

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Planning and Community Development

BOARD AGENDA # 6:45 p.m.

Urgent Routine

AGENDA DATE August 21, 2007

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Public Hearing to Reconsider An Appeal of Denial of Vesting Tentative Parcel Map Application No. 2006-02, Tim Bell Warnerville Partners (Formerly Furtado Family Trust)

PLANNING COMMISSION DECISION:

After conducting a duly advertised public hearing at its regular meeting of February 1, 2007, the Planning Commission, on a 6-2 vote (Layman, Hardie) denied Parcel Map Application No. 2006-02 - Furtado Family Trust.

If following the public hearing the Board of Supervisors decides to approve the project, staff recommends the Board take the actions listed on pages 5 and 6 of this report.

FISCAL IMPACT:

There are no fiscal impacts associated with this item.

BOARD ACTION AS FOLLOWS:

No. 2007-651

On motion of Supervisor Monteith, Seconded by Supervisor Mayfield

and approved by the following vote,

Ayes: Supervisors: Mayfield, Monteith, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: Grover and DeMartini

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Approved an appeal of the Planning Commission's decision of denial, thereby approving Vesting Tentative Parcel Map Application #2006-02, Tim Bell Warnerville Partners (Formerly Furtado Family Trust); approved staff recommendations 1-6 on pages 5 and 6 of this report; and amended the Conditions of Approval to add Condition No. 31 to read as follows: "No residential structures shall be constructed on any parcel or parcels until either tree crops, vines, or other crops have been planted on the parcel or parcels, or until another agricultural use consistent with all use regulations applicable to the particular parcel has been established on the parcel or parcels."


ELIZABETH A. KING, Assistant Clerk

ATTEST:

File No.

DISCUSSION:

This is an appeal of a Planning Commission decision to deny a parcel map application. The request is to create 13 parcels of approximately 80 acres in size, one parcel approximately 70 acres in size, and a 117± acre remainder from two existing parcels totalling 1,147 acres. The site is designated as "Agriculture" on the Land Use Element of the General Plan and zoned "A-2-40" (General Agriculture), which requires a minimum lot size of 40 acres for the creation of new parcels. (All of the proposed parcels are greater than the minimum allowable size.) The parcels would be served by septic systems and private wells.

The site is currently under a Williamson Act Contract (Contract Nos. 72-0705 and 71-0418) and is currently in dry oat farming. Irrigation is currently provided by the Oakdale Irrigation District to portions of proposed Lots 7, 8, 9, and 10. The proposed parcel sizes meet the minimum lot size and would have legal and physical access to a county-maintained road or state highway by either direct road frontage or via an access easement. Because any access easements are the sole responsibility of property owners, the Department of Public Works has requested a Condition of Approval which will require prior to the final parcel map being recorded, either a homeowner's association shall be formed or a Road Maintenance Agreement shall be executed and recorded specifying that the maintenance of all private access roads shall be the sole responsibility of the property owners.

The site is located within an area designated by US Fish and Wildlife Service as "critical habitat" for vernal pool species. A Baseline Biological Resources Inventory is included as an attachment in the Initial Study.

The attached Planning Commission Staff Report (Attachment 1) provides details concerning the project, and the project site, and also provides discussions regarding biological resources, the Williamson Act, and the environmental review process completed for the project.

On February 1, 2007, a duly publicized public hearing was conducted by the Stanislaus County Planning Commission. Staff believed this project was consistent with the County General Plan, the agricultural zoning, and the Williamson Act, and recommended approval. At the hearing, two people spoke in opposition to the proposal, three spoke in favor.

The Planning Commission questioned the speakers and the applicant and discussed various concerns at length including similarities and differences between this proposal and others that have previously been approved. Other concerns voiced by the Commission focused primarily on the findings required in relationship to the Williamson Act and the lack of a definition for "economic viability of agriculture".

Some Commission members wrestled with whether these particular parcels could support a viable agricultural operation and indicated that no data was provided by the applicant to indicate that they could. Commissioners were concerned that there was only anecdotal information provided by the applicant as to agricultural viability, and that there was not any scientific data, soil assessments, cropping or irrigation plans, or other detailed farming information provided.

Others considered the issue of whether or not a parcel was agriculturally viable to be a subjective determination, and that viability could be considered different for different individual landowners. Two Commissioners recognized the need for opportunities for young farmers to get into the business, but were concerned that this particular parcel map did not provide adequate agricultural viability of the resulting parcels to provide those opportunities.

Commissioners were concerned that the underlying purpose of the parcel map was to sell the parcels for rural residential uses which would be in conflict with the goals of the Williamson Act. One Commissioner referenced the response letter from the Department of Conservation that states that the Williamson Act prohibits subdividing land for residential purposes regardless of parcel size (See Page 26 of the Planning Commission Staff Report). The Commissioners acknowledged that intensive farming activities have been moving further up into the foothills and onto what was once considered poorer soils.

Ultimately, a motion to approve the parcel map failed on a 6-2 vote. Based on the staff report, information presented, and testimony, a motion to deny the parcel map was approved 6-2. The denial was based on the Commission finding that the proposed division of this particular land would not sustain the economic viability of continued agricultural use of the parcels, and that the division would result in residential development not incidental to the commercial agriculture.

Subsequent Information Provided

The applicant has submitted additional information that was not available to the Planning Commission for Board of Supervisors consideration. This includes a letter from an Attorney with Allen Matkins, LLP and an attached memo from Foida Ag Consulting. The attorney's letter explains that the purpose behind the proposed parcel map is to allow the applicants "greater flexibility in ensuring the success of agricultural uses" and to "perpetuate and enhance the agricultural uses of the property."

The letter further states that the parcel map is consistent with the "agriculture" designation in the County General Plan and with the "General Agriculture" zoning district(A-2-40). They state that under the Subdivision Map Act, the County must deny approval of the map if it finds that either the resulting parcels following a subdivision would be too small to sustain their agricultural use or the subdivision will result in residential development not incidental to the commercial agricultural use of the land. They further indicate that there is no residential development proposed other than that currently allowable under both the existing zoning and the Williamson Act.

They note that Government Code specifically defines parcels to be large enough to sustain their agricultural use if they are at least 10 acres in size in prime farmlands and 40 acres in size on non-prime lands. They state that the Map Act does not require a finding of "economic viability", but rather, simply asks whether agricultural uses can be sustained. In reference to the Williamson Act, the attorney's letter reiterates that the resulting parcels are of a size large enough to sustain agricultural uses.

The Agricultural Consultant's memo also indicates that based on soil types, and inspections of the property and surrounding areas, the divided properties are large enough to sustain agricultural uses.

Finally, the letter indicates that they believe that the Commission erred in making findings that were not supported by substantial evidence, but rather, that the findings were based on speculation and conjecture. They present an analysis of a trained agricultural expert that states that the divided property could sustain agricultural uses and that the properties have an excellent potential to grow crops.

Previous Board of Supervisors Actions

This matter was originally heard by the Board of Supervisors on March 27, 2007, wherein the Board approved the appeal and as such approved the parcel map. Since the initial approval by the Board it was learned that Solecon Industrial Contractors, which is partly owned by Supervisor Grover, contracted with contractor Stuart McInahan to perform work on a completely separate project owned by another company of the project applicant. The resulting conflict requires the initial consideration of the matter to be reconsidered by the Board without participation by Supervisor Grover, or by Supervisor DeMartini who abstained from participation in the original decision due to a conflict.

At the hearing on March 27, as part of the motion to approve the appeal and the map, the Board included the following "voluntary condition" (Condition 31):

"No residential structures shall be constructed on any parcel until either tree crops or vines have been planted on the parcel."

This condition is **NOT** included as part of this consideration. If after the public hearing the Board decides that this or a similar condition is warranted, the Board may wish to consider potential modifications that would not require any subjective determination of agricultural viability, and provides a bit more flexibility in the types of agricultural operations that could be allowable, such as:

"No residential structures shall be constructed on any parcel or parcels until either tree crops, vines, or other crops have been planted on the parcel or parcels, or until another agricultural use consistent with all use regulations applicable to the particular parcel has been established on the parcel or parcels. "

Summary

In summary, the Planning Commission determined that the parcels would not support economically viable agricultural uses, and as such any residential uses on the parcels in the future would not be considered incidental to agriculture. Because of this, the Commission further determined that the proposed map would not be in conformance with the Williamson Act and as such denied the application.

The attorney for the applicant represents the parcel map complies with all applicable local and state land use laws, the parcels more than meet the minimum size requirements, their expert confirms that the parcels will sustain agricultural uses, the map will not result in residential development not incidental to agriculture, and there is no substantial evidence in the record supporting the Planning Commission's denial of the map.

Recommended Actions for Approval of Appeal and Approval of the Map

If the Board of Supervisors decides to approve the appeal of Vesting Tentative Parcel Map Application No. 2006-02 - Furtado Family Trust, the following actions are recommended:

1. Adopt the Mitigated Negative Declaration pursuant to CEQA Guidelines Section 15074(b), by finding that on the basis of the whole record, including the Initial Study and any comments received, that there is no substantial evidence the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects Stanislaus County's independent judgement and analysis.
2. Adopt the Mitigation Monitoring Plan pursuant to CEQA Guidelines Section 15074(d).
3. Order the filing of a Notice of Determination with the Stanislaus County Clerk-Recorders Office pursuant to Public Resources Code Section 21152 and CEQA Guidelines Section 15075.
4. Find that:
 - (a) The proposed map is consistent with applicable general and specific plans as specified in Section 65451.
 - (b) The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.
 - (c) The site is physically suitable for the type of development.
 - (d) The site is physically suitable for the proposed density of development.
 - (e) The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

- (f) The design of the subdivision or type of improvements is not likely to cause serious public health problems.
 - (g) The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public.
5. Additionally find that the proposed parcels are of a size suitable to sustain agricultural uses and that the proposed parcel map will not result in residential development not incidental to the commercial agricultural use of the land.
6. Approve Vesting Tentative Parcel Map Application No. 2006-02 - Tim Bell Warnerville Partners (formerly Furtado Family Trust) subject to the attached Conditions of Approval and Mitigation Measures, including a modified Condition Number 7 as defined in the Department of Public Works memo dated January 30, 2007.

Note: Pursuant to California Fish and Game Code Section 711.4, all project applicants subject to the California Environmental Quality Act (CEQA) shall pay a filing fee for each project. Therefore, the applicant will further be required to pay \$1,800 to the Department of Fish and Game. The Conditions of Approval ensure that this will occur.

POLICY ISSUES:

The Board should determine whether the granting of the appeal furthers the Board's Priority of ensuring a strong agricultural economy and heritage.

STAFFING IMPACT:

None.

ATTACHMENTS:

- 1. Planning Commission Staff Report, February 1, 2007
- 2. Planning Commission Minutes, February 1, 2007
- 3. Letter from Michael Patrick Durkee, Allen Matkins,LLP dated March 16, 2007
- 4. Appeal Letter, California Equity Management Group Inc., February 6, 2007

STANISLAUS COUNTY PLANNING COMMISSION

February 1, 2007

STAFF REPORT

VESTING TENTATIVE PARCEL MAP APPLICATION NO. 2006-02 FURTADO FAMILY TRUST

REQUEST: TO CREATE 13 PARCELS OF APPROXIMATELY 80 ACRES IN SIZE, ONE PARCEL APPROXIMATELY 70 ACRES IN SIZE, AND A 117± ACRE REMAINDER FROM TWO EXISTING PARCELS TOTALING 1,147 ACRES IN THE A-2-40 (GENERAL AGRICULTURE) ZONING DISTRICT. THE PROPERTY IS LOCATED AT THE SOUTHEAST INTERSECTION OF TIM BELL ROAD AND WARNERVILLE ROAD, NORTHEAST OF WATERFORD AREA.

APPLICATION INFORMATION

Owner/Applicant:	Andrew Katakis, Timbell-Warnerville Partners, LLC
Agent:	Northstar Engineering Group, Inc.
Location:	Southeast of the intersection of Tim Bell Road and Warnerville Road, northeast of Waterford area
Section, Township, Range:	29,32-2-12
Supervisory District:	One (Supervisor O'Brien)
Assessor's Parcel:	011-005-007 & 021
Referrals:	See Exhibit "G" Environmental Review Referrals
Area of Parcels:	13 parcels : 80± acres 1 parcel: 70± acres Remainder: 117± acres
Water Supply:	Water well
Sewage Disposal:	Septic tank/leach field
Existing Zoning:	A-2-40 (General Agriculture)
General Plan Designation:	Agriculture
Community Plan Designation:	Not applicable
Williamson Act Contract Number:	72-0705 and 71-0418
Environmental Review:	Mitigated Negative Declaration
Present Land Use:	Dry farming and some irrigated pasture
Surrounding Land Use:	Agricultural uses, scattered single-family dwellings, and Dry Creek

PROJECT DESCRIPTION

The applicant is requesting to create 13 parcels of approximately 80 acres in size, one parcel approximately 70 acres in size, and a 117± acre remainder from two existing parcels totaling 1,147 acres in the A-2-40 (General Agriculture) zoning district with no proposed new uses. The site is currently enrolled under Williamson Act Contracts No. 72-0705 and 71-0418 and the resulting parcels will remain subject to the provisions set forth by the contract as discussed below.

