

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY AGENDA NOVEMBER 14, 2006

Yuba County Government Center
Board of Supervisors' Chambers
915 Eighth Street, Suite 109A
Marysville, California

Unless otherwise indicated

2:00 P.M. I

CALL TO ORDER

II ROLL CALL – Directors Rick Brown, Mary Jane Griego, Dan Logue, Richard Webb

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 in one motion.

A. Approve minutes of the special meetings of October 17 and 31, 2006.

B. Approve Memorandum of Understanding with County of Yuba for support services and authorize Chairman to execute same.

V ACTION/DISCUSSION ITEMS

A. Adopt resolution certifying the Final Environmental Impact Report for the Feather River Levee Repair Project and approve project alternative.

B. Receive Advisory Committee recommendation for Board Director and take action as appropriate.
No background material

C. Approve First Amendment to Mitigation Rights Purchase Agreement with Wildlands Inc. and authorize Chairman to execute same.

VI BOARD AND STAFF MEMBERS' REPORTS

VII CLOSED SESSION

A. Conference with Real Property Negotiator pursuant to Government Code §54956.8 - Property: 619 Ninth Street, Suite D, Marysville Negotiating Parties: Coldwell Banker Commercial Bosanek and Flores and County of Yuba/Negotiation: Lease and Terms

B. Personnel pursuant to Government Code §54957 – Executive Director Evaluation

VIII ADJOURN



THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

Government Center
915 Eighth Street, Suite 115
Marysville, CA 95901-5273
(530) 749-7841 (530) 749-7884 Fax

November 14, 2006

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul Brunner, Executive Director *PMB*
SUBJECT: Memorandum of Agreement between the County of Yuba and TRLIA for support services

Recommended Action

Approve Memorandum of Agreement (MOA) between the County of Yuba and TRLIA for support services and authorize Chairman to sign

Discussion

The attached proposed MOA between the County and TRLIA was prepared jointly by County and TRLIA staff. This MOA will also be submitted by County staff to the Yuba County Board of Supervisors for approval. It provides the legal basis for the County and TRLIA to exchange support services. County and TRLIA staff believe this agreement is beneficial to both parties.

TRLIA receives and agrees to pay for support services from the County in office space, equipment, supplies, and personnel; specifically:

- Legal Counsel Services
- Public Works Services (processing of invoices, maintaining TRLIA accounts, providing an automobile)
- Information Services (telephone, cell phone/PDA and support, internet, e-mail, software/hardware technical support, and TRLIA web site support)
- Administrative Services (mail, office supplies, office space, equipment, print shop)
- County Auditor, Treasurer Services, Personnel, and Risk Management services
- Facility maintenance and custodial support by the County Administrative Services
- Clerk of the Board (provide clerk services, agenda and minute preparation and maintain official records of the Authority.
-

The County receives and agrees to pay for support services from TRLIA; specifically:

- Technical support (example: engineering expertise)

Fiscal Impact

The anticipated TRLIA expenditures for the County services/support are accounted for in the approved 2006/07 TRLIA budget.

MEMORANDUM OF AGREEMENT
BETWEEN THE COUNTY OF YUBA
AND THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
FOR SUPPORT SERVICES

This Agreement is entered into this _____ day of _____, 2006, by and between the County of Yuba, hereinafter "County", and the Three Rivers Levee Improvement Authority, hereinafter "TRLIA".

Whereas, TRLIA desires to have the County provide office space, equipment, supplies and personnel for TRLIA; and

Whereas, the County desires to provide office space, equipment, supplies and personnel for TRLIA

Now, Therefore, it is agreed as follows:

1. Legal Counsel Services to be Provided by the County: County Counsel will provide legal advice to TRLIA and TRLIA's staff. County Counsel will assist in the performance of the day-to-day business of TRLIA. These services shall include, but not be limited to, review of staff analyses, reports, proposed findings, and other materials submitted to TRLIA.

