



County of Yuba

Community Development & Services Agency

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Planning Department

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PLANNING COMMISSION STAFF REPORT

Hearing Date: September 18, 2019

Case Number: DEVELOPMENT AGREEMENT: DA2019-0002 (Ethan Conrad)

Request: A request by Ethan Conrad to enter into Development Agreements with the County of Yuba for the purposes of extending entitlements for up to 20 years from date of original tentative map approval in exchange for previous participation in the levee funding program.

Location: The project is located in the North Arboga Study Area and will cover Unit 1, Unit 2 and Unit 3 of Thoroughbred Acres (TSTM2003-0037). Which is located south of McGowan Parkway and east of Arboga Road.

Applicant: Ethan Conrad Properties, Inc
1300 National Drive Suite 100
Sacramento, CA 95834

Recommendation: Adopt the attached resolution recommending that the Board of Supervisors approve the Development Agreement between Ethan Conrad Properties and Yuba County.

BACKGROUND:

In 2007 & 2008 the Yuba County Board of Supervisors took a number of actions to move forward with securing a local match for an anticipated \$138.5 million in Proposition 1E Bond Act funds to enhance flood protection in southern Yuba County. The Proposition 1E funds coupled with the required \$53.3 million local match and funds already expended or obligated were necessary to complete the funding to reconstruct, set back or otherwise improve all of the levees within Reclamation District 784 that provide flood protection to the unincorporated urban areas (Linda, Olivehurst, Arboga, Plumas Lake) of Yuba County to a minimum standard of a 100-year flood event, and a projected 200-year standard.

As a condition of landowner participation in previous levee funding agreements the County agreed to approve a development agreement with each landowner who previously executed and provided funding under an agreement for advance funding levee improvements.

DISCUSSION:

In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development, the Legislature of the State of California adopted Section 65864 of the Government Code, authorizing local governments to enter into development agreements with applicants for development projects. The objective of such an agreement is to provide assurances that, upon approval of the project, the applicant may proceed with the project in accord with existing policies, rules, and regulations, subject to the conditions of approval, thus vesting certain development rights in the property.

Yuba County Ordinance Code Section 11.66.010 further states that a development agreement may be appropriate where one or more of the following circumstances exist:

- To facilitate development projects for which there is significant applicant contribution toward infrastructure, public facilities, open space or other amenities, or other programs of benefit to the County and its residents;
- To assure the applicant that upon approval of the subject project, the project may proceed in accordance with existing County policies, rules and regulations in place at the time of Development Agreement approval;
- To encourage private participation in comprehensive planning and provision of public facilities, including, but not limited to, streets, sewerage, transportation, potable water, schools and utilities; and
- To provide a net benefit to the County and its residents not otherwise obtainable through other processes.

Ethan Conrad Properties, through previous levee funding agreements, has met the appropriateness of entering into a development agreement as listed above by their participation in previous levee funding agreements with the County. In addition Chapter 11.66 requires that a public hearing be held by both the Planning Commission and the Board of Supervisors prior to approval of a development agreement.

A draft of the proposed development agreement is provided in Attachments 2 for the Commission's review (the final documents will be forwarded to the Board of Supervisors for action). It is important to note that the development agreements are still subject to modification until they are adopted by the Board of Supervisors. The following is a summary of the provisions of the proposed agreements:

1. The agreements shall commence on the effective date of the adopting ordinance and shall continue in force for a period of twenty (20) years from date of previously approved tentative map.
2. During the term of the agreements the Developer's rights shall be vested only as to the entitlements already approved.

3. No moratorium, quotas or other growth limitations will be imposed on the properties being vested by the agreements unless uniformly applied by the County for a health or safety issue.
4. Consistency with the Yuba County Airport Land Use Compatibility Plan.
5. In the agreements the County agrees to make best efforts to process building permits for already approved master plans within thirty (30) days.

FISCAL IMPACT:

None, there are no additional levee funds being advanced as a result of these agreements.

ENVIRONMENTAL DETERMINATION:

The development agreements are exempt from further environmental review pursuant to Section 15182 of the California Environmental Quality Act regarding "Residential Projects Pursuant to a Specific Plan", due to the fact the development agreements proposed do not alter the maps, the conditions of approval of the maps or the environmental determinations made at the approval of the maps.

Attachments:

1. Resolution
2. Draft Development Agreement
3. Site Map

Report Prepared By:



Kevin Perkins
Planning Manager

**BEFORE THE COUNTY OF YUBA
PLANNING COMMISSION**

RESOLUTION RECOMMENDING THAT THE)
BOARD OF SUPERVISORS APPROVE THE) **RESOLUTION NO.:** _____
DEVELOPMENT AGREEMENT BETWEEN)
ETHAN CONRAD AND THE COUNTY OF)
YUBA (FILE REF: DA2019-0002))

WHEREAS, Ethan Conrad has requested approval of a Development Agreement for the areas identified on ‘**EXHIBIT A**’, incorporated by reference, located within the North Arboga Study Area; and

WHEREAS, the Development Agreement (File Ref: DA2019-0002) is a request to secure vested rights to develop portions of the North Arboga Study Area over a twenty-year period; and

WHEREAS, an exemption in accordance with Section 15182 of the California Environmental Quality Act Guidelines have been prepared for the project. This exemption is due to the fact the development agreement proposed does not alter the map, the conditions of approval of the map or the environmental determinations made at the approval of the map; and

WHEREAS, the Community Development & Services Agency of the County of Yuba has provided due notice of a public hearing before this Commission for the consideration of the proposed project in accordance with Government Code Sections 65090 and 65091; and

WHEREAS, the documents and other materials constituting the administrative record of the proceedings upon which the Planning Commission’s decision is based are located at the Yuba County Government Center offices at 915 8th Street, Marysville, CA 95901, and that the custodian of the records is the Yuba County Planning Department.

NOW, THEREFORE, BE IT RESOLVED, after due deliberation, study, and public hearing the following circumstances exist:

1. The foregoing recitals are true and correct.
2. The Planning Commission finds that the Development Agreement will provide clear and substantial benefits to the County and its residents.
3. The Planning Commission finds that the Development Agreement complies with applicable policies and regulations set forth in the Zoning Ordinance, other County ordinances, the General Plan and any other applicable community or specific plan, and the Improvement Standards.

4. The Planning Commission finds that the Development Agreement complies with the requirements of California Government Code Sections 65864 et seq.
5. The Planning Commission finds that the Development Agreement will promote the public health, safety and welfare, and will not be detrimental to or cause adverse effects to the residents, property, or improvements in the vicinity of the subject project.
6. The Planning Commission finds that the Development Agreement will be compatible with the uses allowed in, and the regulations that apply to, the zone in which the subject property is located.
7. The Planning Commission finds that the Development Agreement will not cause adverse effects to the orderly development of property or the preservation of property values in the county.
8. The Planning Commission finds that the Development Agreement will further important countywide goals and policies that have been officially recognized by the Board of Supervisors.
9. The Planning Commission finds that the Development Agreement will provide the county with important, tangible benefits beyond those that may be required by the County through project conditions of approval.
10. The Planning Commission recommends that the Yuba County Board of Supervisors approve the Development Agreement between Ethan Conrad and the County (File Ref: DA2019-0002).

PASSED AND ADOPTED at a special meeting of the Planning Commission of the County of Yuba, State of California, on the 18th day of September 2019, by the following vote.

AYES:
NOES:
ABSENT:
ABSTAIN:

CHAIRMAN
Yuba County Planning Commission

ATTEST:
Planning Commission Secretary

APPROVED AS TO FORM:
Michael Cizzocci, County Counsel

BY: _____

BY: _____

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

CDSA
County of Yuba
915 8th St. Suite 123
Marysville, CA 95901

Space above for Recorders Use Only

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE COUNTY OF YUBA, THE THREE RIVERS LEVEE IMPROVEMENT
AUTHORITY AND ETHAN CONRAD PROPERTIES, INC. (DEVELOPER)
RELATIVE TO THE DEVELOPMENT KNOWN AS
THOROUGHbred ACRES**

This document, including exhibits, totals ___ pages.

REFERENCE SHEET

Project:

Thoroughbred Acres – TSTM2003-0037

Developer:

Ethan Conrad Properties, Inc.

Developer's Address for Purpose of Written Notice:

1300 National Drive, Suite 100
Sacramento, CA 95834

Landowner:

Same as above.

Term:

The Term of the Development Agreement, as provided for in section 1.8 begins thirty (30) days after the Board of Supervisors enacts the Adopting Ordinance (noted below) and expires on May 19, 2024, twenty (20) years from the original date of approval of TSTM 2003-0037.

Entitlements:

As referred to in Recital 5 shall mean TSTM 2003-0037 and all associated final maps.

CEQA document:

This project is located within the North Arboga Study Area. On May 19, 2004 the Yuba County Planning Commission adopted a Mitigated Negative Declaration for the Thoroughbred Acres project (TSTM2003-0037). This Agreement is consistent with the project evaluated in the Initial Study/Mitigated Negative Declaration and therefore no further environmental review is required.

Adopting Ordinance:

As referred to in Section 1.3 (a), shall mean Ordinance No. _____ enacted by the Board of Supervisors on _____, 20____.

Exhibits which are attached to this Development Agreement are as follows:

- A. Legal Description
- B. Assumption Agreement
- C. Special Conditions and Requirements
- D. Sample Notice of Termination
- E. Credit and Reimbursement Policy

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THIS DEVELOPMENT AGREEMENT ("Agreement") is made by and between the COUNTY OF YUBA, a political subdivision of the State of California (County"), the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY , a joint powers authority ("TRLIA") and Ethan Conrad Properties, Inc. ("Developer") pursuant to the authority of Article 2.5, Chapter 4, Division Title 7 (§ 65864 et seq. of the Government Code) relating to Development Agreements.

RECITALS

1. In order to strengthen the public land use planning process, to encourage private participation in the process, to reduce the economic risk of development and to reduce the waste of resources, the Legislature adopted the Development Agreement Law (Gov. Code, § 65864 et seq.)

2. The Development Agreement Law permits cities and counties to contract with private interests for their mutual benefit in a manner not otherwise available to the contracting parties. Such agreements, as authorized by the Development Agreement Law and by common law, assure property developers that they may proceed with their projects with the assurance that approvals granted by public agencies will not change during the period of development. Cities and counties are equally assured that costly infrastructure such as roads, sewers, fire protection facilities, etc., will be available in a timely manner.

3. The parties have, in good faith, negotiated the terms hereinafter set forth which carry out the legislative purpose set forth above and will assure the parties to this Agreement of mutually desirable development in a manner consistent with the CEQA document, the Entitlements, and this Agreement.

4. Developer owns in fee (or holds an option to purchase for a term that is or may be extended for at least the term of this Agreement) the Subject Property as more particularly described on **Exhibit A** hereto, located in the County.

5. County, in response to Developer's application(s), after public hearings and extensive environmental analysis, has granted approval of the Entitlements, as described on the Reference Sheet.

6. In support of the various Entitlements described in paragraph 5 above, and in accord with the California Environmental Quality Act ("CEQA") and State and County guidelines, County has accepted and ratified a CEQA document, as described on the Reference Sheet.

7. Development of the Subject Property pursuant to the terms and conditions of the Entitlements, the General Plan and appropriate environmental determinations will provide for orderly growth and development consistent with the County's General Plan and other development policies and programs.

8. The Planning Commission considered this Agreement, and recommended its adoption to the Board of Supervisors.

9. Having duly considered this Agreement and having held the noticed public hearings, County finds and declares that the provisions of this Agreement are consistent with the maps and text of the County's General Plan.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1

GENERAL PROVISIONS

Section 1.1. The Project. The Project is defined as set forth on the Reference Sheet.

Section 1.2. Subject Property. The Subject Property is more specifically described in **Exhibit A**, which is incorporated herein and made part of this Agreement.

Section 1.3. Definitions. As used in the Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

(a) **Adopting Ordinance** means the ordinance which approves this Agreement.

(b) **Applicable Laws** means the General Plan, Specific Plan (if applicable), County Laws, rules, ordinances, regulations, and official policies governing the processing of entitlements, the permitted uses of the Subject Property, the density or intensity of use, the rate and timing of development, design, improvements, reservation or dedication of land for public improvements, fees, exactions, construction and building setbacks, occupancy and specifications applicable to the Subject Property in effect on the Effective Date of this Agreement.

(c) **Assumption Agreement** means an agreement substantially conforming to the model assumption agreement described in **Exhibit B**, or other agreement in a form approved by the County Counsel, executed by a Landowner with the Developer, expressly assuming various obligations relating to the development of the Project, or portion thereof.

(d) **CEQA** means the California Environmental Quality Act section 21000 et seq., of the Public Resources Code of the State of California.

(e) **Completed Lots** shall mean any single-family residence, any other residential dwelling unit(s), or any non-residential building, and the lot or parcel upon which such residence or building is located, when it has been approved by the County for occupancy.

(f) **County** means the County of Yuba or, if the context otherwise requires, the Board of Supervisors for the County of Yuba, or its designee.

(g) **County Laws** means ordinances, resolutions, rules, regulations, policies, motions, directives, mitigation measures, conditions, standards, specifications, dedications, fees, taxes (including without limitation general, special and excise taxes), assessments, liens, other exactions and impositions, and any other actions having the force of law, that are enacted or adopted by County, or by its electorate through the initiative or referendum process.

(h) **Current Fees** means those County development impact fees in effect as of the Effective Date and any currently incorporated adjustments or increases therein adopted as of the Effective Date.

(i) **Developer** shall mean that person or entity that has applied for this Development Agreement as defined on the Reference Sheet.

(j) **Director** means the Community Development Director for the County, or his/her designee.

(k) **Effective Date** means the effective date of the Adopting Ordinance.

(l) **Entitlements** shall mean those approvals listed on the Reference Sheet of this Agreement, approved copies of which are on file with the Board of Supervisors.

(m) **General Plan** means the General Plan of the County, including the text and maps, as may have been amended in connection with the Project.

(n) **Landowner** is a party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement.

(o) **New Fees** means those development impact fees adopted by the County after the Effective Date of this Development Agreement.

(p) **Planning Commission** shall mean the County's Planning Commission, or its designee.

(q) **Reserved Powers** shall mean those powers explicitly reserved to the County by this Agreement.

(r) **Revenue Bonds** means the Yuba Levee Financing Authority Revenue Bonds, Series A and Taxable Revenue Bonds, Series B.

(s) **Subject Property** means the property described in Section 1.2, or the remaining portions thereof after releases from the provisions of this Agreement have been executed as authorized by this Agreement.

(t) **TRLIA** means the Three Rivers Levee Improvement Authority.

(u) **YCWA** means the Yuba County Water Agency.

Section 1.4. Exhibits. The Exhibits listed herein are incorporated into this Agreement and made a part hereof. The Exhibits are:

Exhibit A	Subject Property
Exhibit B	Assumption Agreement
Exhibit C	Special Conditions and Requirements

Exhibit D	Sample Notice of Termination
Exhibit E	Credit and Reimbursement Policy
Exhibit F	Airport Compatibility Map

Section 1.5. Incorporation of Recitals. Recitals 1 through 9 are incorporated herein, including all exhibits referred to in the Recitals. In the event of inconsistency between the Recitals and the provisions of Articles 1 through 5, the provisions of Articles 1 through 5 shall prevail.

Section 1.6. Parties to Agreement. The parties to this Agreement are:

(a) **The County of Yuba.** A political subdivision of the State of California exercising general governmental functions and powers. The principal office of the County is located at 915 8th Street, Marysville, California 95901.

(b) **Three Rivers Levee Improvement Authority.** A joint powers authority created by the County and RD 784. The principal office of TRLIA is located at the County of Yuba Government Center, 915 Eighth Street, Suite 115, Marysville, California 95901.

(c) **Developer.** Developer owns in fee or has an equitable interest in the Subject Property.

(d) **Landowner.** From time to time, as provided in this Agreement, Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

Section 1.7. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the County has no interest therein except as authorized in the exercise of its governmental functions.

Section 1.8. Term of Agreement. This Agreement shall commence upon the Effective Date of the Adopting Ordinance approving this Agreement and shall continue in force for the period shown on the Reference Sheet under "Term." Upon the expiration of the Term as provided for in this section, this Agreement shall automatically terminate and be of no further force and effect; provided however, such termination shall not affect the rights or duties arising from the entitlements for the Subject Property which were approved prior to, concurrently with, or subsequent to the approval of this Agreement.

Section 1.9. Assignment and Assumption. Developer shall have the right to sell, assign, or transfer this Agreement with all the rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. The conditions and covenants set forth in this Agreement and incorporated herein shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. Developer shall provide County with a copy of the Assumption Agreement. Express written assumption by such purchaser, assignee or transferee, to the satisfaction of the County Counsel, of the obligations and other terms and conditions of this Agreement with respect to the Subject Property or such

portion thereof sold, assigned or transferred, shall relieve the Developer selling, assigning or transferring such interest of such obligations so expressly assumed. Any such assumption of Developer's obligations under this Agreement shall be deemed to be to the satisfaction of the County Counsel if executed in the form of the Assumption Agreement attached hereto as **Exhibit B** and incorporated herein by this reference, or such other form as shall be approved by the County Counsel.

Section 1.10. Covenants Running with the Land. Each and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it. Provided however, notwithstanding anything to the contrary above, if any such sale, assignment or transfer relates to a completed residential unit or non-residential building which has been approved by the County for occupancy, this Agreement shall automatically terminate with respect to the Completed Lot. The termination of this Agreement for any Completed Lot shall not be construed to terminate or modify any assessment district or Mello-Roos community facilities district lien affecting such Completed Lot at the time of termination. Upon the request of a Developer, County shall execute such documents as are reasonably requested to remove this Agreement from the public records as it affects each Completed Lot. The County may charge a reasonable fee to process this request.

Section 1.11. Amendment to Agreement (Developer and County). This Agreement may be amended by mutual consent of the parties in writing, in accordance with the provisions of Government Code section 65868, provided that: any amendment which relates to the term, permitted uses, density, intensity of use, height and size of proposed buildings, or provisions for reservation and dedication of land shall require a noticed public hearing before the parties may execute an amendment. Unless otherwise provided by law, all other amendments may be approved without a noticed public hearing.

Any amendment entered into between the County and the Developer shall require the signature of each owner of any portion of the Subject Property to the extent the amendment modifies this Agreement as to that other owner's property.

Section 1.12. Amendment to Agreement (Landowner and County). This Agreement may also be amended, subject to the provisions of Government Code section 65868, between a Landowner who has acquired a portion of the Subject Property from Developer and County as to the portions of the Subject Property then owned by Landowner.

Any amendment entered into between the County and a Landowner shall require the signature of each Landowner of any portion of the Subject Property or the Developer to the extent the amendment modifies the Agreement as to that Landowner's or the Developer's property.

Section 1.13. Releases. Developer, and any subsequent Landowner, shall be deemed released from all further obligations relating to the sold, assigned, or transferred property, upon the date that the County Clerk receives a copy of the Assumption Agreement provided for in Section 1.9.

Section 1.14. Notices. Notices, demands, correspondence, and other communication to County and Developer shall be deemed given if dispatched by prepaid first-class mail to the principal offices of the parties as designated in Section 1.6(a) . Notice to the County shall be to the attention of both the County Administrator and the Director. Notices to subsequent Landowners shall be required to be given by the County only for those Landowners who have given the County written notice of their address for such notices. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 1.15. Reimbursement for Agreement Expense of County. Developer agrees to reimburse County for a pro-rata share of the reasonable and actual expenses over and above fees paid by Developer as an applicant, specifically incurred by County for the modification of the County's form development agreement into the form of this Agreement, including recording fees, publishing fees, and reasonable staff and consultant costs not otherwise included within application fees then due and payable to the County. Such reimbursement shall be paid to the County within 10 days following invoice by the County. Developer shall also pay any and all delinquent installments of property tax then due for the Subject Property.

