THREE RIVERS LEVEE IMPROVEMENT AUTHORITY  
Yuba County Government Center, Board Chambers  
915 Eighth Street, Suite 109A  
Marysville, California  

APRIL 1, 2008 – 3:30 P.M.

I  CALL TO ORDER

II  ROLL CALL – Directors Rick Brown, Jerry Crippen, Don Graham, Mary Jane Griego, Dan Logue

III  PUBLIC COMMUNICATIONS: Any person may speak about any subject of concern provided it is within the jurisdiction of the Levee Improvement Authority and is not already on today’s agenda. The total amount of time allotted for receiving such public communication shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes.

IV  CONSENT AGENDA: All matters listed under the consent agenda are considered to be routine and can be enacted by one motion.

A. Approve minutes of the regular meeting of March 18, 2008.

V  ACTION ITEMS

1. Adopt resolutions declaring the public necessity for the taking of certain property for repair, construction, installation and maintenance of the Three Rivers Levee Improvement Project regarding the following properties:

   a) APN 014-290-033 (Dang)
   b) APN 014-290-034 (Uppal)

2. Adopt resolution authorizing specific actions in regard to the funding program for Phase 4 Feather River and Yuba River Levee Improvements.

3. Approve Right of Way Contract with California Department of Transportation in the amount of $30,600 and authorize Executive Director to execute same.

4. Adopt resolution in regard to acquisition of fill from the Platters and authorizing the Executive Director to acquire fill by executing an agreement with the Platters and JTS.

5. Approve waiver of potential conflict of interest in simultaneous representation by Downey Brand LLP of Three Rivers Levee Improvement Authority and Sutter Butte Flood Control Agency and authorize Executive Director to execute same.

VI  BOARD AND STAFF MEMBERS’ REPORTS

VII  ADJOURN
A meeting of the Board of Directors of the Three Rivers Levee Improvement Authority was held on the above date, commencing at 2:16 p.m., within the Government Center, Marysville, California, with a quorum being present as follows: Directors Rick Brown, Jerry Crippen, Don L. Graham, and Mary Jane Griego. Director Dan Logue was absent. Also present were Executive Director Paul Brunner, Counsel Scott Shapiro, and Clerk of the Board of Supervisors/Secretary Donna Stottlemeier. Chair Griego presided.

### CONSENT AGENDA

**Minutes**

Upon motion of Director Crippen, seconded by Director Graham, and carried with Director Logue being absent, the Board approved the minutes of the regular meeting of March 4, 2008, as written.

### BOARD AND STAFF MEMBERS' REPORTS

Reports were received on the following:

**Executive Director Paul Brunner:**
- Central Valley Flood Protection Board meeting on Friday, March 21, 2008
- Receipt of Corps of Engineers 104 Credit, draft permit, and certification
- Environmental Impact Statement for setback levee project
- Issuance of approval decision for Proposition 1E funding agreement
- Financial regarding revenues, expenses, and cash flow
- Board of Supervisors approval of terms for agreement with United States Fish and Wildlife Service

### ACTION ITEMS

**Resolutions of Necessity/Feather River/Phase 4 Levee Repair Project/Setback levee:**
Chair Griego provided information for proceeding with consideration of resolutions of necessity. Right-of-way Manager Bob Morrison provided a Power Point presentation including the following:
- Necessity of Project
- Benefits of setback levee project
- Water surface elevations
- Greatest public good and lease private injury
- Alignment approvals

Mr. Mike Naumes, president and CEO of Naumes, Inc, read written comments which are identified as Exhibit A attached and made a part of the minutes.

Mr. Michael Yaki, Counsel for Naumes, Inc., discussed additional expenses by early acquisition of property.

Director Logue joined the meeting at 2:59 p.m.

Ms. Laura Naumes and Mr. Naumes responded to specific Board inquiries regarding pear crop location and harvest.

Following Board discussion, upon motion of Director Crippen, seconded by Director Brown, and unanimously carried, the Board adopted Resolution No. 08-04, which is entitled: "A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230)," as it relates to Assessor's Parcel Numbers 014-250-027, 014-240-008, 014 and Sutter County 23-180-007,009 (Naumes).

Mr. Morrison provided a Power Point presentation regarding alignment of various properties for acquisition.

Mr. Ray Anderson, property owner, felt the valuation of the Anderson property was erroneous.

Following Board discussion, Director Crippen declared a conflict of interest due to Mrs. Anderson being a client.

Director Graham declared a conflict of interest on all resolutions under consideration due to the property owners being neighbors.

Mrs. Berdina Anderson, property owner, requested compensation of trees.
Counsel Scott Shapiro recapped the process for voting based on conflicts of interest and the rule of necessity which provides an exception to the conflict rule.

Director Graham requested reconsideration of the vote on the Naumes resolution.

Upon motion of Director Crippen, seconded by Director Brown, and carried with Director Graham abstaining, the Board approved the adoption of Resolution No. 08-04 as entitled above.

Upon motion of Director Crippen, seconded by Director Logue, and carried with Director Graham abstaining, the Board adopted the following resolutions:

- Resolution No. 08-05 entitled: "A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230)," as it relates to Assessor's Parcel Numbers 013-010-010-, 034, and 035 (Danna Investments);

- Resolution No. 08-06 entitled: "A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230)," as it relates to Assessor's Parcel Number 014-370-017 (Heir Trust);

- Resolution No. 08-07 entitled: "A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230)," as it relates to Assessor's Parcel Number 014-290-0047 (Heir Family);

- Resolution No. 08-08 entitled: "A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230)," as it relates to Assessor's Parcel Number 014-370-036 (Nordic);

- Resolution No. 08-09 entitled: "A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE
RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230)," as it relates to Assessor's Parcel Number 014-370-007 (P.F. Rice);

- Resolution No. 08-10 entitled: "A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230)," as it relates to Assessor's Parcel Number 014-370-020 (Hadley).

Upon motion of Director Crippen, seconded by Director Logue, and carried with Director Graham abstaining, the Board adopted Resolution No. 08-11, which is entitled: "A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230)," as it relates to Assessor's Parcel Numbers 014-370-006 and 039 (Anderson).

Mr. Morrison provided a Power Point presentation regarding alignment of various properties for acquisition.

Director Crippen declared a conflict of interest regarding the Mitchell property as they are clients.

Counsel Scott Shapiro recapped the process for voting based on conflicts of interest and the rule of necessity which provides an exception to the conflict rule.

Upon motion of Director Griego, seconded by Director Logue, and carried with Director Graham abstaining, the Board adopted the following resolutions:

- Resolution No. 08-12 entitled: "A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230)," as it relates to Assessor's Parcel Number016-010-006 (L. Neischulz etc.);
<table>
<thead>
<tr>
<th>Resolution Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>08-13</td>
<td>&quot;A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230),&quot; as it relates to Assessor's Parcel Number 016-010-016 (Susanna M. Nieschulz Trust);</td>
</tr>
<tr>
<td>08-14</td>
<td>&quot;A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230),&quot; as it relates to Assessor's Parcel Number 016-010-009 (Herold);</td>
</tr>
<tr>
<td>08-15</td>
<td>&quot;A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230),&quot; as it relates to Assessor's Parcel Number 016-010-010 (Flores);</td>
</tr>
<tr>
<td>08-16</td>
<td>&quot;A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230),&quot; as it relates to Assessor's Parcel Numbers 016-010-002, 016-020-005, 014-370-029, 014-370-030 (Foster);</td>
</tr>
<tr>
<td>08-17</td>
<td>&quot;A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230),&quot; as it relates to Assessor's Parcel Number 016-060-008 (Foster);</td>
</tr>
</tbody>
</table>

Upon motion of Director Logue, seconded by Director Crippen, and carried with Director Graham abstaining, the Board adopted Resolution No. 08-17 entitled: "A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. §1245.230)," as it relates to Assessor's Parcel Number 016-060-001 (Foster/Mitchell)
There being no further business to come before the Three Rivers Levee Improvement Authority the meeting was adjourned at 3:45 p.m. by Chair Griego.