2. Services to be Provided by the County Department of Public Works: Services provided by the Department of Public Works shall include, but not be limited to:

A. Processing of TRLIA invoices.

B. Maintaining TRLIA accounts, including journal entries for salaries and salary benefits of Public Works employees utilized by TRLIA, for Public Works services and supplies provided to TRLIA, and for TRLIA salaries and benefits.

C. Providing an automobile to TRLIA through the Automotive Services Fund.

3. Information Technology Services to be Provided by the County: The Administrative Services Department through the Information Technology Division will provide computer, office telephone, cell phone, and support services. These services shall include, but not be limited to:

A. Telephone services and support.

B. Cell phone and/or personal digital assistant (PDA) and support.

C. Internet and e-mail, support partnership in the Microsoft Enterprise Agreement and access to hardware, Microsoft Operating System, and Microsoft Office Suite technical support.

D. Access to notices and other TRLIA information for the public through an Internet website.

E. Information Technology Division Help Desk technical support on a per-hour basis.

4. Services to be Provided by the County Department of Administrative Services: Services provided to TRLIA by Administrative Services will include, but not be limited to office space, office supplies, equipment, Print Shop, and mail service, including interdepartmental, U.S. Mail and expedited.

5. Other Services to be Provided by County:

A. The County, through the County Auditor's office, agrees to perform fiscal and accounting functions for TRLIA.

B. The County, through the County Treasurer-Tax Collector, agrees to perform banking functions for TRLIA.

C. The County, through the County Personnel Department, agrees to provide hiring and personnel management support and to establish and administer any personnel policies necessary or advisable, for carrying out the purposes of TRLIA.

D. The County, through the County Risk Management Department, agrees to maintain in force (or through self-insurance) and administer the following insurances on behalf of TRLIA: (1) Workers' Compensation coverage for all employees of TRLIA; (2) Commercial General Liability providing coverage on an occurrence basis for bodily injury, personal injury, and property damage.

E. The County, through the County Administrative Services Department Buildings and Grounds Division, agrees to provide facility maintenance support, as necessary.

F. The County, through the County Administrative Services Department Custodial Division, agrees to provide custodial support, as necessary.

G. The County, through the Clerk of the Board of Supervisors Department agrees to provide Clerk services to the Authority, agenda and minute preparation, and maintain official records of the Authority.

6. Payment: In consideration of the County's agreement to provide the services defined above, TRLIA agrees to make monthly, bi-monthly, or quarterly payments, as required, in amounts sufficient to reimburse the County for the entirety of its costs in performing under this Agreement. The County's costs shall include all direct and indirect costs associated with the provision of services to TRLIA as determined by the County Auditor's office. These costs may be based upon the County's Cost Plan (A-87) or any other reasonable method, provided charges are not duplicated. Reimbursement shall include costs associated with services provided to TRLIA by the County's County Counsel, Public Works, Information Technology, Auditor, Treasurer-Tax Collector, County Administrator, Personnel, Risk Management, Buildings and Grounds, Custodial Services, Community Development, Administrative Services offices, and Clerk of the Board of Supervisors. The County shall submit invoices or journal entries for reimbursable costs to the County Auditor on a monthly, bi-monthly, or quarterly basis.

7. TRLIA employees may provide services to the County departments and offices, as requested. TRLIA will be reimbursed by the County for these services on an hourly basis to be negotiated between TRLIA and the County department or office.

8. This Agreement shall remain in effect unless terminated upon six months written notice to the other party.

In Witness^{ed} Hereof, the parties hereto have executed this Agreement as of the date set forth above.