Section 1.16. Recordation of Agreement. The County Clerk shall cause a copy of this Agreement to be recorded with the County Recorder not later than ten (10) days after the effective date following execution of this Agreement by the County. Developer hereby covenants that during the period following execution and the recording of this Agreement by the County, Developer shall not, without prior written approval by the County Counsel, cause or allow to be recorded against the Subject Property any instrument affecting the priority, validity or enforceability of this Agreement.

Section 1.17. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

Section 1.18. Invalidity of Agreement/Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which became effective after the Effective Date, the remaining provisions shall continue in full force and effect.

Section 1.19. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner, challenging this Agreement, the Entitlements or any approval subsequently granted by the County' for the development of the Subject Property, then the parties and any Landowner agree to cooperate with each other in good faith in connection with the defense of the same. County may elect to tender the defense of any lawsuit filed by a third person or entity to Developer

and/or Landowner(s) (to the extent the litigation, in part or in whole, seeks to overturn or invalidate this Agreement, the Entitlements or any subsequent approval granted for the Subject Property held by or granted to Developer and/or Landowner), and, in such event, Developer and/or such Landowner(s) shall indemnify, hold the County harmless from and defend the County from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, damages, attorneys' fees and expenses of litigation awarded to the prevailing party or parties in such litigation. For purposes of this section only, "County" shall include all employees, consultants and agents acting on behalf of the County. Neither party shall settle any such lawsuit without the consent of the other party. The County may elect to participate in the litigation, in which case the Developer and/or Landowner agree to reimburse the County for its litigation costs and fees, including the retention of outside legal counsel and all staff costs. It is the intent of the Parties that the County's participation not result in unnecessary duplication of legal services, but rather that the County's active involvement in the litigation be limited to supervising the preparation of the administrative record or discovery as applicable, monitoring of litigation, and responsive pleadings regarding issues which, in the sole opinion of the County, involve broader County concerns than those immediately affecting the Landowner and/or Developer. Upon written demand of the County, Developer and/or Landowner shall deposit with the County such sums as may be specified by the County as its estimated litigation costs and fees for the following thirty day period. Both parties shall act in good faith, and shall not unreasonably withhold consent to settle. In the event that the County elects to settle a claim, and Developer refuses to also settle, County at its sole option may require Developer to post security in a form and amount reasonably acceptable to the County, for the performance of Developer's duties under this section. If the Developer, within 30 days of receiving written notice from County, fails to post this security, the Developer shall settle the claim on terms as previously approved by the County. This provision shall survive the termination of this Agreement.

Section 1.20. Waiver of Claims. Developer waives, as to the Subject Property only, any and all existing claims that it may have against the County, its agents, employees and consultants, arising out of the adoption and/or application of development requirements and standards, impact fees, the adoption of this Agreement or approval of the Entitlements and all of the proceedings, acts or determinations made prior thereto.

Section 1.21. Priority of Enactment. In the event of conflict between the Development Agreement, the Entitlements and the County Laws, the parties agree that the following sequence of approvals establishes the relative priority of approvals, each approval superior to the approvals listed thereafter: (1) **Exhibit C** to this Agreement; (2) the Development Agreement; (3) the Entitlements and (4) the County Laws. In the event of a conflict between two or more of the foregoing documents, the language of that document which is superior in priority as provided above shall govern.

ARTICLE 2

THE PROJECT AND DEVELOPMENT OF THE SUBJECT PROPERTY

Section 2.1. Limited Vested Right. During the Term of and subject to the terms of this Agreement the Developer's rights shall be vested only as to the Entitlements. "Vested" shall

mean that except as to express limitations and reservations contained in this Agreement, Developer has a fully vested right to develop the Property in accordance with the terms and conditions of this Agreement and the Entitlements, and Developer's Entitlements shall not be subject to changes in Applicable Laws. In the event that the County grants an approval or permit in the implementation of the Project, the approval or permit shall be pursuant to Applicable Laws and shall also be considered vested. This section shall not be construed to limit the authority, or obligation of the County to hold necessary public hearings, or to limit the discretion of the County or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements, which require the exercise of discretion by the County or any of its officers or officials in accordance with the Applicable Laws, or those reserved powers set forth in Section 2.6. The foregoing shall not be deemed to limit Developer's rights to seek a modification or amendment to the Entitlements.

Section 2.2. No Moratorium, Quotas, Restrictions, or Other Growth Limitations.

Except as otherwise provided by the terms and conditions of this Agreement or the Entitlements, no ordinance, resolution, rule, regulation or policy of County shall be applied, imposed or enacted by County, by resolution, ordinance, initiative, or otherwise, which in any way relates to the rate, timing or sequencing of the development or use of the Subject Property, or any improvements related thereto, including without limitation, any no-growth or slow-growth moratoriums or annual development allocations, quotas or limitations, or in any way conflicts with the permitted uses, density and intensity of uses, maximum building height and size set forth in the Entitlements; provided, however, Developer shall be subject to any such growth limitation ordinance, resolution, rule; regulation or policy which is adopted on a uniformly applied, County-wide basis and directly concerns an immediate, verifiable adverse risk to public health or safety, in which case County shall treat Developer in a uniform, equitable and proportionate manner with all properties which are zoned consistent with Developer's zoning set forth in the Entitlements. Without limitation of the foregoing, any future County rules, ordinances, regulations or policies, whether by specific reference to the development of the Subject Property or as part of a general enactment that directly or indirectly applies to the development of the Subject Property, shall be considered to conflict with this Agreement if it has any one or more of the following effects: (a) limits or reduces the number of lots or square footage which may be developed on the Subject Property, the density or intensity of use allowed under the Entitlements, (b) imposes or increases any fees, exactions or other monetary obligation from what is set forth in Applicable Law, the Entitlements or the terms of this Agreement, (c) limits utilities, services or related facilities or rights to use such utilities, services or privileges for the Subject Property or that condition development or construction on the availability of public services and/or facilities (for example, the presence of a specified traffic level of service or water or sewer availability) other than as set forth in the Entitlements, (d) limits or controls in any manner the growth or other rate, timing, phasing, or sequencing of the approval or development of the Subject Property, whether by moratorium, growth restriction, or any mechanism by which the development is tied to the availability of public services, and/or facilities or otherwise, (e) limits the maximum height, bulk and size of proposed buildings from what is set forth in Applicable Law, (f) applies to the Subject Property any future County law otherwise allowed by this Agreement that is not applied on a County-wide basis to all substantially similar developments and properties, (g) changes any land use designation or permitted use vested by this Agreement on the Subject Property without the consent of

Developers, (h) requires the issuance of additional permits or approvals by County other than those required by Applicable Laws, or (i) limits the processing of, or the obtaining of, any subsequent entitlements or approvals necessary for the development of the Subject Property as contemplated by this Agreement.

Section 2.3. Permitted Uses and Development Standards. The permitted uses and development standards shall be those as set forth in and permitted by the County General Plan adopted June 7, 2011, the Yuba County Airport Land Use Compatibility Plan adopted May 7, 2011, Entitlements, County Zoning, Applicable Laws and subdivision and land development standards as of the Effective Date.

Section 2.4. Application, Processing and Inspection Fees. Application fees, processing fees, and inspection fees that are revised during the term of this Agreement shall apply to the development pursuant to this Agreement, provided that such revised fees apply generally to similar private projects or works within County.

Section 2.5. Impact Fees. [Intentionally Omitted—See Exhibit C: Special Conditions and Requirements]

Section 2.6. Reserved Powers. Notwithstanding any other provision of this Agreement, and without limitation as to any other requirements or exceptions contained in this Agreement, the County retains the authority to take the following actions and apply the same to the Subject Property:

(a) The authority of the Board of Supervisors to adopt regulations to protect the County and its citizens from an immediate and significant adverse risk to health and safety. This shall include, but not be limited to, lack of sufficient sewer and/or water facilities, but not school facilities.

(b) Adopt new or amended building codes (as may be amended by the County), including, but not limited to, the Uniform Building Code, Uniform Fire Code, Uniform Mechanical Code, Uniform Plumbing Code, National Electrical Code, Uniform Housing Code, and Uniform Sign Code, that generally apply equally to all buildings, structures and real property in the County.

(c) Adopt land use regulations, ordinances, policies, programs, resolutions or fees generally applicable to similar development projects adopted or undertaken by County as and only to the extent necessary to comply with state or federal laws, or regulations, provided that in the event that such state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provision or provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

(d) Adopt county land use regulations, ordinances, policies, programs or resolutions adopted after the Effective Date, which are in conflict with the Applicable Laws, but the application of which to the development of the Subject Property has been consented to in writing by the Developer and/or the applicable Landowner by later separate document, which consent Developer and/or Landowner may withhold in their sole and exclusive discretion.

Section 2.7. Obligation and Rights of Mortgage Lenders. The holder of any mortgage, deed of trust or other security instrument with respect to the Subject Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but, in the event said holder takes title to the Subject Property through foreclosure of a mortgage or a deed of trust, or deed-in-lieu of such foreclosure, said holder shall be bound by all of the terms and conditions of this Agreement which pertain to the Subject Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Subject Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Subject Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Subject Property, or such portion thereof, which accrue prior and subsequent to the time such holder comes into possession. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Subject Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

Upon foreclosure or deed-in-lieu thereof, a lender has no obligation to pay any amounts related to the Subject Property, unless said lender or successor-in-interest elects to use the Entitlements to develop the Subject Property.

Section 2.8. Tolling and Extension During Legal Challenge or Moratoria.

(a) If this Agreement, any of the Entitlements or any subsequent entitlements, approvals or permits required to implement the Entitlements (such as any required fill permit) are subjected to legal challenge by a third party, other than Developer, and Developer cannot or elects not to proceed with development of the Subject Property during such litigation, the Term of this Agreement and timing for obligations imposed pursuant to this Agreement shall, upon written request of Developer to County, be extended and tolled during such litigation until the entry of final order or judgment upholding this Agreement, the Entitlements, subsequent entitlements, approvals and/or other permits required to implement the Entitlements, or the litigation is dismissed by stipulation of the parties.

(b) If this Agreement, any of the Entitlements or any subsequent entitlements, approvals or permits required to implement the Entitlements are subjected to moratoria, and Developer cannot or elects not to proceed with the development of the Subject Property during such moratoria, the Term of this Agreement and timing for obligations imposed pursuant to this Agreement shall, upon written request of Developer to County, be extended and tolled during such moratoria. Moratoria shall be defined as restrictions, moratorium or de facto moratoria on approval or recordation of final maps, issuance of building permits, final inspections or certificates of occupancy, or approval or issuance of other such entitlements or permits, at the time of the transfer which would limit the reasonable ability to construct in a similar fashion a development project previously approved by the County.

Section 2.9. Timing of Construction and Completion. Notwithstanding any provision of this Agreement to the contrary, there is no requirement that Developer initiate or complete development of the Subject Property or any particular phase of development of the

Subject Property within any particular period of time, and County shall not impose such a requirement on any subsequent approval. The parties acknowledge that Developer cannot at this time predict when, or the rate at which or the order in which, phases will be developed. Such decisions depend upon numerous factors that are not within Developer's control, such as market orientation and demand, interest rates, competition, and other similar factors. In light of the foregoing, the parties agree that Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time, for whatever reason, and that Developer shall determine the order in which portions of the Subject Property shall be developed. Without limiting of any of the foregoing, the parties specifically desire to avoid the consequences of the holding of the California Supreme Court in *Pardee Construction Co. v. County of Camarillo* (1984) 37 Cal.3d 465, which held that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement; consequently, the parties agree that Developer shall have the right to develop the Subject Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. Nothing in this Section 2.9 shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.

Section 2.10. Property Tax. Developer shall pay all installments of property tax applicable to the Subject Property prior to such installments becoming delinquent.

Section 2.11. Airport Compatibility. Prior to map recordation creating additional parcels for any phase or portion of the Project, a determination shall be made to ensure compatibility with the Yuba County Airport Land Use Compatibility Plan adopted May 7, 2011. For portions of the Project located within Zones 2 and 4 on the Compatibility Policy Map: Safety (Exhibit F), the Developer shall submit an application to the Airport Land Use Commission to determine conformance to the Compatibility Plan. For portions of the Project located outside of Zones 2 and 4, County staff will determine conformance to the Compatibility Plan.

ARTICLE 3

DEFAULT

Section 3.1. General Provisions. Subject to extensions of time by mutual consent in writing, any failure to perform any term or provision of this Agreement by County, by Developer or by Landowner not released from this Agreement to perform any term or provision of this Agreement, shall constitute a default in the event (a) the party alleging such default or breach gives the other party or Landowner not less than sixty (60) days notice in writing specifying the nature of the alleged default and the manner in which said default may be cured, and (b) the said other party does not cure the breach or default within said sixty (60) days (or, if the cure cannot be accomplished within 60 days, if said other party does not commence the cure within 60 days and diligently prosecute the cure thereafter.) During any such sixty (60) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the sixty (60) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at his/her option, institute legal proceedings pursuant to this Agreement or give notice of his/her intent to terminate this Agreement pursuant to California Government Code section 65868 and any regulations of the County implementing said Government Code section. Following notice of intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review in the manner set forth in Government Code sections 65865, 65867, and 65868 and County regulations implementing said sections by the County within thirty (30) calendar days.

Following consideration of the evidence presented in said review before the County and an additional 30-day period to cure, either party alleging the default by the other party or Landowner may institute legal proceedings or may give written notice of termination of this Agreement to the other party; provided, however, a Landowner may only give such notice with respect to such portion of the Subject Property in which Landowner owns an interest.

Section 3.2. Annual Review. The County shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with the terms of this Agreement. Such periodic review by the Director, unless referred to the Planning Commission or the County Board of Supervisors shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. Each said review shall be completed within sixty (60) days of the first meeting of the Planning Commission and the County Board of Supervisors, respectively, at which such review is undertaken, unless said period is extended by mutual consent of the County and Developer. Failure to complete said review within the prescribed period shall be deemed a finding of good faith substantial compliance. Notice of such annual review shall include the statement that any review, the result of which the local agency finds and determines on the basis of substantial evidence, that the Developer has not complied in good faith with the terms or conditions of the Development Agreement, may result in amendment or termination of this Agreement in accordance with Government Code section 65865.1. The County may charge the Developer a reasonable fee for such annual review to defray the cost to the County to process and conduct such annual review.

The County shall deposit in the mail or fax to Developer and/or Landowner a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least seven (7) days prior to such periodic review. Developer or Landowner shall be entitled to appeal a determination of the Director to the Commission and then to the Board of Supervisors. Any appeal must be filed within ten (10) days of the decision of the Director, or the Commission, as the case may be. Developer or Landowner shall be permitted an opportunity to be heard orally and/or in writing regarding its performance under this Agreement before the Commission, Board of Supervisors, and/or Director, as the case may be.

Section 3.3. Developer Default Limited to Property/Entity; Separate Obligations of Owners. Except as specified herein in Section 3.1, no default hereunder in performance of a covenant or obligation with respect to a particular portion of the Subject Property shall constitute a default applicable to any other portion of the Subject Property, and any remedy arising by

reason of such default shall be applicable solely to the portion of Subject Property where the default has occurred. Similarly, the obligations of the Developer and Landowners shall be severable and no default hereunder in performance of a covenant or obligation by any one of them shall constitute a default applicable to any other owner who is not affiliated with such defaulting owner, and any remedy arising by reason of such default shall be solely applicable to the defaulting owner and the portion of the Subject Property owned thereby.

Section 3.4. Default by County. In the event the County does not accept, review, approve or issue necessary development permits or entitlements for use in a timely fashion as defined by this Agreement, or as otherwise provided in this Agreement, or the County otherwise defaults under the terms of this Agreement, Developer and/or Landowner may give written notice thereof to the County and if not cured within sixty (60) days following receipt of such notice, Developer shall have all rights and remedies provided herein or under applicable law, including without limitation the right to pursue actions for mandamus, specific performance, or injunctive or declaratory relief to enforce this Agreement. Notwithstanding the foregoing sentence, the County, Developer and Landowner each waives any and all rights to seek monetary damages from any other party as a result of any breach or alleged breach of such other party's obligations hereunder, excluding (a) any claim for refunds of fees or excess fee payments imposed inconsistent with this Agreement, and (b) County claims regarding payment of fees, taxes, assessment and other charges, including Levee Fees. In the event the County is in default under the terms of this Agreement, any resulting delays in Developer's performance caused thereby shall not constitute grounds for termination or cancellation of this Agreement.

Section 3.5. Default by and Remedies of TRLIA. TRLIA's rights and obligations under this Agreement are specifically limited to those rights and obligations specifically attributed to TRLIA as set forth in Exhibit C to this Agreement. TRLIA is considered a third party beneficiary of Exhibit C and shall have a right to enforce all obligations of Developer as set forth in Exhibit C to this Agreement. In the event that TRLIA defaults under the terms of this Agreement, Developer and/or Landowner may give written notice thereof to TRLIA with a copy to the County, and if not cured within sixty (60) days following receipt of such notice, Developer's sole remedy shall be the right to pursue actions for mandamus, specific performance, or injunctive or declaratory relief against TRLIA to enforce this Agreement. Notwithstanding the foregoing sentence, TRLIA, Developer and Landowner each waives any and all rights to seek monetary damages from any other party as a result of any breach or alleged breach of such other party's obligations hereunder, excluding any claim for refunds of fees or excess fee payments imposed inconsistent with this Agreement. In the event TRLIA is in default under the terms of this Agreement, any resulting delays in Developer's performance that are directly caused thereby shall not constitute grounds for termination or cancellation of this Agreement.

Section 3.6. Cumulative Remedies of Parties/Waiver of Right to Damages. In addition to any other rights or remedies, County, Developer and any Landowner may institute legal or equitable proceedings to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein, to enjoin any threatened or attempted violation of the provisions of this Agreement. Notwithstanding the foregoing sentence, the County, Developer and Landowner each waives any and all rights to seek monetary damages from the other party as a

result of any breach or alleged breach of such other party's obligations hereunder, excluding any claim for refunds of fees or excess fee payments imposed inconsistent with this Agreement.

ARTICLE 4

TERMINATION

Section 4.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term as defined on the Reference Sheet or when the Subject Property has been fully developed and all of the Developer's obligations in connection therewith are satisfied. Upon termination of this Agreement, the County shall record a notice of such termination in a manner substantially similar to the form attached hereto as **Exhibit D**. This Agreement shall automatically terminate and be of no further force or effect as to Completed Lots.

Section 4.2. Effect of Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the County General Plan and the terms and conditions of any applicable zoning, or subdivision map or other land use entitlements approved with respect to the Subject Property, any other covenants or any other development requirements specified in this Agreement to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees, or taxes. Termination of this Agreement shall not affect Developers rights and duties under Exhibit C to this Agreement.

Section 4.3. Effect of Termination on County. Upon any termination of this Agreement, as provided for under the terms and conditions of this Agreement, as to the Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the Subject Property affected by such termination (provided vesting of entitlements, conditions or fees applicable to the Subject Property shall be governed by planning and zoning law) and the County shall no longer be limited, by this Agreement, to make any changes or modifications to such entitlements, conditions or fees applicable to such property. Except as may be set forth in section 1.10 of Exhibit C, termination of this Agreement shall not affect County or TRLIA rights and duties under Exhibit C to this Agreement.

ARTICLE 5

STANDARD TERMS AND CONDITIONS

Section 5.1. Venue. Venue for all legal proceedings shall be in the Superior Court for the County of Yuba.

Section 5.2. Waiver. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right

to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

Section 5.3. Completeness of Instrument. This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

Section 5.4. Supersedes Prior Agreements. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations or agreements, written or oral, between the parties hereto.