________________________________________
Chairman

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS
AND SECRETARY OF THE PUBLIC AUTHORITY

________________________________________ Approved: _________________
April 1, 2008

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul Brunner, Executive Director  
Scott Shapiro, General Counsel

SUBJECT: Approval of Alternate Local Share of Funding Program for Phase Four of Levee Improvement Program

Staff Recommendation: Staff recommends the Board approve and have the Chairman sign the attached resolution which will provide a bridge loan from Yuba County (County) which will provide for the funding of the local share of the program by the County and the Yuba County Water Agency (YCWA), and which will authorize the Executive Director to take all actions necessary to inform the State of this change.

Background: Three Rivers Levee Improvement Authority (the “Authority”) has constructed over $130,000,000 of levee improvements resulting in the certification of levees on the Western Pacific Interceptor Canal, the Bear River, and significant portions of the levees on the Yuba River, thereby significantly improving public safety in Southern Yuba County. The Authority, the County of Yuba, RD 784, and certain landowners in south Yuba County, previously executed the Second Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements ("Second Funding Agreement") which was to provide for up to $135 million of funds to be advanced by the landowner signatories thereto to strengthen-in-place the remaining RD 784 levees and complete the Authority's levee improvement program. In February 2007 the Authority certified the final environmental impact report for the Feather River Levee Repair Project, the fourth and final phase of levee improvements, which included a Feather River setback levee, and selected the setback levee over the strengthen-in-place alternative. In order to fund the setback levee the Authority applied to the State of California for, and has been selected to receive, funding in the amount of $138.51 million to construct levee improvements including a setback levee along the Feather River as the fourth and final phase of the Authority's work.
The local share of this program ($53.3 million) was to be provided by $23.3 million in funds from the County and $30 million in funds from participating landowners. Unfortunately, because some landowners have elected to not provide funding, the landowners can no longer provide their $30 million in funding.

**Discussion:** On Thursday March 27, 2008 and Friday, March 28, 2008, the County and YCWA, respectively, will be considering resolutions to provide the local share without the participation of the landowners. The County will also be considering a $7 million bridge loan to assist the Authority with its short term cash-flow needs.

The attached resolution, if approved, and if the resolutions are passed by the County and YCWA, will authorize the Executive Director to accept the $7 million loan, to execute a funding agreement to more formally record the terms of the agreement between the Authority, the County, and YCWA, and to inform the State of the changes.

**Financial Impact:** These actions provide the funding for the Authority's program and the budget previously approved by this Board.

Attachments:
1. Resolution No. 2008-__
RESOLUTION NO. 2008-__

A FURTHER RESOLUTION BY THE BOARD OF DIRECTORS OF THREE RIVERS LEVEE IMPROVEMENT AUTHORITY AUTHORIZING SPECIFIC ACTIONS IN REGARD TO THE FUNDING PROGRAM FOR PHASE 4 FEATHER RIVER AND YUBA RIVER LEVEE IMPROVEMENTS

WHEREAS, the Three Rivers Levee Improvement Authority (the “Authority”), a joint exercise of powers authority of which the County of Yuba and Reclamation District 784 (RD 784) are the members, has constructed over $130,000,000 of levee improvements resulting in the certification of levees on the Western Pacific Interceptor Canal, the Bear River, and significant portions of the levees on the Yuba River, thereby significantly improving public safety in Southern Yuba County; and

WHEREAS, the Authority, the County of Yuba, RD 784, and certain landowners in south Yuba County, previously executed the Second Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements ("Second Funding Agreement") which was to provide for up to $135 million of funds to be advanced by the landowner signatories thereto to strengthen-in-place the remaining RD 784 levees and complete the Authority’s levee improvement program; and

WHEREAS, in February 2007 the Authority certified the final environmental impact report for the Feather River Levee Repair Project, the fourth and final phase of levee improvements, which included a Feather River setback levee, and selected the setback levee over the strengthen-in-place alternative; and

WHEREAS, in order to fund the setback levee the Authority applied to the State of California for, and has been tentatively selected to receive, funding in the amount of $138.51 million to construct levee improvements including a setback levee along the Feather River as the fourth and final phase of the Authority’s work; and

WHEREAS, the Authority had expected that the local share required to obtain the State grant would come from a combination of funds from the County and certain landowners, but the Authority was recently informed that not all of the landowners are willing to provide the expected funding; and

WHEREAS, the County and the Yuba County Water Agency (YCWA) are willing to provide the necessary funds to make up the local share and the County is willing to provide a bridge loan to the Authority to assist with cashflow.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Three Rivers Levee Improvement Authority as follows:

Section 1. The Board hereby authorizes its Executive Director to take all appropriate actions to accept the bridge loan offered by the County.
Section 2. The Board hereby authorizes its Executive Director to take any all necessary actions to inform the State of California of the changes in the sources of the local share.

Section 3. The Board hereby authorizes its Executive Director to execute an agreement with the County and YCWA which specifies the terms of the funding to be provided by the County and YCWA for the Levee Improvement Program.

* * * * * *

PASSED AND ADOPTED this 1st day of April, 2008, by the Board of Three Rivers Levee Improvement Authority by the following vote:

AYES: 

NOES: 

ABSENT: 

ABSTAIN: 

____________________________________
Chair

ATTEST: DONNA STOTTMEMEYER, CLERK OF THE BOARD

____________________________________

APPROVED AS TO FORM: GENERAL COUNSEL
SCOTT SHAPIRO
TO: THREE RIVERS LEVEE IMPROVEMENT BOARD OF DIRECTORS
FROM: PAUL BRUNNER, EXECUTIVE DIRECTOR
DATE: March 26, 2008
SUBJECT: CONSIDER ADOPTING RESOLUTIONS OF NECESSITY FOR ACQUISITION OF TWO PROPERTIES ALONG THE FEATHER RIVER FOR THE PHASE 4 LEVEE REPAIR PROJECT

RECOMMENDATION:

That the Board of Directors adopt the attached Resolutions of Necessity for the acquisition of certain properties bearing the following Assessor's Parcel Numbers for the Three Rivers Phase 4 Levee Repair Project (the "Project"):

1. 014-290-033 (Dang)
2. 014-290-034 (Uppal)

BACKGROUND:

The Three Rivers Levee Improvement Authority (TRLIA) is preparing to carry out the construction, improvement and repair work along certain sections of the flood control levees along the Feather River in Yuba County. A major portion of the levee improvements includes a new setback levee.

The proposed setback levee is part of a larger flood control project that includes 29.3 miles of levee improvements in Yuba County. The proposed setback levee is about 5.7 miles long and will replace approximately 6.2 miles of existing Feather River levee. At the North end the new levee begins about 2,000 feet downstream of the Linda County Water District wastewater treatment plant and is West of the Yuba County airport. The Northern tie-in station with the existing Feather River levee is at approximately Project Levee Mile (PLM) 23.4. The Southern tie-in with the existing levee is just North of the Star Bend boat ramp, at about PLM 17.2. The levee height generally ranges between 18 and 30 feet, with an average height of about 24 feet, and the setback area (the area between the existing levee and the new setback levee, including the footprint of the new levee) is about 1,550 acres.
Selection of Current Alignment

The selection of the current alignment is based on previous planning studies, hydraulic analysis, and geotechnical analysis. A summary of the planning studies, hydraulic and geotechnical conditions that were considered before selecting the existing Feather River setback levee alignment are described below.

Previous Planning Studies

Setbacks of the Feather River left (East) bank levee within RD 784 have been the subject of several studies and projects by the Yuba County Water Agency and TRLIA during the last seven years. These studies have evaluated levee deficiencies, deficiency remediation measures, and setback levee options. The significant findings of these studies are documented in the following reports:

*Yuba – Feather Supplemental Flood Control Project (2003 Feasibility Report)* – The 2003 Feasibility Report included Feather River setback levees as options to reduce flooding impacts in Marysville, Yuba City, and RD 784. The study included drilling a total of nine borings to investigate soil conditions in the project area. The Feather River levee was divided into two segments, above Start Bend and below Star Bend. Recommendations included continued development of setback levee options for both reaches.