Three Rivers Levee Improvement Authority

County of Yuba

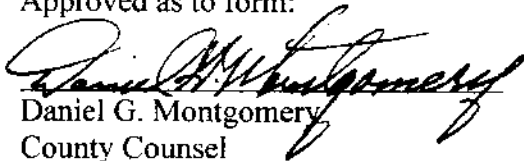
Richard Webb
Chairman

Donald Schrader
Chairman
Board of Supervisors

Attest:

Donna Stottlemeyer
Clerk of the Board of Supervisors

Approved as to form:


Daniel G. Montgomery
County Counsel



**THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY**

915 Eighth Street, Suite 115
Marysville, California 95901
(530) 749-7575
(530) 749-7312 Fax

November 14, 2006

**COPY OF REFERENCED
DOCUMENT ON FILE WITH
CLERK OF THE BOARD**



**The County of Yuba
OFFICE OF THE BOARD OF SUPERVISORS**

915 8TH Street, Suite 109
Marysville, California 95901
(530) 749-7510
(530) 749-7353 Fax

TO: Three Rivers Levee Improvement Authority Board
Yuba County Board of Supervisors

FROM: Paul Brunner, TRLIA Executive Director *PSB*
Robert Bendorf, Yuba County CAO *RB*
Ric Reinhardt, TRLIA Program Manager *LR*
Scott Shapiro, TRLIA Special Counsel

SUBJECT: Certification of Environmental Impact Report and Selection of Project

TRLIA Board Recommended Action: TRLIA Board should take testimony during public hearing, consider the testimony, and then adopt the attached Resolution which: (i) certifies the Final Environmental Impact Report, (ii) adopts findings, (iii) approves mitigation measures, (iv) approves the mitigation monitoring program, and (v) approves Alternative 1 as the TRLIA project for improvements to the Feather River levee.

Board of Supervisors Recommended Action: It is recommended that the Board of Supervisors receive a report from TRLIA staff and the County Administrator regarding the current status of the levee improvement projects and discuss, review, and provide direction regarding the pending TRLIA decision for design and construction of the Feather River portion of the levee project.

Background: The purpose of the proposed project is to correct deficiencies on the east bank levees of the Feather River and Lower Yuba River and consequently to improve flood protection for the area encompassing Reclamation District 784. The overall objectives of the project are as follows:

- Secure flood protection for at least a flood event with a 0.5% (or 1-200) annual chance of occurring;
- Obtain Federal Emergency Management Agency (FEMA) accreditation of the reaches of levee;
- Avoid increasing downstream flow and stage during peak-flow conditions;
- Achieve these objectives as soon as possible;
- Incorporate environmental mitigation as required.

TRLIA, as lead agency, has completed the Final Environmental Impact Report ("Final EIR") for Feather River Levee Repair Project ("Proposed Project" or "FRLRP"). A Draft Environmental Impact Report ("Draft EIR") was released for public agency review on August 4, 2006. Volume 1 of the Draft EIR assesses the potential environmental effects

potential adverse impacts, and evaluates a reasonable range of alternatives to the Proposed Project. Volume 2 of the Draft EIR consists of Appendices referred to in Volume 1. The Final EIR is comprised of the Draft EIR together with one additional volume that includes the comments on the Draft EIR submitted by interested public agencies, organizations and members of the public, written responses to the environmental issues raised in those comments, revisions to the text of the Draft EIR reflecting changes made in response to comments and other information, and other minor changes to the text of the Draft EIR.

The EIR considered four alternatives, dividing the impacted Feather River levees into three segments. The No Project Alternative described the environmental conditions in existence at the time the Notice of Preparation was published, along with a discussion of what would be reasonably expected to occur at the site in the foreseeable future, based on current plans and consistent with available infrastructure and community services. Therefore, under the No-Project Alternative, no levee repair or strengthening would be implemented, and the river bank levees would be left in their current condition. The No Project Alternative would not result in any adverse environmental effects from levee repair and strengthening activities or the construction of a setback levee. The No-Project Alternative, however, would not result in any beneficial effects in the form of increased flood protection and other benefits that would occur with implementation of Alternative 1, 2, or 3.