Section 5.5. Captions. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 5.6. Number and Gender. In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

Section 5.7. Mandatory and Permissive. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

Section 5.8. Term Includes Extensions. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

Section 5.9. Successors and Assigns. All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

Section 5.10. Modification. No, modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification is in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

Section 5.11. Counterparts. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

Section 5.12. Other Documents. The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

Section 5.13. Partial Invalidity. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the

remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 5.14. Controlling Law. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

Section 5.15. Time Is of the Essence. Time is of the essence of this Agreement and each covenant and term a condition herein.

Section 5.16. Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity (s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

Section 5.17. Document Preparation. This Agreement will not be construed against the party preparing it, but will be construed as if prepared by all parties.

Section 5.18. Advice of Legal Counsel. Each party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, and freely entered into this Agreement.

Section 5.19. Estoppel Certificate. Within thirty (30) days following any written request which either party may make from time to time, and upon payment of a fee to the County to reimburse the County for its reasonable expenses associated herewith, the other party to this Agreement shall execute and deliver to the requesting party a statement certifying that:

(a) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications; and

(b) there are not current uncured defaults under this Agreement or specifying the date, nature of any default and manner of cure.

This certificate may be executed by the Director.

Section 5.20. Attorneys Fees and Costs. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

Section 5.21. Consent/Subordination. Unless waived in writing by the County Counsel, Developer shall furnish proof satisfactory to the County, prior to approval of the

Agreement that all persons possessing a legal interest in the Subject Pproperty have consented to the recording of this Agreement in the County Recorder's Office against the Subject Property. Unless waived in writing by the County Counsel, the County shall require subordination by all lenders of record as a condition precedent to the County approval of the Agreement. The County shall have no duty to subordinate its interest in this Agreement.

Section 5.22. Calculation of Time Periods. All calculation of time periods shall be based upon calendar days unless a different intent is clearly stated.

IN WITNESS WHEREOF, this Agreement was executed by the parties thereto on the dates set forth in the Preamble.

COUNTY:
COUNTY OF YUBA,
a political subdivision of the State of California

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: County Clerk

APPROVED AS TO FORM:

By: _____

Name: _____

Title: County Counsel

DEVELOPER:

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: Counsel

TRLIA:
Three Rivers Levee Improvement Authority
a joint powers authority

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: Counsel

LIST OF EXHIBITS

- | | |
|------------------|---------------------------------------|
| Exhibit A | Legal Description of Subject Property |
| Exhibit B | Assumption Agreement |
| Exhibit C | Special Conditions and Requirements |
| Exhibit D | Sample Notice of Termination |
| Exhibit E | Credit and Reimbursement Policy |

EXHIBIT A
SUBJECT PROPERTY

LEGAL DESCRIPTION Real property in the unincorporated area of the County of Yuba, State of California, described as follows: LOTS 1 THROUGH 10 INCLUSIVE AND LOTS 16 THROUGH 146, INCLUSIVE, AS SHOWN ON THE MAP ENTITLED "THOROUGHbred ACRES PHASE I", TRACT MAP NO. 2003-0037, FILED IN THE OFFICE OF THE COUNTY RECORDER OF YUBA COUNTY, CALIFORNIA ON SEPTEMBER 13, 2006 IN BOOK 85 OF MAPS, AT PAGES 42 THROUGH 45.

APN: 013-771-001-000 (Lot 100), 013-771-002-000 (lot 99), 013-771-003-000 (Lot 98), 013-771-004-000 (Lot 97), 013-771-005-000 (Lot 96), 013-771-006-000 (Lot 95), 013-771-007-000 (Lot 94), 013-771-008000 (Lot 93), 013-771-009-000 (Lot 92), 013-772-001-000 (Lot 101), 013-772-002-000 (Lot 102), 013772-003-000 (Lot 103), 013-772-004-000 (Lot 104), 013-772-005-000 (Lot 105), 013-772-006-000 (Lot 106), 013-772-007-000 (Lot 107), 013-772-008-000 (Lot 108), 013-772-009-000 (Lot 109), 013-772-010000 (Lot 110), 013-772-011-000 (Lot 111), 013-772-012-000 (Lot 112), 013-772-013-000 (Lot 113), 013772-014-000 (Lot 114), 013-772-015-000 (Lot 115), 013-772-016-000 (Lot 116), 013-772-017-000 (Lot 117), 013-772-018-000 (Lot 118), 013-773-001-000 (Lot 119), 013-773-002-000 (Lot 120), 013-773-003000 (Lot 121), 013-773-004-000 (Lot 122), 013-773-005-000 (Lot 123), 013-773-006-000 (Lot 124), 013773-007-000 (Lot 125), 013-773-008-000 (Lot 126), 013-773-009-000 (Lot 127), 013-773-010-000 (Lot 128), 013-773-011-000 (Lot 129), 013-773-012-000 (Lot 130), 013-773-013-000 (Lot 131), 013-773-014000 (Lot 132), 013-773-015-000 (Lot 133), 013-773-016-000 (Lot 134), 013-773-017-000 (Lot 135), 013773-018-000 (Lot 136), 013-774-013-000 (Lot 146), 013-774-014-000 (Lot 145), 013-774-015-000 (Lot 144), 013-774-016-000 (Lot 143), 013-774-017-000 (Lot 142), 013-774-018-000 (Lot 141), 013-774-019000 (Lot 140), 013-774-020-000 (Lot 139), 013-774-021-000 (Lot 138), 013-774-022-000 (Lot 137), 013781-001-000 (Lot 91), 013-781-002-000 (Lot 90), 013-781-003-000 (Lot 89), 013-781-004-000 (Lot 88), 013-781-005-000 (Lot 87), 013-781-006-000 (Lot 86), 013-781-007-000 (Lot 85), 013-781-008-000 (Lot 84), 013-781-009-000 (Lot 83), 013-781-010-000 (Lot 82), 013-781-011-000 (Lot 79), 013-781-012-000 (Lot 78), 013-781-013-000 (Lot 77), 013-781-014-000 (Lot 76), 013-781-015-000 (Lot 75), 013-781-016000 (Lot 74), 013-781-017-000 (Lot 73), 013-781-018-000 (Lot 72), 013-781-019-000 (Lot 71), 013-781020-000 (Lot 70), 013-781-021-000 (Lot 69), 013-781-022-000 (Lot 68), 013-781-023-000 (Lot 67), 013782-001-000 (Lot 81), 013-782-002-000 (Lot 80), 013-783-001-000 (Lot 59), 013-783-002-000 (Lot 60), 013-783-003-000 (Lot 61), 013-783-004-000 (Lot 62), 013-783-005-000 (Lot 63), 013-783-006-000 (Lot 64), 013-783-007-000 (Lot 65), 013-783-008-000 (Lot 66), 013-783-009-000 (Lot 51), 013-783-010-000 (Lot 52), 013-783-011-000 (Lot 53), 013-783-012-000 (Lot 54), 013-783-013-000 (Lot 55), 013-783-014000 (Lot 56), 013-783-015-000 (Lot 57), 013-783-016-000 (Lot 58), 013-784-001-000 (Lot 50), 013-784002-000 (Lot 49), 013-784-003-000 (Lot 48), 013-784-004-000 (Lot 47), 013-791-001-000 (Lot 1), 013791-002-000 (Lot 2), 013-791-003-000 (Lot 3), 013-791-004-000 (Lot 4), 013-791-005-000 (Lot 5), 013791-006-000 (Lot 6), 013-791-007-000 (Lot 7), 013-791-008-000 (Lot 8), 013-791-009-000 (Lot 9), 013792-001-000 (Lot 10), 013-792-007-000 (Lot 16), 013-792-008-000 (Lot 17), 013-792-009-000 (Lot 18), 013-792-010-000 (Lot 19), 013-792-011-000 (Lot 20), 013-792-012-000 (Lot 21), 013-792-013-000 (Lot 22), 013-792-014-000 (Lot 23), 013-792-015-000 (Lot 24), 013-792-016-000 (Lot 25), 013-792-017-000 (Lot 26), 013-793-001-000 (Lot 27), 013-793-002-000 (Lot 28), 013-793-003-000 (Lot 29), 013-793-004000 (Lot 30), 013-793-005-000 (Lot 31), 013-793-006-000 (Lot 32), 013-793-007-000 (Lot 33), 013-793008-000 (Lot 34), 013-793-009-000 (Lot 35), 013-793-010-000 (Lot 36), 013-793-011-000 (Lot 37), 013793-012-000 (Lot 38), 013-793-013-000 (Lot 39), 013-793-014-000 (Lot 40), 013-793-015-000 (Lot 41), 013-793-016-000 (Lot 42), 013-793-017-000 (Lot 43), 013-794-001-000 (Lot 44), 013-794-002-000 (Lot 45) and 013-794-003-000 (Lot 46)

Development Agreement Between the County of Yuba
and Thoroughbred Acres

EXHIBIT B

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter "this Agreement") is entered into this ____ day of _____, 20____, by and between _____ (hereinafter called "Owner") and _____ (hereinafter "Assignee").

RECITALS

A. On _____, 20____, the County of Yuba and Owner entered into that certain agreement entitled "Development Agreement," approved by Ordinance _____ (hereinafter "Agreement"), relative to the development known as _____ (hereinafter "Subject Property").

B. Owner entered into a purchase and sale agreement whereby a portion of the Subject Property will be sold to Assignee, which portion of the Subject Property is identified and described in **Exhibit A**, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel(s)").

C. Owner desires to assign all of its interests, rights and obligations under the Agreement with respect to the Assigned Parcel(s).

D. Assignee desires to assume all Owner's rights and obligations under the Agreement with respect to the Assigned Parcel(s).

NOW, THEREFORE, Owner and Assignee hereby agree as follows:

1. Owner hereby assigns effective as of Owner's conveyance of the Assigned Parcel(s) to Assignee, all of the rights, interest, burdens and obligations of Owner under the Agreement with respect to the Assigned Parcel (s). Owner retains all the rights, interest, burdens and obligations under the Agreement with respect to all other property within the Subject Property owned thereby.

2. Assignee hereby assumes all of the burdens and obligations of Owner under the Agreement, and agrees to observe and fully perform all of the duties and obligations of Owner under the Agreement, and to be subject to all the terms and conditions thereof, with respect to the Assigned Parcel(s), it being the express intention of both Owner and Assignee that, upon the execution of this Agreement and conveyance of the Assigned Parcel(s) to Assignee, Assignee shall be come substituted for Owner as the "Developer" under the Agreement with respect to the Assigned Parcel(s).

3. All of the covenants, terms, and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ASSIGNOR / OWNER

By: _____

Name: _____

Title: _____

ASSIGNEE

By: _____

Name: _____

Title: _____

EXHIBIT C

SPECIAL CONDITIONS AND REQUIREMENTS

This Exhibit C is attached to and made a part of that certain Development Agreement dated as of _____, 20__ (the "Development Agreement"), by and between the County, TRLIA and the Developer named therein. For purposes of this Exhibit C, "Developer" shall mean Ethan Conrad Properties, Inc. The terms and conditions of this exhibit shall survive should the Development Agreement terminate prior to completion of reimbursements required herein.

Section 1.1 Background. Developer, or Developer's predecessor in interest as owners of the subject Property, was a party to (a) that certain Agreement For Advanced Funding and Reimbursement of Costs for Levee Improvements dated April 19, 2005 ("2005 Advanced Funding Agreement") and (b) the Second Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements, dated as of August 29, 2006, ("Second Funding Agreement"), (the 2005 Advance Funding Agreement and the Second Funding Agreement being sometimes collectively referred to herein as the "Funding Agreements"), which relates to the construction of certain flood protection improvements benefitting the Plumas Lake Specific Plan and the North Arboga Study Area, which area is generally described as the South Yuba Basin. In order to pay for costs associated with levee improvements in the South Yuba Basin, on November 18, 2008, the Board of Supervisors of the County of Yuba adopted Ordinance No. 1465, enacting the Three Rivers Levee Impact Fee ("Levee Fee"). The Levee Fee was based on the then estimated cost to complete the levee improvements. As a party to the Funding Agreements, Developer advanced funded certain amounts for the Levee Fee to be used for the levee improvements described above. By making advanced payments pursuant to the Second Funding Agreement, Developer became authorized under the terms of the Second Funding Agreement to record final maps and to have a certain number of building permits issued upon request for the Project.

At the time of the execution of the Second Funding Agreement, the anticipated levee improvements included strengthening in place improvements to the existing left (east) Feather River levee from the Bear River Setback levee to the Yuba River, however, a Feather River setback levee from Star Bend to Shanghai Bend (the "Feather River Setback Levee") was contemplated. In early 2008, the decision was made to change certain portions of the levee improvement project to include the Feather River Setback Levee. By doing this, the state of California committed to providing more than \$135 million in funding, pursuant to Prop 1E and 84. Due to the receipt of the State grant funds, the amount of local funds needed to complete the levee improvements was reduced. This reduction caused the Levee Fee to be reduced. The Levee Fee was reduced with the adoption of Ordinance No. 1465 by the Board of Supervisors of the County of Yuba on November 18, 2008.

Due to the reduction of the Levee Fee, Developer claims a right of reimbursement and/or credit. This right is based on prior advanced funding made in excess of the amount required under the Levee Fee, as adjusted by Ordinance No. 1465 (herein "Prior Advanced Funding").

The County of Yuba has adopted certain policies to address the claimed rights of reimbursement or credit for Prior Advanced Funding. Those policies are set forth in the Three Rivers Levee

Credit and Reimbursement Policies and Procedures (the "Credit and Reimbursement Policy"). The Credit and Reimbursement Policy is hereby incorporated into and made a part of the Agreement, and is attached as Exhibit E. To the extent there is any inconsistency between this Agreement and the Credit and Reimbursement Policy as to the timing, manner or amount of credit or reimbursement due, the Credit and Reimbursement Policy shall control.

Section 1.2 Use of Credits. The Parties to this Agreement agree that the Credit and Reimbursement Policy sets forth the amount of credit and reimbursement owed the Developer in connection with Prior Advanced Funding. The Credit and Reimbursement Policy shall control as to the amount of credit or reimbursement due and how any credit or reimbursement will be applied.

Section 1.2.1. For those units included in the Project for which Developer has applied for a building permit after April 19, 2005 and on or before October 21, 2008, the Levee Fee shall be levied at the current rate as set forth in Ordinance No. 1465 and the Developer shall receive full credit for such fees from the amount advance funded, as more specifically set forth in the Credit and Reimbursement Policy.

Section 1.2.2. For those units for which the Developer has applied for a building permit after October 21, 2008, Developer shall receive credit for the Levee Fee imposed on the Project on a proportionate basis for the remainder of the Project. For those building permits applied for after October 21, 2008, Developer will pay a portion of the Levee Fee at the rate set forth in Ordinance No. 1465 and at the time and in the manner required herein, based on the relative proportionality between the remainder of the Project not able to be funded from credit and the total remaining acreage left in the Project after all previously absorbed units, all consistent with the provisions of the Credit and Reimbursement Policy. The County will calculate the amount of the Levee Fee due after the credit at the time the individual building permits are issued for each unit to be constructed on the Project pursuant to a building permit applied for after October 21, 2008. The amount of the credit and how it will be applied is more specifically set forth in the Credit and Reimbursement Policy.

Section 1.2.3. To the extent that the Developer is developing multiple projects which were subject to the Second Funding Agreement and one project has advanced funded Levee Fees in excess of its total obligation and is due reimbursement, that reimbursement may be applied and added to the credit of any of Developer's other projects that will have a remaining obligation to pay Levee Fees. The manner in which the credit from a project that has paid fees in excess of its total obligation may be applied to the credit of Developer's other projects is set forth in Appendix A of the Credit and Reimbursement Policy.

Section 1.3. Reimbursement of Levee Fees. If the amount owed to Developer for Prior Advanced Funding in excess of obligations owed under the current Levee Fee is not satisfied by application of credit to the Project or transfer of the credit to another project as set forth in Section 1.2.3., the remaining amount due will be reimbursed to Developer, solely from Levee Fees collected from others, and then only as follows:

Section 1.3.1. Before Levee Certification. Prior to certification by the Federal Emergency Management Agency (FEMA) of those levees to be constructed or improved pursuant to the Levee Improvement Program defined in Section 3 of the Second Funding Agreement, including the Feather River Setback Levee (the "Levee" or "Levees"), no reimbursement of Prior Advanced Funding will be made to the County, YCWA or Developer from any Levee Fees collected. Levee Fees collected through and until such certification date will be used to directly fund improvements to the Levees. However, it is understood by all parties that, to the extent Levee Fees are collected prior to such certification date, this funding may go to offset the additional required contribution of funds to the TRLIA Levee Improvement Program by the County and YWCA consistent with the intent of the July 22, 2008 Agreement Concerning Levee Impact Fees Among County of Yuba, Yuba County Water Agency, and Yuba Levee Financing Authority.

Section 1.3.2. After Certification of the Levees and before March 1, 2015. During the time period between when the Levees are certified by FEMA and before March 1, 2015 twice per year distribution of Levee Fee revenue not needed to pay any Levee improvement costs incurred prior to such certification but not yet paid will occur. The revenues collected before March 1, 2015 will be split between those parties determined by the County to be due reimbursements (including the County and YCWA on a proportionate basis, based upon the aggregate principal amount of their outstanding reimbursement. Table 6 of the Credit and Reimbursement Policy sets forth an example of the proportionality of outstanding reimbursements due.

Section 1.3.3. From and After March 1, 2015 and until all Reimbursements are Complete. Commencing on March 1, 2015 twice per year distributions of Levee Fee revenue will occur as follows: (a) initially, 100% of the revenues collected will go to fund the scheduled debt service due on the borrowing to fund levee improvements secured by lease and installment payment obligations of the County and YCWA and (b) any remaining Levee Fee revenue will be split between those parties determined by the County to be due reimbursements (including the County and YCWA) on a proportionate basis, based upon the aggregate principal amount of their outstanding reimbursement.

Section 1.3.4. Interest. Any reimbursement owed to Developer, as well as to County or YWCA, will accrue interest at a rate of 5.534% per annum. Interest will be calculated on a monthly compounding rate.

Section 1.3.5. Acknowledgment. Except as set forth in this Exhibit C and the Credit and Reimbursement Policy. Developer acknowledges and agrees that no other reimbursement or Credit is due for funds advanced under prior agreements concerning construction of the Levees, including the 2005 Funding Agreement and/or the Second Funding Agreement.

Section 1.3.6. Inspection of Records. Developer shall have the right to review and inspect records of the County with respect to Levee Fees and other revenue sources available to make payments or reimbursements to Developer under this Section 1.3. Developer must give the County reasonable notice of any such request.

Section 1.4. Extension of Tentative Map Life. The expiration date of any existing tentative map within the Subject Property, subject to the Credit and Reimbursement Policy, is extended for twenty (20) years from the original approval date, inclusive of any and all other extensions which may be provided by law.

Section 1.5. County Imposed Development Fees. The County shall not impose any New Fees relating to the Project for ten (10) years from August 11, 2009. Notwithstanding the forgoing, the County may impose New Fees as follows: (a) any Traffic Impact (Road Improvements) component of the County-Wide Capital Facility Fee; (b) any traffic impact fee associated with the South Yuba Transportation Improvement Authority; (c) and any fees levied for the purpose of offsetting the cost of regional park improvements, provided, however, that the cumulative new fees levied for regional park improvements shall not exceed Two Thousand Dollars (\$2,000) per dwelling unit contained in the Project. To the extent a New Fee is levied against the Project pursuant to one of the exclusions listed herein, that New Fee shall be imposed and levied in a manner consistent with all applicable State and local laws and regulations. Development impact fees imposed by entities other than the County or by the County on behalf of other entities are not subject to this provision.