SITE DESCRIPTION

The property is located southeast of the intersection of Tim Bell Road and Warnerville Road, northeast of Waterford area. The project site consists of some dry farm oats and irrigated pasture. The surrounding land uses consist of agricultural uses, and scattered single-family dwellings, and Dry Creek.

DISCUSSION

The site is designated as Agriculture on the Land Use Element of the General Plan and zoned A-2-40 (General Agriculture), which requires a minimum lot size of 40 acres for the creation of new parcels. The parcels will be served by septic systems and private wells. Irrigation is currently provided by the Oakdale Irrigation District to portions of Lots 7, 8, 9, and 10. The proposed parcel sizes meet this minimum lot size and will have legal and physical access to a county-maintained road or state highway by either direct road frontage or via an access easement. Because any access easements are the sole responsibility of property owners, the Department of Public Works has requested a Condition of Approval which will require that a Homeowners Association be established in order to maintain these access easements. Staff believes this project is consistent with the County General Plan.

BIOLOGICAL SURVEY

A Baseline Biological Resources Inventory was conducted in December 2005 and July 2006 on the project site by Moore Biological Consultants. The field surveys consisted of driving and walking throughout the site, making observations and noting habitat conditions, surrounding land uses, and plant and wildlife species. The complete report is included as an attachment in the Initial Study (see Exhibit "D").

The Baseline Biological Resources Inventory report concluded that there are only a few potential jurisdictional waters of the U.S. or wetlands in the site. These include Dry Creek, two tributaries to Dry Creek, an irrigation lateral, and a few stock ponds. However, it is noted that the Army Corps of Engineers holds the authority to determine jurisdiction or non-jurisdiction. To ensure any potential impacts are considered "less than significant," very detailed Mitigation Measures have been added to the project (see Exhibit "B"). In addition, there are Conditions of Approval Nos. 15, 16, 17, and 18, which states the applicant is responsible for obtaining all appropriate permits or authorizations from these agencies, if necessary.

WILLIAMSON ACT AND AGRICULTURAL RESOURCES

The site is currently under a Williamson Act Contract (Contract Nos. 72-0705 and 71-0418) and is dry oat farming. Under the Williamson Act, lands are presumed to be too small to sustain their agricultural use if the lands are less than 40 acres in size in the case of non-prime agricultural land; 10 acres in size in the case of prime agricultural land; or the subdivision will result in residential development not incidental to the commercial agricultural use of the land. This project will not conflict with any bonafide agricultural activities in the area and/or other lands enrolled under the Williamson Act. The proposed parcels will be restricted by the General Agriculture (A-2) zoning district to on-site residential development which is incidental to the agricultural use of the land and will not diminish the agricultural viability. All parcels will remain enrolled under the existing Williamson Act Contracts.

The Planning Department sent a certified 2-week CEQA Referral Early Consultation, a certified 30-day CEQA Referral, and a revised certified 30-day CEQA Referral (with revised Mitigation Measures) to the State Department of Conservation. Staff received several responses during those response time periods from the Department of Conservation. The Department of Conservation's responses and the applicant's statement addressing those concerns is attached for your review (see Exhibit "C").

Staff believes that the proposed map will not result in residential development that could be considered not incidental to the commercial agricultural use of the land, specifically because, at this point, no residential development is proposed and the parcels are not of a "home site" size.

The current zoning (A-2-40) allows only one single family residence per parcel on all parcels that meet or exceed the minimum area requirements of the zoning district. In addition, a second dwelling may be allowed on parcels greater than 20 acres as long as the placement of the second dwelling is approved by the Director of Planning and Community Development and be designed to minimize disruptions of agricultural land and to take maximum advantage of existing facilities, including utilities and driveways. (County Code 21.20.020(B))

In addition, staff has instituted a process by which all building permit applications submitted for any new structures (including new single-family houses) on Williamson Act properties, must be accompanied by a signed Landowners Statement that verifies compatibility with the Williamson Act contract. The Landowners Statement further acknowledges that, pursuant to AB1492, severe penalties may arise should the County or the Department of Conservation determine in the future that the structure is in material breach of the contract.

The statement specifically requires the landowner to verify that:

1. The activity, use, or construction as proposed will be conducted in such a way as to maintain the agricultural viability of the parcel.
2. They are aware of the provisions of the Williamson Act (Section 51250 of the California Government Code) and of the allowable uses on Williamson Act properties as defined by Stanislaus County Code and the Stanislaus County Uniform Rules governing Williamson Act properties.
3. They understand that AB1492 (Govt. Code Section 51250) defines specific and substantial financial penalties (up to 25% of the market value of the land and construction) if construction on the parcel is found by the County of Stanislaus or State of California to result in a material breach of the contract provisions.
4. They acknowledge that the Department of Conservation has indicated that: "Residences not incidental to an agricultural use are prohibited, and may trigger AB1492 penalties. These may include residences for family members not involved with the agricultural use, or residences constructed on contracted parcels with no commercial-agricultural use."
5. They acknowledge that the activity, use, or construction as proposed is of size and type that would not adversely affect the on-site or adjacent farming operations and understand that the County has a "right to farm" policy.

6. They understand that it is their sole responsibility as the landowner to ensure that all activities, uses, and construction on this parcel are in compliance with the provisions of the Williamson Act and Stanislaus County Code, and that those activities will not result in a material breach of the Williamson Act contract.

By requiring a separate review of the compatibility of each building permit application submitted on Williamson Act properties, staff can ensure that no structures are constructed that are not incidental to the agricultural use of the property.

ENVIRONMENTAL REVIEW

Pursuant to the California Environmental Quality Act (CEQA), the proposed project was circulated to all interested parties and responsible agencies for review and comment (see Exhibit "G" - Environmental Review Referrals). Referral responses from the Department of Fish and Game, and the Department of Fish and Wildlife were addressed with Mitigation Measures. As discussed above, the proposed Mitigated Negative Declaration declares the proposed project will not have a significant effect on the environment and incorporates the mitigation measures identified in the Initial Study. Conditions of Approval, which include the Mitigation Measures, have been placed on the project (Exhibit "B").

RECOMMENDATION

Based on all evidence on the record, staff recommends that the Planning Commission take the following actions regarding this project:

1. Adopt the Mitigated Negative Declaration pursuant to CEQA Guidelines Section 15074(b), by finding that on the basis of the whole record, including the Initial Study and any comments received, that there is no substantial evidence the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects Stanislaus County's independent judgement and analysis.
2. Adopt the Mitigation Monitoring Plan pursuant to CEQA Guidelines Section 15074(d).
3. Order the filing of a Notice of Determination with the Stanislaus County Clerk-Recorders Office pursuant to Public Resources Code Section 21152 and CEQA Guidelines Section 15075.
4. Find that:
 - (a) The proposed map is consistent with applicable general and specific plans as specified in Section 65451.
 - (b) The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.
 - (c) The site is physically suitable for the type of development.
 - (d) The site is physically suitable for the proposed density of development.

- (e) The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) The design of the subdivision or type of improvements is not likely to cause serious public health problems.
- (g) The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public.

5. Approve Vesting Tentative Parcel Map Application No. 2006-02 - Furtado Family Trust, subject to the attached Conditions of Approval and Mitigation Measures.

Note: Pursuant to California Fish and Game Code Section 711.4, all project applicants subject to the California Environmental Quality Act (CEQA) shall pay a filing fee for each project. Therefore, the applicant will further be required to pay \$1,800 to the Department of Fish and Game. The attached Conditions of Approval ensure that this will occur.

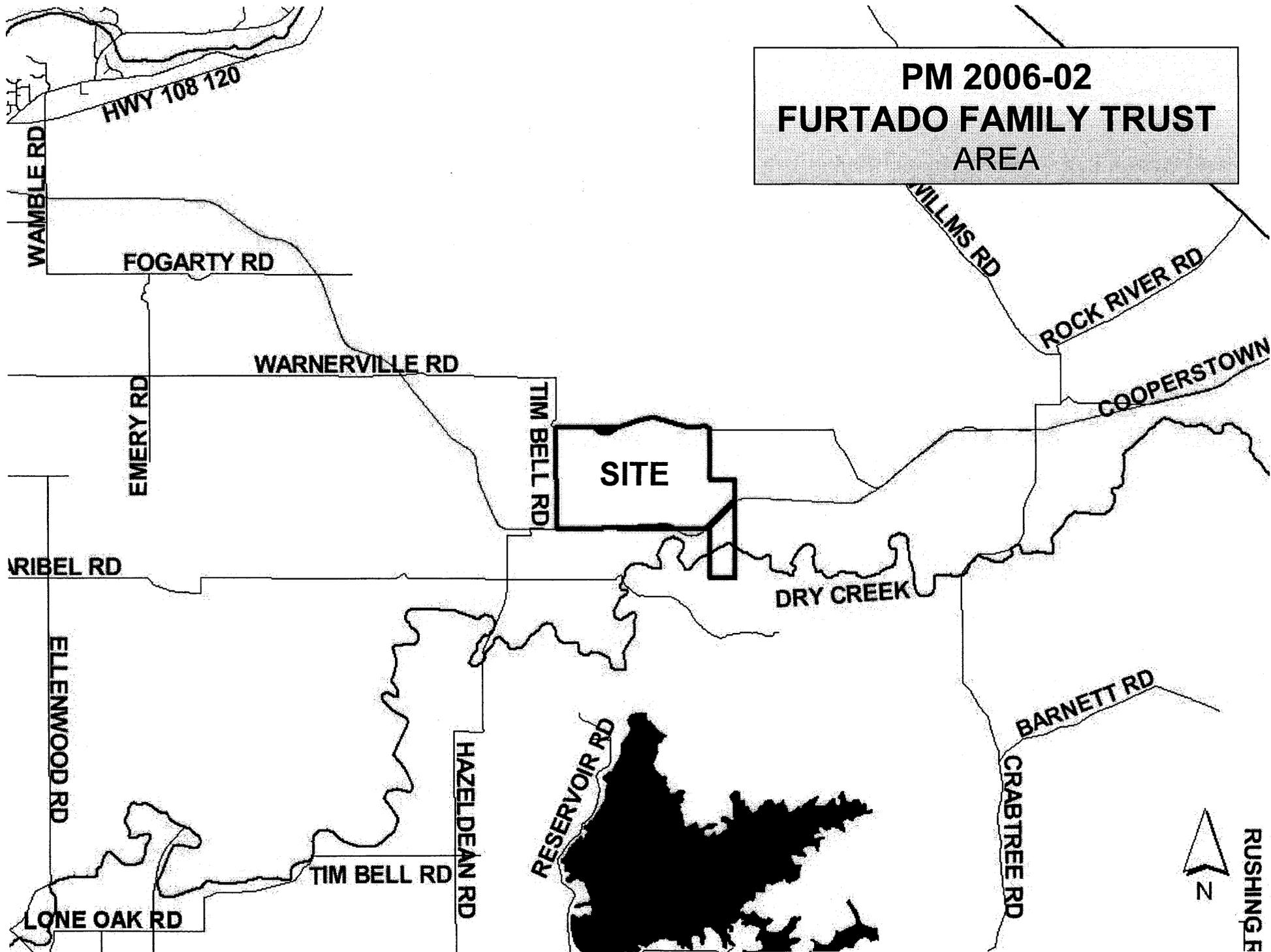
Report written by: Carole Maben, Associate Planner, January 17, 2007

- Attachments:
- Exhibit A - Maps
 - Exhibit B - Conditions of Approval
 - Exhibit C - Referral responses from the Department of Conservation and the Applicant's Addendum to Parcel Map Application
 - Exhibit D - Initial Study with the Biological Reconnaissance Survey Performed by Moore Biological Consultants
 - Exhibit E - Mitigation Monitoring Plan
 - Exhibit F - Mitigated Negative Declaration
 - Exhibit G - Environmental Review Referrals

Reviewed by:


Bob Kachel, Senior Planner

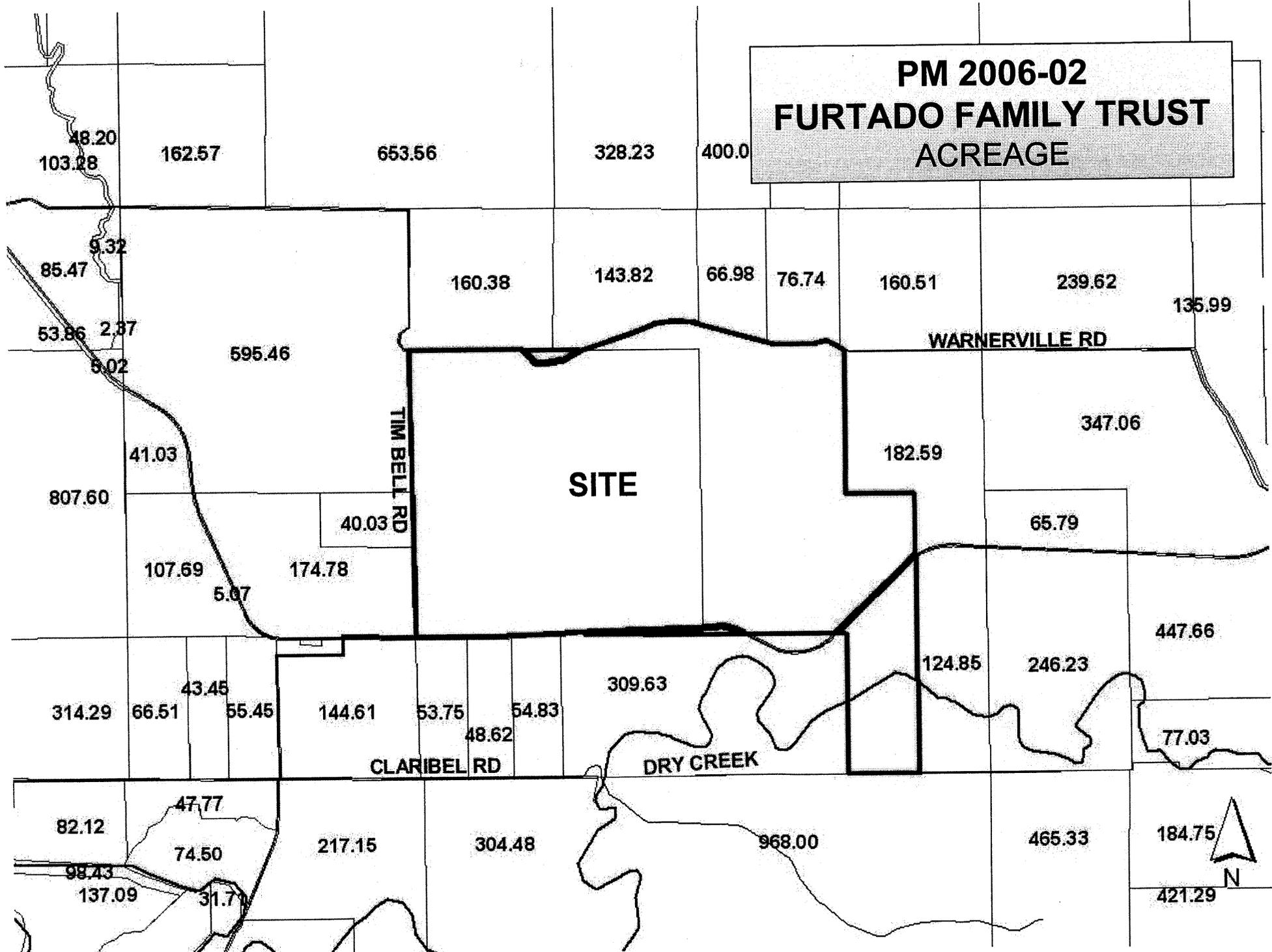
**PM 2006-02
FURTADO FAMILY TRUST
AREA**



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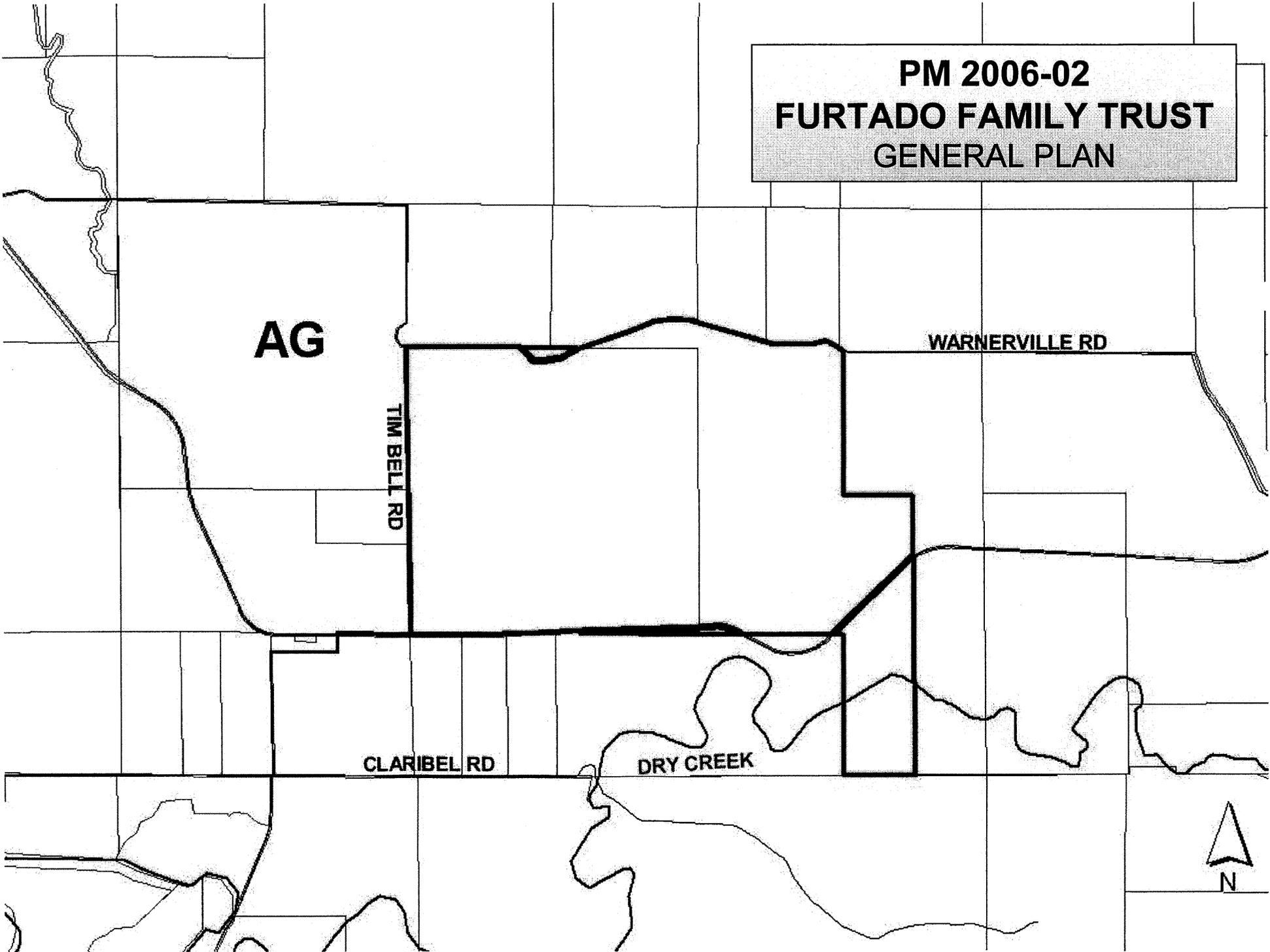
**PM 2006-02
FURTADO FAMILY TRUST
ACREAGE**



20

EXHIBIT A-1

**PM 2006-02
FURTADO FAMILY TRUST
GENERAL PLAN**



AG

WARNERVILLE RD

TIM BELL RD

CLARIBEL RD

DRY CREEK



80

**PM 2006-02
FURTADO FAMILY TRUST
ZONING DESIGNATIONS**

A-2-40

TIM BELL RD

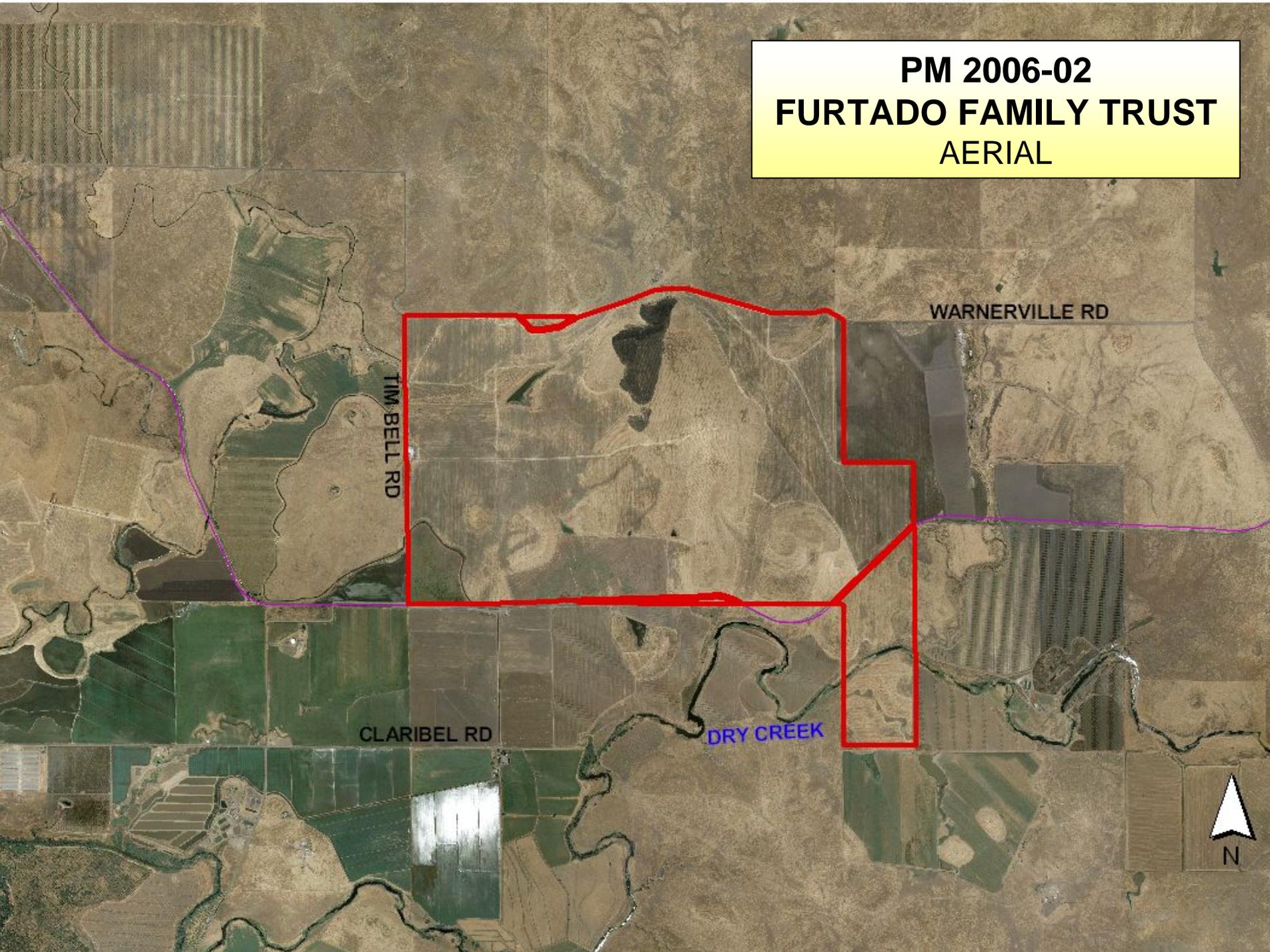
WARNERVILLE RD

CLARIBEL RD

DRY CREEK



**PM 2006-02
FURTADO FAMILY TRUST
AERIAL**



TIM BELL RD

WARNERVILLE RD

CLARIBEL RD

DRY CREEK



As Amended by the Planning Commission

February 1, 2007

As Amended by the Board of Supervisors

March 27, 2007

CONDITIONS OF APPROVAL

VESTING TENTATIVE PARCEL MAP APPLICATION NO. 2006-02 FURTADO FAMILY TRUST

Department of Public Works

1. The recorded parcel map shall be prepared by a licensed land surveyor or a registered civil engineer.
2. All existing non-public facilities and/or utilities that do not have lawful authority to occupy the road right of way shall be relocated onto private property upon the request of the Department of Public Works.
3. All structures not shown on the tentative parcel map shall be removed prior to the parcel map being recorded.
4. That 60-foot public utility easements from Tim Bell Road and Warnerville Road to Parcels "8" through "13" shall be shown on the parcel map to be recorded. The public utility easements shall be within the proposed access easements as shown on the tentative parcel map.
5. That approved 60-foot wide access easements from Tim Bell Road and Warnerville Road to Parcels "8" through "13" as shown on the tentative map shall be shown on the parcel map to be recorded.
6. A statement on the final parcel map that the access roads are private, non-county maintained.
7. ~~Prior to the final parcel map being recorded, a homeowner's association shall be formed and the necessary documents recorded that specify maintenance of all private access roads will be the sole responsibility of the property owners. A copy of the recorded homeowner's association shall be provided to the Department of Public Works and the Department of Planning and Community Development.~~

Prior to the final parcel map being recorded, either a homeowner's association shall be formed or a Road Maintenance Agreement shall be executed and recorded specifying that the maintenance of all private access roads shall be the sole responsibility of the property owners. A copy of the applicable document shall be provided to the Department of Public Works and the Department of Planning and Community Development.