Alternative 1 is the Levee Strengthening Alternative. Under Alternative 1, levee repair and strengthening activities, including installation of slurry cutoff walls, relief wells, and seepage/stability berms, would be completed along the entire length of project segments 1, 2, and 3. Pump Station No. 3 would be removed under this alternative, and a new pump station would be constructed farther east of the levee bank. Alternative 1 would also include construction of a detention basin to hold peak flows. Alternative 1 has the fewest impacts that remain significant and unavoidable after mitigation. The only non-temporary significant and unavoidable impact is the conversion of farmland to non-agricultural uses, and Alternative 1 results in the smallest agricultural acreage to be converted of the three alternatives evaluated in equal detail in the EIR. Alternative 1 is considered to be the least intrusive to the environment (in CEQA parlance, the "Environmentally Superior Alternative"). Alternative 1 would meet all of the project objectives related to increasing flood protection, and unlike Alternatives 2 and 3, would not affect residences and other structures that could be affected by construction of a setback levee. Some of the environmental benefits associated with construction of a setback levee, such as changes in local flood hydrology upstream and downstream of the project area, would not occur with Alternative 1.

Alternative 2 is the Levee Strengthening and ASB Setback Levee Alternative. Alternative 2 includes the levee repair and strengthening activities of Alternative 1 but adds a setback levee in project segment 2. The setback area would occupy approximately 1,600 acres, and would require the removal of several residences and other structures, as well as the relocation of those residents. The use of the setback area as a floodway would conflict with existing land use designation and zoning of the setback area acreage, and thus, Alternative 2 results in an additional significant and unavoidable impact in the area of Land Use Conflicts, as compared to Alternative 1. Alternatives 2 and 3 have the same number of impacts that remain significant and unavoidable after mitigation. The acreage of the setback area under Alternative 2, however, is larger than under Alternative 3.

Thus, while both Alternative 2 and 3 have more significant and unavoidable impacts than Alternative 1, the magnitude of the impacts of Alternative 2 is slightly greater than under Alternative 3. Alternative 2 would provide the greatest degree of flood protection benefit, but would have relatively higher cost in the form of environmental effects and impacts to residences and other structures in the setback area.

Alternative 3 is the Levee Strengthening and Intermediate Setback Levee Alternative. Alternative 3 involves the same levee repair and strengthening activities as Alternative 1, and a setback levee in project segment 2 similar to that proposed under Alternative 2. The setback levee follows a different alignment, however, that results in a setback area of approximately 1,300 acres. Thus, fewer houses, structures, and other facilities would be affected or need to be removed from the setback area under Alternative 3 than under Alternative 2. Nonetheless, as with Alternative 2, the use of the setback area as a floodway would conflict with existing land use designation and zoning of the setback area acreage results in an additional significant and unavoidable impact in the area of Land Use Conflicts, as compared to Alternative 1. Alternatives 2 and 3 have the same number of impacts that remain significant and unavoidable after mitigation. The acreage of the setback area under Alternative 3, however, is smaller than under Alternative 2. Thus, while both Alternative 2 and 3 have more significant and unavoidable impacts than Alternative 1, the magnitude of the impacts of Alternative 3 is slightly smaller than under Alternative 2. Alternative 3 would provide a greater degree of flood protection benefit than Alternative 1, but at a relatively lower cost in the form of environmental effects and impacts to residences and other structures in the setback area than Alternative 2.

Discussion: A critical factor in selecting an alternative is the design and construction schedule. The strengthen in place alternative (Alternative 1) can achieve the 2008 completion goal, whereas the setback alternatives (alternatives 2 and 3) are projected to be completed no earlier than 2009. For the last year TRLIA has consistently communicated to the Reclamation Board, to FEMA, and to other stakeholders and the media that the levee improvements necessary to provide 200-year flood protection would be completed by 2008. To adopt a program element at this time which delays the TRLIA program, thus delaying improved flood protection for existing and new residents, has increased risk and may result in difficulties with the Reclamation Board and accelerated remapping by FEMA.

