

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

MINUTES – BOARD OF DIRECTORS

MARCH 18, 2008

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 Stottlemeyer. 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. APPROVE MINUTES

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. EXHIBIT "A"

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). ADOPT RESOLUTION NO. 08-04

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); ADOPT RESOLUTION NO. 08-05
- 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); ADOPT RESOLUTION NO. 08-06
- 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); ADOPT RESOLUTION NO. 08-07
- 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); ADOPT RESOLUTION NO. 08-08
- 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 ADOPT RESOLUTION NO. 08-09

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).

ADOPT
RESOLUTION
NO. 08-10

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).

ADOPT
RESOLUTION
NO. 08-11

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 Number 016-010-006 (L. Neischulz etc.);

ADOPT
RESOLUTION
NO. 08-12

- Resolution No. 08-13 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 016-010-016 (Susanna M. Nieschulz Trust);

ADOPT
RESOLUTION
NO. 08-13
- Resolution No. 08-14 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 016-010-009 (Herold);

ADOPT
RESOLUTION
NO. 08-14
- Resolution No. 08-15 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 016-010-010-(Flores);

ADOPT
RESOLUTION
NO. 08-15
- Resolution No. 08-16 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 016-010-002, 016-020-005, 014-370-029, 014-370-030 9 (Foster);

ADOPT
RESOLUTION
NO. 08-16
- 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 016-060-008 (Foster).

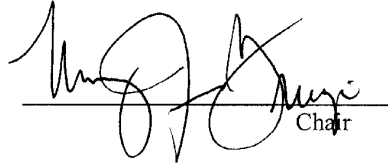
ADOPT
RESOLUTION
NO. 08-17

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).

ADOPT
RESOLUTION
NO. 08-18

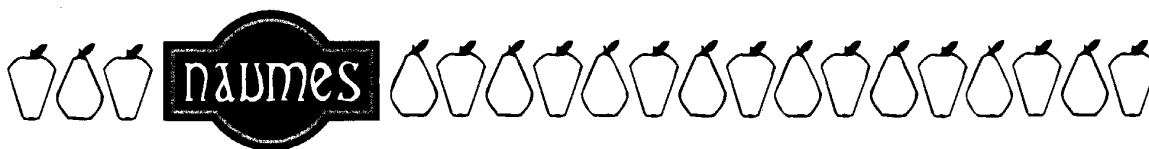
ADJOURNMENT

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.


Chair

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

 Approved: 



Good Afternoon Ladies & Gentlemen:

My name is Mike Naumes, President and CEO of Naumes, Inc. Our orchard involved in the possible taking we refer to as the New England Orchard has roots back to the Gold Rush days and plantings by the Chinese. Many smaller plots were combined over time and the orchard was ultimately purchased, expanded, and improved by the Di Giorgio family in the 1920's. Our family purchased this ranch from the Di Giorgios in June of 1978. We are currently on our 31st crop on this property.

We came to California from a marketing perspective. Our plan has been and still is to capture retailers at the start of a new season and take them throughout the balance of the marketing year in the Northwest. We are primarily known for our pears and we have endeavored to differentiate ourselves by emphasizing specialty pears. Often retailers start a season with us utilizing our broad array of pears and stay with us the balance of the season since we are the only handler that offers a full line of pears for the entire season. With the loss of the acreage at New England we would no longer have the distinct advantage of being able to offer the retailer the broad spectrum of pear varieties from day one – all our Comice and Forelle pears would be gone and a high percentage of our Red pears lost. This puts us strictly in the commodity game which is not profitable. Ultimately, our entire three state operation could be in jeopardy.

Loss of the 637 acres greatly affects the efficiency of our California operation – including farming, handling, storing, and marketing. There is no question that our unit cost will increase and facilities will be underutilized. There will be serious dislocations for employees, relocating irrigation lines and pumps will be a difficult and expensive proposition, we will lose a multi-million dollar wastewater set up, and we will have limited access to our remaining acreage which will hardly be an economic unit anymore.

We are not here to be adversarial or obstructionists. We understand the need for more adequate levee protection. We, too, suffered in the 1986 and 1997 floods. In fact, our company, to this day, is still recovering from 10 million dollars in losses suffered in the 1997 flood. What we ask you for is a fair and full settlement for our losses in this taking. Our losses are many and complicated. What comprises them?

1. Land and improvement values which are sustained by true comparables along with Feather River Blvd corridor
2. Adequate compensation for severance and good will
3. A fair value for our property inside the current levee
4. Proper reimbursement for current year production costs and damages to the marketing program
5. Future development potential

NAUMES, INC.

POST OFFICE BOX 996 MEDFORD, OREGON 97501
HOME OFFICE: PHONE (541) 772-6268 FAX (541) 772-2135
SALES OFFICE: PHONE (541) 779-9951 FAX (541) 772-3650

EXHIBIT "A"

3/18/08

What we are finding to date is that appraisals on other properties involved in this taking are more than 2 times what we are being offered. Even the settlement in the Danna Bear River case is 40% higher than what we have been offered and that was established with comparables 3 years prior to our effective date.

We found severance values offered very low and no good will offered at all. We learned at the 11th hour after no communication whatsoever for months (In fact, we thought that the project was dead) that good will was a separate claim. After receiving four pages of document requests, we decided that we weren't ready or staffed to deal with your good will consultant and delayed further action until we found out where all this was headed. We will have to hire our own expert since we have strong feelings that good will in the marketing area may well be our biggest economic loss over time. It will take 7 to 10 years to replace our specialty pear production here in California if the trees were planted today. This time lag could well spell the demise of our entire three state agricultural operation.