Section 1.6. Impact Fee Lock. The County shall not increase any Current Fees relating to the Project for 10 years from August 11, 2009. Notwithstanding the forgoing, the County may increase Current Fees as follows: (a) any currently incorporated escalator adopted with and incorporated into the Current Fee; (b) any increase to the current Traffic Impact (Road Improvements) component of the County-Wide Capital Facility Fee; (c) any change or increase to the current PLSP/NASA Road Improvement Fee; (d) and any change or increase to the South Yuba Transportation Improvement Authority Traffic Impact Fee. To the extent a Current Fee levied against the Project is changed or increased pursuant to one of the exclusions listed herein, that change or increase shall be imposed and levied in a manner consistent with all applicable State and local laws and regulations. Development impact fees imposed by entities other than the County or by the County on behalf of other entities are not subject to this provision.

Section 1.7. Developer to Receive Benefit of Reduction in Fees. Notwithstanding any of the other terms of this Agreement, any reduction to Current Fees or New Fees that is applied to development within the County generally shall be applied to the Project.

Section 1.8. Deferral of Collection of Impact Fees. The balance of the Levee Fee due after application of credit as described in 1.2 above with respect to units in the Project, shall be calculated for each unit at the time a building permit is issued for that unit, but the collection by the County of the amount due shall be deferred until the final inspection of the unit for which the building permit is issued (in a manner consistent with Yuba County Ordinance No. 1461). The duration of this fee deferral will be for ten (10) years from August 11, 2009. The collection of all other development impact fees and County-Wide Capital Facility Fees will be deferred in a manner consistent with the Yuba County Ordinance No. 1461, except that, the duration of the deferral will be ten (10) years from August 11, 2009. Following any such deferral period, all fees will be due and payable as and when levied in accordance with County policy.

Development impact fees imposed by entities other than the County or by the County on behalf of other entities are not subject to this provision.

Section 1.9. Builder Bonds. In the event that the Developer is the registered owner of any Builder Bonds (as such term is defined in the Second Funding Agreement) issued by TRLIA for CFD 2006-1 or CFD 2006-2 (as such community facilities districts are described in Section 7.A.(1) of the Second Funding Agreement), the County and TRLIA agree to take all reasonable actions on its part necessary or appropriate, at the written request and cost of the Developer, in the redemption or refunding of such bonds, so long as any such request is consistent with the procedures and requirements described in Appendix B to the Three Rivers Levee Impact Credit and Reimbursement Policy. The County and TRLIA acknowledge and agree that all special tax revenues collected by TRLIA from special tax levies for CFD 2006-1 and CFD 2006-2 shall be disposed of by TRLIA as provided in Section 4.01 of the respective Fiscal Agent Agreement for the Builder Bonds for the respective community facilities district, in the rate and method of apportionment for the respective community facilities district and, to the extent not inconsistent with the foregoing, as described in Appendix C to the Credit and Reimbursement Policy.

Section 1.10. Failure of Consideration. The terms and conditions set forth in Sections 1.4. through 1.8. of this Exhibit C are granted by the County in consideration of the Developer's agreement to the credit and reimbursement terms in Section 1.2 and 1.3 et seq. If any term of the credit and reimbursement policies as set forth in Sections 1.2 and 1.3 et seq. is deemed invalid or a legal challenge to any such terms is made by Developer, then there shall be deemed a failure of consideration and the provisions of Section 1.4 through 1.8 shall be void and unenforceable by Developer.

Section 1.11.1 Flood Insurance. Developer shall provide, at no cost to all new residents (including the initial sale by the Developer and all subsequent resales) of homes constructed by such Developer within the Affected Area (as defined in the Second Funding Agreement) since 2003 (i.e., homes for which building permits were issued from and after January 1, 2003), flood insurance and renewals of flood insurance only through the Completion of the Levee or until December 31, 2010 (whichever occurs first). As used in this Section, "Completion" shall mean the earlier of: (i) the date on which a notice of completion is recorded by the general contractors performing TRLIA's Phase 4 work, or (ii) the date on which a determination of substantial completion of TRLIA's Phase 4 work is made by the Executive Officer of the Central Valley Flood Protection Board. The County and TRLIA will reasonably cooperate in assisting Developer to fulfill this requirement, including but not limited to providing for notice of resales of homes within the Project to be provided to Developer. The renewals and subsequent issuance of flood insurance provided by the Developer shall satisfy the minimum requirements of the National Flood Insurance Program for a standard dwelling policy.

Section 1.11.2 Notice Requirements to New and Existing Homeowners. Developer shall take the following steps to increase the awareness of flood risk by new and existing purchasers of homes within the Project:

(a) At the time of execution of a sales contract for a new home within the Project, Developer shall distribute an informational packet prepared by TRLIA on the status of the Levee Improvement Program. Purchasers will then be requested to sign an acknowledgment

sheet that they have received the packet and are aware of the flood risks associated with the Project.

(b) At the time of closing on a new home within the Project, Participant shall require execution by the new purchaser of the home of a Notice of Acknowledgement stating that the purchaser understands that the Developer (home builder) is purchasing flood insurance for the purchaser of the home (including the terms of that insurance and the period for which that insurance will be purchased) and that the purchaser of the home has received an information packet on the Levee Improvement Program and the risk of purchasing a home within the Project.

(c) Four times a year until certification of all levees required under the Levee Improvement Program, TRLIA shall prepare and distribute through the mail to new and existing purchasers of new homes within the Project an information packet on the Levee Improvement Program and any information provided by the County or TRLIA to the Developer on steps that such purchasers may take to reduce the risk of flooding to homes within the Project, such as being aware of the County's pre-hazard mitigation program, time-inundation maps, and hazard evacuation routes. Developer shall reasonably assist TRLIA to provide such information packets.

Section 1.11.3 Evacuation and Prehazard Mitigation Program. County commits to continue to use reasonable diligence to inform residents within the Project, including portions of Reclamation District 784, of the risk of flooding and to further refine, improve, and make available the County's Evacuation Plan and Prehazard Mitigation Plan.

Section 1.11.4 Accounting, Auditing and Reporting.

(a) TRLIA and County shall use best efforts to properly account for all sums paid to and grants received by TRLIA and County for the Levee Improvement Program.

(b) Developer has the right, upon not less than three (3) business days notice, at all reasonable times, to inspect the books and records of TRLIA and County pertaining to the Levee Improvement Program, as pertinent to the purposes of this Agreement.

(c) Upon request each year by Developer, TRLIA shall deliver to Developer the audited financial statement prepared by a qualified independent auditor pertaining to the Levee Improvement Program for each fiscal year, including all revenues and expenditures of TRLIA relating thereto for the prior year's period. The audited financial statement shall be delivered to Developer within 30 days following submission of such statement to the TRLIA Board.

Section 1.11.5 Maintenance of Levees. TRLIA shall be responsible to assure levee maintenance until certification, as the improvements are completed, in accordance with the Levee Improvement Program and consistent with relevant State and Federal standards.

Section 1.11.6 Preparation of Informational Packets. TRLIA shall prepare and update informational packets on the status of the Levee Improvement Program which shall be distributed to new home purchasers by the Developer. Purchasers will then be requested to sign

an acknowledgement sheet that they have received the packet and are aware of the flood risks associated with the Project.

Section 1.12. Status of Second Funding Agreement. The County, TRLIA and the Developer hereby acknowledge and agree that following State Approval all rights, duties, or obligations set forth in, or required by, the Second Funding Agreement as applied to each of them are hereby terminated and neither of the Funding Agreements is of any force or effect as to the County, TRLIA and Developer. "State Approval" shall mean receipt by TRLIA of a letter from the Central Valley Flood Protection Board which confirms that TRLIA has satisfied all of its obligations under the Second Implementation Agreement (referenced in Recital N to the Second Funding Agreement). The County, TRLIA, and the Developer further acknowledge and agree that (i) this Development Agreement supersedes both the 2005 Advanced Funding Agreement (referenced in Recital J to the Second Funding Agreement) as well as the Second Funding Agreement, (ii) all reimbursable amounts that may have been due to the Developer under the 2005 Advanced Funding Agreement have been deemed paid, and (iii) all funding advanced by the Developer to TRLIA under the Second Funding Agreement shall be applied pursuant to this Development Agreement. All obligations, rights and duties set forth in the Second Funding Agreement that apply to the County, TRLIA and Developer are hereby superseded by this Development Agreement. Notwithstanding anything in this Section 1.12 to the contrary, if a third party that was not a party to either Funding Agreements (meaning any party other than a party to this Agreement or a successor or related entity) shall make a claim under or to enforce the Second Funding Agreement against any party hereto, then solely for purposes of defending against, responding to, and/or making cross or counter claims in connection with the third party claim, the Second Funding Agreement shall not be deemed terminated, but only to the extent necessary to defend against, respond to, and/or make such cross or counter claims in connection with the third party claim.

EXHIBIT D

NOTICE OF TERMINATION

THIS NOTICE OF TERMINATION (hereinafter "this Notice") is given this ____ day of _____, 20__, by the County of Yuba (hereinafter "County") for the benefit of _____, (hereinafter "Owner").

1. On _____, 20__, the County of Yuba and _____ entered into that certain agreement entitled "Development Agreement," approved by Ordinance _____ (hereinafter "Agreement"), relative to the development known as _____ (hereinafter "Subject Property").

2. Owner has fully performed all its duties with respect to that portion of the Subject Property, which portion of the Subject Property is identified and described in **Exhibit A**, attached hereto and incorporated herein by this reference (hereinafter the "Released Property").

3. Pursuant to Section 4.1 of the Development Agreement, the Development Agreement is no longer in effect with respect to the Released Property.

COUNTY OF YUBA

By: _____

Name: _____

Title: _____

[NOTE: SIGNATURE MUST BE NOTARIZED]

NOTARY

State of California

County of _____

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

Notary Signature

WITNESS MY HAND AND OFFICIAL SEAL.

Revised Final Study

The Economics of Land Use



Three Rivers Levee Impact Fee Advanced Funding Credit and Reimbursement Policies and Procedures

Prepared for:

Yuba County

Prepared by:

Economic & Planning Systems, Inc.

March 11, 2009

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Appendix A: Credit and Reimbursement Detailed Calculations

Appendix B: Terms Associated with the Issuance of Private Placement and Conventional Bonds for the TRLIA CFDs 2006-1 and 2006-2

Appendix C: Special Consideration for Projects in TRLIA CFDs 2006-1 and 2006-2

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1. OVERVIEW

Purpose of Study

Economic & Planning Systems, Inc., (EPS) has prepared this Three Rivers Levee Impact Fee Advanced Funding Credit and Reimbursement Policies and Procedures Study (Study) at the request of Yuba County (County). The purposes of this document are as follows:

- Account for and establish the amounts of prior advance-funding of the Three Rivers Levee Impact Fee (Fee or Levee Impact Fee) by the landowners participating in prior and current advance-funding agreements.
- Establish the corresponding amounts of acreage credit toward the Fee by those landowners as a result of their prior advance-funding.
- Establish the corresponding amounts of reimbursements due to certain landowners as a result of advance-funding amounts in excess of the Fee due on their project.
- Establish the policies and demonstrate the methodology by which acreage credit toward the Fee will be used by those landowners with homes left to construct in their projects.
- Establish the policies and procedures and demonstrate the methodology by which reimbursements for funding in excess of the Fee due on a project is paid.
- Document the negotiated terms to be incorporated into agreements between the County, Landowners, and Three Rivers Levee Improvement Authority to effectuate the credit and reimbursements.

This study is divided into four chapters including this Overview as **Chapter 1**. **Chapter 2** provides the relevant data regarding prior advance-funding and project acreage. It also provides the credit and reimbursement amount calculations based on the revised Fee. **Chapter 3** outlines the credit policies and how the credit for prior advance-funding is to be used by landowners as they build out the remainder of their projects. **Chapter 4** provides the reimbursement policies and describes how and when the reimbursements for funding in excess of the Fee obligation will be paid.

Background

Levee Impact Fee

On May 16, 2006, the County Board of Supervisors (BOS) adopted Ordinance No. 1372, the Levee Impact Fee, and the associated Nexus Study. This ordinance established the obligation of new development to fund levee improvements in the area affected by flooding along the Yuba, Feather, and Bear Rivers and the Western Pacific Interceptor Canal. On November 18, 2008, the BOS adopted Ordinance No. 1465 which revised the adopted Nexus Study and reset the rates of the fees.

The revised Levee Impact Fee Ordinance No. 1465 and associated Nexus Study provided revisions as a result of the following factors:

- The scope and costs of projects funded by the Fee:
 - Specifically, TRLIA is now constructing a set-back levee on the Feather River. The prior Nexus Study reflected a strengthen-in-place project on the Feather River. More refined cost estimates are also available as a result of the progress made on the various phases of the levee improvement project.
- The amount of non-local funding for the projects:
 - TRLIA has received funds from the State through Propositions 1E and 84, which were approved by California voters in November 2006. This additional source of funding is reflected in the revised Nexus Study.
- The cost and structure of local financing for the projects:
 - The County and Yuba County Water Agency (YCWA) are providing up-front funding for construction of the improvements before receiving impact fees from future development. The County and YCWA are borrowing these funds. The cost of this borrowing is reflected in the revised Nexus Study.
- The amount and relative proportionality of planned development benefiting from the improvements.
- The administrative procedures for fee calculation and collection.

The revised Levee Impact Fee Ordinance became effective January 17, 2009. This Study reflects the revised Levee Impact Fee.

Prior Advance Funding of the Three Rivers Levee Impact Fee

Landowners and residential home builders in the area subject to the Fee have advance-funded the obligations of the Fee through the following funding mechanisms:

- The November 4, 2003, Funding Agreement for Plumas Lake Specific Plan Area Flood Control Levee Improvements Study Advance Agreement (2003 Agreement).
- Three Rivers Levee Improvement Authority (TRLIA) Community Facilities District (CFD) 2004-1.
- The April 19, 2005, Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements (First Funding Agreement).
- The August 29, 2006, Second Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements (Second Funding Agreement).
- TRLIA CFDs 2006-1 and 2006-2.

- The separate Agreement between the County and Axel Karlshoej signed by the County on March 27, 2008.

The following discussion provides a brief outline of the history of the key advanced-funding events that have taken place since the start of landowner advanced funding of the levee improvement program.

First Funding Agreement

TRLIA entered into the First Funding Agreement with the County, Reclamation District 784 (RD 784), and 21 different landowners each with holdings in the Plumas Lake Specific Plan. That agreement outlined a process by which the landowners would collectively continue to advance fund levee improvement costs and receive credit for that advanced funding, and correspondingly TRLIA and the County would proceed expeditiously with constructing the levee improvements, obtain all of the necessary permits, and satisfy conditions of those permits. The First Funding Agreement resulted in the landowners providing approximately \$36.9 million in funding. In accordance with Section 8(a) of the First Funding Agreement, a study was to be produced by TRLIA that established the basis for funding obligation of each of the landowners party to the agreement. The study was to take into consideration the following items:

- The costs and expenses of the Program that had been incurred to date.
- The best estimates available for the remaining cost estimates for completion of the levee improvement program.
- The properties benefiting from levee improvements and available to contribute funding.
- The amount of money necessary to provide reimbursement to those landowners contributing beyond their allocated fair share of Program costs, based upon the study.

In addition, the study was to account for all funding advanced from before the date it was produced. On July 24, 2006, EPS produced the "Revised July 2006 Report of Three Rivers Levee Fair Share Funding Study" (Fair Share Funding Report). This Study will take data from the prior Fair Share Funding Report that reflects the funding advanced by landowners through the following mechanisms:

- The 2003 Agreement.
- TRLIA CFD 2004-1.
- The First Funding Agreement.

Second Funding Agreement

The Second Funding Agreement was entered into by TRLIA, the County, RD 784 and 13 different landowners to generate the remaining funding required to complete the levee improvement program by TRLIA. This agreement recognized the prior First Funding Agreement and the funding that it generated, including the funding mechanisms listed above. The Second Funding Agreement also recognized the reimbursements because of certain participant landowners by that agreement. The Second Funding Agreement laid out a plan by which additional funding would be advanced by the participating landowners. By the agreement, the funding would come

either from a schedule of cash calls or pay-as-you-go special tax revenue collections from the two Mello-Roos CFDs proposed to be formed by the agreement, TRLIA CFDs 2006-1 and 2. Furthermore, the agreement identified a process by which the landowners would be able to determine how much of their funding would be in excess of their Fee obligation once all of the levee improvement costs had been incurred and the project was completed. The Second Funding Agreement and associated CFDs were to generate \$135 million; however, it only provided and additional \$20.3 million from the landowners.

As a result of several critical events affecting the progress of funding for TRLIA's project, including the passage of Propositions 1E and 84 in November 2006 and TRLIA's award of funding by DWR, the TRLIA Board's decision to pursue a setback levee on the Feather River as the preferred public safety improvement and the economic downturn in the real estate market, the specific funding terms in the Second Funding Agreement were not met. The landowners ceased funding any additional revenue into the program. The County and landowners worked to try to amend the funding agreement; however, an amendment to the funding agreement was not reached. The necessity for additional funding to complete the project led to a financing partnership between the County and YCWA.

County and YCWA Joint Financing

To secure the funding awarded by Propositions 1E and 84 for the Feather River Setback Levee project, TRLIA was required to demonstrate to DWR that it could provide the local share of the costs in a timely fashion. TRLIA, in its original draft of its financial plan submitted to DWR, had been relying on the local share of costs to be provided from an amended funding agreement with the landowners. To backfill the void left from a lack of an amended funding agreement, the County and YCWA agreed on March 27 and 28, 2008, respectively to proceed with a joint borrowing to yield \$46.6 million of construction proceeds. TRLIA ultimately secured the funding from the State based on this planned borrowing.

On July 22, 2008, the County and YCWA formed a Joint Powers Authority (JPA) called the Yuba Levee Financing Authority (YLFA). The purpose of the YLFA was to provide a vehicle for the issuance of \$78.37 million of revenue bonds to provide the \$46.6 million of funding for the project. On August 5, 2008, the respective Boards of the County, YCWA, and YLFA all approved the borrowing, which subsequently sold on September 3, 2008.

The County and YCWA issued the bonds intending that the source of repayment for the borrowing was to be revenues from collection of the Fee. On July 22, 2008, the same day the County and YCWA formed YLFA, the County, YCWA, and YLFA entered into the Agreement Concerning Levee Impact Fees (Impact Fee Agreement). This agreement laid out the rules by which the County and YCWA would use Fee revenue to repay the borrowing.

2. CREDIT AND REIMBURSEMENT AMOUNTS

The purpose of this chapter is to establish the amount of fee credit, in terms of acreage, or any applicable cash reimbursement due to the individual landowners and their projects based on funding received to date. To do this, information regarding the amount of advanced funding and acreage in each project, must be established. In addition, for projects that are currently underway, information regarding acreage and unit counts must be gathered on a map-by-map basis.

Advance-Funding Amounts

As described in the Background section of **Chapter 1**, landowners provided advance funding of the Fee through several mechanisms. The funding can be divided into two major categories.

- Funding provided prior to and through the First Funding Agreement
- Funding provided through the Second Funding Agreement and separate individual agreements.

Table 1 details the amount of funding creditable toward the Fee advanced by the landowners by their associated projects before and through the First Funding Agreement. The information in this table is primarily derived from the prior Fair Share Funding Report. **Table 2** details the amount of funding creditable toward the Fee advanced by the landowners by their associated projects through the Second Funding Agreement and subsequent funding mechanisms. **Table 3** provides a summary of the prior two funding tables.

As a matter of policy, the County associates funding by a landowner on behalf of a project to remain with that project unless otherwise specified. Funds advanced toward the Fee on behalf of a project will remain as advance funding of the Fee regardless of whether the property changes ownership over time. Consideration for the investment of the advanced Fee into the project is the responsibility of the buyer and seller of the projects.