The incremental cost of the setback levees is projected to be between \$65 to \$100 million more than strengthen in place (Alternative 1). A large portion of this is the cost to purchase additional land required for the setback levee. Unfortunately, land costs are difficult to ascertain at this time, as exemplified by the right-of-way litigation resulting from the Phase 3 setback levee project on the Bear River. Moreover, the current schedule for this trial is unhelpful in making a decision in line with the time elements articulated to the state and federal agencies. At this time, the only funding source discussed for the setback levee alternatives is State Proposition 1E. While Measure 1E has passed the electorate, the State Department of Water Resources (DWR) has yet to adopt regulations or guidelines to indicate how this money might be spent. Also, any funds from this source are also subject to appropriation by the legislature – an act that likely will not occur until late 2007. Therefore, no reliable funding can yet be identified for the setback levee. (Importantly, as was briefed to the Board in July, the Second Funding Agreement

provides that landowner funds may not be used for the setback levee without meeting and conferring landowner approval.)

With cash on hand in the various escrow accounts and Proposition 13 funding, TRLIA has adequate resources to continue the program through the end of November, 2006. However, TRLIA will need additional funds from the 2nd capital call by December 2006 in order to pay expenses. Under the Second Funding Agreement the landowners are not obligated to provide the second Capital Call until a decision is made on whether the setback levee will be constructed ("The Parties agree that the second Capital Call is required for the design of the Phase 4 Feather Work, which is not necessary until the decision is made on the Feather River Setback Levee. Therefore, the Parties agree that the second Capital Call will not be due until November 22, 2006." Section 6(A)(2)(c).) Therefore, it is not feasible to delay this decision while awaiting possible funding certainty from the State.

Notwithstanding the need to move forward with strengthen in place, the setback levee is considered to provide additional flood protection benefits compared to the strengthening in place alternative. In addition, construction of a setback levee may leverage greater bond funds from the State. Therefore, if the TRLIA Board adopts the recommended action above, staff intends to continue investigating the setback levee to see if the State would fund this alternative. To do this, for as long as possible Staff intends to minimize costs in furtherance of those portions of the strengthen-in-place alternative that would be replaced by a setback levee alternative without delaying any of the key schedule dates, for 2008, and while moving ahead as rapidly as possible on the strengthen in place alignments that would be constructed even with a setback levee. Any recommendation to the TRLIA Board in 2007 to consider the setback levee alternative would need to be consistent with the factors contained in the September 26, 2006 white paper: "Status of Feather River Setback Levee Decision" (attached).

It is also important to note that the State Reclamation Board will likely require indemnification by TRLIA, the County, and RD 784 in conjunction with the Reclamation Board permit for the selected option.

Fiscal Impact: The alternative recommended by staff (Alternative 1 – strengthen in place) can be constructed within those revenue streams that have been secured by contract at this time. Largely because of land costs associated with Alternatives 2 and 3, staff cannot at this time identify revenue streams to support these two alternatives.



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(530) 749-7841 (530) 749-7884 Fax

November 14, 2006

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul Brunner, Executive Director *PBB*
Scott Shapiro, Special Counsel
SUBJECT: Mitigation of Vernal Pool Crustacean Impacts

Recommended Action

Approve the attached FIRST AMENDMENT TO MITIGATION RIGHTS PURCHASE AGREEMENT so that TRLIA may purchase the required Vernal Pool Crustacean (VPC) mitigation required under the Biological Opinion and 404 permit issued in September of 2005.

Background

Wildlands and TRLIA previously entered into a Mitigation Rights Purchase Agreement dated September 6, 2005. The Agreement reflects Wildlands' agreement to sell to TRLIA 9.65 acres of VPC habitat from the Reeds Creek Mitigation Preserve. Unfortunately, the Reeds Creek Mitigation Preserve cannot provide the required mitigation. Wildlands and TRLIA also executed a letter of intent for Wildlands to sell to TRLIA a further 17.77 acres of VPC habitat from a site not yet identified.

Discussion

To accommodate the requirements imposed by the Biological Opinion and the 404 Permit, Wildlands and TRLIA need to provide for the purchase and sale of VPC habitat from the Daley Ranch Preserve instead of the Reeds Creek Mitigation Preserve as well as provide for the additional VPC habitat acreage from the Daley Ranch Preserve. The Amended Agreement provides explicitly that all of the VPC habitat mitigation (27.42 acres) that was to come from Reeds Creek and the unidentified site will instead come from Daley Ranch. Importantly, the costs to TRLIA (\$4,113,000) are identical to the previously negotiated costs.