We urge you to take our property inside the current levee. We received token consideration for its limited accessibility in the severance package. It makes no sense for us to retain the 185.334 acres which are rendered virtually useless in this process.

We ask you to consider rezoning our remaining 157.936 acres located to the East of the property to a mixed use concept (industrial, commercial, employment center, and residential). It is the area closest to Feather River Blvd and currently includes all our office, packing, cold storage buildings, and labor housing. We see a real need for this type of development in the area to sustain all the housing across the street. Rezoning would be a small compensation for the taking of the balance of our property. It would also compensate us partially for the loss of any future development possibilities on our entire parcel.

Finally, you should be aware that if you were to take our property just prior to harvest that our damages could run to as high as 4 million dollars and the damage to our marketing program disastrous. We are willing to work with you in anyway possible to minimize or mitigate these damages, but we will need to be on the property until September 15th to complete this harvest. Laura Naumes, VP of Naumes, Inc. and Director of Agricultural Operations or I will be happy to attempt to answer any questions that you might have.

Thank you for your time and consideration.

March 3, 2008

Three Rivers Levee Improvement Authority
1114 Yuba Street, Ste 218
Marysville, CA 95901

Re: NAUMES PROPERTY RESOLUTION OF NECESSITY
Assessor's Parcel Numbers 014-250-027, 014-250-028; 014-240-008 and 014-
240-014 in the County of Yuba, California and 23-180-007 and 23-180-009 in the
County of Sutter, California (the "Property")

To Whom it May Concern:

I am writing as counsel for Naumes, Inc., an Oregon Corporation doing business in Yuba and Sutter counties, in the above-entitled action.

All parties understand the need and urgency of repairing the levees in Yuba County. In this instance, my clients will be affected by repair work on the Feather River Levee. Notwithstanding our general agreement with the goals of the project, there are several serious and substantial concerns that must be raised with regard to this action by the Three Rivers Levee Improvement Authority (TRLIA). Moreover, the Naumes' reserve their right to bring additional claims and objections as actions in this matter proceed forward.

First, the Naumes' believe that the Resolution of Necessity is underinclusive. By this we mean that the amount of acreage sought by TRLIA is predicated upon and restricted by a possible funding shortfall for the Feather River Levee project, and thus the acreage sought is what TRLIA believes is the minimal amount required. In fact, the acreage sought by TRLIA affects the entire parcel of land owned by the Naumes', and the 637 acres effectively renders the remainder of the parcel economically not viable for the Naumes'.

The entire parcel is 980 acres. Thus, the 637 acres comprises 65% of the entire property, most located in the geographic center of the property. This obviously impacts access to the remaining parcels, affects the viable planting area for orchards around the levee, and has adverse consequences for irrigation and other infrastructure for orchards. The overall impact is that useful nature of the remainder of the property is, by many experts' opinion, substantially diminished, in contrast to the opinions of TRLIA staff none of whom, in our any of our meetings, are in the business of the Naumes'. Moreover, if the acreage reflects economic reality of funding shortfalls rather than potential need in reality, that becomes a pennywise and pound-

foolish decision. In other words, the actual impact of the taking, the Naumes' believe, far exceeds the 637 acres, and the Resolution of Necessity should reflect that.

Second, the Naumes' believe that the Resolution of Necessity, or at least the timing of taking possession of the property, is premature. TRLIA staff was well aware that the Naumes' were engaged in activities aimed at harvesting their orchard crop in the late summer/early Fall of 2008. It has been stated to them by TRLIA staff that TRLIA intends to take possession in the Spring. This will be very expensive for TRLIA if they choose this path, because not only will the County have to pay the Naumes' the sunk costs of all expenses incurred for the orchard to date, but there will be serious economic consequences as well. The Naumes' lost profits are one factor. Another is the fact that agreements to suppliers will be jeopardized, damages to the goodwill of the Naumes will likely be incurred, and contract terms may be breached. By waiting, on the other hand, for the end of harvest, TRLIA will avoid incurring all these costs and, by implication, avoid imposing these costs on the taxpayers of Yuba County.

Third, the Naumes' believe that the compensation offered by TRLIA is exceedingly low¹. No consideration is given to the fact that the amount of acreage owned by Naumes' creates multiple economic and development opportunities (and thus foregone economic profits) that few other properties seen by TRLIA possess. The Naumes' also challenge the method of accounting for severance damages, and no loss of goodwill was noted in their offer. The Naumes' also allege and believe that other settlements by TRLIA with property owners have resulted in substantially higher funds for substantially less desirable property. The Naumes have communicated their desire to reach an amicable settlement of this issue rather than go to trial. Indeed, they remain hopeful that a negotiated settlement will occur. However, the Naumes are fully prepared to defend their land and their claims in a court of law.

Finally, we raise the issue of defective notice. The Notice of Intent, dated February 14, 2008, clearly notices the hearing for 2:00 p.m. on March 4, 2008. Only after a phone call (not even written notice) at or around 3:30 p.m. on March 3, 2008, were we informed of the time change. Under the Brown Act, we allege that this Notice is defective and reserve our rights to challenge the validity of this meeting.

¹ These are examples only, and the Naumes' reserve their right to bring other or alternative claims and theories for damages at trial.

Three Rivers Levee Improvement Authority
March 3, 2008
Page 3

Thank you for your attention to this urgent and important matter.

Sincerely,

A handwritten signature in black ink that reads "Michael Yaki". The signature is written in a cursive, flowing style.

MICHAEL YAKI

Jeffer, Mangels, Butler & Marmaro LLP

MJY:lc