Project Acreage

The Fee is charged on a Gross Developable Acres (GDAs) basis and is normally due before the recordation of a Final Map in the case of single-family residential development. To determine the obligation of each project and associated remaining obligation, information regarding the number of GDAs subject to the Fee, the total number of units, and number of remaining units must be determined for each project with associated advance funding. **Table 4** provides this relevant information for all but five of the landowners and their projects that have provided advance funding. For the five projects (identified as "Other Projects" on **Table 3**) that have provided advance funding and are to receive credit the utilization of the credit will be the same as outlined in the study, however, the details of the project are currently insufficient to provide calculations within this Study at this time.

Table 1
Three Rivers Levee Fee Credit & Reimbursement
Advanced Funding: First Funding Agreement & Prior

Builder / Landowner	Project	2003 Agreement Levee Study Advances	TRLIA CFD 2004-1 Special Tax Collections	Allocated Units	First Funding Agreement Amounts	Adjustments Between Projects [1]	Total Funding	First Funding Agreement Reimbursement [2]	Interest Earned on Funding	Total Advanced Funding
Formula		A	B	C	D = C*29,345	E	F = A+B+D+E	G	H	I = F + G + H
Projects Providing Advance Funding										
Beazer	Rio Del Oro (Villages 1-5, 7 & 9-13)	\$0	\$236,083	80	\$2,347,600	\$0	\$2,583,683		\$14,424	\$2,598,107
Cassano / Kamilos	Rio Del Oro (Villages 6 & 8)	\$0	\$621,012	62	\$1,819,390	\$0	\$2,440,402		\$8,922	\$2,449,324
Cresleigh	Creekside Plumas Ranch	\$89,355	\$348,026	37	\$1,085,765	\$0	\$1,523,146		\$5,202	\$1,528,348
Cresleigh	Woodside	\$168,547	\$705,504	84	\$2,464,980	\$0	\$3,339,031		\$11,810	\$3,350,841
Dansk-Californisk	Rio Del Oro (Danna 70)	\$0	\$0	0	\$0	\$0	\$0		\$0	\$0
DeValentine	Sawyer's Landing	\$52,542	\$0	0	\$0	\$0	\$52,542		\$0	\$52,542
DR Horton (Western Pacific Housing)	River Oaks South (Villages 1, 2 & 3)	\$70,082	\$0	0	\$0	\$341,167	\$411,249		\$0	\$411,249
DR Horton (Western Pacific Housing)	Wheeler Ranch (Units 4 & 5)	\$0	\$928,984	149	\$4,372,405	-\$341,167	\$4,960,222		\$12,878	\$4,973,100
Feather Glenn Land Holding Company [3]	Feather Glen (Phase A & B)	\$65,458	\$203,163	30	\$879,122	\$0	\$1,147,743		\$4,083	\$1,151,826
Gilbert Retail Holdings	The Meadows	\$121,670	\$229,600	0	\$0	\$0	\$351,270		\$1,905	\$353,175
Homes by Towne	Rio Del Oro (Village 14)	\$0	\$440,139	76	\$2,230,220	\$0	\$2,670,359	-\$336,218	\$6,566.57	\$2,340,707
K Hovnanian / Forecast Homes	Wheeler Ranch I (Units 2, 3, 6 & 7)	\$0	\$1,397,074	150	\$4,401,750	\$0	\$5,798,824		\$9,087	\$5,807,911
KB Home	Hawes Ranch	\$0	\$0	18	\$528,210	\$0	\$528,210		\$1,874	\$530,084
KB Home	Plumas Lake Cobblestone	\$100,000	\$541,492	96	\$2,817,120	\$0	\$3,458,612		\$9,993	\$3,468,604
Lakemont Homes [3]	Feather Glen (Phase C & D)	\$59,086	\$183,387	27	\$793,543	\$0	\$1,036,016		\$3,686	\$1,039,702
Lennar - Renaissance	River Oaks East	\$121,670	\$438,900	70	\$2,054,150	\$512,912	\$3,127,632		\$6,413	\$3,134,045
Lennar - Renaissance	River Oaks North	\$63,268	\$0	0	\$0	\$0	\$63,268		\$0	\$63,268
Lennar - US Homes	Rio Del Oro (Village 15)	\$0	\$395,696	76	\$2,230,220	-\$512,912	\$2,113,004		\$7,230	\$2,120,234
Matthews Homes	Riverside Meadows	\$145,070	\$756,616	105	\$3,081,225	\$0	\$3,982,911		\$15,237	\$3,998,148
Meritage Homes	Draper Ranch North	\$0	\$383,740	90	\$2,641,050	\$0	\$3,024,790		\$6,042	\$3,030,832
Rio Del Oro Farms	Rio Del Oro (Villages 16)	\$270,864	\$0	0	\$0	\$0	\$270,864		\$0	\$270,864
Ryland Homes	Thoroughbred Acres (Unit 1)	\$0	\$525,840	64	\$1,878,080	\$0	\$2,403,920		-\$375	\$2,403,545
Wheeler Land LLC	Wheeler Ranch Phase 2	\$395,184	\$0	44	\$1,291,180	\$0	\$1,686,364		\$5,529	\$1,691,893
Yuba Investors (Mark Engstrom)	The Greens (Plumas Lake Estates)	\$28,217	\$0	0	\$0	\$0	\$28,217		\$0	\$28,217
Total Payments Subject to Credit		\$1,751,013	\$8,335,256	1,258	\$36,916,010	\$0	\$47,002,278	-\$336,218	\$130,506	\$46,796,567

credits

Source: Revised July 2006 Report Three Rivers Levee Fair Share Funding Study prepared by EPS dated July 24, 2006 and EPS

[1] Through the Fair Share Funding Report, projects owned by the same entity were provided the ability to transfer excess funding between projects.

[2] Based upon the First Funding Agreement and its associated terms, Homes by Towne is owed a reimbursement of this amount. This amount of reimbursement will be paid separately from any reimbursement owed through subsequent funding.

[3] Lakemont Homes financed their Prior Advanced Funding, \$2,191,528, through TRLIA CFD 2006-2. The property securing the funding was subsequently foreclosed upon and was purchased by Feather Glenn Land Holding Company. The associated amount of financed funding has been transferred to Feather Glenn Land Holding Company.

Table 2
Three Rivers Levee Fee Credit & Reimbursement
Advanced Funding: Second Funding Agreement & Later

Developer	Project	2nd Funding Agreement	TRLIA CFDs		Total
			2006-1 & 2006-2 [1]	Separate Agreement [2]	
Second Funding Agreement Participant Projects					
Cassano/Kamilos	Rio Del Oro (Villages 6 & 8)	\$239,377	\$0	\$0	\$239,377
Cresleigh	Creekside Plumas Ranch	\$433,690	\$0	\$0	\$433,690
Cresleigh	Woodside	\$1,167,802	\$0	\$0	\$1,167,802
Dansk-Californisk	Rio Del Oro (Danna 70)	\$1,421,862	\$0	\$2,017,424	\$3,439,286
DR Horton	Wheeler Ranch (Units 4 & 5)	\$2,114,160	\$0	\$0	\$2,114,160
Feather Glenn Land Holding Company [3]	Feather Glen (Phase A & B)	\$321,606	\$0	\$0	\$321,606
Homes by Towne	Rio Del Oro (Village 14)	\$0	\$0	\$0	\$0
K Hovnanian/Forecast	Wheeler Ranch I (Units 2, 3, 6 & 7)	\$450,341	\$0	\$0	\$450,341
KB Home	Hawes Ranch	\$1,316,797	\$11,564	\$0	\$1,328,361
KB Home	Plumas Lake Cobblestone	\$3,540,078	\$4,186	\$0	\$3,544,264
Lakemont [3]	Feather Glen	\$258,857	\$0	\$0	\$258,857
Lennar - Renaissance	River Oaks East	\$1,005,064	\$16,885	\$0	\$1,021,949
Lennar - Renaissance	River Oaks North	\$770,296	\$0	\$0	\$770,296
Lennar - US Homes	Rio Del Oro (Village 15)	\$0	\$10,285	\$0	\$10,285
Matthews Homes	Riverside Meadows	\$2,661,845	\$16,800	\$0	\$2,678,645
Meritage Homes	Draper Ranch North	\$1,972,505	\$0	\$0	\$1,972,505
Rio Del Oro Farms	Rio Del Oro (Villages 16)	\$944,112	\$0	\$1,268,401	\$2,212,513
Ryland Homes	Thoroughbred Acres (Unit 1)	\$1,669,453	\$0	\$0	\$1,669,453
Total Payments		\$20,287,845	\$59,720	\$3,285,825	\$23,633,390

"credits2"

Source: Second Funding Agreement, First American Title Company Escrow Statements, Yuba County Auditor Controller, Yuba County and EPS

- [1] Includes Special Tax Revenues Received for Fiscal Year 07/08 only. Credit for Special Tax Revenues for later FY's will be handled separately.
[2] Includes funding to be received through December 2008 from Axel Karlshoej.
[3] Funding received through the Second Funding Agreement from Lakemont Homes for the Feather Glen project, \$580,463, has been allocated proportionately to each Phase on an acreage basis.

Table 3
Three Rivers Levee Fee Credit & Reimbursement
Advanced Funding: Total Funding

Developer	Project	First Funding Agreement & Prior	Second Funding Agreement & Later	Total	Applicable Acreage Credit [1]
Projects with Advance Funding Detailed in the Study					
Beazer	Rio Del Oro (Villages 1-5, 7 & 9-13)	\$2,598,107	\$0	\$2,598,107	43,187
Cassano/Kamilos	Rio Del Oro (Villages 6 & 8)	\$2,449,324	\$239,377	\$2,688,701	44,693
Cresleigh	Creekside Plumas Ranch	\$1,528,348	\$433,690	\$1,962,038	32,614
Cresleigh	Woodside	\$3,350,841	\$1,167,802	\$4,518,643	75,112
Dansk-Californisk	Rio Del Oro (Danna 70)	\$0	\$3,439,286	\$3,439,286	64,320 [2]
DR Horton	Wheeler Ranch (Units 4 & 5)	\$4,973,100	\$2,114,160	\$7,087,260	117,809
Feather Glenn Land Holding Company	Feather Glen (Phase A & B)	\$1,151,826	\$321,606	\$1,473,433	24,492
Homes by Towne	Rio Del Oro (Village 14)	\$2,340,707	\$0	\$2,340,707	38,909
K Hovnanian/Forecast	Wheeler Ranch I (Units 2, 3, 6 & 7)	\$5,807,911	\$450,341	\$6,258,252	104,029
KB Home	Hawes Ranch	\$530,084	\$1,328,361	\$1,858,445	30,892
KB Home	Plumas Lake Cobblestone	\$3,468,604	\$3,544,264	\$7,012,868	116,572
Lakemont	Feather Glen (Phase C & D)	\$1,039,702	\$258,857	\$1,298,558	21,585
Lennar - Renaissance	River Oaks East	\$3,134,045	\$1,021,949	\$4,155,994	69,083
Lennar - US Homes	River Oaks North	\$63,268	\$770,296	\$833,564	13,856
Matthews Homes	Rio Del Oro (Village 15)	\$2,120,234	\$10,285	\$2,130,519	35,415
Meritage Homes	Riverside Meadows	\$3,998,148	\$2,678,645	\$6,676,794	110,986
Rio Del Oro Farms	Draper Ranch North	\$3,030,832	\$1,972,505	\$5,003,337	83,169
Ryland Homes	Rio Del Oro (Villages 16)	\$270,864	\$2,212,513	\$2,483,376	46,443 [2]
	Thoroughbred Acres (Unit 1)	\$2,403,545	\$1,669,453	\$4,072,998	67,704
Other Projects with Advance Funding					
DeValentine	Sawyer's Landing	\$52,542	\$0	\$52,542	0.873
DR Horton (Western Pacific Housing)	River Oaks South (Villages 1, 2 & 3)	\$411,249	\$0	\$411,249	6.836
Gilbert Retail Holdings	The Meadows	\$353,175	\$0	\$353,175	5.871
Wheeler Land LLC	Wheeler Ranch Phase 2	\$1,691,893	\$0	\$1,691,893	28,124
Yuba Investors (Mark Engstrom)	The Greens (Plumas Lake Estates)	\$28,217	\$0	\$28,217	0.469
Total Payments from Funding Agreements		\$46,796,567	\$23,633,390	\$70,429,957	1,183.043

*Credits3"

Source: Tables 1 & 2

[1] The acreage credit is determined by dividing the total funding amount by \$60,159 which is the initial Three Rivers Levee Fee rate for Single Family residential development in Plumas Zone.

[2] For these projects, the Acreage Credit is determined by dividing the Total funding by \$53,471 based upon proposed development agreements for these projects.

Table 4
Three Rivers Levee Fee Credit & Reimbursement
Land Use Information for Second Funding Agreement Participants

Landowner/Project/Map	GDAs	Units	GDA/ Unit	Units Absorbed [1]	GDAs Absorbed	Remaining GDAs
<i>Formula</i>	<i>A</i>	<i>B</i>	<i>C = A / B</i>	<i>D</i>	<i>E = C * D</i>	<i>F = A - E</i>
<u>Beazer</u>						
Rio Del Oro [6]						
Villages 1-5, 7 & 9-13	37.300	126	0.296	80	23.683	13.617
<u>Cassano/Kamilos</u>						
Rio Del Oro						
Village 6	13.882	41	0.339	34	11.512	2.370
Village 8	30.385	80	0.380	0	0.000	30.385
Subtotal Rio Del Oro	44.267	121		34	11.512	32.755
<u>Cresleigh Homes</u>						
Plumas Ranch						
Village 5 (TM 99-585)	24.859	87	0.286	34	9.715	15.144
Village 6 (TM 2004-23)	15.645	72	0.217	0	0.000	15.645
Subtotal Plumas Ranch	40.504	159		34	9.715	30.789
Woodside [5]						
Village 1 (TM 99-582)	14.727	74	0.199	55	10.946	3.781
Village 2A (TM 2003-39)	16.495	83	0.199	0	0.000	16.495
Village 2B (TM 2003-40)	13.829	62	0.223	34	7.584	6.245
Village 3 (TM 2005-12)	27.641	144	0.192	0	0.000	27.641
Village 4 (TM 2005-13)	24.569	142	0.173	0	0.000	24.569
Subtotal Woodside	97.261	505		89	18.529	78.732
Total Cresleigh Homes	137.765	664	0.000	123	28.244	109.521
<u>Dansk-Californisk</u>						
Rio Del Oro						
Danna 70	64.320	309	0.208	0	0.000	64.320
<u>DR Horton</u>						
Wheeler Ranch						
Unit 4	26.581	92	0.289	92	26.581	0.000
Unit 6	39.776	148	0.269	148	39.776	0.000
Subtotal Wheeler Ranch	66.357	240		240	66.357	0.000
<u>Lakemont Homes and Feather Glenn Land Holding Company (FGLHC)</u>						
Feather Glenn - FGLHC						
Phase 1A	17.850	72	0.248	23	5.702	12.148
Phase 1B	13.260	46	0.288	0	0.000	13.260
Subtotal Feather Glenn - FGLHC	31.110	118		23	5.702	25.408
Feather Glenn - Lakemont Homes						
Phase 1C	9.850	47	0.210	0	0.000	9.850
Phase 1D	15.190	55	0.276	0	0.000	15.190
Subtotal Feather Glenn	25.040	102		0	0.000	25.040

Table 4
Three Rivers Levee Fee Credit & Reimbursement
Land Use Information for Second Funding Agreement Participants

Landowner/Project/Map	GDAs	Units	GDA/ Unit	Units Absorbed [1]	GDAs Absorbed	Remaining GDAs
<i>Formula</i>	<i>A</i>	<i>B</i>	<i>C = A / B</i>	<i>D</i>	<i>E = C * D</i>	<i>F = A - E</i>
<u>Towne Development of Plumas Lake LLP</u>						
Rio Del Oro [4]						
Village 14	31.227	120	0.260	71	18.476	12.751
<u>K Hovnanian</u>						
Wheeler Ranch						
Phase 1, Unit 2 (TM 2004-21)	32.214	146	0.221	97	21.402	10.812
Phase 1, Unit 3 (TM 2004-33)	26.799	106	0.253	36	9.102	17.697
Phase 1, Unit 6 (TM 2004-31)	19.878	89	0.223	81	18.091	1.787
Phase 1, Unit 7 (TM 2004-32)	20.900	86	0.243	28	6.805	14.095
Subtotal Wheeler Ranch	99.791	427		242	55.400	44.391
<u>KB Homes</u>						
Hawes Ranch Estates [2]						
Hawes Ranch Map 02-602	21.005	102	0.206	66	13.591	7.413
Plumas Lake [3]						
Phase 1A	1.402	11	0.127	11	1.402	0.000
Phase 1B	34.685	164	0.211	164	34.685	0.000
Phase 2B-2A	15.225	70	0.218	18	3.915	11.310
Phase 2B-1	8.160	32	0.255	0	0.000	8.160
Phase 2 (Remainder)	84.555	374	0.226	0	0.000	84.555
Subtotal Plumas Lake	144.027	651		193	40.002	104.025
Total KB Homes	165.032	753		259	53.593	111.438
<u>Lennar</u>						
Rio Del Oro						
Village 15	28.264	104	0.272	104	28.264	0.000
River Oaks East						
Village 1	32.772	99	0.331	56	18.538	14.234
Village 2	31.847	94	0.339	0	0.000	31.847
Village 3	23.685	71	0.334	0	0.000	23.685
Subtotal River Oaks East	88.304	264		56	18.538	69.766
River Oaks North						
River Oaks North 2004-24	35.697	107	0.334	0	0.000	35.697
Total Lennar	152.265	475		160	46.802	105.463
<u>Matthews Homes</u>						
Riverside Meadows						
Village 1	29.372	82	0.358	73	26.148	3.224
Village 2	24.672	90	0.274	39	10.691	13.981
Village 3	23.111	97	0.238	0	0.000	23.111
Village 4	23.187	90	0.258	0	0.000	23.187
Village 5	22.900	74	0.309	0	0.000	22.900
Village 6	27.388	85	0.322	0	0.000	27.388
Village 7	23.121	81	0.285	0	0.000	23.121
Subtotal Riverside Meadows	173.751	599		112	36.839	136.912

Table 4
Three Rivers Levee Fee Credit & Reimbursement
Land Use Information for Second Funding Agreement Participants

Landowner/Project/Map	GDAs	Units	GDA/ Unit	Units Absorbed [1]	GDAs Absorbed	Remaining GDAs
<i>Formula</i>	<i>A</i>	<i>B</i>	<i>C = A / B</i>	<i>D</i>	<i>E = C * D</i>	<i>F = A - E</i>
<u>Meritage</u>						
Draper Ranch North						
Phase 1	27.650	98	0.282	96	27.086	0.564
Remaining Phases	78.440	328	0.239	0	0.000	78.440
Subtotal Draper Ranch North	106.090	426		96	27.086	79.004
<u>Rio Del Oro Farms</u>						
Rio Del Oro						
Village 16	46.443	155	0.300	0	0.000	46.443
<u>Ryland Homes</u>						
Thoroughbred Acres						
Phase 1	36.951	158	0.234	143	33.443	3.508
Phase 2	10.011	35	0.286	0	0.000	10.011
Phase 3	58.710	252	0.233	0	0.000	58.710
Subtotal Thoroughbred Acres	105.672	445		143	33.443	72.229

"land_uses"

Source: KASL Engineering, draft and final tract Maps, Yuba County and EPS data

[1] Absorbed units are assumed to be those units with building permits applied for before October 21, 2008.

[2] As of the date of the First Funding Agreement, April 19, 2005, only 102 of 183 lots remained in the Hawes Ranch Project to fund levee improvements. Therefore only a proportionate amount GDAs are included here. (i.e., $37.685 / 183 * 102 = 21.005$ GDAs)

[3] As of the date of the First Funding Agreement, April 19, 2005, 167 lots within Plumas Lake Cobblestone had building permits and the obligation for funding was satisfied for 36.9 acres. Reference the July 24, 2006 Fair Share Funding Report. The acreage and associated units have been removed from the Phase 1A Map.