Fiscal Impact

None. All of the costs associated with this Amended Agreement have previously been budgeted and funds are deposited into the Escrow Accounts held by U.S. Bank.

FIRST AMENDMENT TO MITIGATION RIGHTS PURCHASE AGREEMENT
(Three Rivers Levee Improvement Authority)

This First Amendment (“**Amendment**”) is made and entered into on this the 14th day of November, 2006, by and between WILDLANDS, INC., a California corporation (“**Wildlands**”) and THREE RIVERS LEVEE IMPROVEMENT AUTHORITY (“**Authority**”) who agree as follows:

1. Background.

1.1. The Mitigation Rights Purchase Agreement. Wildlands and Authority have entered into that certain Mitigation Rights Purchase Agreement dated September 6, 2005 (the “**Agreement**”). All capitalized terms used in this Amendment and not otherwise defined in this Amendment shall have the meaning ascribed to such terms in the Agreement.

1.2. Reeds Creek Mitigation Preserve; Daley Ranch Preserve. The Agreement provides for, among other things, Wildlands’ agreement to sell to Authority the Allocated Mitigation which was 9.65 acres of vernal pool habitat from the Reeds Creek Mitigation Preserve. To accommodate the Biological Opinion and the 404 Permit the parties desire to provide for, among other things, the purchase and sale of vernal pool habitat from the “Daley Ranch Preserve” instead of the Reeds Creek Mitigation Preserve as well as additional vernal pool acreage from the Daley Ranch Preserve.

1.3. Purpose. The purpose of this Amendment is to amend the Agreement to provide for the purchase and sale of the mitigation values associated with 27.42 vernal pool acres from the Daley Ranch Preserve instead of the Reeds Creek Mitigation Preserve, and accordingly, to delete any references to the Reeds Creek Mitigation Preserve from the Agreement.

2. Amendment; Daley Ranch Preserve. The parties agree to consummate the transaction contemplated above and hereby amend the Agreement to delete all references to the “Reeds Creek Mitigation Preserve” and replace them with the “Daley Ranch Preserve”. The parties also hereby agree that any specific references to the Mitigation Site shall mean the Daley Ranch Preserve.

3. Allocated Mitigation. The parties hereby amend the Agreement to increase the Allocated Mitigation to 27.42 acres of vernal pool habitat from the Daley Ranch Preserve and the Purchase Price thereof to \$4,113,000.

4. Conservation Easement. Upon payment of the Purchase Price, or the appropriate portion thereof, Wildlands further agrees to cause to be granted to Authority a conservation easement (“**Conservation Easement**”) thereby affecting the Daley Ranch Preserve in a proportionate amount to the actual amount of the Purchase Price paid for the Allocated Mitigation. By way of example, if Authority pays the portion of the

Purchase Price attributable to seventy-five percent (75%) of the Allocated Mitigation (\$3,084,750), then Wildlands shall cause to be granted to Authority a Conservation Easement affecting seventy-five percent (75%) of the Allocated Mitigation on the Daley Ranch Preserve (20.565 vernal pool acres).

5. Authority: Conservation Easement. By approving this Amendment Authority is also authorizing its Executive Director to certify Authority's acceptance of the Conservation Easement, execute all agreements and other instruments, and to take all actions as may be necessary, appropriate or convenient to effectuate the purpose of this Amendment.

6. Effect. Except as expressly modified by this Amendment, the Agreement shall continue in full force and effect according to its terms, and Authority and Wildlands hereby ratify and affirm all their respective rights and obligations under the Agreement. In the event of any conflict between this Amendment and the Agreement, this Amendment shall govern.


7. Counterparts. This Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

AUTHORITY:

Three Rivers Levee Improvement Authority

By: _____
Richard E. Webb
Chairman

Approved as to form by:


Daniel G. Montgomery
County Counsel

WILDLANDS:

WILDLANDS, INC.
a California corporation

By: _____
Name:
Its: