taking of all testimony or to close the public hearing when a reasonable opportunity to present all questions and points of view has been allowed, any person wishing to speak shall be heard. Except for rebuttal allowed, each speaker shall speak only once.
d. The Yuba County Board of Supervisors shall preserve all photographs and other documentary evidence introduced at the time of the hearing. After all of the testimony is taken, the Yuba County Board of Supervisors shall close the public hearing unless he or she deems it necessary to continue the hearing for the receipt of additional evidence or an ordinance interpretation from the Affected Department.

7.40.650 Submission of Additional Written Evidence and Argument

At any time before or after the hearing up to the point the hearing is closed by the Yuba County Board of Supervisors, any interested party may submit written evidence or argument. In the event the Yuba County Board of Supervisors concludes the hearing and continues the decision to another time, the Yuba County Board of Supervisors may, in their discretion, set a deadline for submission of written argument. Except for the receipt of written argument, no ex parte communications, either direct or indirect, shall be received by the Yuba County Board of Supervisors during the period of a continuance or after the public hearing has been closed.

7.40.655 Field Trips

Whenever the Yuba County Board of Supervisors deems it necessary to take a field trip to view the site in question, the Yuba County Board of Supervisors may conduct a site visit. Unless the site visit is tape recorded, the Yuba County Board of Supervisors shall not talk to any members of the public during the conduct of such site visit. After the conduct of a site visit, the Yuba County Board of Supervisors shall place into the record the visual observations made and the conclusions drawn as a result of such visit.

7.40.660 Recording

All proceedings shall be recorded. If a verbatim transcript is desired, the person requesting the transcript shall have the responsibility for arranging for the appearance of a court reporter to transcribe the hearing. In the event that a court reporter is present at the request of an interested party, the party retaining the court reporter shall provide a copy of the reporter's written transcript to the Yuba County Board of Supervisors at no charge to the County.

7.40.670 Decision
The decision of the Yuba County Board of Supervisors is final. The time within which judicial review of this decision may be sought is governed by California Code of Civil Procedure, Section 1094.6 and the Yuba County Ordinance Code Chapter 1.16.

7.40.680 Severability
If any section, subsection, sentence, clause, or phrase of this Chapter, is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any or all other portions of this Chapter.

Section 3.If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Draft Proposal #4
Chapter 7.40 Modified

COUNTY OF YUBA

SUMMARY OF PROPOSED ORDINANCE
REPEALING AND REENACTING AS AMENDED CHAPTER 7.40
OF THE YUBA COUNTY ORDINANCE CODE
RELATING TO MARIJUANA CULTIVATION

The following is a summary of an ordinance proposed to be adopted by the Board of Supervisors of the County of Yuba on_____ day of _____20__.

The proposed ordinance would repeal and reenact as amended Chapter 7.40 of the Yuba County Ordinance Code relating to Marijuana Cultivation.

The complete text of the proposed ordinance may be reviewed in the Office of the Clerk of the Board of Supervisors of Yuba County.

DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

By:_____

COUNTY OF YUBA

SUMMARY OF ADOPTED ORDINANCE NO._____
REPEALING AND REENACTING AS AMENDED CHAPTER 7.40
OF THE YUBA COUNTY ORDINANCE CODE
RELATING TO MARIJUANA CULTIVATION

The following is a summary of an ordinance adopted by the Board of Supervisors of the County of Yuba on_____ day of_____ 20__.

The adopted ordinance repealed and reenacts as amended Chapter 7.40 of the Yuba County Ordinance Code relating to Marijuana Cultivation.

The ordinance was passed upon the following vote:

AYES:

NOES:

ABSENT:

The complete text of the ordinance may be reviewed in the Office of the Clerk of the Board of Supervisors of Yuba County.

DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

By:_____

ORDINANCE NO. _____

AN ORDINANCE REPEALING AND RE-ENACTING AS AMENDED CHAPTER 7.40 MARIJUANA CULTIVATION

The following ordinance consisting of three (3) sections was duly and regularly passed and adopted by the Board of Supervisors of the County of Yuba, State of California, at a regular meeting of the Board of Supervisors held on the ___ day of _____, 20___ by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

Chairperson of the Board of Supervisors County of Yuba, State of California

ATTEST: Donna Stottlemeyer
Clerk of the Board of Supervisors

_____

_____

APPROVED AS TO FORM: Angil Morris-Jones
County Counsel

_____

THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA DOES ORDAIN AS FOLLOWS:

Section 1.This ordinance shall take effect thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Chapter 7.40 of Title VII of the Yuba County Ordinance Code is hereby amended to read as follows:

CHAPTER 7.40

MARIJUANA CULTIVATION

Sections

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ARTICLE 1
GENERAL PROVISIONS

7.40.100 Authority

Pursuant to authority granted by Article XI Section 7 of the California Constitution, Section 11362.83(c) of the California Health and Safety Code and Section 25845 of the California Government Code, the Yuba County Board of Supervisors does hereby enact this Chapter.

7.40.110 Purpose & Intent

The purpose and intent in adopting this Chapter is to acknowledge State law as it relates to medical marijuana and to reduce conditions that create public nuisances through enacting these regulations including without limitation, restrictions as to location of cultivation, the number of marijuana plants, and the use of screening and security structures, to more effectively control the adverse impacts associated with marijuana cultivation as stated herein, while considering the desires of qualified patients and primary caregivers, in furtherance of the public necessity, health, safety, convenience, and general welfare within the Board's jurisdictional limits. Nothing in this Chapter shall be construed to authorize any use, possession, cultivation, or distribution of marijuana for non-medical purposes or that is in violation of state or federal law.

7.40.120 Findings

a. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision.
b. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.

c. Division 10 of the California Health and Safety Code, Uniform Substance Control Act, makes it unlawful, under State law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana.
d. In 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act", (codified as Health and Safety Code Section 11362.5) which was intended to decriminalize cultivation and possession of medical marijuana by a seriously ill patient, or the patient's primary caregiver, for the patient's personal use, and to create a limited defense to the crimes of possessing or cultivating marijuana. The Act further provided that nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.
e. The State enacted SB 420 in 2004 (known as the "Medical Marijuana Program Act", codified as Health and Safety Code Section 11362.7 et seq.) to expand and clarify the scope of The Compassionate Use Act of 1996 by creating the medical marijuana Identification Card program, creating reasonable regulations for cultivating, processing, transporting and administering marijuana, as well as limiting the amount marijuana a qualified individual may possess. The Medical Marijuana Program Act defines a "primary caregiver" as an individual who is designated by a qualified patient or by a person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person and is further defined in the California Supreme Court decision *People v. Mentch* (2008) 45 Ca1.4th 274.
f. The County's geographic and climatic conditions, which include dense forested areas receiving substantial precipitation, provide conditions that are favorable to outdoor marijuana cultivation, thus growers can achieve a high per-plant yield. The Federal Drug Enforcement Administration reports that various types of marijuana plants under various planting conditions may yield averages of 236 grams, or about one-half (1/2) pound, to 846 grams, or nearly two (2) pounds.
g. The strong distinctive odor of marijuana plants creates an attractive nuisance, alerting persons to the location of the valuable plants, and has resulted in burglary, robbery and armed robbery.
h. The strong and distinctive odor of marijuana plants creates a need to ensure that smells that disrupt the use of adjacent properties are minimized, much in the same way that the County has ordinances currently in place to minimize the smells associated with raising livestock.
i. Children (minor under the age of 18) are particularly vulnerable to the effects of marijuana use and the presence of marijuana plants is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children (including schools, parks, and other similar locations).
j. The unregulated cultivation of marijuana in the unincorporated area of Yuba County can adversely affect the health, safety, and well-being of the County, its residents and environment. Comprehensive civil regulation of premises used for marijuana

cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

k. The indoor Cultivation of substantial amounts of Marijuana within a residence presents potential health and safety risks to those living in the residence, especially to children, including, but not limited to, increased risk of fire from grow light systems, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence.

l. Comprehensive restriction of premises used for marijuana cultivation is proper and necessary to address the risks and adverse impacts as stated herein, that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

m. Outdoor marijuana cultivation, especially within the foothills, is creating devastating impacts to California's surface and groundwater resources. The State Water Resources Control Board, the North Coast Regional Water Quality Control Board, the Central Valley Regional Water Quality Control Board and the Department of Fish and Wildlife have seen a dramatic increase in the number of marijuana gardens, and corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash and human waste. The sources of these impacts result from unpermitted and unregulated timber clearing, road development, stream diversion for irrigation, land grading, erosion of disturbed surfaces and stream banks, and temporary human occupancy without proper sanitary facilities.

n. The immunities from certain prosecution provided to qualified patients and their primary caregivers under State law to cultivate marijuana plants for medical purposes does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the County will achieve a significant reduction in the complaints of odor and the risks of fire, crime and pollution caused or threatened by the unregulated cultivation of marijuana in the unincorporated area of Yuba County.

o. Nothing in this Chapter shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State law. No provision of this Chapter shall be deemed a defense or immunity to any action brought against any person by the County of Yuba, Yuba County District Attorney, the Attorney General of State of California, or the United States of America.

p. In *Browne v. County of Tehama*, 213 Cal. App. 4th 704 (2013), the California Court of Appeal stated that "Neither the Compassionate Use Act nor the Medical Marijuana Program grants . . . anyone . . . an unfettered right to cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not

conflict with either statute." Similarly, in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*, 56 Cal. 4th 729 (2013), the California Supreme Court concurred that "Nothing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land . . ." Additionally, in *Maral v. City of Live Oak* (2013), 221 Cal.App. 4th 975, 983, review denied 2014 Cal. LEXIS 2402 (March 26, 2014), the same Court of Appeal held that "there is no right—and certainly no constitutional right—to cultivate medical marijuana . . ." The Court in *Live Oak* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

q. On May 1, 2012, the Board of Supervisors adopted Ordinance No. 1518 to regulate marijuana cultivation. On December 18, 2012, Ordinance 1522 was adopted revising Ordinance 1518 to modify enforcement procedures and requirements to a specific plant count based on property size from square foot of area for cultivation. The provisions of both Ordinances have proven to be inadequate to control the negative impacts of marijuana cultivation. Since the adoption of Ordinance No. 1522, there has been increased Marijuana Cultivation throughout the unincorporated areas of the County in violation of the provisions of that ordinance. In addition, the graduated areas for cultivation, based on parcel size, have proven cumbersome and problematic to administer and enforce. For example, the original limits were based on square feet of total Cultivation area, leading to uncertainty in measurement when the plants were not cultivated in a defined contiguous area, and the need for multiple inspections throughout the grow season. The current revisions contained in this ordinance are intended to address the aforementioned concerns, and simplify the regulations to be more readily understood by those affected, to expedite the code enforcement process and to more effectively control the adverse impacts associated with marijuana cultivation as stated herein, while considering the desires of Qualified Patients and their Primary Caregivers.

7.40.130 Scope

The provisions of this Chapter shall apply generally to all property throughout the unincorporated area of the County of Yuba.

7.40.140 Responsibilities

a. Regardless of whether an owner is in actual possession of his or her real property, it is the duty of every owner of real property within the unincorporated area of Yuba County to prevent a public nuisance from arising on, or from existing upon, his or her real property.

b. No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance as defined in this Chapter to exist upon any property within their control and shall not cause a public nuisance to exist upon any other property within the unincorporated limits of the County of Yuba. It shall be the duty of every owner, occupant, and person that controls any land or interest therein within the unincorporated

area of the County of Yuba to remove, abate and prevent the reoccurrence of any public nuisance upon such land.

7.40.150 Private Right of Action

Nothing contained in this Chapter shall be construed to prohibit the right of any person or public or private entity damaged by any violation of this Chapter to institute a civil proceeding for injunctive relief against such violation, for money damages, or for whatever other or additional relief the court deems appropriate. The remedies available under this Chapter shall be in addition to, and shall not in any way restrict other rights or remedies available under law.

ARTICLE 2
DEFINITIONS

7.40.200 Definitions

Except where the context otherwise requires, the following definitions shall govern the construction of this Chapter:

a. "Accessory Structure" means a separate and permitted building located on the same parcel as the residence or an attached garage separated by a firewall.
b. "Code" means the Yuba County Ordinance Code
c. "Code Enforcement Officer" means any person employed by the County of Yuba and appointed to the position of code enforcement officer.
d. "Costs of Enforcement" or "Enforcement Costs" means all costs, direct or indirect, actual or incurred related to the performance of various administrative acts required pursuant to the enforcement of this Chapter, which include but are not limited to: administrative overhead, salaries and expenses incurred by County Officers, site inspections, investigations, notices, telephone contacts and correspondence, conducting hearings, as well as time expended by County staff in calculating the above expenses. The costs also include the cost of time and expenses associated with bringing the matter to hearing, the costs associated with any appeals from any decision rendered by any hearing body, the costs of judicially abating a violation and all costs associated with removing, correcting or otherwise abating any violation including administrative penalties of this Chapter.
e. "County" means the County of Yuba.
f. "Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.
g. "Defined Area of Cultivation" means a single indoor area per residence or accessory structure or single outdoor area defined by visible boundaries, wherein all portions of cultivation, including all of the marijuana plant canopy, resides within and that vertically projects no higher than the fence or wall screening the cultivation from public view.
h. "Dwelling" means a building intended for human habitation that has been legally established, permitted and certified as a single-family or multi-family dwelling, but not including hotels, motels, trailers, tents, converted transit vehicles, boarding or lodging

houses, or any type of temporary structures.

i. "Enforcement Official" means the Code Enforcement Officer or the Sheriff, or the authorized deputies or designees of either, each of whom is independently authorized to enforce this Chapter.

j. "Fence" means a solid wall or a barrier connected by boards (redwood or cedar), masonry, rails, panels, or any other materials typically utilized for residential fences (subject to the approval of the Community Development and Services Agency) for the purpose of enclosing, securing, and screening space from public view. The term "Fence" does not include retaining walls.

k. "Indoors" means within a fully enclosed structure, with a solid roof, floor, and walls. The structure must be securable against unauthorized entry and constructed of solid materials such as 3/8" or thicker plywood, glass, or equivalent materials. Shade-cloth covered and plastic sheeting covered, regardless of gauge, or similar products do not satisfy this requirement.

l. "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

m. "Marijuana Plant" means any mature or immature marijuana plant including the stalks of the plant, or any marijuana seedling, that is capable of producing marijuana. A "mature" marijuana plant is one whose sex can be determined by visual inspection.

n. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

o. "Parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (commencing with Section 66410 of the Government Code) and also means parcels that are described, recorded and kept in official County records specifically including documents and maps used by the County Assessor's Office, the County Tax Collector's Office and the County Recorder's Office.

p. "Primary Caregiver" shall have the same meaning as "primary caregiver" as defined in the California Health and Safety Code, commencing with Section 11362.7(d), and as further defined in the California Supreme Court decision *People v. Mentch* (2008) 45 Ca1.4th 274.

q. "Public View" shall mean as viewed at ground level, without the use of a ladder or similar device, from any place the general public has a lawful right to be including the public right of way, a public way or neighboring premises.

r. "School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a kindergarten, elementary school, middle or junior high school,

senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.

s. "School Bus Stop" means any location designated in accordance with California Code of Regulations, Title 13, Section 1238, to receive school buses, as defined in California Vehicle Code Section 233, or school pupil activity buses, as defined in Vehicle Code Section 546.

t. "Qualified Patient" shall have the same meaning as "qualified patient" as defined in the California Health and Safety Code, commencing with Section 11362.7(f).

u. "Residence" shall have the same meaning as "Dwelling".

v. "Sheriff" or "Sheriff's Office" means the Yuba County Sheriff's Office or the authorized representatives thereof.

w. "Youth-Oriented facility" means preschool, elementary school, middle school, high school, public park, church, large family day care or day care center. The definition also includes, but is not limited to, and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

ARTICLE 3
RESTRICTIONS, REQUIREMENTS AND REGISTRATION

7.40.300 Cultivation Restrictions

a. Cultivation of more than twelve (12) marijuana plants on any Parcel is prohibited. The foregoing limitation shall be imposed regardless of the number of qualified patients or primary caregivers residing on the Parcel or participating directly or indirectly in the cultivation. Further, this limitation shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana are the primary caregiver(s) for qualified patients or that such person(s) are collectively or cooperatively cultivating marijuana.

b. Cultivation may only occur on a Parcel improved with an occupied, legally established, Dwelling in conformance with this Chapter. The cultivation shall be contained within the Defined Area of Cultivation either indoors or outdoors pursuant to this Chapter.

c. All persons and entities engaging in the cultivation of marijuana shall:
    1. Have a legal water source on the Parcel,
    2. Not engage in unlawful or unpermitted surface drawing of water for such cultivation, and
    3. Not permit illegal discharges of water from the parcel.

d. Marijuana cultivation shall not adversely affect the environment or the public health, safety, or general welfare by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, or vibration, by the use or storage of plant or animal poisons, or hazardous materials, processes, products or wastes, or by any other way.

7.40.310 Cultivation Requirements

a. Indoor Cultivation. Indoor cultivation shall not occur outside a single defined area of cultivation within a structure, shall not be in public view, and shall not be accessible to minors. The structure shall be located on a parcel with a legally established residence, occupied by a qualified patient or primary caregiver as their physical and legal place of residence. No portion of any structure shall be altered unless a building permit has first been obtained, and under no circumstance shall any alteration create a fire-life-safety hazard. Additionally, the structure shall not be in violation of the County's Building and Zoning Ordinances by conforming to one of the following:
    1. In an accessory structure that is greater than 120 square foot in size and has received an approved building permit from Yuba County.
    2. In an accessory structure that is 120 square foot or less in size, and all of the following requirements are met:
        i. The structure is not located within the front yard setback, is setback from the property line a distance consistent with the zoning the parcel is located within, and in no case located within five (5) feet of a property line, and
        ii. The structure is one story in height and is built in conformance with the California Building Code, and meets zoning height restrictions
        iii. The structure has a roof, floor, and walls constructed of solid materials such as 3/8" or thicker plywood, glass, or equivalent materials, and
        iv. All necessary building permits are obtained, including those needed for any plumbing, mechanical or electrical equipment.
    3. Within a residence, and all of the following requirements are met:
        i. A qualified patient or primary caregiver occupies the dwelling as their physical and legal place of residence, and
        ii. The lighting used for cultivation does not exceed 1200 watts, and
        iii. No gas products (CO_2, butane, etc.) are used, and
        iv. The cultivation is not located within the kitchen, and
        v. The residence maintains at least one operable bathroom, and
        vi. The defined area of cultivation is not more than one hundred (100) square feet.

b. Outdoor Cultivation. Outdoor cultivation of marijuana shall not occur outside a single defined area of cultivation, shall not be in public view, shall be surrounded by a fence as required by 7.40.310c, and shall not be accessible to minors.
    1. All outdoor cultivation shall not be located on parcels in a manner that increases the potential to create a public nuisance, and shall reduce the potential by:
        i. First and foremost, locating the area of cultivation on the parcel as far away as possible from neighboring residences, and
        ii. Locating the area of cultivation on the parcel as close as possible to the cultivator's residence for security purposes, but taking into consideration

the need to keep the cultivation away from neighboring residences, and

iii. For parcels less than one (1) acre in size, locating the area of cultivation no greater than twenty (20) feet from the cultivator's residence.

2. Outdoor cultivation of marijuana shall not be located within:

   i. Ten (10) feet of the property line and within three hundred (300) feet of a school, school bus stop, park, or youth-oriented facility on parcels less than one (1) acre in size.

   ii. Fifty (50) feet of the property line and within six hundred (600) feet of a school, school bus stop, park, or youth-oriented facility on parcels one (1) acre but less than five (5) acres in size.

   iii. One hundred (100) feet of the property line and within one thousand (1,000) feet of a school, school bus stop, park, or youth-oriented facility on parcels five

3. The distances specified in this section shall be the horizontal distance measured in a straight line to the closest area in which the medical marijuana is cultivated.

c. Fencing.

1. Outdoor cultivation shall be fully surrounded by a solid fence at least six (6) feet but not greater than (8) feet in height with a locking gate and conform to the following:

   i. Fencing materials shall be in compliance with Section 7.40.200j, and

   ii. Location of fence shall meet zoning setback and height requirements, and

   iii. Fences over seven (7) feet in height will require proof of an approved building permit, and

   iv. Marijuana plant(s) shall not be higher than the fence, and

   v. The fence and gate must be adequately secure to prevent unauthorized entry and keep the area out of reach of minors.

Bushes or hedgerows alone shall not constitute an adequate fence under this Chapter. However, for parcels greater than 5 acres in size, a combination of mature vegetation or natural topography that keeps the cultivation out of public view in combination with a securable six foot tall chain link fence may be substituted for a solid fence.

7.40.320 Registration Requirement

a. The cultivation of marijuana, in any amount or quantity, either indoors or outdoors, upon any premises without first registering the cultivation is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter, unless all of the following conditions are satisfied:

1. The person(s) owning, leasing, occupying, or having charge or possession of any premises have submitted the required annual registration for the premises to the Yuba Community Development and Services Agency (CDSA), and provided all of the following current information and documentation to CDSA:

i. The name of each person, owning, leasing, occupying, or having charge or possession of the premises;
ii. The name of each qualified patient or primary caregiver who participates in the cultivation, either directly or by providing reimbursement for marijuana or the services provided in conjunction with the provision of that marijuana;
iii. A copy of the current valid medical recommendation or State-issued medical marijuana card for each qualified patient identified as required above, and for each qualified patient for whom any person identified as required above is the primary caregiver;
iv. The number of marijuana plants cultivated on the premises; and
v. Such other information and documentation as the Department determines is necessary to ensure compliance with State law and this Chapter.
vi. This information and documentation shall be received in confidence, and shall be used or disclosed only for purposes of administration or enforcement of this Chapter or State law, or as otherwise required by law.

b. The Board of Supervisors may, by Resolution, establish a fee for such annual registration in accordance with all applicable legal requirements.
c. Every registration under this Chapter shall be valid for no more than one calendar year and shall expire on December 31st of that year. An expired registration shall be renewed in the same manner as an initial registration hereunder. In the event that the registration of any premises for any calendar year is submitted after March 1st of that year, the registrant shall pay a late registration penalty equal to fifty percent (50%) of the applicable registration fee. The Director of CDSA may waive the late registration penalty if the failure to timely register was due to reasonable cause and not due to willful neglect.
d. If the person(s) cultivating marijuana on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall submit a notarized letter from the legal owner(s) consenting to the cultivation of marijuana on the parcel. The Department shall prescribe forms for such letters.

ARTICLE 4
PUBLIC NUISANCE

7.40.400 Conditions Creating Public Nuisance

A public nuisance shall be deemed to exist when any of the following conditions or circumstances is present:

a. Any person owning, leasing, occupying or having charge or possession of any Parcel within the unincorporated area of the County to cause or allow such Parcel to be used for the cultivation of marijuana in violation of the provisions contained herein or any provisions set forth in Division 10 of the California Health and Safety Code.

b. The cultivation of marijuana on a Parcel that does not have an occupied legally established Dwelling in conformance with this Chapter.
c. The cultivation of marijuana on a Parcel by anyone other than a qualified patient or a primary caregiver. A physician's recommendation shall be kept onsite at all times and shall be posted in plain view for inspection. Where multiple people are cultivating, each physician recommendation shall be posted.
d. Marijuana plants in public view as defined in Section 7.40.200 of this Chapter.
e. The cultivation of marijuana in a manner that exceeds 12 plants.
f. The improper use, storage and/or disposal (per the manufacturer's instructions and/or any law that governs same) of chemicals, fertilizers, gas products (CO2, butane, etc.) or any other products or equipment associated with the cultivation of marijuana.
g. Any violation of any Ordinance or State law or any public nuisance defined or known at common law or in equity jurisprudence.

ARTICLE 5
ENFORCEMENT

7.40.500 Enforcement Authority
The Office of the Yuba County Sheriff and/or the Director of the County Department that has been assigned responsibility for administration of Code Enforcement services are hereby designated to enforce this Chapter.

7.40.510 Right of Entry/Inspection
To enforce the provision of this Code, an Enforcement Officer may at a reasonable time request inspection of any parcel suspected of cultivating marijuana. If the person owning or occupying the parcel refuses the request for an inspection, the Enforcement Officer shall have recourse to every remedy provided by law to secure entry, including obtaining an inspection warrant.

7.40.520 Violations
a. It is unlawful and a violation of this Chapter for any person to permit a public nuisance to exist upon real property in which such person has an ownership or possessory interest.
b. It shall be unlawful and a violation of this Chapter to do anything in contrary to the guidelines set forth in this Chapter.
c. Each person violating this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, which any violation of any provision of this Chapter is committed, continued, or permitted by any such person. Any violation which persists for more than one day is deemed a continuing violation.

7.40.530 Remedies
a. Any violation of this Chapter shall be deemed a public nuisance and is subject to any

enforcement process authorized by law or as outlined in this Code.

b. Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County of Yuba or any other governmental entity to enforce County ordinances, to abate any and all nuisances, or employ any remedy available at law or equity.

c. Issuance of a warning shall not be a requirement prior to using any enforcement provision of this Code. Violations are not tiered and are subject to enforcement without warning.

7.40.540 Notice and Order to Abate

a. Upon making a determination that a public nuisance exists, the Enforcement Official shall notify the owner and/or the alleged violator that a public nuisance exists upon such owner's property. As to an owner, the Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner directs. As to an alleged violator whom the Enforcement Official has determined directly or indirectly contributed to the condition creating the nuisance, the Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, to the last known address of the alleged violator. In addition, the Notice and Order to Abate shall be delivered by first class mail, with postage prepaid, addressed to the owner and/or alleged violator at the same addresses. A copy shall also be posted on the property. The Enforcement Official shall complete a proof of service.

b. The Notice and Order to Abate shall describe the use or condition which constitutes the public nuisance; and shall order that the uses or conditions constituting the nuisance be abated by demolition, securing, removal, cleanup, repair or other means within a reasonable time certain as determined necessary for such abatement by the Enforcement Official based upon the nature and complexity of the abatement process, normally being three (3) days, or less, from the date such notice is mailed and/or posted.

7.40.550 Administrative Penalties

a. Any person who violates this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, the violation is committed, permitted or continued. In addition to the actual abatement and/or administrative costs incurred by the County any person who has been issued a Notice and Order to Abate Public Nuisance shall be assessed an Administrative Penalty as follows:

    1. A penalty of $100.00 for each violation of this Code per day as set forth in the Notice and Order to Abate.
    2. A penalty of $200.00 for each violation of this Code per day when a second violation of this Code occurs within eighteen (18) months of a previously issued Notice and Order to Abate.

3. A penalty of $500.00 for each violation of this Code per day for each subsequent violation of this Code beyond the second when the violation occurs within thirty-six (36) months of the original Notice and Order to Abate.

b. For the purpose of calculating the daily Administrative Penalty, each offense of any Section of this Chapter shall be charged as a separate violation; in addition, each marijuana plant in violation of this Chapter shall be charged as a separate violation.

c. The Administrative Penalty, pursuant to this Section, shall be assessed immediately upon the issuance of a Notice and Order to Abate Public Nuisance and shall continue to accrue until the date compliance with the Order has been met and verified by the Enforcing Officer. In the event an appeal has been properly filed with the County, the appeal shall have no affect on the Administrative Penalty and said Penalty shall continue to accrue during the pendency of the hearing. At the conclusion of the hearing the Yuba County Board of Supervisors is authorized to modify or waive the Administrative Penalty for cause and shall make express findings into the record for such modification or waiver.

7.40.560 Enforcement Costs

a. All costs and penalties associated with the enforcement of this Chapter are the responsibility of the owner(s) of any parcel(s) on which a nuisance has been found to exist and such costs shall be paid within 30 days of the date of demand thereof.

b. Where costs and penalties go unpaid beyond 30 days, the Enforcement Official shall take action to confirm the costs, record a lien and place a special tax assessment pursuant to procedures as set forth in Chapter 7.36 of the Yuba County Ordinance Code.

ARTICLE 6
APPEALS AND UNIFORM HEARINGS AND PROCEDURES

7.40.600 Appeal

Any person who has received a Notice and Order to Abate Public Nuisance may request an appeal before the Yuba County Board of Supervisors within 10 calendar days of the date of the Notice and Order to Abate. The request for appeal shall be in writing and must be accompanied by a deposit for costs as enumerated in Title XIII of this Code.

7.40.605 Appeal Hearings

Abatement hearings and hearings to determine administrative penalties shall be heard by the Yuba County Board of Supervisors. The Board of Supervisors, in its discretion, may appoint a hearing officer or commissioner to hear and preside over such hearings.

7.40.610 Notice of Hearing

If the owner or alleged violator requests a hearing within ten (10) calendar days of the date of the Notice and Order to Abate, the Enforcement Official shall schedule a hearing and provide notice to the owner or alleged violator of the time and place the hearing will take place. Notice of the

hearing shall be delivered by personal service or by Certified Return Receipt mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner or alleged violator provides. In addition, the Notice of Hearing shall be delivered by first class mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner or alleged violator provides. The Enforcement Official shall complete a proof of service. The hearing shall be set for a date that is not less than five (5) and not more than thirty (30) days from the date that the request for hearing is filed with the Enforcement Official.

7.40.620 Powers of the Yuba County Board of Supervisors

The Yuba County Board of Supervisors shall have the power to conduct the hearing, the power to decide a matter upon which a hearing has been held, the power to make findings of fact and conclusions of law required for the decision, the power to issue subpoenas, the power to receive evidence, the power to administer oaths, the power to rule on questions of law and the admissibility of evidence, the power to continue the hearing from time to time, and the power to prepare a record of the proceedings.

7.40.630 Fairness of Hearings

Hearings shall be conducted in a manner suitable to ensure fundamental fairness to all parties concerned, limited by the need to secure relevant information necessary to render a decision without unnecessary delay.

7.40.635 Evidentiary Rules

The hearing need not be conducted according to technical rules relating to evidence. Any evidence may be presented if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but may be rejected if deemed to be unreliable. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at a hearing. Unduly repetitious or irrelevant evidence shall be excluded at the discretion of the Yuba County Board of Supervisors.

7.40.640 Order of Proceeding at Hearing

The Yuba County Board of Supervisors shall ordinarily proceed in the following order when conducting hearings:

a. The Enforcement Official's presentation shall proceed first. It should include identification of the file and property, a summary of the history and matters at issue, a staff analysis of the legal and factual issues involved, permitted uses to which the property was and is subject, and accounting of enforcement costs relating to the property, and a recommended decision.

b. A presentation by or on behalf of the appellant shall next proceed.
c. Tenants or other occupants of the subject property shall speak third.
d. Individuals who are not appealing but own property immediately contiguous to the subject property shall speak fourth.
e. Other interested parties shall speak fifth.
f. The appellant shall be entitled to rebuttal.

7.40.645 Speakers' Presentation

Each speaker shall approach the microphone and give his or her full name and address for the record.

a. Each speaker's presentation shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate, but, if used, shall become part of the public record and the property of the County. The Yuba County Board of Supervisors may establish a time limit for presentations; provided, however, that at least ten minutes shall be allowed for each speaker. Speakers shall, at the discretion of the Yuba County Board of Supervisors, be allowed to speak for longer than ten minutes if that speaker represents a group of individuals, the remainder of which chose not to speak. Speakers with lengthy presentations are encouraged to submit them in writing. There shall be no limitation upon length of written statements.
b. The Yuba County Board of Supervisors shall hear testimony and receive written and/or documentary evidence relating to the alleged violation. The parties may be represented by legal counsel. Testimony shall be taken on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues presented; to impeach any witness; and to rebut evidence. Witnesses shall be subject to cross-examination by the Yuba County Board of Supervisors.
c. Subject to the Yuba County Board of Supervisors' right to accept a motion to conclude the taking of all testimony or to close the public hearing when a reasonable opportunity to present all questions and points of view has been allowed, any person wishing to speak shall be heard. Except for rebuttal allowed, each speaker shall speak only once.
d. The Yuba County Board of Supervisors shall preserve all photographs and other documentary evidence introduced at the time of the hearing. After all of the testimony is taken, the Yuba County Board of Supervisors shall close the public hearing unless he or she deems it necessary to continue the hearing for the receipt of additional evidence or an ordinance interpretation from the Affected Department.

7.40.650 Submission of Additional Written Evidence and Argument

At any time before or after the hearing up to the point the hearing is closed by the Yuba County Board of Supervisors, any interested party may submit written evidence or argument. In the event the Yuba County Board of Supervisors concludes the hearing and continues the decision to another time, the Yuba County Board of Supervisors may, in their discretion, set a deadline for

submission of written argument. Except for the receipt of written argument, no ex parte communications, either direct or indirect, shall be received by the Yuba County Board of Supervisors during the period of a continuance or after the public hearing has been closed.

7.40.655 Field Trips
Whenever the Yuba County Board of Supervisors deems it necessary to take a field trip to view the site in question, the Yuba County Board of Supervisors may conduct a site visit. Unless the site visit is tape recorded, the Yuba County Board of Supervisors shall not talk to any members of the public during the conduct of such site visit. After the conduct of a site visit, the Yuba County Board of Supervisors shall place into the record the visual observations made and the conclusions drawn as a result of such visit.

7.40.660 Recording
All proceedings shall be recorded. If a verbatim transcript is desired, the person requesting the transcript shall have the responsibility for arranging for the appearance of a court reporter to transcribe the hearing. In the event that a court reporter is present at the request of an interested party, the party retaining the court reporter shall provide a copy of the reporter's written transcript to the Yuba County Board of Supervisors at no charge to the County.

7.40.670 Decision
The decision of the Yuba County Board of Supervisors is final. The time within which judicial review of this decision may be sought is governed by California Code of Civil Procedure, Section 1094.6 and the Yuba County Ordinance Code Chapter 1.16.

7.40.680 Severability
If any section, subsection, sentence, clause, or phrase of this Chapter, is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any or all other portions of this Chapter.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

EVENING SESSION

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The County of Yuba

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TO: BOARD OF SUPERVISORS

FROM: Michael G. Lee, Director of Public Works

SUBJECT: Initiate Proposition 218 Process to Increase Water Fee at River Highlands CSD

DATE: January 13, 2015

Recommendation

That the Board direct staff to initiate the Proposition 218 process to propose a new, tiered water rate for the River Highlands / Gold Village Community Services District.

Background

The River Highlands / Gold Village CSD faces two issues, limited groundwater supply and funding. The fractured rock upon which the District sits provides a limited volume of water on an annual basis. Because of this, water use by residents has to be closely monitored and on occasions restricted to prevent the District from running out of water. During the summer of 2014, the water levels in the aquifer dropped approximately 90 feet in two months, resulting in a prohibition on outdoor watering. The State of California recognizes that this issue is not limited to the River Highlands / Gold Village CSD, and therefore has mandated that all public water systems transition to a metered rate that charges customers based upon the amount of water used. The use of a tiered rate, which is promoted by the state, is intended to incentivize the conservation of water.

While metered water rates encourage conservation, the primary purpose of water rates is to generate sufficient revenues to fully cover operational and maintenance expenses. It has been five years since the water rate for River Highlands / Gold Village CSD has increased. Since that time, expenses associated with state fees, electrical power, and other routine operational and maintenance expenses have continued to increase. According to the water rate study prepared by the Rural Community Assistance Corporation (RCAC), the River Highlands / Gold Village CSD should collect revenues sufficient to fund both operational expenses and reserve accounts in order to provide rate stabilization and accommodate cash flow needs. The proposed tiered water rate includes a base rate, a reserve account surcharge, and a commodity charge based upon the volume of water used. The proposed rates are as shown in Table 1:

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Table 1: Proposed Metered Water Rates

Proposed Increase	**Monthly Rate**
Monthly Base Rate	$40.00
Monthly Reserve Account Surcharge	$31.00
Commodity Charges Per CF:	**Per CF**
Up to 750 CF per Month - 0.025 per CF	$0.025
750 - 1250 CF per Month - 0.05 per CF	$0.050
1251 - 1650 CF per Month - 0.10 per CF	$0.100
1651 - 2000 CF per Month - 0.20 per CF	$0.200
Over 2000 CF per Month - 0.40 per CF	$0.400

The monthly amount customers would pay for water service would depend upon how much water is used in that month. For convenience, the total monthly charge to the customer based upon different volumes of water use is provided in Table 2. This table demonstrates how conserving water results in a significant savings in a customer's monthly water bill:

Table 2: Monthly Water Charge

Water Use (CF)	**Water Use (Gallons)**	**Total Cost**
500	3,740	$83.50
750	5,610	$89.75
1,000	7,481	$102.25
1,250	9,351	$114.75
1,450	10,847	$134.75
1,650	12,343	$154.75
1,825	13,652	$189.75
2,025	15,148	$234.75
2,275	17,018	$334.75

It is anticipated that the proposed water rates would be sufficient to fund the annual operating expenses and reserve accounts as identified in the water rate study. A breakdown of those expenses is presented in Table 3:

Table 3: Anticipated Expenses

River Highlands Community Services District - Water System Budget #2	Budget FYE 6/30/2015
Operating Expenses:	
Water Operator Contract	$20,000
Utilities	$16,887
Maintenance & Repairs	$32,782
Supplies	$2,641
Administration	$30,000
Licenses/Permits	$685
Total Operating Expenses:	**$102,995**
Reserve Account Expenses:	
Annual Emergency Reserve	$10,000
Annual Operating Reserve	$2,575
Annual Debt Service Reserves	$0
Annual Replacement CIP reserve	$22,096
Total Annual Reserves:	**$34,671**
TOTAL ANNUAL BUDGET:	**$137,666**

Discussion

Under Proposition 218, a proposed change in fees requires a public hearing, and the change can only occur absent a majority protest of the customers. An owner of record of a parcel or parcels subject to the proposed rate changes may submit a written protest against the proposed rate increase prior to the public hearing. If timely written protests are filed by a majority of the affected property owners, the proposed rate change will not be imposed. One written protest per parcel, filed by the owner of the parcel, shall be counted in calculating a majority protest to the proposed rate change.

The proposed action of initiating the Proposition 218 process is only the first step in the overall process of changing the water rate. Should the Board of Supervisors direct staff to initiate this process, staff will begin a public outreach effort that includes multiple mailers to all Gold Village customers and a public workshop. The tentative schedule for this effort is as follows:

1. **October 31, 2014**: CDSA received the final water rate studies from the Rural Community Assistance Corporation (RCAC);
2. **January 13, 2015**: Present the recommended water rate to the Board of Supervisors and request permission to begin the Proposition 218 process;
3. **January 19, 2015**: Staff will mail information regarding the proposed rate increase to every property owner. Each assessment notice will contain a mail-in ballot for the proposed water rate; the property owner can return the ballot to indicate his or her disapproval of the assessment if so desired;
4. **February - March, 2015**: A public workshop will be held to inform the residents of their options regarding the Proposition 218 vote and the need for a water fee increase. *Note: This date may vary, but experience shows it best to hold within one or two weeks of the public hearing*;
5. **March 10, 2015**: A public hearing will be held at least 45 days after the formal Proposition 218 notice is distributed to affected customers;
6. **April 1, 2015**: The new water rate may go into effect absent a majority protest.

Fiscal Impact:

The fiscal impact of initiating the Proposition 218 process is anticipated to be negligible. Should the proposed water fee be imposed, the revenues generated by user fees are anticipated to be sufficient to fund both operational expenses and reserve accounts associated with the provision of water service to the River Highlands / Gold Village Community Services District. The proposed fee increase is based upon a Water Rate Analysis prepared by the Rural Community Assistance Corporation (RCAC). The proposed fee would be effective April 1, 2015. It is further proposed that the monthly water fee be increased by an additional $2.00 on April 1, 2016 and by an additional $2.00 each year thereafter to offset inflation. The annual adjustments will occur each year for a period not to exceed five years.

Water Rate Protest

Protests can be mailed or personally delivered to the Yuba County Clerk of the Board at 915 Eighth Street, Marysville, CA, 95901. To be valid, a protest must be in writing and received by the Clerk of the Board at or before the time of the protest hearing.

Property Address: _____

Fee being protested: **Water**

Signature of Property Owner: _____

Note: If the signer is not shown on the last equalized roll of Yuba County as the owner of the property, signer must provide written evidence of ownership.

If a protest is received from a majority of affected property owners, the proposed rate changes will not be imposed. One written protest per parcel, filed by the owner of the parcel, shall be counted in calculating a majority protest to the proposed rate increase.