[4] As of the date of the First Funding Agreement, April 19, 2005, 107 lots within Rio Del Oro Village 14 had building permits and the obligation for funding was satisfied for 27.8 acres. Reference the July 24, 2006 Fair Share Funding Report. The acreage and associated units have been removed from the Village 14 Map.

[5] As of the date of the First Funding Agreement, April 19, 2005, 84 lots within Woodside Village 1 had building permits and the obligation for funding was satisfied for 16.3 acres. Reference the July 24, 2006 Fair Share Funding Report. The acreage and associated units have been removed from the Village 1 Map.

[6] Because Beazer has funded in excess of the obligation for all of the individual acreage remaining for its Villages with the Rio Del Oro project, individual Village information has determined not to be necessary. In addition, as of the date of the First Funding Agreement, April 19, 2005, 833 lots within Rio Del Oro Villages 1-5, 7, & 9-13 had building permits and the obligation for funding was satisfied for 247.0 acres. Reference the July 24, 2006 Fair Share Funding Report. The acreage and associated units have been removed from the Village 1-5, 7, & 9-13 Maps and only the remaining acreage and units are shown.

Calculation of Credit and Reimbursement Amounts

Table 5 presents a summary of the credit and reimbursement calculations presented in **Appendix A**. The calculations presented in **Appendix A** use the information contained in **Tables 3** and **4** to calculate the amount of credit available on an acreage basis to each individual map in a development project. In addition, based on this credit, the tables show the additional acreage that must be funded on a lot-by-lot basis.

The following are the underlying assumptions that predicate this analysis and the establishment of credits and reimbursements:

- All prior advance funding of the Fee has been collected on behalf of development projects as identified by the tables included in this Study.
- All prior advance funding of the Fee is proportionately allocable to the individual tract maps/phases/units/villages in projects based upon the projects' GDAs.
- Units are assumed to have been previously absorbed if a permit for the unit has been applied for before October 21, 2008.
- The Fee obligation for all remaining developable acreage after April 19, 2005, and absorbed before October 21, 2008, is the Initial Fee Rate for Single-Family Residential Development in the Plumas Zone as identified in the October 13, 2008, Revised Three Rivers Levee Fee Nexus Study of \$60,159 per GDA as adopted by Yuba County Ordinance 1465 on November 18, 2008 (reference Table 1 of that Nexus Study).¹
- The credit for prior advanced funding will be expressed in terms of GDAs as shown in **Table 3** and has been determined by taking the amount of prior advance funding and dividing it by the Initial Fee Rate of \$60,159 per GDA.² The amount of GDA credit will be set by this methodology and will not be recalculated in the future by any escalating fee rate.
- All permits that have previously been applied for before October 21, 2008, (i.e., absorbed) are assumed to have been fully funded with credit from prior advance funding and no additional levee fees will be required to be paid for these units.
- The use of credit on the remaining units (units not yet absorbed) will take place as discussed in **Chapter 3**.

¹ The Levee Impact Fee obligation for the Rio Del Oro 4—Dansk Californisk Danna 70 project and Rio Del Oro Farms #2 Rio Del Oro Village 16 is \$53,471. This is based on the analysis included in the respective Exhibit C of the proposed development agreement for each of the projects.

² Except in the case of the Danna 70 project and Rio Del Oro Village 6 project as noted in footnote #2.

Table 5
Three Rivers Levee Fee Credit & Reimbursement
Summary of Credits & Reimbursements

Developer	Project	Reimbursements Due	Gross Credit Acreage [1]	Additional Fees Due [2]
Second Funding Agreement Participant Projects				
<i>Projects with Reimbursement</i>				
Beazer	Rio Del Oro (Villages 1-5, 7, & 9-13)	\$354,176	N/A	\$0
Cassano/Kamilos	Rio Del Oro (Villages 6 & 8)	\$25,643	N/A	\$0
DR Horton	Wheeler Ranch (Units 4 & 5)	\$3,095,289	N/A	\$0
Homes by Towne	Rio Del Oro (Village 14)	\$462,093	N/A	\$0
K Hovnanian/Forecast	Wheeler Ranch I (Units 2, 3, 6 & 7)	\$254,925	N/A	\$0
<i>Projects with No Obligation or Reimbursement</i>				
Dansk-Californisk	Rio Del Oro (Danna 70)	\$0	N/A	\$0
Rio Del Oro Farms	Rio Del Oro (Villages 16)	\$0	N/A	\$0
<i>Projects Utilizing a Transfer of Reimbursement with Remaining Fees</i>				
KB Home [3]	Hawes Ranch	\$0	N/A	\$0
KB Home	Plumas Lake Cobblestone	N/A	86.458	\$1,056,832
Lennar - US Homes [4]	Rio Del Oro (Village 15)	\$0	N/A	\$0
Lennar - Renaissance	River Oaks East	N/A	57.697	\$726,101
Lennar - Renaissance	River Oaks North	N/A	13.856	\$1,313,932
<i>Projects with Remaining Fees</i>				
Cresleigh	Creskide Plumas Ranch	N/A	22.899	\$474,642
Cresleigh	Woodside	N/A	56.582	\$1,332,478
FGLHC	Feather Glen (Phase A & B)	N/A	18.790	\$398,114
Lakemont	Feather Glen (Phase C & D)	N/A	21.585	\$207,823
Matthews Homes	Riverside Meadows	N/A	74.146	\$3,775,893
Meritage Homes	Draper Ranch North	N/A	56.083	\$1,378,931
Ryland Homes	Thoroughbred Acres (Unit 1)	N/A	34.261	\$2,284,124
Totals		\$4,192,126	442.358	\$12,948,869

"summary"

Source: Appendix A

[1] After transfer of remaining credit acreage from transfer projects noted.

[2] Additional Fees due based upon starting Fee rate of \$60,159 per GDA. Additional Fees will be due to the extent the fee has escalated at the time of collection.

[3] The KB Homes Hawes Ranch reimbursement is transferred to KB Homes Plumas Lake Cobblestone Project

[4] The Lennar - US Homes Rio Del Oro (Village 15) reimbursement is transferred to the Lennar - Renaissance River Oaks East Project

- For multiple projects that are being developed by a common landowner:

If one project is determined to have advanced funded in excess of the obligation due by the Fee and is due a reimbursement, the reimbursement will be applied and added to the credit of the next project currently underway with the consent of the landowner.

3. CREDIT POLICY

Use of Credit for Prior Advanced Funding

Policy Question

Table 5 and **Appendix A** demonstrate that, for the projects analyzed in this Study, 10 projects have paid levee fees in excess of the amount due based on their projects' absorption to date. However, those same projects have an insufficient amount of credit through prior advance funding to fully pay the remainder of their projects' Levee Impact Fees. The policy questions that arise are as follows:

- How will these projects use the credit they have accumulated over the remainder of their projects?
- When, in the development process will the projects pay the remainder of the Levee Impact Fees due?

Possible Policy Approaches

There are several ways to approach the answer to these questions:

1. Provide full credit for the remaining units as they are pulled until all of the credit is used, i.e., a first-in/first-to-use-credit approach. This would delay the payment of any additional fees until all the acreage credit accumulated is absorbed.
2. Require full payment of the Fee as the remaining units are developed until the entire obligation of the project is funded. Subsequently the last portion of a project will use the credit for prior advance funding, i.e., a first-in/first-to-pay approach. This will accelerate the payment of additional fees until the total obligation of a project is met.
3. Allow for the use of accumulated credit on a proportionate basis as the remainder of a project is developed. The basis for the proportionality would be the ratio of the remaining credit acreage to the total remaining acres to be developed. This concept would essentially spread the credit accumulated on a project over its remaining acreage to be developed.

Adopted Approach

The third approach is the approach recommended by staff and adopted by the Board of Supervisors by Resolution No. 2008-153 on November 18, 2008. This policy would apply for the use of credit for all projects having provided advance-funding of the Levee Impact Fee. Specifically, within Attachment A of Resolution No. 2008-153, the Credit Policy for Prior Advance Funding is as follows:

The Crediting Policy will allow for the use of the accumulated credit on a proportionate basis as the remainder of a project is developed. The basis for the

proportionality will be the ratio of Remaining Credit Acreage to Total Remaining Acres to be developed.

- "Remaining Credit Acreage" will be defined as the credit accumulated by the prior advance funding less the amount of credit utilized by units that have been absorbed prior to October 21, 2008.
- "Total Remaining Acres" to be developed will be defined as the difference between the total developable GDAs in a project after April 19, 2005 and the amount of acres absorbed before October 21, 2008, or as subsequently revised by County and Landowner."

Further details on the mechanics of implementing this policy are provided below.

Development Agreement Terms

In exchange for providing additional funding on the proportionate basis, the County may enter into individual development agreements with the landowners of the projects upon proper application and payment of County fees, subject to review by the Planning Commission and approval by the Board of Supervisors with terms that may generally include these:

- The form of development agreement will contain the terms set forth below and substantially conform to the form available from the County's website:³
- The Tentative Map life for any tentative map included in the project will be extended to a total of 20 years from the date of approval of the Tentative Map.
- No new County imposed development impact fees will be imposed on the project for 10 years from the date of the development agreement with the following exclusions.
 - Any impact fees associated with any Traffic Impact (Road Improvements) within the County.
 - Any fees levied to offset the cost of regional park improvements up to a maximum of \$2,000 dollars per dwelling unit or equivalent.
- All currently County imposed development impact fees will not be increased for 10 years from the date of the development agreement with the following exclusions.
 - Any currently incorporated escalator adopted with the fee.

³ The document URL is
http://www.co.yuba.ca.us/Departments/Community%20Development/Planning/documents/Forms%20&%20Applications/Planning2008/DA-PART2_6-08.pdf

- Any increase of fees associated with the current Traffic Impact (Road Improvement) Fee component of the County Capital Facilities Fee and any change or increase associated with the current PLSP/NASA Road Improvement Fee.
- The collection of the balance of the Levee Fees due after the application of credit as described above will be determined at the time a building permit is pulled but will be deferred collection until the final inspection of home (in a manner consistent with Yuba County Ordinance 1461). The duration of this fee deferral will be 10 years from the effective date of the development agreement.
- The collection of all development impact fees and County Capital Facilities Fees will be deferred in a manner consistent with Yuba County Ordinance 1461, however, the duration of the deferral will be 10 years from the effective date of the development agreement.

With respect to Mello-Roos financing by TRLIA for landowners Levee Impact Fee obligations, the County will work with TRLIA to incorporate its acceptance of the following.

- The redemption of any outstanding builder bonds through the issuance of private placement or conventional Mello-Roos bonds issued by TRLIA associated with TRLIA CFDs 2006-1 and 2006-2 will be recommended by the County to TRLIA to be subject to the terms outlined in **Appendix B**.
- The application of revenues from special tax collections associated with TRLIA CFDs 2006-1 and 2006-2 will be as outlined in **Appendix C**.

Miscellaneous provisions:

- Mutual agreement by all parties (i.e. each Landowner who accepts the Credit and Reimbursement Policy, County and TRLIA) that the Second Funding Agreement for Advance Funding and Reimbursement of Costs for Levee Improvements ("Second Funding Agreement") is terminated as to those parties and of no force and effect and that any obligations or provisions that survive will be restated and incorporated into the development agreement (e.g., mandatory flood insurance provisions, TRLIA is not responsible for repayment) along with any other provisions that the parties might mutually agree upon.
- Landowners shall receive benefit of any development impact fee or capital facilities fee reduction applied to the County generally.
- TRLIA to execute Development Agreement only as to acceptance and compliance with sections related to redemption of outstanding builder bonds (**Appendix B**), application of revenues from special tax collections associated with TRLIA CFDs 2006-1 and 2006-2 (**Appendix C**), restatement of obligations that survive the Second Funding Agreement, and approval of Credit & Reimbursement Policies.

Implementation

With the adoption of Resolution No. 2008-153 by the BOS, the County Administrator is authorized to negotiate development agreements with the landowners that effectuate the adopted policy.

In general, credit for prior advance funding in excess of that used on all permits that have previously been applied for is to be allocated proportionately among the remaining lots in all tract maps/phases/units/villages (either previously created or proposed) that have not yet been applied for.

This means that for the projects identified in this Study, as additional homes are constructed, the landowner will fund a portion of the Fee based on the relative proportionality between the remainder of a project not able to be funded from credit and the total remaining acreage left in the project after all previously absorbed units. For purposes of this discussion, a unit is to be considered absorbed if its building permit has been applied for.

For purposes of implementing this policy, the County will calculate this remaining amount of the Fee due as the individual building permits are issued for units to be constructed in the project. However, collection of the Fee will be deferred until the final inspection of the home.

To calculate the amount of the fee due at the issuance of the building permit, the number of GDAs for each lot must be determined. This is a function of total GDAs in each tract map/phase/unit/village and the number of lots created in each of the tract maps/phases/units/villages. The tables in **Appendix A** provide this information and identify the specific amount of acreage that the levee Fee must be paid for at the final inspection of each building permit. This information is provided on a map-by-map basis for each project by landowner.

The amount of the Fee due will be determined at the time the building permit is issued based on the acreage identified in the tables in **Appendix A** and the applicable fee rate at the time of building permit issuance. The collection of the fee will be deferred until the final inspection of the unit for which the permit was issued.

4. REIMBURSEMENT POLICY

Reimbursement of Funds Advanced in Excess of the Fee Obligation Due

Policy Question

Table 5 and **Appendix A** demonstrate that, for the projects analyzed in this Study, 7 projects have advance funded levee fees in excess of the total amount of Levee Impact Fees due on the project. Two of these 7 projects are able to apply this additional funding to other projects through a transfer policy (as described in **Chapter 2**); however, for the remaining 5 projects, the policy question that arises is this: When and how will the projects receive a reimbursement for this excess funding?

The source of funds that will provide this reimbursement is not in question. Under all circumstances by which this funding was advanced, the source of repayment was identified as the collection of Levee Impact Fees from other development. Therefore, the County (and all other public agencies involved for that matter) is under no obligation to pay this reimbursement from other sources.

The primary issue involved is that the County and YCWA have also borrowed funds under the premise that the borrowing will be repaid from the same source of funds, the Levee Impact Fee. Therefore, a second policy question arises: How does the timing of repayment of the reimbursement due to landowners relate to the repayment of the County and YCWA borrowing?

Possible Approaches

There are many ways to approach the answer to these questions. The following list provides examples of various approaches:

1. Reimburse the landowners that are due reimbursements with any new funds that come into the levee improvement program, e.g., new fee collections and the funds from the County and YCWA borrowing.
2. Share any additional new funds that come into the program on a split basis (Landowners: County and YCWA) based on some proportionality.
3. Reimburse those landowners from new funds that come into the program only after the levee improvement program is complete and the levees are certified, regardless of when new funds arrive.
4. Reimburse private landowner funding until after the County and YCWA borrowing has been repaid.

Underlying Principles

To derive a policy direction on this issue, certain underlying principles should be established that help guide the determination of a policy. Listed below are the principles that are incorporated

into the adopted resolution that established the policy direction for reimbursement. These principles have previously been incorporated into prior decisions made by the BOS and should be considered in this circumstance:

- No reimbursements should be made to any party advancing funds into the levee improvement program until all project costs are paid and the levee improvement program has been complete and certified, unless otherwise determined by the County and YCWA that payment of such reimbursements are financially and legally advantageous to the County and YCWA.
- The Board should make decisions that consider the impact to the General Fund and the services provided to the County at large.
- The Board should make decisions that consider the proportionality of the investment made into the levee improvement program.
- The Board should consider the timing of repayment of capital to those investing in the levee improvement program.

Adopted Approach

The following list outlines the reimbursement approach adopted by Resolution 2008-153. This approach takes into consideration the aforementioned principles and provides a plan for reimbursement of the advance funding of levee improvements. The approach takes into consideration all reimbursements that are to be paid from the future collection of levee impact fees as shown in **Table 5** and the debt service obligations of the County and YCWA borrowing in the future. The approach is divided into three stages based on the following time periods:

- Period 1: Before Levee Certification.
- Period 2: After Levee Certification, before March 1, 2015.
- Period 3: After March 1, 2015, until all reimbursements are complete.

Period 1: Before Levee Certification

During this time period no reimbursements will be made to the County, YCWA, or landowners unless otherwise determined to be financially and legally advantageous and directed by the County and YCWA. All new Levee Impact Fees collected will be used to directly fund the levee improvements and ultimately offset the additional investment by the County and YCWA into the levee improvements program.

Period 2: After Levee Certification, before March 1, 2015

During the time period between when the levees are certified and before the County and YCWA will be required to pay debt service on their borrowing, twice per year distributions of Levee Impact Fee revenue will occur as follows:

- One hundred percent of revenues collected from Levee Impact fees will first be used to reimburse any outstanding reimbursement due under the First Funding Agreement to Homes by Towne:

- The principal amount of this reimbursement due is \$366,218 as of November 29, 2005. It will accrue interest at 7.5 percent per annum.
- After the full reimbursement of this amount to Homes by Towne, revenues collected before March 1, 2015, will be split by those parties determined by the County to be due reimbursements (including the County and YCWA) on a proportionate basis of the principal amount of their outstanding reimbursement. **Table 6** has been provided to demonstrate an example of the proportionality of outstanding reimbursements:
 - It will be assumed that landowners' reimbursement will accrue and capitalize interest onto their principal amounts at the same interest rate as the County and YCWA joint borrowing of 5.534 percent per annum. Interest will be calculated on a monthly compounding rate that is equivalent to an effective interest rate of 5.534 percent per annum.

Period 3: After March 1, 2015, until Reimbursements are Complete

Commencing on March 1, 2015, when debt service is due on the County and YCWA joint borrowing, twice-per-year distributions of Levee Impact Fee revenue will occur as follows:

- One hundred percent of Fee revenue collected will go fund the debt service due on the borrowing up to the debt service amount.⁴
- After March 1, 2015, any fee revenue collected in excess this debt service due will first be used to complete the reimbursement due to Homes by Towne under the Second Funding Agreement to the extent it was not completed before March 1, 2015.
- After this reimbursement to Homes by Towne, any fee revenue will be split between those parties determined by the County to be due reimbursement (including the County and YCWA) on a proportionate basis of the principal amount of their outstanding reimbursement.
 - It will be assumed that landowner's reimbursement will accrue and capitalize interest onto their principal amounts at the same interest rate as the County and YCWA joint borrowing of 5.534 percent per annum. Interest will be calculated on a monthly compounding rate that is equivalent to an effective interest rate of 5.534 percent per annum. Because the County and YCWA will be amortizing the principal amount of their reimbursement through the payment of debt service, their outstanding reimbursement amount will be reduced by this amount.

⁴ The debt service amount is defined as the total debt service due on the outstanding Taxable and Tax-Exempt Bonds.

Table 6
Three Rivers Levee Fee Credit & Reimbursement
Summary of Reimbursements from Levee Impact Fees

Entity	Project	Reimbursements [1] as of October 21, 2008	Estimated Proportionate Amount of Total Reimbursement
First Entity with Reimbursement Due from Levee Impact Fees			
Homes by Towne	Rio Del Oro (Village 14) [2]	\$415,173	
Remaining Entities with Reimbursements Due from Levee Impact Fees [3]			
Beazer	Rio Del Oro (Villages 1-5, 7 & 9-13)	\$354,176	0.428%
Cassano/Kamilos	Rio Del Oro (Villages 6 & 8)	\$354,176	0.428%
DR Horton	Wheeler Ranch (Units 4 & 5)	\$25,643	0.031%
Homes by Towne	Rio Del Oro (Village 14)	\$3,095,289	3.745%
K Hovnanian/Forecast	Wheeler Ranch I (Units 2, 3, 6 & 7)	\$462,093	0.559%
		\$4,291,377	5.192%
<i>Public Entity</i>			
Yuba County		\$39,185,000	47.404%
Yuba County Water Agency		\$39,185,000	47.404%
<i>Subtotal Public Borrowing</i>		\$78,370,000	94.808%
Total Remaining Entities with Reimbursements		\$82,661,377	100.000%

Source: Appendix A

- [1] Represents the principal amount of reimbursements as of October 21, 2008 including, in the case of the Homes by Towne reimbursement from the First Funding Agreement, the capitalized interest amount due from that agreement.
- [2] Homes by Towne, from the Second Funding Agreement was due a principal amount of \$336,218 with interest to accrue at an effective 7.5% per annum from November 29, 2005.
- [3] Remaining Entities will accrue interest on their outstanding balances at the Public Bond rate of 5.534%.

Implementation

As previously stated, the County, YCWA, and YLFA entered into an Impact Fee Agreement to provide a vehicle for repayment of their joint borrowing. This Impact Fee Agreement, as identified in Section 2.1, recognized that the County would, at some point in the future, enter into reimbursement agreements with the landowners that have advance funded costs of the levee improvement program beyond their otherwise applicable levee fee obligation.

For purposes of implementing the preferred approach for reimbursements, the County should proceed with these:

- Draft, negotiate, and execute the contemplated reimbursement agreements that are consistent with the approach outlined in this Study.
- As further identified in the Impact Fee Agreement, instruct the Community Development and Services Agency to administer the reimbursement agreements and Impact Fee Agreement consistent with policies and procedures outlined by this Study.

APPENDICES:

- Appendix A: Credit and Reimbursement Detailed Calculations
- Appendix B: Terms Associated with the Issuance of Private Placement and Conventional Bonds for TRLIA CFDs 2006-1 and 2006-2
- Appendix C: Special Considerations for Projects in TRLIA CFDs 2006-1 and 2006-2



APPENDIX A:

Credit and Reimbursement Detailed Calculations

Projects with Transfer of Reimbursement for Credit

Table A-1	KB Homes Credit	A-1
Table A-2	Lennar Credit	A-2

Projects with Reimbursement

Table A-3	Cassano/Kamilos Credit.....	A-3
Table A-4	DR Horton Credit	A-4
Table A-5	Towne Development of Plumas Lake LLP Credit	A-5
Table A-6	K Hovnanian Credit.....	A-6
Table A-7	Beazer Credit	A-7

Projects with No Reimbursement

Table A-8	Dansk-Californisk Danna 70 Credit	A-8
Table A-9	Rio Del Oro Farms Village 16 Credit	A-9

Projects with Credit

Table A-10	Cresleigh Credit.....	A-10
Table A-11	Meritage Homes Credit	A-11
Table A-12	Matthews Homes Credit.....	A-12
Table A-13	Feather Glenn Credit.....	A-13
Table A-14	Ryland Homes Credit	A-14



Projects with Transfer
of Reimbursement for Credit

Table A-1
Three Rivers Levee Fee Credit & Reimbursement
KB Homes Credit

KB Homes Transfer											
Project / Map	GDAs Absorbed	GDAs	Total Fee Obligation	Fee Credit Used on Absorbed GDAs	Total Funding Creditable to Date	Transfer of Credits	Remaining Funding after Absorbed GDAs	Remaining Credit Acreage	Acreage Not Subject to Credit	Acreage to be Funded on a Per Unit Basis	Fee Due (per Unit) or Reimbursement Due
<i>Formula</i>											
	A = Table 1	B = Table 1	C = A * \$60159	D = B * \$60159	E	F	G = E - D	H = G / \$60159	I = Remaining GDAs - H	J = (I / Remaining GDAs) * GDA per Unit	K = J * \$60159
Hawes Ranch Estates											
Hawes Ranch Map 02-602	21.005	13.591	\$1,263,625	\$817,640	\$1,858,445	N/A	\$1,040,805	17.301	N/A	N/A	\$594,820.13
Plumas Lake	144.027	40.002	\$8,664,520	\$2,406,480	\$7,012,868	\$594,820	\$5,201,208	86.458	17.567		
Phase 1A	1.402	1.402	\$84,343	\$84,343						0.022	\$1,294.86
Phase 1B	34.685	34.685	\$2,086,615	\$2,086,615						0.036	\$2,148.65
Phase 2A	15.225	3.915	\$915,921	\$235,522						0.037	\$2,209.67
Phase 2B	8.160	0.000	\$490,897	\$0						0.043	\$2,590.65
Phase 2 (Remainder)	84.555	0.000	\$5,086,744	\$0						0.038	\$2,296.87
Total KB Homes	165.032	53.593	\$9,928,145	\$3,224,120	\$8,871,313		\$6,242,013	103.759	17.567	Total Remaining Fees	\$1,056,832
											No homes credit

*kb_homes_credit

Table A-2
Three Rivers Levee Fee Credit & Reimbursement
Lennar Credit

Lennar Transfer												
Project / Map	GDA's	GDA's Absorbed	Total Fee Obligation	Fee Credit Used on Absorbed GDAs	Total Funding Creditable to Date	Transfer of Credits	Remaining Funding after Absorbed GDAs	Remaining Credit Acreage	Acreage Not Subject to Credit	Acreage to be Funded on a Per Unit Basis	Fee Due (per Unit) or Reimbursement Due	
Formula	A = Table 1	B = Table 1	C = A * \$60159	D = B * \$60159	E	F	G = E - D	H = G / \$60159	I = Remaining GDAs - H	J = (I / Remaining GDAs) * GDA per Unit	K = J * \$60159	
Rio Del Oro Village 15	28.264	28.264	\$1,700,334	\$1,700,334	\$2,130,519	N/A	\$430,185	7.151	N/A	N/A	\$430,185.07	
River Oaks East Village 1	88.304	18.538	\$5,312,280	\$1,115,209	\$4,155,994	\$430,185	\$3,470,970	57.697	12.070	0.057	\$3,445.24	
Village 2	32.772	18.538	\$1,971,531	\$1,115,209	\$0					0.059	\$3,526.08	
Village 3	31.847	0.000	\$1,915,884	\$0						0.058	\$3,471.89	
	23.685	0.000	\$1,424,866	\$0								
River Oaks North River Oaks North 2004-24	35.697	0.000	\$2,147,496	\$0	\$833,564	N/A	\$833,564	13.856	21.841	0.204	\$12,279.74	
										Remaining Fee Due	\$726,101	
										Remaining Fee Due	\$1,313,932	
Total Lennar	152.265	46.802	\$9,160,110	\$2,815,543	\$7,120,077		\$4,734,719	78.703	33.911	Total Remaining Fees	\$2,040,033	

¹lennar_credit

Projects with Reimbursement

Table A-3
Three Rivers Levee Fee Credit & Reimbursement
Cassano/Kamilos Credit

Cassano/Kamilos
Reimbursement

Project / Map	GDA's Absorbed	GDA's Absorbed	Total Fee Obligation	Fee Credit Used on Absorbed GDAs	Total Funding Creditable to Date	Transfer of Credits	Remaining Funding after Absorbed GDAs	Remaining Credit Acreage	Acreage Not Subject to Credit	Acreage to be Funded on a Per Unit Basis	Reimbursement Due
<i>Formula</i>	<i>A = Table 1</i>	<i>B = Table 1</i>	<i>C = A * \$60159</i>	<i>D = B * \$60159</i>	<i>E</i>	<i>F</i>	<i>G = E - D</i>	<i>H = G / \$60159</i>	<i>I = Remaining GDAs - H</i>	<i>J = (I / Remaining GDAs) * GDA per Unit</i>	
Rio Del Oro	44,267	11,512	\$2,663,058	\$692,545	\$2,668,701	N/A	\$1,996,157	33.181	N/A	N/A	\$8,041.45
Village 6	13,882	11,512	\$835,127	\$692,545						N/A	\$17,601.17
Village 8	30,385	0.000	\$1,827,931	\$0							
										Total Reimbursement	\$25,642.62

*cassano_kamilos_credit"

Table A-4
Three Rivers Levee Fee Credit & Reimbursement
DR Horton Credit

DR Horton Reimbursement										
Project / Map	GDA's Absorbed	Total Fee Obligation	Fee Credit Used on Absorbed GDAs	Total Funding Creditable to Date	Transfer of Credits	Remaining Funding after Absorbed GDAs	Remaining Credit Acreage	Acreage Not Subject to Credit	Acreage to be Funded on a Per Unit Basis	Reimbursement Due
Formula	A = Table 1	B = Table 1	C = A * \$60159	D = B * \$60159	E	F	G = E - D	H = G / \$60159	I = Remaining GDAs - H	J = (I / Remaining GDAs) * GDA per Unit
Wheeler Ranch	66.357	\$3,991,971	\$3,991,971	\$7,087,260	N/A	\$3,095,289	51,452	N/A	N/A	\$1,239,897.45
Unit 4	26.581	\$1,599,086	\$1,599,086						N/A	\$1,855,391.48
Unit 6	39.776	\$2,392,884	\$2,392,884						N/A	
									<u>Total Reimbursement</u>	<u>\$3,095,288.93</u>
"Horton credit"										

Horton_credit

Table A-5
Three Rivers Levee Fee Credit & Reimbursement
Towne Development of Plumas Lake LLP Credit

Table A-5
Three Rivers Levee Fee Credit & Reimbursement
Towne Development of Plumas Lake LLP Credit

Towne Reimbursement											
Project / Map	GDA's Absorbed	GDA's Absorbed	Total Fee Obligation	Fee Credit Used on Absorbed GDAs	Total Funding Creditable to Date	Transfer of Credits	Remaining Funding after Absorbed GDAs	Remaining Credit Acreage	Acreage Not Subject to Credit	Acreage to be Funded on a Per Unit Basis	Reimbursement Due
Formula	A = Table 1	B = Table 1	C = A * \$60159	D = B * \$60159	E	F	G = E - D	H = G / \$60159	I = Remaining GDAs - H	J = (I / Remaining GDAs) * GDA per Unit	
Rio Del Oro Village 14	31.227	18.476	\$1,878,615	\$1,111,514	\$2,340,707	N/A	\$1,229,194	20.432	N/A	N/A	\$462,093
										<u>Total Reimbursement</u>	<u>\$462,093</u>

"Towne credit"

Towne_Credit

Table A-6
Three Rivers Levee Fee Credit & Reimbursement
K Hovnanian Credit

K Hovnanian Reimbursement											
Project / Map	GDA's Absorbed	GDA's Absorbed	Total Fee Obligation	Fee Credit Used on Absorbed GDAs	Total Funding Creditable to Date	Transfer of Credits	Remaining Funding after Absorbed GDAs	Remaining Credit Acreage	Acreage Not Subject to Credit	Acreage to be Funded on a Per Unit Basis	Reimbursement Due
Formula	A = Table 1	B = Table 1	C = A * \$60159	D = B * \$60159	E	F	G = E - D	H = G / \$60159	I = Remaining GDAs - H	J = (I / Remaining GDAs) * GDA per Unit	
Wheeler Ranch	99,791	55,400	\$6,003,327	\$3,332,800	\$6,258,252	N/A	\$2,925,451	48.629	N/A	N/A	\$82,294
Phase 1, Unit 2 (TM 2004-21)	32,214	21,402	\$1,937,962	\$1,287,550						N/A	\$68,460
Phase 1, Unit 3 (TM 2004-33)	26,799	9,102	\$1,612,201	\$547,540						N/A	\$50,780
Phase 1, Unit 6 (TM 2004-31)	19,878	18,091	\$1,195,841	\$1,088,349						N/A	\$53,391
Phase 1, Unit 7 (TM 2004-32)	20,900	6,805	\$1,257,323	\$409,361						N/A	
										<u>Total Reimbursement</u>	<u>\$254,925</u>
"K_hovnanian_credit"											

"K_hovnanian_credit"

Table A-7
Three Rivers Levee Fee Credit & Reimbursement
Beazer Credit

Beazer Reimbursement										
Project / Map	GDA's Absorbed	Total Fee Obligation	Fee Credit Used on Absorbed GDAs	Total Funding Creditable to Date	Transfer of Credits	Remaining Funding after Absorbed GDAs	Remaining Credit Acreage	Acreage Not Subject to Credit	Acreage to be Funded on a Per Unit Basis	Reimbursement Due
Formula	A = Table 1	B = Table 1	C = A * \$60159	D = B * \$60159	E	G = E - D	H = G / \$60159	I = Remaining GDAs - H	J = (I / Remaining GDAs) * GDA per Unit	
Rio Del Oro Villages 1-5, 7 & 9-13	37,300 37,300	\$2,243,931 \$2,243,931	\$1,424,718 \$1,424,718	\$2,598,107	N/A	\$1,173,389	19,505	N/A	N/A	\$354,176
									<u>Total Reimbursement</u>	<u>\$354,176</u>
"beazer_credit"										

"beazer_credit"

Projects with No Reimbursement

Table A-9
Three Rivers Levee Fee Credit & Reimbursement
Rio Del Oro Farms Village 16 Credit

**Rio Del Oro Farms
No Reimbursement**

Project / Map	GDA's Absorbed	GDA's Absorbed	Total Fee Obligation [1]	Fee Credit Used on Absorbed GDAs	Total Funding Creditable to Date	Transfer of Credits	Remaining Funding after Absorbed GDAs	Remaining Credit Acreage	Acreage Not Subject to Credit	Acreage to be Funded on a Per Unit Basis	Reimbursement Due
<i>Formula</i>	<i>A = Table 1</i>	<i>B = Table 1</i>	<i>C = A * \$53,471</i>	<i>D = B * \$53,471</i>	<i>E</i>	<i>F</i>	<i>G = E - D</i>	<i>H = G / \$53,471</i>	<i>I = Remaining GDAs - H</i>	<i>J = (I / Remaining GDAs) * GDA per Unit</i>	
Rio Del Oro Village 16	46.443	0.000	\$2,483,376	\$0	\$2,483,376	N/A	\$2,483,376	46.443	0.000	0.000	\$0.00
										Total Reimbursement	\$0.00

¹⁰ *rdo_farms_credit*¹⁰

[1] Based on Exhibit C of Development Agreement.

Projects with Credit

Table A-10
Three Rivers Levee Fee Credit & Reimbursement
Cresleigh Credit

Cresleigh Homes
Credit w/ Additional Funding

Project / Map	GDA's Absorbed	GDA's Absorbed	Total Fee Obligation	Fee Credit Used on Absorbed GDAs	Total Funding Creditable to Date	Transfer of Credits	Remaining Funding after Absorbed GDAs	Remaining Credit Acreage	Acreage Not Subject to Credit	Acreage to be Funded on a Per Unit Basis	Estimated Fee Due (per Unit) [1]
<i>Formula</i>	<i>A = Table 1</i>	<i>B = Table 1</i>	<i>C = A * \$60159</i>	<i>D = B * \$60159</i>	<i>E</i>	<i>F</i>	<i>G = E - D</i>	<i>H = G / \$60159</i>	<i>I = Remaining GDAs - H</i>	<i>J = (I / Remaining GDAs) * GDA per Unit</i>	<i>K = J * \$60159</i>
Plumas Ranch	40,504	9,715	\$2,436,680	\$584,445	\$1,962,038	N/A	\$1,377,593	22,899	7,890		
Village 5	24,859	9,715	\$1,495,493	\$584,445						0.0732	\$4,405
Village 6	15,645	0.000	\$941,188	\$0						0.0557	\$3,350
Woodside	97,261	18,529	\$5,851,121	\$1,114,707	\$4,518,643	N/A	\$3,403,936	56,582		Remaining Fee	\$474,642
Village 1 (TM 99-582)	14,727	10,946	\$885,958	\$658,482					22,149	0.0560	\$3,368
Village 2A (TM 2003-39)	16,495	0.000	\$992,323	\$0						0.0559	\$3,363
Village 2B (TM 2003-40)	13,829	7,584	\$831,939	\$456,225						0.0627	\$3,775
Village 3 (TM 2005-12)	27,641	0.000	\$1,662,855	\$0						0.0540	\$3,249
Village 4 (TM 2005-13)	24,569	0.000	\$1,478,046	\$0						0.0487	\$2,928
Total Cresleigh Homes	137,765	28,244	\$8,287,801	\$1,699,152	\$6,480,681		\$4,781,529	79,482	30,039	Total Remaining Fees	\$1,807,120

*Cresleigh_credit**

[1] Fee shown is based upon the initial starting fee rate of \$60,159.

Table A-11
Three Rivers Levee Fee Credit & Reimbursement
Meritage Homes Credit

Meritage Homes
Credit w/ Additional Funding

Project / Map	GDA's Absorbed	GDA's Absorbed	Total Fee Obligation	Fee Credit Used on Absorbed GDAs	Total Funding Creditable to Date	Transfer of Credits	Remaining Funding after Absorbed GDAs	Remaining Credit Acreage	Acreage Not Subject to Credit	Acreage to be Funded on a Per Unit Basis	Estimated Fee Due (per Unit) [1]
<i>Formula</i>	<i>A = Table 1</i>	<i>B = Table 1</i>	<i>C = A * \$60159</i>	<i>D = B * \$60159</i>	<i>E</i>	<i>F</i>	<i>G = E - D</i>	<i>H = G / \$60159</i>	<i>I = Remaining GDAs - H</i>	<i>J = (I / Remaining GDAs) *</i> <i>GDA per Unit</i>	<i>K = J * \$60159</i>
Draper Ranch North	106.090	27.086	\$6,382,268	\$1,629,449	\$5,003,337	N/A	\$3,373,888	56.083	22.921	0.082	\$4,924
Phase 1	27.650	27.086	\$1,663,396	\$1,629,449						0.069	\$4,174
Remaining Phases [2]	78.440	0.000	\$4,718,872	\$0							
								Total Remaining Fees			\$1,378,931

meritage_credit

- [1] Fee shown is based upon the initial starting fee rate of \$60,159.
[2] Remaining Phase Maps have not yet been submitted. As additional maps are submitted this table should be revised to reflect the actual density of the phased maps.

Table A-12
Three Rivers Levee Fee Credit & Reimbursement
Matthews Homes Credit

Matthews Homes
Credit w/ Additional Funding

Project / Map	GDA's Absorbed	GDA's Absorbed	Total Fee Obligation	Fee Credit Used on Absorbed GDAs	Total Funding Creditable to Date	Transfer of Credits	Remaining Funding after Absorbed GDAs	Remaining Credit Acreage	Acreage Not Subject to Credit	Acreage to be Funded on a Per Unit Basis	Estimated Fee Due (per Unit) [1]
<i>Formula</i>	<i>A = Table 1</i>	<i>B = Table 1</i>	<i>C = A * \$60159</i>	<i>D = B * \$60159</i>	<i>E</i>	<i>F</i>	<i>G = E - D</i>	<i>H = G / \$60159</i>	<i>I = Remaining GDAs - H</i>	<i>J = (I / Remaining GDAs) * GDA per Unit</i>	<i>K = J * \$60159</i>
Riverside Meadows	173,751	36,839	\$10,452,686	\$2,216,224	\$6,676,794	N/A	\$4,460,569	74,146	62,765		
Village 1	29,372	26,148	\$1,766,990	\$1,573,052						0.164	\$9,878.69
Village 2	24,672	10,691	\$1,484,243	\$643,172						0.126	\$7,560.34
Village 3	23,111	0.000	\$1,390,335	\$0						0.109	\$6,570.93
Village 4	23,187	0.000	\$1,394,907	\$0						0.118	\$7,105.29
Village 5	22,900	0.000	\$1,377,641	\$0						0.142	\$8,534.60
Village 6	27,388	0.000	\$1,647,635	\$0						0.148	\$8,886.30
Village 7	23,121	0.000	\$1,390,936	\$0						0.131	\$7,872.29
										Total Remaining Fees	\$3,775,893

"matthews_credit"

[1] Fee shown is based upon the initial starting fee rate of \$60,159.