*RD 784 Supplemental Flood Control Improvements (2004 Feasibility Report)* – The 2004 Feasibility Report evaluated an alternative that included a combined setback levee for the lower Bear River and the lower (below Star Bend) Feather River. The study recommended a Southern alignment for a Bear River setback levee over the combined Feather-Bear Rivers setback levee alternative. It was found that the Southern Bear River setback levee could accomplish some of the benefits of a below-Star-Bend Feather setback levee. Construction of the Bear River setback levee has been completed.

*Phase 4 Feather River Levee Repair Project Alternatives Analysis (2006 Alternatives Analysis Report)* - While the 2003 Feasibility Report considered a single setback levee alignment extending from Star Bend to about one mile North of Murphy Road, the 2006 Alternatives Analysis Report evaluated that alignment plus two additional alignments farther to the West. The alternative setback levee alignments for study were selected by a range of project stakeholders in an Alternatives Identification Workshop held in January 2006. The workshop participants identified two alignments to include in the alternatives analysis. Subsequent to the workshop a third alternative setback levee alignment was identified to address property owner concerns at the Northern end of Segment 2. These alignments are shown on Figure 2 and summarized in Table 1.

<table>
<thead>
<tr>
<th>Study Description</th>
<th>Workshop Description</th>
<th>Setback Levee Length</th>
<th>Setback Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Above Star Bend (ASB) Setback Levee</td>
<td>Modified 2003 Setback Levee</td>
<td>30,000 ft.</td>
<td>1,600 acres</td>
</tr>
<tr>
<td>Intermediate Setback Levee</td>
<td>Intermediate Setback Levee</td>
<td>29,000 ft.</td>
<td>1,200 acres</td>
</tr>
<tr>
<td>Modified Intermediate Setback Levee</td>
<td>n/a</td>
<td>29,000 ft.</td>
<td>1,000 acres</td>
</tr>
</tbody>
</table>

*Setback area includes the footprint of the setback levee*. 
The study assessed the impact of the three alignments on lowering of flood stages in the Feather and Yuba Rivers and evaluated the geotechnical conditions along the alignments, inundation reduction benefits, impact on private property, comparative costs, and opportunities for habitat restoration. As part of the geotechnical evaluation, 13 additional soil borings were drilled to investigate soils conditions along the alternative alignments. Combined with the nine borings from the 2003 Feasibility Report, and several borings from earlier Corps studies, over 25 borings were included in the geotechnical evaluation. Based on the hydraulic, geotechnical, environmental, inundation damage reduction, and cost evaluations documented in the 2006 Alternatives Analysis Report, the Above Star Bend (ASB) setback levee was determined to provide the greatest total benefits and greatest net benefit of the identified alternatives and was therefore determined to be the economically superior alternative.

**DISCUSSION:**

Undertaking the proposed construction work along the Feather and Yuba River bank levee will necessitate the acquisition of the three properties illustrated below:

<table>
<thead>
<tr>
<th>Assessor's Parcel No.</th>
<th>Owner</th>
<th>Area to be acquired (Acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>014-290-033</td>
<td>Quinn X. Dang (70%) and Andy N. Dang (30%) as tenants in common</td>
<td>13.65 acres in fee</td>
</tr>
<tr>
<td>014-290-034</td>
<td>Rajinder S. Uppal and Sakhminderpal Uppal, husband and wife as to undivided 7/8 interest; Pritpal S. Dhillon and Ravtej Kaur Gill, husband and wife as to an undivided 1/16 interest; Manjiv Raj and Tajinder Kaur, husband and wife as to an undivided 1/16 interest</td>
<td>39.53 acres in fee</td>
</tr>
</tbody>
</table>

**FISCAL IMPACT:**

The appraised values for these two parcels are within the TRLIA Board approved (Feb. 6, 2007) land acquisition plan for Feather River Segment 2. The funding to acquire these two parcels is in the TRLIA cash flow and is available to be deposited to the State Treasurer's Condemnation Fund once the Prop 1E agreement is signed.
RESOLUTION NO. _______

A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY
FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE
RIVERS LEVEE IMPROVEMENT PROJECT
(CODE CIV. PROC. § 1245.230)

WHEREAS, Three Rivers Levee Improvement Authority ("TRLIA") proposes to repair, construct, install, and maintain the Three Rivers Phase 4 Levee Repair Project (the "Project") affecting a portion of Assessor's Parcel No 014-290-033 in the County of Yuba, California (the "Property"); and

WHEREAS, TRLIA has advised the owners of the Property of the need for the Project and offered said owners an opportunity for a hearing before the TRLIA Board on April 1, 2008 pursuant to section 1245.235 of the Code of Civil Procedure, State of California; and

WHEREAS, the Board of Directors of TRLIA adopts this resolution in compliance with Section 1245.230 of the Code of Civil Procedure.

NOW THEREFORE, THE BOARD OF DIRECTORS OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Property to be acquired is for the repair, construction, installation and maintenance of the Project.

TRLIA is authorized to acquire property for the Project pursuant to, among others, the following statutes: Government Code section 25350.5 and Water Code section 50930.

SECTION 2. The general location and extent of the Property to be acquired is as set forth in the legal description attached hereto as Exhibit A and accompanying map attached hereto as Exhibit B, and incorporated herein by reference.

SECTION 3. The Board of Directors declares that it has found and determined as follows:

a. The public interest and necessity require the proposed Project.

b. The proposed Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury.

c. The Property described in Exhibits A and B is necessary for the proposed Project.

d. The offer of just compensation required by Government Code Section 7267.2 has been made to the owners of record of the Property.

e. The use of the property for its stated public use scheduled to begin within two years of its acquisition.
PASSED AND ADOPTED by the Board of Directors of the Three Rivers Levee Improvement Authority this 1st day of April, 2008 by a two-thirds (2/3) or greater vote as follows:

AYES:
NOES:
ABSTAIN:
ABSENT:

______________________________
CHAIRPERSON

ATTEST:

______________________________
Donna Stottlemeyer, Secretary

APPROVED AS TO FORM
SCOTT L. SHAPIRO
GENERAL COUNSEL

By: ____________________________
Exhibit 'A'

APN 014-290-033
LEGAL DESCRIPTION
FEE TITLE ACQUISITION

All that Real property situated in the County of Yuba, State of California, being a portion of Real property conveyed by deed to Quinn X. "Dang", Recorded in Document No. 2005R-003346, Official Records of said County, hereinafter referred to as "Dang" property, being a portion Lot 11, Block 24 as shown upon that certain map entitled "Arboga Colony", filed in the Office of the Recorder in said County and State in Book 1 of maps at Page 31, and situated in the Southwest One Quarter of Section 24 Township 14 North, Range 3 East of the Mount Diablo Base and Meridian, being more particularly described as follows:

Beginning at an Iron Pipe marking the Northwest corner of said "Dang" property; thence along the North line of said "Dang" property North 89°44'20" East 417.88 feet; thence leaving said North line South 03°04'07" East 1322.16 feet to a point on the South line of said "Dang" property; thence along said South line South 89°45'45" West 482.54 feet to the Southwest corner thereof; thence along the West line of said "Dang" property North 00°15'56" West 1320.37 feet to the Point of Beginning, containing an area of 594,482 Square Feet or 13.65 acres, more or less.

See Exhibit B attached hereto and made a part of this description.

End of description

The Basis of Bearings for this description is the California Coordinate System Zone 2.

This description has been prepared by me or under my direct supervision.

Kevin A. Heaney, P.L.S. 5914
POINT OF BEGINNING
IRON PIPE
N.W. CORNER
DANG PROPERTY

OWNER: DANG
A.P.N. 014-290-033

ACQUISITION AREAS:
FEE TITLE ACQUISITION=594,482 SQ. FT.
13.65 ACRES

PHASE 4 FEATHER RIVER LEVEE
REPAIR PROJECT
RECLAMATION DISTRICT 784
SETBACK LEVEE RIGHT OF WAY

OWNER:
DANG
A.P.N. 014-290-033

PHASE 4 FEATHER RIVER LEVEE
REPAIR PROJECT
RECLAMATION DISTRICT 784
SETBACK LEVEE RIGHT OF WAY

CTA Engineering - Surveying
COUNTY OF YUBA
RESOLUTION NO. _______

A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT (CODE CIV. PROC. § 1245.230)

WHEREAS, Three Rivers Levee Improvement Authority ("TRLIA") proposes to repair, construct, install, and maintain the Three Rivers Phase 4 Levee Repair Project (the "Project") affecting Assessor's Parcel No 014-290-034 in the County of Yuba, California (the "Property"); and

WHEREAS, TRLIA has advised the owners of the Property of the need for the Project and offered said owners an opportunity for a hearing before the TRLIA Board on April 1, 2008 pursuant to section 1245.235 of the Code of Civil Procedure, State of California; and

WHEREAS, the Board of Directors of TRLIA adopts this resolution in compliance with Section 1245.230 of the Code of Civil Procedure.

NOW THEREFORE, THE BOARD OF DIRECTORS OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Property to be acquired is for the repair, construction, installation and maintenance of the Project.

TRLIA is authorized to acquire property for the Project pursuant to, among others, the following statutes: Government Code section 25350.5 and Water Code section 50930.

SECTION 2. The general location and extent of the Property to be acquired is as set forth in the legal description attached hereto as Exhibit A and map attached hereto as Exhibit B, incorporated herein by reference.

SECTION 3. The Board of Directors declares that it has found and determined as follows:

a. The public interest and necessity require the proposed Project.

b. The proposed Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury.

c. The Property described in Exhibits A and B is necessary for the proposed Project.

d. The offer of just compensation required by Government Code Section 7267.2 has been made to the owners of record of the Property.

e. The use of the property for its stated public use scheduled to begin within two years of its acquisition.
PASSED AND ADOPTED by the Board of Directors of the Three Rivers Levee Improvement Authority this 1st day of April, 2008 by a two-thirds (2/3) or greater vote as follows:

AYES:
NOES:
ABSTAIN:
ABSENT:

________________________
CHAIRPERSON

ATTEST:

________________________
Donna Stottlemeyer, Secretary

APPROVED AS TO FORM
SCOTT L. SHAPIRO
GENERAL COUNSEL

By: ___________________________
Exhibit A

Lot 14, in Block 24, as shown upon that certain map entitled, "Arboga Colony", on file in the office of the County Recorder of the County of Yuba, State of California, in Book 1 of Maps, at Page 31.

Excepting therefrom 50% of all oil, gas, geothermal resources and all mineral wherever situated, weather or not similar to those herein mentioned, in to recoverable from the herein described real property together with the right to mine, Drill, remove and otherwise extract such oil, gas geothermal resources, and minerals; provided, however, that such drilling and removal shall not unreasonably interfere with other use of the land, as reserved in the Deed from Del Monte Corporation recorded in Book 608, Page 588 Official records

A.P. No. 14-290-025 Portion OLD

APN: 14-296-034 NEW
April 1, 2008

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

SUBJECT: Request to waive potential conflict created by Downey Brand's representation of TRLIA and Sutter Butte Flood Control Agency (SBFCA)

Recommendation: Staff recommends the Board delegate authority to the Executive Director to sign the attached waiver letter waiving the potential conflict from Downey Brand's representation of both TRLIA and SBFCA.

Background: TRLIA has retained Downey Brand as special counsel for approximately three and a half years and as general counsel for approximately one year. Recently, the Counties of Sutter and Butte, Cities of Yuba City, Live Oak, Biggs, and Griddley, and Levee Districts 1 and 9 have formed a joint powers agency to seek increased flood protection on the west side of the Feather River. Through a competitive process, the SBFCA has selected Downey Brand to provide general counsel services.

Discussion: In order for Downey Brand to represent both TRLIA and SBFCA, it must obtain a conflict waiver from both due to the potential conflict. Downey Brand's representation of TRLIA and SBFCA has the potential to present a conflict of interest in future matters. While at this time the interests of TRLIA and SBFCA are not adverse, it is possible that TRLIA and SBFCA may have differences during the normal course of development of flood protection projects, possibly relating to hydraulic impacts or limited financial resources associated with State and Federal funding. In particular, it is possible that TRLIA or SBFCA could develop a project, for which Downey Brand would advocate, which could be argued by the other entity to have hydraulic impacts upon the other. While this possibility is unlikely in light of the existing State and Federal standards for projects which were created to prevent just such impacts, the possibility always exists. In regard to limited financial resources, both TRLIA and SBFCA will be reliant upon funding from the State of California and the Federal government. In this regard, Downey Brand could be called upon to advocate for funding from the State or Federal government which could have the effect of causing the State of Federal government to select one project for funding, to the detriment of the other.
If a waiver was granted, Downey Brand would be able to represent each entity in regulatory and other contexts, but would not be able to representing each in a negotiation or litigation against the other, without a further waiver. In the event of negotiations or litigation against each other where a further waiver has not been granted, Downey Brand would still have the ability to represent TRLIA as the earlier client of the two.

Staff believes that the interests of TRLIA and SBFCA are the same: to obtain better flood protection for their residents. TRLIA's collaborative style has allowed TRLIA to make tremendous progress to date, and this style suggests that TRLIA should grant this waiver so that we can all achieve increased flood protection.

**Financial Impact:** No fiscal impact.
March 19, 2008

Bill Edgar  
Sutter Butte Flood Control Agency  
c/o County of Sutter  
1160 Civic Center Blvd, Suite A  
Yuba City, California 95993

Paul Brunner  
Three Rivers Levee Improvement Authority  
Yuba County 1-Stop Center  
1114 Yuba Street, Suite 218  
Marysville, California 95901-5273

Re: Waiver of Potential Conflict of Interest in Simultaneous Representation by Downey Brand LLP of the Three Rivers Levee Improvement Authority and the Sutter-Butte Flood Control Agency

Dear Bill Edgar and Paul Brunner,

Our firm serves as special counsel to the Three Rivers Levee Improvement Authority (TRLIA) and is proposed to be general counsel to the Sutter-Butte Flood Control Agency (SBFCA). This letter relates to potential conflicts of interest that could arise in the course of our representation of these existing and potential clients.

The purposes of this letter are: (i) to discuss the potential conflicts of interest that could arise from our representation of TRLIA and SBFCA, and (ii) to obtain the consent of both parties to our current and proposed representation of TRLIA and SBFCA.

1. Disclosure of Potential Conflict of Interest Arising from Simultaneous Representation of TRLIA and SBFCA

Under California law, we owe a duty of loyalty to all of our clients. The California Rules of Professional Conduct 3-310(C), in interpreting the duty of loyalty in the case of simultaneous representation of clients, prohibit our firm from representing clients with potentially adverse interests unless all clients provide us with their informed written consent to the representation. In order to comply with this requirement, we must provide you sufficient information to permit your "free and intelligent consent" to this type of simultaneous representation. (Ishmael v. Millington, (1966) 241 Cal. App. 2d 520, 528, fn.5). We also wish to advise you that it is
possible (and highly desirable) for each of you to obtain independent legal advice before waiving these potential conflicts of interest. \textit{(Klemm v. Superior Court (1977) 75 Cal. App. 3d 893, 901)}.

Our representation of TRLIA and SBFCA has the potential to present a conflict of interest in future matters. While at this time the interests of TRLIA and SBFCA are not adverse, it is possible that TRLIA and SBFCA may have differences during the normal course of development of flood protection projects, possibly relating to hydraulic impacts or limited financial resources associated with State and Federal funding. In particular, it is possible that TRLIA or SBFCA could develop a project, for which this firm would advocate, which could be argued by the other entity to have hydraulic impacts upon the other. While this possibility is unlikely in light of the existing State and Federal standards for projects which were created to prevent just such impacts, the possibility always exists. In regard to limited financial resources, both TRLIA and SBFCA will be reliant upon funding from the State of California and the Federal government. In this regard, Downey Brand could be called upon to advocate for funding from the State or Federal government which could have the effect of causing the State of Federal government to select one project for funding, to the detriment of the other.

Other possible conflicts could arise from fact circumstances not known today. Under these circumstances, there could be a disadvantage to one or the other of you because our firm represents both entities, with the attendant concern that we might not advocate as zealously for each entity's interests as we would if we did not represent the other.

2. \textit{Waivers of Conflicts of Interest}

Again, as part of determining whether TRLIA or SBFCA wish to consent to this simultaneous representation, either may want to obtain the advice of independent legal counsel. If either of you so desire, we will be glad to provide you with the names of potential independent counsel.

If each of you, after having read the foregoing discussion and having the opportunity to seek the advice of independent counsel, wish to waive all present and future conflicts that arise out of our representation of both entities, please so indicate by signing the waiver below. The waiver granted herein allows Downey Brand to represent each entity in regulatory and other contexts, but does not contemplate Downey Brand representing each in a negotiation or litigation against the other, without a further waiver. In the event of negotiations or litigation against each other where a further waiver has not been granted, Downey Brand would still have the ability to represent TRLIA as the earlier client of the two.

We have provided you with duplicate originals of this letter; please sign one, retaining it for your files, and return the other letter to us. We will then circulate to you a copy of the letter with all signatures.
Please feel free to call if you have any questions. We look forward to working with you on this matter.

Very truly yours,

DOWNEY BRAND LLP

AGREED AND ACCEPTED:

I, ______________________, have read the foregoing letter regarding the conflict associated with Downey Brand LLP's proposed representation of TRLIA and SBFCA. I am authorized to waive such conflicts by ______________________ and, after having the opportunity to consult with independent counsel, do waive any and all conflicts that may arise from this representation.

Dated: March ___, 2008.

Three Rivers Levee Improvement Authority

______________________________
Name:
Title:

AGREED AND ACCEPTED:

I, ______________________, have read the foregoing letter regarding the conflict associated with Downey Brand LLP's proposed representation of TRLIA and SBFCA. I am authorized to waive such conflicts by ______________________ and, after having the opportunity to consult with independent counsel, do waive any and all conflicts that may arise from this representation.

Dated: March ___, 2008.

Sutter Butte Flood Control Agency

______________________________
Name:
Title:
TO: Three Rivers Levee Improvement Authority Board
FROM: Paul G. Brunner, Executive Director
Bob Morrison, ROW Manager
SUBJECT: Real Estate Sale to Caltrans
APN's: 016-130-015, 016-130-008, and 028-050-009

Recommendation:
Delegate authority to TRLIA Executive Director to sell construction access rights to Caltrans for a total of $30,600.00 (initial offer of $25,600 plus $5,000 for staff time)

Background:
The California Department of Transportation is prepared to begin construction on the State Route 70 widening project. The construction of the new bridge over the Bear River will require temporary access to the floodplain of the Bear River over TRLIA owned property. TRLIA owns much of the flood plain from the purchase of the DeValentine Orchard.

Discussion:
Caltrans approached TRLIA over a year ago to acquire temporary access rights to the floodplain for construction. Staff reviewed and agreed with the appraised value. Our major concern was related to reimbursement for staff time to complete the acquisition.

Caltrans recently agreed to reimburse TRLIA for staff time related to the transaction.

Fiscal Impact:
Net increase to TRLIA of $30,600.
RIGHT OF WAY CONTRACT -- STATE HIGHWAY

Document No. 033107-2 in the form of an Easement Deed to the State of California, particularly described in the above instrument and this Document No. 033107-1 in the form of a Temporary Construction Easement, and covering the property as delineated on the attached map identified as Exhibit "A", have been executed and delivered to CHARLEY HESSE, Right of Way Agent for the State of California.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. (A) The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the State of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

(B) Grantee requires said property described in Document Nos. 033107-1 and 033107-2 for State highway purposes, a public use for which Grantee has the authority to exercise the power of eminent domain. Grantors are compelled to sell, and Grantee is compelled to acquire the property.

(C) Both Grantors and Grantee recognize the expense, time, effort, and risk to both parties in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is in compromise and settlement, in lieu of such litigation.

2. The State shall:

(A) Pay the undersigned grantors the sum of $30,600.00 for the property or interest conveyed by above documents when title to said property vests in the State free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes, except:

a. Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.

b. Covenants, conditions, restrictions and reservations of record, or contained in the above-referenced document.

c. Easements or rights of way over said land for public or quasi-public utility or public street purposes, if any.
(B) Pay all escrow and recording fees incurred in this transaction, and, if title insurance is desired by the State, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer tax. This transaction will be handled through an escrow with First American Title Company, 415 Century Park Drive, Yuba City, CA 95991, Escrow No. 33107.

(C) Have the authority to deduct and pay from the amount shown on Clause 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid nondelinquent assessments which have become a lien at the close of escrow.

3. Permission is hereby granted the State or its authorized agent to enter upon Grantors’ land, within the temporary construction easement, shown on the map marked Exhibit “A” attached hereto and made a part hereof, for the purpose of the access and construction for widening of Highway 70 including expanding the current bridge over Bear River from 2 lanes to 4 lanes. The temporary construction easement is needed from April 1, 2007 through July 31, 2011. Payment for said temporary construction easement is included in amount in Clause 2(A).

4. Any monies payable under this contract up to and including the total amount of unpaid principal and interest on notes secured by mortgages or deeds of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said trust deeds or mortgages, shall upon demand be made payable to the mortgagees or beneficiaries entitled thereunder; said mortgagees or beneficiaries to furnish grantor with good and sufficient receipt showing said monies credited against the indebtedness secured by said mortgages or deeds of trust.

5. It is understood and agreed between the parties hereto that payment in Clause 2(A) hereinabove includes, but is not limited to, full payment for all rights granted within said Access Easement Deed, referred to hereinabove as Document No. 33107-2, in favor of the State of California.

It is further understood and agreed said Access Easement Deed, includes but is not limited to, the State’s right of ingress and egress there from said easement, over and across grantor’s property; and the State’s right to trim, cut down, and clear away or otherwise control any trees or brush within 15 feet of said described easement, whenever considered necessary. This Access Easement is for the maintenance of the bridge spanning the Bear River at Highway 70.

6. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the State, including the right to remove and dispose of improvements, commenced on May 1, 2006, or the close of the escrow controlling this transaction, whichever occurs first, and that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

7. Grantor warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the grantor agrees to hold State harmless and reimburse State for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of grantor for a period exceeding one month. Grantor acknowledges that a quitclaim deed will be required from any lessee that has a lease term exceeding one month. Said quitclaim deeds are to be provided to Title by Grantor, prior to the close of escrow.

8. It is understood and agreed by and between the parties hereto that payment as provided in Clause 2(A) includes, but is not limited to, payment for any and all damages, and any and all damages which may accrue to the Grantors' remaining property by reason of its severance from the property conveyed herein and the construction and use of the proposed highway project, including, but not limited to, any expense which Grantors may incur in restoring the utility of their remaining property.
9. It is agreed between the parties hereto that the State in acquiring title subject to unpaid assessments, as set forth herein, is not assuming responsibility for payment or subsequent cancellation of such assessments. The assessments remain the obligation of the grantors and, as between the State and the grantors; no contractual obligation has been made requiring their payment. Payment for the property acquired under this transaction is made upon the basis that the grantors retain their obligation to the levying body respecting said assessments. The property acquired under this transaction is to be free and clear of any bonds and/or assessments at the close of escrow.

10. It is understood and agreed by and between the parties hereto that this Agreement inures to the benefit of, and is binding on, the parties, their respective heirs, personal representatives, successors, and or assignees.

11. State agrees to indemnify the hold harmless grantors from any liability arising out of State’s operations under this agreement. State further agrees to assume responsibility for any damages proximately caused by reason of State’s operations under this agreement and State will, at its option, either repair or pay for such damage.

In Witness Whereof, the Parties have executed this agreement the day and year first above written.

Three Rivers Levee Improvement District

THREE RIVERS LEVEE IMPROVEMENT DISTRICT
Grantor

TRLI REPRESENTATIVES NAME

TRLI REPRESENTATIVES TITLE

RECOMMENDED FOR APPROVAL:

ACCEPTED:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By

CHARLEY HESSE
Right of Way Agent

By

GREG LUNDBLAD
Senior Right of Way Agent
Acquisition Branch
Marysville

By

DEBBIE H. MORENO
North Region Right of Way Manager
Marysville

No Obligation Other Than Those Set Forth Herein Will Be Recognized
April 1, 2008

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul Brunner, Executive Director
Scott Shapiro, General Counsel

SUBJECT: Approval of Fill Purchase Agreement with Platters

Staff Recommendation: Staff recommends the Board approve and have the Chairman sign the attached resolution which will delegate the authority to the Executive Director to execute an agreement with the Platters in a form substantially similar to the attached draft agreement.

Background: Three Rivers Levee Improvement Authority (the “Authority”) has constructed over $130,000,000 of levee improvements resulting in the certification of levees on the Western Pacific Interceptor Canal, the Bear River, and significant portions of the levees on the Yuba River, thereby significantly improving public safety in Southern Yuba County. The Authority plans to construct a new setback levee along the Feather River. Construction of the levee will require significant sources of fill material, and the Platter's property contains fill suitable for this construction.

Discussion: The attached agreement provided the Authority with permission to excavate from the Platter's property fill material required for the new levee, and then to later fill the borrow bit with soil from the old levee. JTS is a party to the agreement because JTS holds an option on the property. The effect of the agreement is to pay the Platters for the use of the property to obtain the fill, and in the process to extend JTS’s option.

Staff has concluded that the cost of this fill is less expensive than fill that would be obtained from within the setback areas (due to additional treatment costs and transportation costs associated with other fill).

Two minor issues remain to be resolved. First, an issue between the Platters and JTS exists as to drainage easements. Secondly, JTS has questions regarding the Authority's plan to compact the new fill material. Staff expects both of these issues to be resolved in
the next few days, allowing execution of the agreement (with any necessary modifications) shortly after the Board's approval

**Financial Impact:** These costs (currently estimated at $1,054,925) are included within the Authority's construction budget. Also, the Authority's obligation to pay is contingent on execution of the State funding agreement.

Attachments:
1. Resolution No. 2008-__
2. Draft agreement
RESOLUTION NO. 2008-__

A RESOLUTION BY THE BOARD OF DIRECTORS OF THREE RIVERS LEVEE IMPROVEMENT AUTHORITY IN REGARD TO ACQUISITION OF FILL FROM THE PLATTERS

WHEREAS, the Three Rivers Levee Improvement Authority (Authority) is engaged in a public works project to repair certain levees within Yuba County, California, for the purpose of providing greater protection from flooding; and

WHEREAS, as part of the public works project, Authority is constructing its Phase 4 Feather River Setback Levee (the "Project") in order to improve the Feather River levee that protects the communities of Linda, Olivehurst, and Plumas Lake; and

WHEREAS, Authority is interested in acquiring temporary interests in certain portions of the Platters' real property (the "Property") as a result of which Authority would be permitted to excavate borrow material from the Property to construct a new Feather River Levee, and then to return other fill material to the borrow pit and re-grade the Property for its ultimate use; and

WHEREAS, the Platters and ITS, as the option holder, have previously executed an "Option Agreement" dated August 1, 2003 whereby the Platters have granted to ITS certain rights to acquire 278.4 acres of land, which land includes the Property; and

WHEREAS, in addition to granting Authority the rights its seeks, the Platters and ITS are willing to execute an agreement to modify the rights and obligations contained within the Option Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Three Rivers Levee Improvement Authority as follows:

Section 1. The Board hereby authorizes its Executive Director to acquire fill for the Project by executing an agreement with the Platters and ITS, in a form substantially similar to the draft attached hereto.

PASSED AND ADOPTED this 1st day of April, 2008, by the Board of Three Rivers Levee Improvement Authority by the following vote:
AYES:

NOES:

ABSENT:

ABSTAIN:

________________________
Chair

ATTEST: DONNA STOTTLEMeyer,
CLERK OF THE BOARD

________________________

APPROVED AS TO FORM: GENERAL COUNSEL
SCOTT SHAPIRO
SAMPLE AGREEMENT

AGREEMENT GRANTING TO THREE RIVERS LEVEE IMPROVEMENT AUTHORITY A RIGHT TO ENTER AND REMOVE SOIL

APN's: 016-030-001, 014-380-020, and 016-040-022

This AGREEMENT GRANTING TO THREE RIVERS LEVEE IMPROVEMENT AUTHORITY A RIGHT TO ENTER AND REMOVE SOIL ("Agreement") is entered into and is effective on the latest date next to the signatures on the last page. It is among E. PLATTER AND SONS, INC. ("Owner"), JTS COMMUNITIES, INC. ("Option Holder") and THREE RIVERS LEVEE IMPROVEMENT AUTHORITY ("Authority"). For purposes of this Agreement, the Authority's officers, employees, representatives, contractors and subcontractors shall be collectively referenced herein as "Authority's Representatives".

FACTS AND CIRCUMSTANCES

This Agreement is made with reference to the following facts and circumstances, among others:

A. Authority is engaged in a public works project to repair certain levees within Yuba County, California, for the purpose of providing greater protection from flooding. As part of the public works project, Authority is constructing its Phase 4 Feather River Setback Levee (the "Project") in order to improve the Feather River levee that protects the communities of Linda, Olivehurst, and Plumas Lake.

B. Authority is interested in acquiring temporary interests in certain portions of Owner's real property (the "Property") as a result of which Authority would be permitted to excavate Borrow Material (as defined below) from the Property to construct a new Feather River Levee, and then to return other Fill Material (as defined below) to the borrow pit and re-grade the Property for its ultimate use. The Property is more particularly described on Exhibit "A-1", "A-2", "A-3", and "A-4", attached hereto and incorporated herein by this reference.

C. Owner and Option Holder have previously executed an "Option Agreement" dated August 1, 2003 whereby Owner has granted to Option Holder certain rights to acquire 278.4 acres of land, which land includes the Property. As a result of the extension of that Option Agreement under Section 2.03.B. of that Option Agreement, Option Holder has rights to exercise the option until August 1, 2009.

D. In addition to granting Authority the rights its seeks under this Agreement, Owner and Option Holder are executing this Agreement to modify the rights and obligations contained within the Option Agreement, all on the terms and conditions set forth in this Agreement.
NOW, THEREFORE, in mutual consideration of the promises made herein, the Parties agree as follows:

1. Rights and Obligations of the Authority.

   a. Permission to Enter. Permission is hereby granted by Owner and Option Holder to Authority and Authority's Representatives to enter onto the Property from Feather River Boulevard and Country Club Road, within 14 days following execution of this Agreement, for the purpose of removing Borrow Material, together with the right of ingress and egress over the Property in connection therewith, to deposit tools and construction materials, and to take all other actions as may be reasonably necessary to remove certain Borrow Material. Permission is further granted to take the same and similar actions in regard to the placement of Fill Materials on the Property as further described below.

   b. Removal of Borrow Material; Placement of Fill Material. Authority may excavate all soils from the Property, which soils shall be defined herein as "Borrow Materials," for the purpose of construction of the Project, with no limitation on quantity. Authority shall replace the Borrowed Material with soils from the existing Feather River levee, which soils shall be collectively herein defined as "Fill Materials." Authority shall implement the following measures to optimize replacement soil quality for the Fill Material to be placed on the Property:

      (i) The top 6 inches of the existing soil will be removed and stockpiled prior to borrow operations. After the excavated area is backfilled with Fill Materials, this salvaged soil will be replaced in a six-inch layer over the top of the backfilled area.

      (ii) The borrow pits on the Property will be backfilled with Fill Material from the existing Feather River Levee. The Fill material shall be free of significant concentrations of organic materials, rubble and debris. The soil to be backfilled will be identified as originating in three separate reaches of that levee designated as Reach 1 (south tie-in with setback levee to Pump Station No. 3 (approximate existing levee Sta. 291+50)), Reach 2 (Pump Station No. 3 to existing levee Sta. 320+00), and Reach 3 (existing levee Sta. 320+00 to Country Club Rd (approximate existing levee Sta. 355+00)). If upon evaluation of the volume of the borrow pit and the volume of the three levee reaches, the Authority determines that Reaches 1, 2 and 3 will not provide enough soil to backfill the borrow pits, TRLIA will obtain additional soil from Reach 4 of the existing levee (approximate existing levee Sta. 370+00 to Sta. 450+00) as needed to fill the borrow pits. The soils from Reach 3 (and Reach 4 if used) will be placed first in the bottom of the borrow pit. The soil from Reach 1 and Reach 2 will be placed last, i.e., in the upper portion of the backfilled areas. Authority shall not use any fill from the area of the 1997 levee break section as backfill without separate written approval granted by Owner. All Fill Material will be placed in maximum of 12
inch lifts and compacted to 95% of the maximum dry density in accordance with ASTM D 698.

(iii) The Fill Material will be covered with the six inches of salvaged topsoil as described under item (i) above.

c. **Removal of Equipment; Debris.** Authority agrees that immediately prior to the termination of this Agreement, it will remove from the Property all construction equipment, tools, and building materials associated with construction of the Project and any trash, and other debris, deposited during construction. All concrete from the main irrigation lines shall be removed from the Property by Authority. Authority shall also demolish the barn located on parcel APN 016-030-001 and shall dispose of the debris offsite.

d. **Restoration of Grade.**

(i) Authority shall restore the property to a grade that contains a fall of 15/100's of a foot for each 100 lineal feet from north to south for the portions of the property that are located in APN's 014-380-020 and 016-030-001 and level east to west on all APNS. Authority shall restore the portion of the property that is located in APN 016-040-022 to an approximate level grade. Consistent with TRLIA's setback levee construction contract documents, grading and surveying tolerances shall be +/- 0.1 foot. Notwithstanding the forgoing, Authority shall return approximately the same volume of Fill Material to the Property as has been removed by Authority.

(ii) The Fill Material shall not contain any plastic material such as that used as part of the levee construction.

e. **Protection and Abandonment of Wells.** Authority shall preserve and protect irrigation wells "W-1" and "W-2" as shown on the attached Exhibit "A-4". Authority shall remove and seal irrigation well "W-3" as shown in the attached Exhibit "A-4". Authority will preserve and protect monitoring well "W-4" as shown on the attached Exhibit "A-4".

f. **Removal of Power Poles.** Authority shall remove from the ground the smaller electrical power pole owned by the Owner and shown as "PP 1" on the attached Exhibit "A-4". Said power pole "PP 1" will remain the property of Owner and Authority shall preserve the removed pole and make it available for Owner to remove from the site. Authority shall have no obligation with respect to larger electrical power pole owned by PG&E and shown as "PP 2" on the attached Exhibit "A-4".

2. **Term.** This Agreement shall be effective upon the execution by the Parties and shall remain in full force and effect until August 1, 2011.

3. **Compensation.**

a.补偿 to Option Holder. Option Holder acknowledges and agrees that Authority shall not be obligated to pay any cash
compensation to Option Holder for the rights granted herein to Authority because the
further extension of Option Holder's option beyond the date provided for in the Option
Agreement, coupled with Authority's agreement to grade the Property under Section 4
below as requested by Option Holder, is sufficient consideration from Authority to
Option Holder.

b. **Compensation to Owner.** Owner acknowledges and agrees
that this Section 3.b provides the exclusive compensation to Owner for the rights granted
herein to Authority. Subject to Section 3.c, Authority shall pay Owner the amount of
One Million Fifty Four Thousand Nine Hundred Twenty Five Dollars ($1,054,925) by
May 1, 2008; provided, that in the Authority' sole discretion this payment date may be
delayed by up to 45 days, and the Authority shall pay interest on that amount
compounded daily at the State Controller's Office – Surplus Money Investment Fund
rate. The compensation ($1,054,925) consists of the following elements:

(i) Compensation to the Owner of $250,000 per year
for the use of the Property for three years and $125,000 for the use of the property for a
fourth year.

(ii) Compensation to Owner for the costs of
reinstallation of fencing and gates following Authority's final placement of Fill Materials
on the Property, in the amount of $51,925 which is estimated to compensate for the loss
and replacement of 9 gates and 10,335 linear feet of barb wire fencing. However, Owner
is entitled to remove existing fencing and gates prior to April 1, 2008 at their discretion
and at their own expense. If fencing and gates in excess of the amounts indicated above
are taken by Authority, Owner shall be further compensated at the rate of $4.50 per linear
feet for fencing and $600 per gate to be paid in a single lump sum payment within three
months of the removal of the fencing. Owner is entitled to the $51,925 and this further
compensation even if Owner elects to not reinstall the fencing and gates.

(iii) Compensation to Owner for the costs of
reinstallation of an irrigation system following Authority's final placement of Fill
Materials on the Property, estimated to cost in the amount of $100,000.00. However,
Owner is entitled to remove existing irrigation fixtures prior to April 1, 2008 at their
discretion and at their own expense. Owner is entitled to this compensation even if
Owner elects to not reinstall the irrigation system.

(iv) Compensation to Owner for the costs to prepare and
replant the property with an irrigated pasture seed mix estimated to cost $ 25,000.00.
Owner is entitled to this compensation even if Owner elects to not replant the pasture.

(v) Compensation to Owner to partially cover the costs
of attorney time for the preparation of this Agreement in the amount of $3,000.

c. **Condition Precedent to Payment.** A condition precedent
to the payment of compensation by the Authority to the Owner is that the State executes
the Funding Agreement which is the basis for a substantial portion of this funding. The
Parties understand that representatives from the State have stated their expectation that the State Funding Agreement will be executed by the end of March.

d. Right to Extend. Authority shall have a right to extend this Agreement in one year increments at a further cost of $250,000 per year. Authority must provide notice of such extension by February 1st of the year in which the Agreement is set to terminate. The effect of such extension shall be to also provide a further one year extension to Option Holder under Section 4(a) below.

4. Future Uses of the Property by the Owner and Option Holder; Interplay with Rights and Obligations Under the Option Agreement.

a. Under the Option Agreement Option Holder has until August 1, 2009 to exercise its option, and is to provide notice under Section 3.04 of the Option Agreement of such exercising by June 1, of that year. This Agreement shall extend Option Holder’s option until August 1, 2011, with Option Holder to provide notice of exercising the option to Owner 120 days prior to close of escrow, but no later than April 1, 2011 at latest.

b. Upon its completion of the re-grading of the Property, Authority shall return the Property to the Owner, and the Owner shall have exclusive rights to the use of the Property unless and until the Option Holder exercises the option under Section 4.b. above.

5. Property to be Kept Free of Encumbrances. Authority shall defend, hold harmless, and indemnify Owner and Option Holder from any and all third party encumbrances and/or liens against the Property arising out of the removal of the Borrow Material and placement of Fill Materials, including, without limitation, any claim or liability in any way connected with the failure of Authority to pay any of its contractors or subcontractors, or the failure of any contractor or subcontractor of Authority to pay any person(s) referred to in Section 3181 of the California Civil Code.

6. Owner and Option Holder Not Liable. Owner and Option Holder shall not be liable for any loss, damage, or injury of any kind or character to any person, entity, or property arising from Authority’s or its employees’, agents’, assigns’, or contractors’ use of the Property, or any portion thereof, or by any act or omission by Authority under this Agreement, or by any of Authority’s Representatives, licensees, or invitees, or by or from any accident on the Property arising out of this contract, or by any fire or other casualty thereon, occasioned by the failure of Authority to maintain the Property in a safe condition. Authority shall defend, hold harmless, and indemnify Owner and Option Holder or any successor in interest thereto from any loss, liability, or damage resulting from the activities of Authority, “Authority’s Representatives, or anyone acting pursuant to authorization from Authority in relation to the Property. However, Authority shall have no obligation to indemnify Owner and Option Holder for any loss, liability, or damage caused by the sole and active negligence of either Owner or Option Holder, or any of Owner or Option Holder’s employees, agents, or authorized users, including, but not limited to, tenants, invitees or permittees.
7. **Coordination with Owner and Option Holder Regarding Construction Activities.** Authority shall coordinate its proposed activities with Owner and Option Holder to ensure that its work on the Property is conducted at times and in a manner that will not unreasonably interfere with the use and enjoyment of the Property and/or the adjacent property of Owner and Option Holder and its tenants, if any, and other authorized users.

8. **Compliance with Laws.** Authority shall be responsible to comply with any and all applicable laws, rules, regulations and ordinances in connection with any use of the Property pursuant to this Agreement.

9. **As-Is Condition of Property.** Authority acknowledges that Owner and Option Holder has made no representation or warranty of any kind or nature whatsoever regarding the condition of the Property, the Borrow Material, or their fitness or suitability for Authority's intended use hereunder. Authority agrees to accept the Property and the Borrow Material in their AS-IS condition and acknowledges that Authority has conducted, or has had the opportunity to conduct, any and all inspections of the condition of the Property and the Borrow Material that Authority deems necessary or desirable.

10. **Ownership of Borrow Material and Fill Material.** All Borrow Material excavated and removed from the Property shall become the property of Authority or its designee. All Fill Material after replacement on the Property shall become the property of Owner.

11. **Insurance; Fire Protection.** During the term of this Agreement and any extension thereof, Authority shall ensure that the contractor performing the borrow and fill activities obtains and thereafter maintains insurance listing Owner and Option Holders as additional insureds on a commercial general liability insurance, with a combined single limit of liability not less than $1 million. Such insurance shall be provided by an insurer rated no less than A-IX by A&M Best's Insurance Rating Guide. Authority shall also require its contractor to carry worker's compensation insurance as required by law. Authority shall also require that its contractor keeps the Property in good condition such as to limit the risk of fire at all times during the term of this Agreement.

12. **Attorney Fees; Litigation Costs.** If any legal action or other proceeding, including without limitation arbitration or an action for declaratory relief is brought to enforce this Agreement or because of a dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs, in addition to any other proper relief. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.
13. **Assignment.** This Agreement is binding upon Owner's, Option Holder's, and Authority's successors in interest, heirs, and assigns. Authority agrees that it will not, voluntarily assign this Agreement to any other party without Owner and Option Holder's prior written consent, which may be withheld in Owner and Option Holder's sole and absolute discretion. Neither Owner nor Option Holder shall be permitted to assign this Agreement or sell their interests in the Property without the permission of Authority. Authority may record this Agreement as against the Property to preserve its rights herein. Authority shall promptly terminate this Agreement upon the earlier of completion of all work contemplated by this Agreement or any termination of this Agreement.

14. **Time of the Essence.** Time is of the essence in this Agreement and every provision contained in this Agreement.

15. **Construction.** The title and headings of the Sections in this Agreement are intended solely for reference and do not modify, explain, or construe any provision of this Agreement. All references to sections and recitals shall, unless otherwise stated, refer to the Sections and Recitals of this Agreement. In construing this Agreement, the singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if all parties have prepared the Agreement.

16. **Integration.** This Agreement, all attached exhibits, and all related documents referred to in this Agreement, constitute the entire agreement between the parties. There are no oral or parol agreements which are not expressly set forth in this Agreement and the related documents being executed in connection with this Agreement. This Agreement may not be modified, amended, or otherwise changed except by a writing fully executed by all parties to this Agreement.

17. **Third Party Rights.** This Agreement has been made and is made solely for the benefit of Owner, Option Holder and Authority. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties and their respective successors and permitted assigns, any rights or remedies. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement.

18. **Further Assurances.** Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this Agreement.

19. **Severability.** If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be enforced to the fullest extent permitted by law.

20. **Waivers.** No waiver or breach of any provision shall be deemed a waiver of any other provision. No extension of time for performance of any obligation or
act shall be deemed an extension of time for any other obligation or act. Failure by a
party to insist upon the strict performance of any of the provisions of this Agreement by
the other party, or the failure by a party to exercise its rights upon the default of the other
party shall not constitute a waiver of such party’s right to insist and demand strict
compliance by the other party with the terms of this Agreement thereafter.

21. **Incorporation of Exhibits.** All attached exhibits are incorporated in this Agreement by reference.

22. **Authority of Parties.** All persons executing this Agreement on behalf of a party warrant that they have the authority to execute this Agreement on behalf of that party.

23. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The execution of this Agreement shall be deemed to have occurred, and this Agreement shall be enforceable and effective only upon the complete execution of this Agreement by Owner and Option Holder and Authority.

24. **Governing Law.** This Agreement shall be governed by and construed in accordance with California law.

25. **Notices.** All notices, requests, demands and other communications required to or permitted to be given under this Agreement shall be in writing and shall be conclusively deemed to have been duly given: (a) when hand-delivered to the other party; or (b) when received when sent by facsimile at the address and number set forth below (provided that any notice given by facsimile shall be deemed received on the next business day if such notice is received after 5:00 p.m. (recipient's time) or on a nonbusiness day); or (c) three (3) business days after the same have been deposited in a United States post office with first class or certified mail return receipt requested postage prepaid and addressed to the parties as set forth below; or (d) the next business day after same have been deposited with Federal Express or a comparable national express courier, postage prepaid, addressed to the parties as set forth below with next business day delivery guaranteed:

**If to Authority:** Three Rivers Levee Improvement Authority

Paul Brunner, Executive Director
Yuba County 1-Stop Center
1114 Yuba Street, Suite 218
Marysville, California 95901-5273
Telephone: (530) 749-5679
Facsimile: (530) 749-6990

**If to Owner:** E. Platter And Sons, Inc.
E. Platter & Sons Inc.
Thomas H Platter, Pres.
1233 Country Club Rd.
Plumas Lake, Ca. 95961-9622
530-743-3074
530-743-3074
rplatter@comcast.net

If to Option Holder:  JTS Communities, Inc.

_________________  
_________________

Telephone:  
Facsimile:  

With copies to:

Owner's Attorney:
Patricia D. Elliott, Esq.
McDonough Holland & Allen PC
555 Capitol Mall, 9th Floor
Sacramento, CA 95814
Telephone: (916) 444-3900
Direct:  (916) 325-4581
Fax: (916) 444-5918
pelliott@mhalaw.com

Option Holder's Attorney:

Authority's Attorney:
Scott L. Shapiro
Attorney at Law
DOWNEY BRAND
555 Capitol Mall, 10th Floor
Sacramento, CA 95814
P: 916/444-1000
F: 916/444-2100
sshapiro@downeybrand.com
A party may change or supplement the addresses given above, or designate additional addresses, for purposes of this paragraph 25, by giving the other parties written notice of the new address in the manner set forth above.

**OWNER:**

**E. PLATTER AND SONS, INC.**

By: ___________________________ Date: ______________
    Thomas Platter

Title: __________________________

By: ___________________________ Date: ______________
    Roberta Platter

Title: __________________________

**OPTION HOLDER:**

**JTS COMMUNITIES, INC.**

By: ___________________________ Date: ______________
    Print Name: __________________

Title: __________________________

**AUTHORITY:**

**THREE RIVERS LEVEE IMPROVEMENT AUTHORITY**

By: ___________________________ Date: ______________
    Paul Brunner
    Executive Director