Table A-13
Three Rivers Levee Fee Credit and Reimbursement
Feather Glenn Credit

Feather Glenn Project
Credit w/ Additional Funding

Project / Map	GDA's	GDA's Absorbed	Total Fee Obligation	GDA's	Fee Credit Used on Absorbed GDAs	Total Funding Creditable to Date	Transfer of Credits	Remaining Funding after Absorbed GDAs	Remaining Credit Acreage	Acreage Not Subject to Credit	Acreage to be Funded on a Per Unit Basis	Estimated Fee Due (per Unit) [1]
<i>Formula</i>	<i>A</i>	<i>B</i>	<i>C = A * \$60159</i>	<i>D = B * \$60159</i>	<i>E</i>	<i>F</i>	<i>G = E + F - D</i>	<i>H = G / \$60159</i>	<i>I = Remaining GDAs - H</i>	<i>J = (I / Remaining GDAs) * GDA per Unit</i>	<i>K = J * \$60159</i>	
FGLHC	31.110	5.702	\$1,871,546	\$343,032	\$1,473,433	N/A	\$1,130,401	18.790	6.618			
Phase 1A	17.850	5.702	\$1,073,838	\$343,032						0.065		\$3,884.58
Phase 1B	13.260	0.000	\$797,708	\$0						0.075		\$4,516.72
										Total Remaining Fees		\$398,114
Lakemont Homes	25.040	0.000	\$1,506,381	\$0	\$1,298,558	N/A	\$1,298,558	21.585	3.455			
Phase 1C	9.850	0.000	\$592,566	\$0						0.029		\$1,739.39
Phase 1D	15.190	0.000	\$913,815	\$0						0.038		\$2,292.21
										Total Remaining Fees		\$207,823

Lakemont_credit

[1] Fee shown is based upon the initial starting fee rate of \$60,159.

APPENDIX B:

Terms Associated with the Issuance
of Private Placement and Conventional
Bonds for TRLIA CFDs 2006-1 and 2006-2



APPENDIX B

TERMS ASSOCIATED WITH THE ISSUANCE OF PRIVATE PLACEMENT AND CONVENTIONAL BONDS FOR TRLIA CFD'S 2006-1 & 2006-2

TRLIA will consider from time to time, and otherwise at the written request of the owner of a Builder Bonds, the issuance of Private Placement Bonds or Conventional Bonds to refund Builder Bonds. Landowners shall cooperate with TRLIA in such effort. In order to promote the sale of Private Placement Bonds and Conventional Bonds to outside parties prior to the completion of the Levee Improvement Program, TRLIA shall agree to consider, given current market conditions, eligible investors and the use of call protection for such Bonds, the use of tax-exempt interest rates that reflect actual market rates for bonds with similar credit characteristics to the Bonds being marketed, and the use of other bondholder incentives (that do not require any funding from TRLIA, other than from Special Tax Revenues from the respective Tax Zone of the respective CFD) as may be necessary to attract investors for the Bonds. Notwithstanding the preceding, TRLIA shall not be obligated to issue Private Placement Bonds or Conventional Bonds that have significant credit risk of default or otherwise, at tax exempt interest rates that are in excess of the outstanding related Builder Bond interest rates. TRLIA shall consider investors willing to purchase Private Placement Bonds who are proposed by the owners of the Builder Bonds, and approval of such investors shall not be unreasonably withheld as long as such investors comply with the terms and qualifications for bond purchasers listed below. A guideline of the terms for such bond issuances are contained below. The cost of issuance shall be paid from the proceeds of the sale of Private Placement Bonds and Conventional Bonds to outside parties. TRLIA may require a deposit in a reasonable and customary amount towards the cost of issuance. So long as (i) the applicable Landowners fully and timely cooperates with respect to the provision of customary requests for information, certificates, legal opinions, and execution of continuing disclosure certificates, (ii) the proposed financing is in compliance with the requirements below, and (iii) with respect to Private Placement Bonds, a purchaser has been identified, TRLIA expects that Private Placement Bonds can be issued within 90 days of a request by an owner of Builder Bonds therefore and Conventional Bonds can be issued within 180 days of an owner of Builder Bonds request therefore; subject in any event to general market conditions for land secured financings.

(1) Owners of Builder Bonds with property located within TRLIA CFD's 2006-1 & 2006-2 may request that TRLIA issue Private Placement Bonds and Conventional Bonds on behalf of the Tax Zones applicable to such Builder Bonds.

(2) For owners of Builder Bonds that are willing to provide individual collateral (e.g., a letter of credit from a financial institution acceptable to TRLIA), TRLIA will use reasonable efforts to seek willing investors for a fixed rate interest bond issue in the conventional marketplace to refund Builder Bonds, without satisfying the terms of Section 3 (except subparagraphs b., d. and i. shall apply in any event) and 4 (except subparagraphs b.(i), b.(ix), b.(x), b.(xi) and b.(xiii) shall apply in any event).

(3) *Private Placement Bonds.* Terms under which Private Placement Bonds for a Tax Zone may be issued are listed below, as determined by TRLIA; however, neither the County nor TRLIA can guarantee that a buyer will exist even if the following criteria are satisfied:

a. Purchasers of such Private Placement Bonds shall be "qualified institutional investors" as such term is defined in Subsection (a) of Rule 144A of the Securities Act of 1933 or "accredited investors" as such term is defined in Subsection (a) of Rule 501 of Regulation D under the Securities Act of 1933;

b. The EIR and/or EIS for the Phase 4 Work is approved and certified, with no legal challenge pending.

c. Bonds for the Tax Zone are supported by at least a 3:1 value-to-lien ratio in accordance with all provisions of Section (4)a, below. Parcels of undeveloped land within such Tax Zone with a 2:1 value-to-lien ratio, or lower, shall not be included for purposes of determining land values or tax revenue capacity. However, notwithstanding Section 4(a), all appraisals utilized to determine the 3:1 and 2:1 value-to-lien ratios for purposes of issuing Private Placement Bonds shall assume the completion of all Phase 4 Work, with all disclosure documents for such Bonds clearly stating that, if applicable, although Phase 4 Work has in fact not yet been completed, its completion has been assumed in determining the appraised value of the CFD and all parcels located therein.

d. All net refunding proceeds generated by Private Placement Bonds within a Tax Zone shall be placed with the fiscal agent for the CFD and expended as necessary to pay the future Levee Impact Fee obligations of the Landowner for that Tax Zone, until all of such Landowner's future Levee Impact Fee Obligations have been satisfied. Once sufficient funding has been collected to cover all future projected Levee Impact Fees for a specific Landowner, any additional net refunding proceeds generated by Private Placement Bonds within a Tax Zone shall be used to redeem the Builder Bonds that were refunded with the proceeds of the Private Placement Bonds.

e. California Debt Issuance Advisory Committee (CDIAC) compliant appraisal has been provided;

f. Annual tax levy in effect and customary foreclosure covenant on the Landowner's property, there are no significant delinquencies in payment of Special Taxes levied in the applicable Tax Zone, and the requirements of (4)(b)(ix) are met;

g. Customary reserve fund(s) established;

h. The Private Placement Bonds shall have at least \$100,000 face value denominations (to preclude owners from re-offering portions of the bonds) and such bonds shall be in certificated (not book-entry) form; and

i. The Landowners complete questionnaires and provide sufficient data for TRLIA to compile and deliver a suitable initial disclosure document to the targeted investor(s); there is an agreement in place with TRLIA to enable it to fully comply with continuing disclosure requirements; TRLIA has reason to believe that it will be furnished all required customary 10(b)-5 opinions and certificates required to close the offering; and the sale of the bonds is accompanied by a "traveling" investment letter and occurs through a registered broker dealer.

j. Private Placement Bonds may be current interest bonds or capital appreciation bonds.

k. Tax-exempt interest rates assigned to Private Placement Bonds shall reflect actual market interest rates for bonds with similar credit characteristics to the Bonds being marketed, as may be necessary to attract investors for the Bonds.

(4) *Conventional Bonds.* For Conventional Bonds to be issued for a Tax Zone, one of the following conditions must be met within such Tax Zone:

a. The standards established within the then current TRLIA's adopted Goals and Policies for Land Secured Financings and the requirements of (4)(b)(ix) are satisfied; or

b. Improved land value to public lien ratio must be at least 3 to 1, and supported by an as-built appraisal plus *all* of the following criteria must be satisfied as determined by TRLIA:

(i) there are no delinquent ad valorem or special taxes on any parcels owned by the owner of Builder of the Builder Bonds in the applicable Tax Zone;

(ii) the combined total of the projected assigned special taxes on all parcels in a Tax Zone are equal to or greater than 110% of projected gross (not net) debt service of the proposed Private Placement Bonds and Conventional Bonds for the next year (or at peak level, if debt service is escalating), based on projected interest rates for the Bonds;

(iii) special taxes on developed (final mapped) property will provide at least 50% of the projected debt service requirement for the next fiscal year on the proposed Conventional Bonds and Private Placement Bonds;

(iv) the special tax revenues for undeveloped parcels with a land value to public lien ratio of less than 2 to 1 shall not be included for purposes of calculation of the 110% coverage factor;

- (v) no impediment to development exists from restrictions imposed by agencies such as FEMA, the State Reclamation Board or any other agency having jurisdiction over the levees and levee-related matters;
- (vi) a customary reserve fund(s) established;
- (vii) the Conventional Bonds shall be in "standard" (i.e., \$5,000) denominations;
- (viii) the Conventional Bonds shall be structured so as to pay periodic interest;
- (ix) special taxes required to amortize the debt, when combined with overlapping ad valorem property taxes, other special taxes or assessments, and other property taxes, are limited to 1.8% of the projected average residential sales price for properties included in each final map in the Tax Zone, and shall provide minimum coverage levels of 110% of projected debt service requirements;
- (x) typical validity and tax exemption opinions of counsel are provided;
- (xi) standard initial disclosures shall be provided (with typical comfort letters and opinions) and shall be accompanied by appropriate ongoing disclosure agreement(s);
- (xii) such other material features as the several underwriters for such Conventional Bonds may require to establish suitability for intended offerees; and
- (xiii) The Landowners complete questionnaires and provide sufficient data for TRLIA to compile and deliver a suitable initial disclosure document to the targeted investor(s); there is an agreement in place with TRLIA to enable it to fully comply with continuing disclosure requirements; TRLIA has reason to believe that it will be furnished all required customary 10(b)-5 opinions and certificates required to close the offering.

(5) *Builder Bonds Status in the Event of Issuance of Private Placement Bonds or Conventional Bonds.* IN THE EVENT OF A SALE OF A PRIVATE PLACEMENT BOND OR CONVENTIONAL BOND, THE LIEN OF ANY REMAINING BUILDER BONDS SHALL BE SUBORDINATE TO THE PRIVATE PLACEMENT BOND OR THE CONVENTIONAL BOND AND SUCH LIEN AND OBLIGATION TO PAY THE BUILDER BOND WILL BE EXTINGUISHED IN THE EVENT OF A DEFAULT AND FORECLOSURE AGAINST THE PROPERTY SECURING SUCH PRIVATE PLACEMENT BOND OR CONVENTIONAL BOND.

(6) The terms of bond issues by or on behalf of TRLIA shall be subject to the approval by the Board of Directors of TRLIA, and all such terms not

expressly described above shall be as determined by TRLIA consistent with similar land secured financings in the County of Yuba or adjacent areas.

APPENDIX C:

Special Considerations for Projects
in TRLIA CFDs 2006-1 and 2006-2



APPENDIX C

SPECIAL CONSIDERATION FOR PROJECTS IN TRLIA CFDS 2006-1 AND 2006-2

The purpose of this Appendix is to discuss the use of Special Tax revenue collected from those projects that have land within TRLIA CFDs 2006-1 and 2006-2. Specifically, this Appendix will explain how that Special Tax revenue relates to the Three Rivers Levee Impact Fee ordinance (Levee Impact Fee) and the obligation to fund the Levee Impact Fee (Fee Obligation) prescribed therein.

- First, in order to ensure that Special Tax revenue can be used in the same manner as revenue generated from the Levee Impact Fee, this document will analyze of the relevant documents that prescribe the use of the Special Tax revenue.
- Second, this document will describe how Special Tax revenue will be treated with respect to satisfying the Fee Obligation by providing credit.

USE OF SPECIAL TAX REVENUE

The terms related to how Special Tax revenue collected from property within these CFDs is to be used are contained within the following documents;

- Description of Facilities Eligible to be funded by the Districts;
- Rate and Method of Apportionment of the Special Tax (RMA) for each CFD; and,
- The individual Fiscal Agent Agreements entered into for each Tax Zone within each CFD.

The relevant terms of these documents are summarized as follows.

Description of Eligible Facilities

The description of Eligible Facilities for both CFD 2006-1 and CFD 2006-2 includes the following;

“The District may finance all or a portion of the costs of the following:...The construction, repair and /or rehabilitation of flood control improvements, including but not limited to levee system and drainage

improvements, and any necessary habitat mitigation incident to any improvements."

And also includes the following:

"Reimbursement of costs related to the formation of the District advanced by the Authority, the County, Reclamation District No. 784 or any other governmental agency, or any landowner or developer within the District, as well as reimbursement of any costs advanced by the Authority or any related entity, or any landowner or developer within the District, for facilities, fees or other purposes or costs of the District."

Rate and Method of Apportionment

Special Tax revenues are used to pay "Annual Costs," as defined in the RMA. Annual Costs are defined in the RMA for each of CFD 2006-1 and CFD 2006-2 as follows;

"Annual Costs" means, for any Fiscal Year, the total of these:

- i. Debt Service for Bonds due in calendar year that commences in such Fiscal Year;
- ii. Administrative Expenses for such Fiscal Year;
- iii. The amount needed to replenish the Reserve Fund for the Bonds to the level required under the Bond Indenture;
- iv. An amount to fund delinquencies in payments of Special Taxes from Taxable Parcels based upon the Special Tax levied in the previous Fiscal Year and/or anticipated for the current Fiscal Year;
- v. Premiums for Bond credit enhancements; and
- vi. Pay-As-You-Go Expenditures for Authorized Facilities to be constructed or acquired by the CFD, including the repayment of Builder Bonds, or to be used to reduce the amount of future Capital Calls."

According to the RMA for each of CFD 2006-1 and CFD 2006-2, Pay-As-You-Go Expenditures means, "the use of annual Special Tax revenues to pay for Authorized Facilities, as determined by the Administrator."

Fiscal Agent Agreements²

With respect to the use of Special Tax revenues as it relates to the repayment of the Builder Bonds, Sections 4.01 of the Fiscal Agent Agreements for each respective Tax Zones of CFD 2006-1 states the following;

² While there are separate Fiscal Agent Agreements entered into for each set bonds issued for each Tax Zone in the 2 CFD's, the Fiscal Agent Agreements are substantially the same .

"With respect to Special Tax Revenues, if any, collected by or on behalf of the Authority, any Special Tax Revenues remaining in any Fiscal Year after the satisfaction of any and all other claims thereon and pledges thereof (including (i) the payment of debt service on any Private Placement Bonds or Conventional Bonds, as such terms are defined in the Second Funding Agreement; (ii) the payment of any debt service on any Refunding Bonds; and (iii) the payment of any other Annual Cost, as such term is defined in the RMA, other than the payment of the Bonds), as determined by the Treasurer, shall be transferred by the Treasurer to the Fiscal Agent for deposit by the Fiscal Agent to the Bond Fund; provided that any such Special Tax Revenues constituting payment of the portion of the Special Tax levy for Administrative Expenses shall be deposited by the Treasurer in the Administrative Expense Fund, and any such Special Tax Revenues constituting Special Tax Prepayments shall be transferred by the Treasurer to the Fiscal Agent for deposit by the Fiscal Agent (as specified in writing by the Treasurer to the Fiscal Agent) directly in the Special Tax Prepayments Account established pursuant to Section 4.04(A)."

Sections 4.01 of the Fiscal Agent Agreements for each respective Tax Zone of CFD 2006-2 contain similar language, except with respect to Zones 3 and 4 of CFD 2006-2 which make it clear that CFD 2006-1 Zone 5 and 4 bonds, respectively, get paid prior to Zone 3 and 4 bonds of CFD 2006-2.

SPECIAL TAX REVENUE AND CREDIT TOWARD FEE OBLIGATION

Two categories of land within the CFDs are affected by the application of Special Tax revenue. They are;

1. Those properties that have land within either of the CFDs and have a **remaining Fee Obligation**; and
2. Those properties that have land within either of the CFDs **and have fully funded their Fee Obligation**.

For projects that have an additional Fee Obligation -

Based upon the above referenced terms contained within the RMA, Description of Eligible Facilities and Fiscal Agent Agreement, Special Tax revenue collected from land within projects that have an additional Fee Obligation should be treated as Pay-As-You-Go expenditures to fund Authorized Facilities. As defined in the Description of Eligible Facilities, the term "Authorized Facilities" includes "reimbursement of any costs advanced by the Authority or any related entity (*in this case the County and the Yuba County Water Agency*), or any landowner or developer within the District, for facilities,

fees or other purposes or costs of the District” (italicized language added) is part of Authorized Facilities.

Therefore, Special Tax Revenue that is collected from those lands that have an additional Fee Obligation will be used to provide reimbursement to the County and YCWA for payments made by them with respect to their borrowing to pay levee improvement costs. This application of revenues is the same as will apply to revenue from the collection of the Three Rivers Levee Impact Fee which also would provide reimbursement to the County and YCWA for payments made by them with respect to their borrowing to pay levee improvement costs. Furthermore, the Fiscal Agent Agreement indicates that the payment of any Annual Cost is senior to the redemption of Builder Bonds from Special Tax revenue. Given the foregoing and the provisions of Sections 4.01 of the Fiscal Agent Agreements, the reimbursement of funds to the County and YCWA comes before the payment of Builder Bonds.

Hence, for those Projects that have an additional Fee Obligation:

- Special tax revenue will be credited toward funding the Fee Obligation due on the remaining units. The funds will be accounted for by the County Treasurer and upon remission by the County Treasurer to YLFA to pay project costs, YLFA will advise the County on the amount of acreage credit earned.
- The funds will be accounted for and utilized in the same manner as the disposition of Levee Impact Fees collected by the County. Special tax revenues can be used to pay project costs if the levee improvement project is still incomplete, or the revenues can be used to pay reimbursements due to those parties that advance-funded improvement costs (reference **Chapter 4**).
- The acreage credit will be determined based upon the fee applicable at the time the Special Tax revenues are transmitted to YLFA.
- Acreage credit generated from Special Tax revenues will be utilized by the landowner to satisfy the Levee Impact Fees due, as outlined in **Chapter 3**, for the next subsequent building permits issued. The credit will be applied to satisfy the remaining Fee Obligation due on the permit in the same manner as cash paid would.
- As a result of utilizing Special Tax revenues to satisfy a remaining Fee Obligation, Special Tax revenue will not be used toward the payment or redemption of Builder Bonds.

For projects that have fully funded their levee funding obligations -

Projects that have fully funded their Fee Obligation have no additional allocable costs remaining to pay and have no reimbursement obligation to the County, YCWA or any other landowner that advanced funded levee improvement costs. Therefore, Special Tax revenue collected from properties in such projects in any year that Builder Bonds are outstanding (and no additional debt has been issued) will be used pursuant to the Fiscal Agent Agreement to pay Administrative Expenses, with any remaining funds to be used to redeem the outstanding Builder Bonds of the applicable Zone of the applicable CFD. Sections 2.03 of the Fiscal Agent Agreements states the procedures for Builder Bond redemption. In summary, the Builder Bonds can be redeemed on any date, without premiums in increments of \$5,000 of Maturity Amount.