8. All irrigation easements shown on the tentative parcel map shall be shown on the final parcel map.

Building Permits Division

9. Development shall comply with current State adopted Title 24 Building Codes.

Department of Planning and Community Development

10. The developer shall pay all applicable Public Facilities Impact Fees and Fire Protection Development/Impact Fees as adopted by Resolution of the Board of Supervisors. For the Public Facilities Impact Fees, the fees shall be based on the Guidelines Concerning the Fee Payment Provisions established by County Ordinance C.S. 824 as approved by the County Board of Supervisors on March 11, 2003, and shall be payable at the time determined by the Department of Public Works.
11. Any construction resulting from this project shall comply with standardized dust controls adopted by the San Joaquin Valley Air Pollution Control District.
12. The subdivider is required to defend, indemnify, or hold harmless the County, its officers and employees from any claim, action, or proceedings against the County to set aside the approval of the map as set forth in Government Code Section 66474.9. The County shall promptly notify the subdivider of any claim, action, or proceeding to set aside the approval and shall cooperate fully in the defense.
13. Pursuant to Section 711.4 of the California Fish and Game Code (effective January 1, 2007), the applicant is required to pay a Department of Fish and Game filing fee at the time of recording a "Notice of Determination." Within five (5) days of approval of this project by the Planning Commission or Board of Supervisors, the applicant shall submit payment to the Department of Planning and Community Development as follows:

An **\$1,800.00** check made payable to "**California Department of Fish and Game**" for the Fish and Game filing fee; and
A **\$57.00** recording fee made payable to "**Stanislaus County Clerk/Recorder**".

Total amount due and payable within 5 days of approval is **\$1,857.00**.

Pursuant to Section 711.4 (e)(3) of the California Fish and Game Code, no project shall be operative, vested, or final, nor shall local government permits for the project be valid, until the filing fees required pursuant to this section are paid.

14. Pursuant to Section 404 of the Clean Water Act, prior to construction, the developer shall be responsible for contacting the US Army Corps of Engineers to determine if any "wetlands," "waters of the United States," or other areas under the jurisdiction of the Corps of Engineers are present on the project site, and shall be responsible for obtaining all appropriate permits or authorizations from the Corps, including all necessary water quality certifications, if necessary.

15. Pursuant to the federal and state Endangered Species Acts, prior to construction, the developer shall be responsible for contacting the US Fish and Wildlife Service and California Department of Fish and Game to determine if any special status plant or animal species are present on the project site, and shall be responsible for obtaining all appropriate permits or authorizations from these agencies, if necessary.
16. Pursuant to Section 1600 and 1603 of the California Fish and Game Code, prior to construction, the developer shall be responsible for contacting the California Department of Fish and Game and shall be responsible for obtaining all appropriate streambed alteration agreements, permits or authorizations, if necessary.
17. Pursuant to State Water Resources Control Board Order 99-08-DWQ and National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, prior to construction, the developer shall be responsible for contacting the California Regional Water Quality Control Board to determine if a "Notice of Intent" is necessary, and shall prepare all appropriate documentation, including a Storm Water Pollution Prevention Plan (SWPPP). Once complete, and prior to construction, a copy of the SWPPP Pollution Prevention Plan shall be submitted to the Stanislaus County Department of Public Works.
18. The final recorded map shall contain the following statement:

"All persons purchasing lots within the boundaries of this approved map should be prepared to accept the inconveniences associated with the agricultural operations, such as noise, odors, flies, dust or fumes. Stanislaus County has determined that such inconveniences shall not be considered to be a nuisance if agricultural operations are consistent with accepted customs and standards."
19. Prior to the issuance of building permits for a dwelling, the owner/developer shall pay a fee of \$339.00 per dwelling to the County Sheriff's Department.
20. The Department of Planning and Community Development shall record a Notice of Administrative Conditions and Restrictions with the County Recorder's Office within 30 days of project approval. The Notice includes: Conditions of Approval/Development Standards and Schedule; any adopted Mitigation Measures; and a project area map.

Department of Environmental Resources

21. Each parcel shall have an approved independent water supply (if not provided public water service). Prior to the issuance of building permits, each parcel shall have it's own well. A drilling permit shall be obtained from the Department of Environmental Resources. (Stanislaus County Policy and State Model Well Standards Ordinance)
22. Each parcel shall have a conventional septic system for onsite sewage disposal. Due to the topography, Parcel 11 and Parcel 13 septic systems need to have an engineered design.

Oakdale Rural Fire District

23. An \$800 per parcel fee shall be paid to the Oakdale Rural Fire District Water Delivery Fund prior to any structure being built or erected on any of the newly formed or existing parcels. No fees would be due if the property is not improved otherwise.
24. The project would be required to have a 20-foot all weather access road to any and all structures.

Oakdale Irrigation District

25. O.I.D. requests a 60-foot wide easement for the Paulsell Lateral, said easement to be located entirely within the proposed Lot "7." The recorded instrument number with the bearings and distances of the requested easement must be noted on the recording map before final approval.
26. The signature block be provided for OID review and approval:

OAKDALE IRRIGATION DISTRICT

This map has been reviewed for compliance with Oakdale Irrigation District Subdivision Parcel Map Policy and project approval conditions. The recorded right-of-way and/or easements for Oakdale Irrigation District as shown on this map meet the conditions of approval and Oakdale Irrigation District approves the filing of this map.

By: _____
Steve Knell, P.E.
General Manager

Date: _____

Stanislaus Consolidated Fire District

27. The recorded map shall have the following note: "Prior to issuance of a building permit on the proposed parcels, an access easement and water for fire suppression, if applicable, shall meet minimum fire code requirements and/or standards in effect at time of proposed development."
28. Per the 2001 California Fire Code Section 902, fire access roads (easement) shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 13 feet 6 inches. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with a surface to provide all-weather driving capabilities. The turning radius of a fire apparatus access road shall be as approved (50 foot outside, 30 foot inside turning radius). The gradient for a fire apparatus access road shall not exceed the maximum approved (10 percent).
29. Make sure 30-foot reciprocal access easement goes around existing lift pump or applicant must relocate lift pump.

San Joaquin Valley Air Pollution District

30. The project is subject to the following rules:
- Regulation VIII (Fugitive PM10 Prohibitions)
 - Rule 3135 (Dust Control Plan Fee)
 - Rule 4102 (Nuisance)
 - Rule 4103 (Open Burning)
 - Rule 4550 (Conservation Management Practices)

Board of Supervisors

- ~~31. No residential structures shall be constructed on any parcel until either tree crops or vines have been planted on the parcel.~~

Mitigation Measures

1. Prior to the recording of the parcel map, and prior to construction of any on-site residences, or any roads to serve any new residences, or any other on-site improvements, all creeks, ponds, seasonal swales, wetlands, and vernal pools within 100 feet of the centerline of proposed access roads shall be accurately mapped and shall be included on the recorded version of the parcel map. Specific language shall be included on the recorded parcel map that prohibits any construction within 100-feet of the identified features without prior authorization and/or permits from the appropriate state or federal regulatory agency, if necessary. The setback may be reduced to 50 feet around the three managed irrigation ponds in the south part of the site. The applicant shall forward copies of all surveys and maps to the Stanislaus County Planning Department and the CDFG for verification prior to recording the parcel map and prior to issuance of any building or grading permit.
2. Prior to construction of any new residences or any other on-site improvements, a supplemental biological survey shall be completed that identifies all creeks, ponds, seasonal swales, wetlands, and vernal pools within 100 feet of the proposed construction activities, and shall be accurately mapped for the area(s) proposed for construction. Construction within 100-feet of the identified features without any necessary prior authorization from the appropriate state or federal regulatory agency is prohibited. The setback may be reduced to 50 feet around the three managed irrigation ponds in the south part of the site. The applicant shall forward copies of all surveys and maps to the Stanislaus County Planning Department and CDFG for verification prior to issuance of any building or grading permit.
3. No construction or development of access roads or other improvements shall be allowed within 100 feet of areas that fall within the jurisdiction of the U.S. Army Corps of Engineers (Corps), or CDFG without first obtaining appropriate permits and authorizations from those agencies, if necessary. The setback may be reduced to 50 feet around the three managed irrigation ponds in the south part of the site.

4. The applicant shall contact the Corps and CDFG prior to recording the parcel map and prior to construction of any access roadways or other improvements to determine if permits or authorizations are warranted. The applicant shall forward copies of all correspondence with the Corps and/or CDFG to the Stanislaus County Planning Department for verification prior to recording the parcel map.
5. Pre-construction surveys for nesting burrowing owls shall be undertaken within 250 feet of any access road or home sites for construction activities between February 1st and August 31st. If active nests are found, construction activities within 250 feet of the natal burrow shall be prohibited until a qualified biologist confirms that the young have fledged and are capable of foraging independently. In the event that active occupied burrows are located within the footprint of proposed construction, the owls may be relocated after the completion of nesting using passive relocation techniques described in CDFG's 1995 Staff Report on Burrowing Owl Mitigation.
6. Pursuant to the federal and state Endangered Species Acts, prior to construction, the developer shall be responsible for contacting the US Fish and Wildlife Service and California Department of Fish and Game to determine if any special status plant or animal species are present on the project site, and shall be responsible for obtaining all appropriate permits or authorizations from these agencies, if necessary.

Please note: If Conditions are amended by the Planning Commission or Board of Supervisors, such amendments will be noted in the upper right hand corner of the first page of the Conditions of Approval, new wording is in bold, and deleted wording will have a ~~line through it~~.



DEPARTMENT OF CONSERVATION

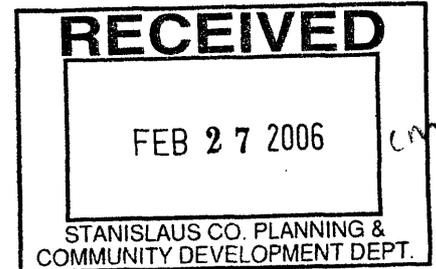
DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0850 • FAX 916 / 327-3430 • TDD 916 / 324-2555 • WEB SITE conservation.ca.gov

February 23, 2006

Ms. Carole Maben, Associate Planner
 Stanislaus County
 Department of Planning and Community Development
 1010 10th Street, suite 3400
 Modesto, CA 95354



Subject: Parcel Map Application No. 2006-02 (Furtado) Early Consultation (EC),
 Stanislaus County

Dear Ms. Maben:

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Negative Declaration (ND) for the referenced project. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. We offer the following comments and recommendations with respect to the project's impacts on Williamson Act land.

Project Description

The project is a proposed subdivision of two parcels totaling 1,147 acres of land enforceably restricted by Williamson Act Contract No. 72-0705 and 71-0418 (APN 011-005-007 and 021). The proposal is to create 12 parcels of 80 acres each, one of 70 acres and a remainder of 117 acres. Four of the 80-acre parcels are prime agricultural land currently used as irrigated pasture. The remaining land is used for dry oats farming. Surrounding land is mostly rangeland, with some orchards and rice on parcels in excess of 140 acres. There are no structures currently on the subject property, which is planned to continue the current agricultural use or something similar to uses on surrounding parcels. Some of the proposed parcels will front existing roadways while others will require a private road access and utility easement. The project will require an extension of utilities. The subject property is located southeast of the intersection of Tim bell Road and Warnerville Road northeast of Waterford in Stanislaus County (County).

Subdivision of Williamson Act Land

The EC states that the contracts for the subject parcels do not require written approval of parcel splits in excess of 20 acres. Copies of the subject contracts were not attached. However, such an allowance appears to conflict with the Subdivision Map Act and the Williamson Act, the prevailing authorities regarding subdivision of contracted land.

The Board of Supervisors will need to determine whether the proposed subdivision conflicts with the Subdivision Map Act or the Williamson Act. The Board of Supervisors must deny approval of a tentative map or parcel map involving Williamson Act contracted land “. . . if it finds that either the resulting parcels following a subdivision of that land would be too small to sustain their agricultural use or the subdivision will result in residential development not incidental to the commercial agricultural use of the land, . . . (Government Code §66474.4(a)).”

There appears to be no affirmative statement as to the agricultural basis for the subdivision. If the agricultural use will remain the same as the current use, what is the reason for the subdivision? If each new parcel can be developed with a home or homes, how will such a significant increase in residential development be “incidental to the commercial agricultural use of the land?” In addition, the EC Findings appear to be more suited to a discussion of compatible use rather than subdivision of Williamson Act land and §66474.4.

The EC states that the proposal will not result in residential development of the resulting parcels except where residential use is incidental to the agricultural use of the land. We note, however, that the principal purpose of §66474.4 is to ensure that subdivision of contracted land for residential purposes does not occur. The Legislature has acted to limit the permissibility of residential subdivision because of a subdivision's irreversible erosion of the enforceability of the Williamson Act's requirement to protect agricultural land and, thus, its constitutional *quid pro quo* basis for the preferential property tax benefit.

For subdivision of Williamson Act contracted land, the local government administering the agricultural preserve must have a substantive basis for approving the application and map, it must do so on the basis of a specific and affirmative determination that each of the resulting parcels is large enough to sustain the agricultural uses to which it is restricted and it must make a finding that the subdivision will not result in residential development of the resulting parcels, except where residential use will be incidental to the commercial agricultural use of the land.

Ms. Carole Maben
February 23, 2006
Page 3

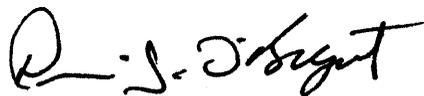
In addition, the State of California Attorney General's Office has opined that the Williamson Act prohibits subdividing contracted lands for residential purposes regardless of parcel size. (75 Ops. Att'y Gen. 278 (1992); 62 Ops. Att'y Gen. 233 (1979); 54 Ops. Att'y Gen. 90 (1971)). The Legislature, through enactment of Senate Bill 985 (Chapter 1018, Statutes of 1999, § 15), concurred with these Attorney General opinions and made them declaratory of existing law, adding the following: *"In enacting Section 14 of this act . . . clarifying that a landowner's right to subdivide is subject to the Williamson Act . . . therefore, the subdivision of enrolled lands for residential purposes is prohibited by both the Williamson Act and by Section 66474.4 of the Government Code"*

In a case where the landowner and County desire to develop buildable lots, we recommend that the proposed subdivision be postponed until the land is out of contract. It is the County's responsibility to ensure that subdivision of Williamson Act land for residential purposes not occur. To address this issue, some counties have included "no build" provisions for Williamson Act parcel splits, and others have included agricultural income requirements for parcels before additional houses could be built. Such conditions may protect both the property owner and the county from potential Williamson Act violations.

The County should also be aware that under §51250 (AB 1492 Laird, Chapter 694), construction of buildings not related to agricultural use on newly created parcels of contracted land may be subject to the breach of contract penalties. While it is the County's responsibility to enforce the sanctions contained in §51250, the Department is also empowered to take actions against breaches of contract.

Thank you for the opportunity to comment on this EC. If you have questions on our comments or require technical assistance or information on agricultural land conservation, please contact Bob Blanford at 801 K Street, MS 18-01, Sacramento, California 95814; or, phone (916) 327-2145.

Sincerely,



Dennis J. O'Bryant
Acting Assistant Director

cc: East Stanislaus Resource Conservation District



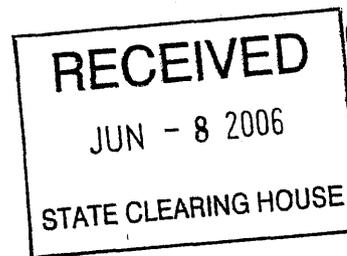
DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0850 • FAX 916 / 327-3430 • TDD 916 / 324-2555 • WEBSITE conservation.ca.gov

June 8, 2006



Ms. Carole Maben, Associate Planner
Stanislaus County
Department of Planning and Community Development
1010 10th Street, Suite 3400
Modesto, CA 95354

Subject: Parcel Map Application No. 2006-02 (Furtado) Mitigated Negative Declaration (MND) – SCH# 2006022015, Stanislaus County

Dear Ms. Maben:

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the MND for the referenced project. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. The Department commented on the subject application on February 23, 2006 in response to an Early Consultation request. We offer the following comments and recommendations with respect to the project's impacts on Williamson Act land.

Project Description

The project is a proposed subdivision of two parcels totaling 1,147 acres of land enforceably restricted by Williamson Act Contract No. 72-0705 and 71-0418 (APN 011-005-007 and 021). The proposal is to create 12 parcels of 80 acres each, one of 70 acres and a remainder of 117 acres. Four of the 80-acre parcels are designated Prime Farmland by the Department's Farmland Mapping and Monitoring Program and are currently used as irrigated pasture. The remaining land is Farmland of Local Importance and is used for dry oats farming. Surrounding land is mostly rangeland, with some orchards and rice on parcels in excess of 140 acres. There are no structures currently on the subject property. The landowner's stated expectation is that application approval will result in opportunities for future, small family-owned farming operations to increase the agricultural intensity and productivity of the property. Some of the proposed parcels will front existing roadways while others will require a private road access and utility easement. The project will require an extension of utilities. The

Ms. Carole Maben, Associate Planner

June 8, 2006

Page 2 of 3

subject property is located southeast of the intersection of Tim Bell Road and Warnerville Road northeast of Waterford in Stanislaus County (County).

Subdivision of Williamson Act Land

The Board of Supervisors will need to determine whether the proposed subdivision conflicts with the Subdivision Map Act or the Williamson Act. The Board of Supervisors must deny approval of a tentative map or parcel map involving Williamson Act contracted land "... if it finds that either the resulting parcels following a subdivision of that land would be too small to sustain their agricultural use or the subdivision will result in residential development not incidental to the commercial agricultural use of the land, ... (Government Code §66474.4(a))."

There appears to be no affirmative agricultural basis for the proposed subdivision. In addition, while it may be feasible to intensify agricultural use on the Prime Farmland parcels, what is the feasibility for intensifying the use on parcels of Farmland of Local Importance? Attorney General Opinion and the relatively recent Legislative enhancement of the Subdivision Map Act (SMA) noted above make it clear that subdividing contracted land for the purpose of residential development is prohibited by the Williamson Act and SMA. The landowner's expectation for increased agricultural intensity is based on selling the parcels to several, future, unknown owners who may or may not increase intensity. But, as the landowner states, residential development of the parcels is critical. One could be concerned, therefore, that the purpose of this proposed subdivision is residential development.

The Initial Study states that the proposed parcels will be restricted by General Agriculture (A-2) zoning and AB 1492. However, zoning presumably permits the development of one or more homes on each of the 14 proposed parcels, a significant increase in the residential development of the property that may not be incidental to the commercial agricultural use of the land. AB 1492 provides for after-the-fact penalties for incompatible residential development. The principal purpose of §66474.4 is to ensure that subdivision of contracted land for residential purposes does not occur in the first place. The Legislature has acted to limit the permissibility of residential subdivision because of a subdivision's irreversible erosion of the enforceability of the Williamson Act's requirement to protect agricultural land and, thus, its constitutional *quid pro quo* basis for the preferential property tax benefit.

For subdivision of Williamson Act contracted land, the local government administering the agricultural preserve must have a substantive basis for approving the application and map, it must do so on the basis of a specific and affirmative determination that each of the resulting parcels is large enough to sustain the agricultural uses to which it is restricted and it must make a finding that the subdivision will not result in residential development of the resulting parcels, except where residential use will be incidental to the commercial agricultural use of the land.

Ms. Carole Maben Associate Planner

June 8, 2006

Page 3 of 3

The State of California Attorney General's Office has opined that the Williamson Act prohibits subdividing contracted lands for residential purposes regardless of parcel size. (75 Ops. Att'y Gen. 278 (1992); 62 Ops. Att'y Gen. 233 (1979); 54 Ops. Att'y Gen. 90 (1971)). The Legislature, through enactment of Senate Bill 985 (Chapter 1018, Statutes of 1999, § 15), concurred with these Attorney General opinions and made them declaratory of existing law, adding the following: *"In enacting Section 14 of this act . . . clarifying that a landowner's right to subdivide is subject to the Williamson Act . . . therefore, the subdivision of enrolled lands for residential purposes is prohibited by both the Williamson Act and by Section 66474.4 of the Government Code . . ."*

In a case where the landowner and County desire to develop buildable lots, we recommend that the proposed subdivision be postponed until the land is out of contract. It is the County's responsibility to ensure that subdivision of Williamson Act land for residential purposes does not occur. To address this issue, some counties have included "no build" provisions for Williamson Act parcel splits, and others have included agricultural income requirements for parcels before additional houses could be built. Such conditions may protect both the property owner and the county from potential Williamson Act violations.

The County should also be aware that under §51250 (AB 1492 Laird, Chapter 694), construction of buildings not related to agricultural use on newly created parcels of contracted land may be subject to the breach of contract penalties. While it is the County's responsibility to enforce the sanctions contained in §51250, the Department is also empowered to take actions against breaches of contract.

Thank you for the opportunity to comment on this MND. If you have questions on our comments or require technical assistance or information on agricultural land conservation, please contact Bob Blanford at 801 K Street, MS 18-01, Sacramento, California 95814; or, phone (916) 327-2145.

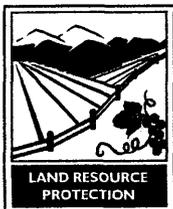
Sincerely,



Dennis J. O'Bryant
Acting Assistant Director

cc: State Clearinghouse

East Stanislaus Resource Conservation District
3800 Cornucopia Way Ste. E,
Modesto, CA 95358



DEPARTMENT OF CONSERVATION

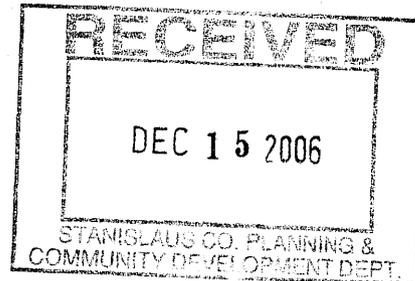
DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0850 • FAX 916 / 327-3430 • TDD 916 / 324-2555 • WEBSITE conservation.ca.gov

December 7, 2006

Ms. Carole Maben, Associate Planner
 Stanislaus County
 Department of Planning and Community Development
 1010 10th Street, Suite 3400
 Modesto, CA 95354



Subject: Mitigated Negative Declaration (MND): Tentative Parcel Map No.2006-02
 APN's 011-005-007 & 021 Williamson Act Contract No. 72-0705 and 71-0418; Applicant: Furtado Family Trust

Dear Ms. Maben:

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the MND for the referenced project. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. The Department commented on the subject application on February 23, 2006 in response to an Early Consultation request. We offer the following comments and recommendations with respect to the project's impacts on Williamson Act land.

Project Description

The project is a proposed subdivision of two parcels totaling 1,147 acres of land enforceably restricted by Williamson Act Contract No. 72-0705 and 71-0418 (APN 011-005-007 and 021). The proposal is to create 13 parcels of 80 acres each, one of 70 acres and a remainder of 117 acres. Four of the 80-acre parcels are designated Prime Farmland by the Department's Farmland Mapping and Monitoring Program and are currently used as irrigated pasture. The remaining land is Farmland of Local Importance and is used for dry oats farming. Surrounding land is mostly rangeland, with some orchards and rice on parcels in excess of 140 acres. There are no structures currently on the subject property. The landowner's stated expectation is that application approval will result in opportunities for future, small family-owned farming operations to increase the agricultural intensity and productivity of the property. Some of the proposed parcels will front existing roadways while others will require a private road access and utility easement. The project will require an extension of utilities. The

subject property is located southeast of the intersection of Tim Bell Road and Warnerville Road northeast of Waterford in Stanislaus County.

Subdivision of Williamson Act Land

The Board of Supervisors will need to determine whether the proposed subdivision conflicts with the Subdivision Map Act or the Williamson Act. The Board of Supervisors must deny approval of a tentative map or parcel map involving Williamson Act contracted land “. . . if it finds that either the resulting parcels following a **subdivision of that land would be too small to sustain their agricultural use or the subdivision will result in residential development not incidental to the commercial agricultural use of the land, . . . (Government Code §66474.4(a)).”**

There appears to be no affirmative agricultural basis for the proposed subdivision. In addition, while it may be feasible to intensify agricultural use on the Prime Farmland parcels, what is the feasibility for intensifying the use on parcels of Farmland of Local Importance? Attorney General Opinion and the relatively recent Legislative enhancement of the Subdivision Map Act (SMA) noted above make it clear that subdividing contracted land for the purpose of residential development is prohibited by the Williamson Act and SMA. The landowner's expectation for increased agricultural intensity is based on selling the parcels to several, future, unknown owners who may or may not increase intensity. But, as the landowner states, residential development of the parcels is critical. One could be concerned, therefore, that the purpose of this proposed subdivision is residential development.

The Initial Study states that the proposed parcels will be restricted by General Agriculture (A-2) zoning and AB 1492. However, zoning presumably permits the development of one or more homes on each of the 14 proposed parcels, a significant increase in the residential development of the property that may not be incidental to the commercial agricultural use of the land. AB 1492 provides for after-the-fact penalties for incompatible residential development. The principal purpose of §66474.4 is to ensure that subdivision of contracted land for residential purposes does not occur in the first place. The Legislature has acted to limit the permissibility of residential subdivision because of a subdivision's irreversible erosion of the enforceability of the Williamson Act's requirement to protect agricultural land and, thus, its constitutional *quid pro quo* basis for the preferential property tax benefit.

For subdivision of Williamson Act contracted land, the local government administering the agricultural preserve must have a substantive basis for approving the application and map, it must do so on the basis of a specific and affirmative determination that each of the resulting parcels is large enough to sustain the agricultural uses to which it is restricted **and** it must make a finding that the subdivision will not result in residential development of the resulting parcels, except where residential use will be incidental to the commercial agricultural use of the land.

Ms. Carole Maben, Associate Planner
December 13, 2006
Page 3 of 3

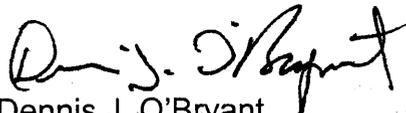
The State of California Attorney General's Office has opined that the Williamson Act prohibits subdividing contracted lands for residential purposes regardless of parcel size. (75 Ops. Att'y Gen. 278 (1992); 62 Ops. Att'y Gen. 233 (1979); 54 Ops. Att'y Gen. 90 (1971)). The Legislature, through enactment of Senate Bill 985 (Chapter 1018, Statutes of 1999, § 15), concurred with these Attorney General opinions and made them declaratory of existing law, adding the following: *"In enacting Section 14 of this act . . . clarifying that a landowner's right to subdivide is subject to the Williamson Act . . . therefore, the subdivision of enrolled lands for residential purposes is prohibited by both the Williamson Act and by Section 66474.4 of the Government Code . . ."*

In a case where the landowner and County desire to develop buildable lots, we recommend that the proposed subdivision be postponed until the land is out of contract. It is the County's responsibility to ensure that subdivision of Williamson Act land for residential purposes does not occur. To address this issue, some counties have included "no build" provisions for Williamson Act parcel splits, and others have included agricultural income requirements for parcels before additional houses could be built. Such conditions may protect both the property owner and the county from potential Williamson Act violations.

The County should also be aware that under §51250 (AB 1492 Laird, Chapter 694), construction of buildings not related to agricultural use on newly created parcels of contracted land may be subject to the breach of contract penalties. While it is the County's responsibility to enforce the sanctions contained in §51250, the Department is also empowered to take actions against breaches of contract.

Thank you for the opportunity to comment on this MND. The Department looks forward to receiving your response and copies of any subsequent CEQA documents. We also request copies of the Board of Supervisor's findings regarding the project, including supporting documentation. If you have questions on our comments or require technical assistance or information on agricultural land conservation, please contact Sharon Grewal at 801 K Street, MS 18-01, Sacramento, California 95814; or, phone (916) 327-6643.

Sincerely,



Dennis J. O'Bryant
Program Manager

ADDENDUM TO PARCEL MAP APPLICATION

Application Number: PM 2006-02

Assesor's Parcel Numbers: 011-005-007/021

Current Owners: Timbell-Warnerville Partners, LLC

Application Date: 1-12-06

After review of the above referenced Parcel Map Application and in response to the issues raised by the Department of Conservation, State of California, we believe that additional information concerning the real property which is subject of the Application would be beneficial to the County of Stanislaus in their review, analysis and approval of the Application. The following information is presented, in order to give an accurate portrayal of the Property, including its present use, anticipated use, its location, and the use of real property in the relevant vicinity of the Property.

Present Use of Property

The subject property is located southeast of the intersection of Tim Bell Road and Warnerville Road, northeast of Waterford in Stanislaus County. Four of the 80-acre parcels are prime agricultural land currently used as irrigated pasture. The remaining land is used for dry oats farming. There are no structures currently on the subject property.

Anticipated Use of Property:

The project is a proposed subdivision of two parcels totaling 1,147 acres of land enforceably restricted by Williamson Act Contract No. 72-0705 and 71-0418 (APN 011-005-007 and 021). The proposal is to create 12 parcels of 80 acres each, one of 70 acres and a remainder of 117 ± acres. The anticipated use of the Property is a continuation of agricultural use with an expectation, given the approval of the Application, of further agricultural development increasing the intensity and productivity of such use.

Based on the agricultural development of the surrounding Properties, it is expected that the splitting of the Property into smaller parcels within the parameters of the current zoning will enhance the agricultural development of the Property. The approval of the Application will result in opportunities for the development of small, family-owned farming operations, to fulfill the dreams of future owners.

Use of Real Property in the Vicinity:

The property is located approximately seven (7) to eight (8) miles from the City of Waterford, the closest residential community to the Property. Accordingly, the relevant comparison of like properties to the Property would be other agricultural land that has been split into smaller parcels which are likewise significant distances from municipal services.

To the direct north of the property are four open land parcels with no irrigation system.

To the south of the property are Dry Creek, Claribel Road and three parcels: a 156 acre with agricultural use, a 317 acre open land and agricultural use parcel, and a 991 acre open land parcel.

To the east of the property is one 314 acre open land parcel with no irrigation system.

To the west of the property are three parcels: a 606 acre open land and agricultural use parcel, a 40 acre open land parcel with a single family residence, and a 168 acre open land parcel.

Residential and Agricultural Construction:

In order to facilitate the development of the Property into more intensive and productive agricultural use, the ability to construct residences on the parcels consistent with current zoning without size limitations is a critical element of the Application. While future agricultural development of the Property may not necessarily result in construction of residences on the various parcels, the option should be available to the owner/farmer who wants to oversee farming operation by being on location. In addition, depending on the size of the operation and the distance from other cultivated land, larger farming operations may want to construct local residences for personnel managing the farming operations. Any such residential construction shall be incidental, related to and consistent with the commercial agricultural uses of the Property.

Commitment to Agricultural Use:

As set forth in the letter submitted herewith, there is a commitment by the owners of the Property to maintain the agricultural viability of the Property. Given the distance of the Property from municipal services, the Property by its location is committed to a continuation of agricultural use. At a minimum, the Property will be maintained in its current agricultural use if the Application is approved. However, based on regional development, a substantial portion of the Property will likely experience further agricultural development resulting in greater agricultural productivity.

Dated: March 8, 2006

Timbell-Warnerville Partners, LLC

By: California Equity Management Group Inc. – Member Manager



By: Andrew B. Katakis - President



Stanislaus County Planning and Community Development

1010 10th Street, Suite 3400
Modesto, California 95354

Phone: (209) 525-6330
Fax: (209) 525-5911

CEQA INITIAL STUDY

Adapted from CEQA Guidelines APP ENDIX G Environmental Checklist Form, Final Text, October 26, 1998

1. **Project title:** Vesting Tentative Parcel Map Application No. 2006-02 - Furtado Family Trust
2. **Lead agency name and address:** Stanislaus County
1010 10th Street, Suite 3400
Modesto, CA 95354
3. **Contact person and phone number:** Carole Maben
(209) 525-6330
4. **Project location:** Southeast of the intersection of Tim Bell Road and Warnerville Road, northeast of Waterford area. (APN: 011-005-007 & 011-005-021)
5. **Project sponsor's name and address:** Andrew Katakis
Timbell-Warnerville Partners, LLC
P.O. Box 1747
Modesto, CA 95353
6. **General plan designation:** Agriculture
7. **Zoning:** A-2-40 (General Agriculture)
8. **Description of project:** Request to create 13 parcels of approximately 80 acres in size, one parcel approximately 70 acres in size, and a 117± acre remainder from two existing parcels totaling 1,147 acres.
9. **Surrounding land uses and setting:** Sierra Northern Railway, agricultural uses, single-family dwellings and ranchettes.
10. **Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.):** Stanislaus County Department of Public Works
Department of Environmental Resources
Oakdale Rural Fire Protection District
Stanislaus Consolidated Fire District

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- Aesthetics
- Biological Resources
- Hazards & Hazardous Materials
- Mineral Resources
- Public Services
- Utilities / Service Systems
- Agriculture Resources
- Cultural Resources
- Hydrology / Water Quality
- Noise
- Recreation
- Mandatory Findings of
- Air Quality
- Geology /Soils
- Land Use / Planning
- Population / Housing
- Transportation/Traffic

DETERMINATION: (To be completed by the Lead Agency)
On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.


Signature

October 11, 2006
Date

Carole Maben, Associate Planner
Printed name

EVALUATION OF ENVIRONMENTAL IMPACTS:

- 1) A brief explanation is required for all answers except “No Impact” answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A “No Impact” answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A “No Impact” answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. “Potentially Significant Impact” is appropriate if there is substantial evidence that an effect may be significant. If there are one or more “Potentially Significant Impact” entries when the determination is made, an EIR is required.
- 4) “Negative Declaration: Less Than Significant With Mitigation Incorporated” applies where the incorporation of mitigation measures has reduced an effect from “Potentially Significant Impact” to a “Less Than Significant Impact.” The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, “Earlier Analyses,” may be cross-referenced).
- 5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration.

Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

- a) Earlier Analysis Used. Identify and state where they are available for review.
 - b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - c) Mitigation Measures. For effects that are “Less than Significant with Mitigation Measures Incorporated,” describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
 - 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
 - 8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
 - 9) The explanation of each issue should identify:
 - a) the significant criteria or threshold, if any, used to evaluate each question; and
 - b) the mitigation measure identified, if any, to reduce the impact to less than significant.

ISSUES

I. AESTHETICS -- Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect on a scenic vista?				X
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				X
c) Substantially degrade the existing visual character or quality of the site and its surroundings?				X
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?				X

Discussion: The site itself is not considered to be a scenic resource or a unique scenic vista. Community standards generally do not dictate the need or desire for architectural review of residential subdivisions or residential structures. Any development resulting from this project will be consistent with existing area developments.

Mitigation: None.

References: County policies and staff experience.

II. AGRICULTURE RESOURCES -- In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?				X

Discussion: The project site is currently enrolled in Williamson Act Contracts No. 72-0705 and 70-0418. The project site is currently in dry farming and irrigated pasture. The majority of soil is designated as Farmland of Local Importance and two sections located in the southerly region are designated Prime Farmland. by the California State Department of Conservation Farmland Mapping and Monitoring Program. The soils on site are PvB(Peters cobbly clay), 0 to 8 percent slopes, Index Rating of 16, Grade 5; KeB (Keyes cobbly clay loam), 0 to 8 percent slopes, Index Rating of 14, Grade 5; BcA (Bear Creek clay loam), 0 to 3 percent slopes, Index Rating 54, Grade 3; PaA (Paulsell clay), 0 to 1 percent slopes, Index Rating of 52, Grade 6; PeD (Pentz gravelly loam), 8 to 30 percent slopes, Index Rating of 15, Grade 5; RaA (Raynor clay), 0 to 3 percent slopes, Index Rating of 40, Grade 3; PvC (Peters cobbly clay), 8 to 15 percent slopes, Index Rating of 5, Grade 5; WyA

(Wyman loam), 0 to 1 percent slopes, Index Rating of 85, Grade 1; and RtA (Ryer clay), 0 to 1 percent slopes, Index Rating of 55, Grade 3. Under the Williamson Act, lands are presumed to be too small to sustain their agricultural use if the lands are less than 40 acres in size, in the case of non-prime agricultural land, 10 acres in size, in the case of prime agricultural land, or the subdivision will result in residential development not incidental to the commercial agricultural use of the land. In this case, the proposed parcels will be 40 acres or greater in size. This project will not conflict with any bonafide agricultural activities in the area and/or lands enrolled under the Williamson Act. The proposed parcels will be restricted by the General Agriculture (A-2) zoning district and AB 1492. Attached to the initial study is a statement by the applicant regarding consistency with the Williamson Act and maintenance of agricultural viability.

Mitigation: None.

References: Stanislaus County General Plan and Support Documentation¹, Stanislaus County Agricultural Element¹, Stanislaus County Zoning Ordinance, Eastern Stanislaus Area Soil Survey, and the California State Department of Conservation Farmland Mapping and Monitoring Program - Stanislaus County Farmland 2000.

III. AIR QUALITY -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Conflict with or obstruct implementation of the applicable air quality plan?			X	
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?			X	
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?			X	
d) Expose sensitive receptors to substantial pollutant concentrations?				X
e) Create objectionable odors affecting a substantial number of people?				X

Discussion: The project site is within the San Joaquin Valley Air Basin, which has been classified as "non-attainment" for ozone and respirable particulate matter (PM-10) and (PM 2.5) as defined by the Federal Clean Air Act. The San Joaquin Valley Air Pollution Control District (SJVAPCD) has been established by the State in an effort to control and minimize air pollution. As such, the District maintains permit authority over stationary sources of pollutants.

The primary source of air pollutants generated by this project would be classified as being generated from "mobile" sources. Mobile sources would generally include dust from roads, farming, and automobile exhausts. Mobile sources are generally regulated by the Air Resources Board of the California EPA which sets emissions for vehicles and acts on issues regarding cleaner burning fuels and alternative fuel technologies. As such, the District has addressed most criteria air pollutants through basin wide programs and policies to prevent cumulative deterioration of air quality within the Basin. A referral response was received from the SJVAPCD noting this project should not have a significant impact on air quality, however, development of the property would contribute to the overall decline in air quality due to preparation of the site, on-going traffic, and other operational emission. The District is requesting some district rules be placed on this project to help reduce possible emissions such as Rule 3135 (Dust Control Plan Fee), Rule 4102 (Nuisance), Rule 4103 (Open burning), and Rule 4550 (Conservation Management Practices). Staff will place these as Conditions of Approval on the project.

Mitigation: None.

References: SJVAPCD Referral response dated February 18, 2006, San Joaquin Valley Air Pollution Control District - Regulation VIII Fugitive Dust/PM-10 Synopsis, Stanislaus County General Plan¹.

IV. BIOLOGICAL RESOURCES -- Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?		X		
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?		X		
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?		X		
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?			X	
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?			X	
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?			X	

Discussion: A Baseline Biological Resources Inventory was conducted in December 2005 and July 2006 on the project site by Moore Biological Consultants. The field surveys consisted of driving and walking throughout the site, making observations and noting habitat conditions, surrounding land uses, and plant and wildlife species. The complete report is provided as an attachment to this Initial Study.

The Baseline Biological Resources Inventory report concluded that there are only a few potential jurisdictional waters of the U.S. or wetlands in the site. These include Dry Creek, two tributaries to Dry Creek, an irrigation lateral, and a few stock ponds. However, it is noted that the Army Corps of Engineers holds the authority to determine jurisdiction or non-jurisdiction, and to make sure any potential impacts are considered "less than significant", Mitigation Measures 1, 2, 3, and 4 have been added to the project.

As noted above, Dry Creek and two tributaries to Dry Creek flow through the site. Modification of the bed or bank of any of the on-site creeks requires notification to the California Department of Fish and Game (CDFG) pursuant to Section 1600 and 1603 of the California Fish and Game Code.

The likelihood of occurrence of listed, candidate, and sensitive plant species in the project site is generally considered low. From past land leveling, irrigation and intensive small grain farming, it appears to have substantially modified natural habitats in the vicinity and on the project site. The survey did not report any occurrences of Colusa grass or other sensitive vernal pool species and the only potentially suitable, yet marginal habitat for vernal pool plant species is a perennial stock pond in the north part of the site. A list of plants on-site is included in the report by Moore Biological Consultants.

The likelihood of occurrence of listed, candidate, and sensitive wildlife species in the project site is also considered low. The only sensitive wildlife species observed by Moore Biological Consultants on the site was a single burrowing owl during the 2005 winter survey. No burrowing owls were observed during the July 2006 survey, but it is possible that this species could nest on the site during some years. Mitigation Measure 5 has been added to the project to reduce the potential for construction disturbance to burrowing owls. A list of wildlife species observed on-site is included in the report by Moore Biological Consultants.

Beyond burrowing owl, no sensitive plant or wildlife species are expected to occur in the site on more than a very occasional or transitory basis.

Development of the site for any additional roads or homes, beyond those currently shown and surveyed for the tentative map, could result in direct and/or indirect impacts to sensitive plant and animal species.

This project will not be considered "De Minimis" for Fish and Game Fees.

Mitigation:

1. *Prior to the recording of the parcel map, and prior to construction of any on-site residences, or any roads to serve any new residences, or any other on-site improvements, all creeks, ponds, seasonal swales, wetlands, and vernal pools within 100 feet of the centerline of proposed access roads shall be accurately mapped and shall be included on the recorded version of the parcel map. Specific language shall be included on the recorded parcel map that prohibits any construction within 100-feet of the identified features without prior authorization and/or permits from the appropriate state or federal regulatory agency, if necessary. The setback may be reduced to 50 feet around the three managed irrigation ponds in the south part of the site. The applicant shall forward copies of all surveys and maps to the Stanislaus County Planning Department and the CDFG for verification prior to recording the parcel map and prior to issuance of any building or grading permit.*
2. *Prior to construction of any new residences or any other on-site improvements, a supplemental biological survey shall be completed that identifies all creeks, ponds, seasonal swales, wetlands, and vernal pools within 100 feet of the proposed construction activities, and shall be accurately mapped for the area(s) proposed for construction. Construction within 100-feet of the identified features without any necessary prior authorization from the appropriate state or federal regulatory agency is prohibited. The setback may be reduced to 50 feet around the three managed irrigation ponds in the south part of the site. The applicant shall forward copies of all surveys and maps to the Stanislaus County Planning Department and CDFG for verification prior to issuance of any building or grading permit.*
3. *No construction or development of access roads or other improvements shall be allowed within 100 feet of areas that fall within the jurisdiction of the U.S. Army Corps of Engineers (Corps), or CDFG without first obtaining appropriate permits and authorizations from those agencies, if necessary. The setback may be reduced to 50 feet around the three managed irrigation ponds in the south part of the site.*
4. *The applicant shall contact the Corps and CDFG prior to recording the parcel map and prior to construction of any access roadways or other improvements to determine if permits or authorizations are warranted. The applicant shall forward copies of all correspondence with the Corps and/or CDFG to the Stanislaus County Planning Department for verification prior to recording the parcel map.*

5. *Pre-construction surveys for nesting burrowing owls shall be undertaken within 250 feet of any access road or home sites for construction activities between February 1st and August 31st. If active nests are found, construction activities within 250 feet of the natal burrow shall be prohibited until a qualified biologist confirms that the young have fledged and are capable of foraging independently. In the event that active occupied burrows are located within the footprint of proposed construction, the owls may be relocated after the completion of nesting using passive relocation techniques described in CDFG's 1995 Staff Report on Burrowing Owl Mitigation.*
6. *Pursuant to the federal and state Endangered Species Acts, prior to construction, the developer shall be responsible for contacting the US Fish and Wildlife Service and California Department of Fish and Game to determine if any special status plant or animal species are present on the project site, and shall be responsible for obtaining all appropriate permits or authorizations from these agencies, if necessary.*

References: California National Diversity Data Base (CNDDDB), Biological Reconnaissance Survey conducted in December 2005 and July 2006 by Moore Biological Consultants, Stanislaus County General Plan and Support Documentation¹.

V. CULTURAL RESOURCES -- Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5?				X
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?				X
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				X
d) Disturb any human remains, including those interred outside of formal cemeteries?				X

Discussion: It does not appear this project will result in significant impacts to any archaeological or cultural resources. A Condition of Approval will be placed on the project that if any resources are found, construction activities will be halted at that time.

Mitigation: None.

References: Stanislaus County General Plan and Support Documentation¹.

VI. GEOLOGY AND SOILS -- Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
l) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				X

ii) Strong seismic ground shaking?				X
iii) Seismic-related ground failure, including liquefaction?				X
iv) Landslides?				X
b) Result in substantial soil erosion or the loss of topsoil?			X	
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?				X
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?				X
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?				X

Discussion: As contained in Chapter 5 of the General Plan Support Documentation¹, the areas of the County subject to significant geologic hazard are located in the Diablo Range, west of Interstate 5. Any structures resulting from this project will be designed and built according to all applicable building codes and ordinances.

Mitigation: None.

References: Stanislaus County General Plan and Support Documentation¹.



VII. HAZARDS AND HAZARDOUS MATERIALS -- Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				X
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				X
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				X

f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				X

Discussion: No known hazardous materials are on-site. Pesticide exposure is a risk in agricultural areas. Sources of exposure include contaminated groundwater which is consumed and drift from spray applications. Application of sprays is strictly controlled by the Agricultural Commissioner and can only be accomplished after first obtaining permits. The County Department of Environmental Resources is responsible for overseeing hazardous materials in this area and there has been no response with any concerns regarding this project site.

Mitigation: None.

References: Stanislaus County General Plan and Support Documentation¹.



VIII. HYDROLOGY AND WATER QUALITY -- Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Violate any water quality standards or waste discharge requirements?				X
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				X
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?				X
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?				X
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?				X
f) Otherwise substantially degrade water quality?				X

g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?			X	
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?			X	
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				X
j) Inundation by seiche, tsunami, or mudflow?				X

Discussion: The project site will be served by private on-site septic systems and water wells. Run-off is not considered an issue because of low rainfall intensities. A referral response from the Department of Public Works has not indicated any concerns in this area.

Mitigation: None.

References: Referral response dated February 24, 2006, from the Stanislaus County Public Works Department, Stanislaus County General Plan and Support Documentation¹.



IX. LAND USE AND PLANNING -- Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Physically divide an established community?				X
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?				X

Discussion: This project is consistent with the Agriculture designation and A-2-40 (General Agriculture) zoning of the site. The features of this project will not physically divide an established community and/or conflict with any habitat conservation plan or natural community conservation plan. This project is not known to conflict with any applicable land use plan, policy, or regulation of any agency with jurisdiction over the project.

Mitigation: None.

References: Stanislaus County General Plan and Support Documentation¹.



X. MINERAL RESOURCES -- Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X

b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?				X
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Discussion: The location of all commercially viable mineral resources in Stanislaus County has been mapped by the State Division of Mines and Geology in Special Report 173. There are no known significant resources on the site.

Mitigation: None.

References: Stanislaus County General Plan and Support Documentation¹.



XI. NOISE -- Would the project result in:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?				X
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?				X
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				X
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				X
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				X

Discussion: Any construction as a result of this project should not increase the area's ambient noise level. Any noise impacts associated with increased on-site activities and traffic is not anticipated to exceed the areas existing level of noise.

Mitigation: None.

References: Stanislaus County General Plan "Noise Element"¹, Stanislaus County General Plan Support Documentation¹.



XII. POPULATION AND HOUSING -- Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				X

b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X

Discussion: This project does not propose any significant type of growth inducing features, therefore, adverse affects created by population growth should not occur. The proposed parcels will be restricted by the General Agriculture (A-2) zoning and AB 1492 district to on-site residential development which is incidental to the commercially viable agricultural use of the land and will not hamper the agricultural viability of the land.

Mitigation: None.

References: Stanislaus County General Plan¹, Stanislaus County Zoning Ordinance.



XIII. PUBLIC SERVICES:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?			X	
Police protection?			X	
Schools?			X	
Parks?				X
Other public facilities?			X	

Discussion: The County has adopted a standardized mitigation measure requiring payment of all applicable Public Facilities Fees, as well as one for the Fire Facility Fees on behalf of the appropriate fire district, to address impacts to public services. In addition, first year costs of the Sheriff's Department have been standardized based on studies conducted by the Sheriff's Department. These fees will be required upon issuance of any building permits and will be placed as Conditions of Approval for this project. Per a referral response from the Oakdale Rural Fire District, if these parcels are developed with structures, they will be subject to an \$800.00 mitigation fee payable to the Rural Water Delivery Fund. This will also be placed as a Condition of Approval for the project. Consolidated Fire noted requirements regarding fire access roads, turning radius of a fire apparatus access road, fire suppression, and the gradient of the roads. These will also be included as the Conditions of Approval for this proposed project.

Mitigation: None.

References: Referral response dated February 17, 2006, from the Oakdale Rural Fire District, Environmental Review Committee (ERC) dated March 1, 2006, County policies, Stanislaus County General Plan and Support Documentation¹.



XIV. RECREATION:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				X
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?				X
<p>Discussion: The increased use of existing recreational facilities as a result of this project is anticipated to be less than significant since the project does not propose any dwellings at this time. The proposed parcels are of substantial size to offer on-site recreation opportunities to the respective owners, if warranted.</p>				
<p>Mitigation: None.</p>				
<p>References: County policies, Stanislaus County General Plan and Support Documentation¹.</p>				
XV. TRANSPORTATION/TRAFFIC -- Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?			X	
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?			X	
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				X
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?				X
e) Result in inadequate emergency access?				X
f) Result in inadequate parking capacity?				X
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?				X
<p>Discussion: This project will not substantially increase traffic for this area, and the proposed parcels will have access from either Warnerville Road or Tim Bell Road which are County-maintained roads. The Stanislaus County Public Works Department has reviewed this project and has not indicated any significant traffic impacts.</p>				
<p>Mitigation: None.</p>				

References: Referral response dated February 24, 2006 from the Stanislaus County Department of Public Works, Stanislaus County General Plan and Support Documentation¹.

XVI. UTILITIES AND SERVICE SYSTEMS -- Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				X
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				X
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				X
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				X
g) Comply with federal, state, and local statutes and regulations related to solid waste?				X

Discussion: Limitations on public utilities and service systems have not been identified. Less than significant impacts associated with public utility and irrigation easement(s) will be reflected in the project's Conditions of Approval.

Mitigation: None.

References: Stanislaus County General Plan and Support Documentation¹.

XVII. MANDATORY FINDINGS OF SIGNIFICANCE:	Potentially Significant Impact	Less Than Significant With Mitigation Included	Less Than Significant Impact	No Impact
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?		X		

<p>b) Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?</p>				<p>X</p>
<p>c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?</p>				<p>X</p>
<p>Discussion: Any potential impacts from this project have been mitigated to less than significant.</p>				

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¹Stanislaus County General Plan and Support Documentation adopted in October 1994, as amended. Optional and revised elements of the General Plan and Support Documentation: **Agricultural Element** adopted on April 23, 1992. **Housing Element** adopted on December 12, 2003, and certified by the California Department of Housing and Community Development Department on March 26, 2004. **Circulation Element** and **Noise Element** adopted on April 18, 2006.

MOORE BIOLOGICAL CONSULTANTS

September 1, 2006

Mr. Andrew Katakis
California Equity Management Group, Inc.
P.O. Box 1747
Modesto, CA 95353

Subject: UPDATED BASELINE BIOLOGICAL RESOURCES INVENTORY AT THE 1,100+/-
ACRE "FURTADO FAMILY TRUST" SITE, STANISLAUS COUNTY, CALIFORNIA

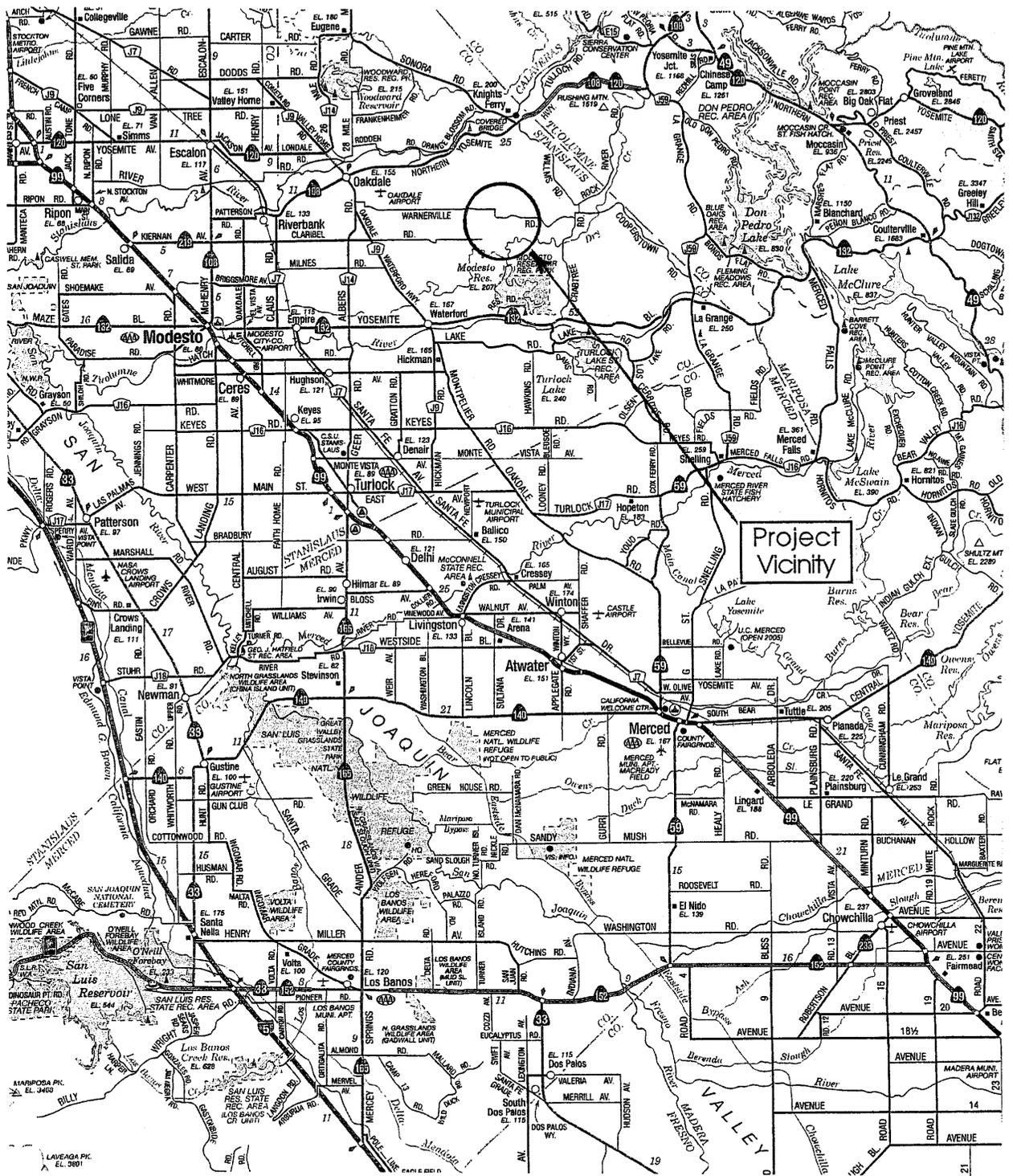
Dear Andrew:

Thank you for contracting with Moore Biological Consultants to prepare this updated biological resources inventory for the Furtado Family Trust parcel, located southeast of Oakdale (Figures 1 and 2). This work was undertaken in support of an agricultural parcel split of the site in to 14 parcels ranging from 71 to 102 acres, with most parcels being 80+/- acres. The focus of our work was to document existing biological resources at the site, conduct a survey to determine presence or absence of wetlands, and search for suitable habitat for or presence of sensitive species within the project site. This letter report details the methodology and results of our investigation.

Methods

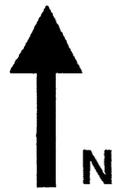
Prior to the first field survey, we conducted a search of California Department of Fish and Game's (CDFG) California Natural Diversity Database (CNDDDB, 2005); an updated search was undertaken in July, 2006. This information was utilized to identify species that have been previously documented in the project vicinity or have the potential to occur in the project vicinity based on suitable habitat. The CNDDDB search area encompassed the USGS 7.5-minute Paulsell topographic quadrangle, which is an area of approximately 70 square miles around the site.

Field surveys were conducted on December 7, 2005 and July 22, 2006. The surveys consisted of driving and walking throughout the site, making observations and noting habitat conditions, surrounding land uses, and plant and wildlife species. We



Scale: 1 inch = 9 miles

Source: Calif. State Automobile Association



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**FIGURE 1
PROJECT VICINITY**

conducted a search for jurisdictional waters of the U.S. (a term that includes wetlands) as defined by the U.S. Army Corps of Engineers (ACOE, 1987), sensitive species and suitable habitat for sensitive species (e.g., elderberry shrubs, vernal pools).

Results

GENERAL SETTING: The site is located within Sections 28, 29, 32, and 33, Township 2 South, Range 12 East of the USGS 7.5-minute Paulsell topographic quadrangle (Figure 2). The site consists of rolling hills that have been intensively farmed in dryland grains (i.e., oats) for the past two decades, plus two small fields along the south edge of the site that have been leveled and irrigated for grazing. Site elevations range from approximately 200 to 340 feet above mean sea level. The site was being chiseled during the 2006 survey.

Land uses in this portion of Stanislaus County are primarily agricultural, with widely scattered ranchettes. The site is bounded by Timbell Road on the west and Warnerville Road on the north. The Sierra Railroad is the southern boundary across most of the site. Dry Creek traverses through the southeast corner of the site. There are rice fields and orchards to the south of the site, and open rangeland on all other sides.

VEGETATION: California annual grassland series (Sawyer and Keeler-Wolf, 1995) best describes the natural habitats present within the greater project vicinity. However, the vast majority of the sit has been intensively farmed in dryland grains (i.e., oats) for the past two decades, displacing the historic vegetation community. There are a few areas of annual grassland on the tops of hills that are too steep to farm, and along the fence-lines. Dominant non-native annual grass and forb species in the grassland areas include tarweed (*Holocarpha virgata*), foxtail barley (*Hordeum murinum*), yellow star-thistle (*Centaurea solstitialis*), ripgut brome (*Bromus diandrus*), soft chess brome (*B. hordeaceus*), rose clover (*Trifolium hirtum*), and bull thistle (*Cirsium vulgare*). Plant species observed within the project site are listed in Table 1.

There are two leveled fields of irrigated pasture in the southern part of the site, located immediately north of the railroad tracks in Section 32, which are shown as flat areas on the USGS topographic map (Figure 2). These fields were irrigated during the summer of 2005 and were vegetated with wetland grasses and forbs including perennial ryegrass (*Lolium perenne*), Baltic rush (*Juncus balticus*), umbrella sedge (*Cyperus eragrostis*),

TABLE 1
PLANT SPECIES OBSERVED DURING THE 2005 AND 2006 SURVEYS

<i>Avena fatua</i>	wild oat
<i>Brassica nigra</i>	black mustard
<i>Bromus diandrus</i>	ripgut brome
<i>Bromus hordeaceus</i>	soft chess brome
<i>Centaurea solstitialis</i>	yellow star-thistle
<i>Cirsium vulgare</i>	bull thistle
<i>Convolvulus arvensis</i>	morning glory
<i>Cynodon dactylon</i>	Bermuda grass
<i>Cyperus eragrostis</i>	umbrella sedge
<i>Eremocarpus setigerus</i>	turkey mullen
<i>Erodium botrys</i>	filaree
<i>Eryngium vaseyi</i>	coyote thistle
<i>Holocarpha virgata</i>	tarweed
<i>Hordeum marinum</i>	Mediterranean barley
<i>Hordeum murinum</i>	foxtail barley
<i>Juncus balticus</i>	Baltic rush
<i>Lactuca serriola</i>	prickly lettuce
<i>Lolium perenne</i>	perennial ryegrass
<i>Medicago lupulina</i>	bur clover
<i>Polygonum amphibium</i>	water smartweed
<i>Polypogon monspeliensis</i>	annual beard grass
<i>Raphanus sativus</i>	wild radish
<i>Rumex crispus</i>	curly dock
<i>Salix</i> sp.	willow sp.
<i>Salsola tragus</i>	tumbleweed
<i>Trifolium hirtum</i>	rose clover
<i>Typha</i> sp.	cattail
<i>Vicia sativa</i>	common vetch
<i>Xanthium strumarium</i>	cocklebur

and curly dock (*Rumex crispus*) during the December 2005 survey. In anticipation of the upcoming parcel split, irrigated of these fields ceased, and a variety of upland grass and weeds were becoming established in the leveled fields during the 2006 survey.

There are no trees or shrubs in the body of the site that is farmed, or on the steep hilltops. On-site trees are limited to a few small willows (*Salix* sp.) along Dry Creek and within a few irrigation ditches and stock ponds along the southern fence line of the site. No blue elderberry shrubs (*Sambucus mexicana*) were observed within or adjacent to the site.

WILDLIFE: A number of bird species were observed during the field surveys; all of these are common species found in eastern Stanislaus County (Table 2). Turkey vulture (*Cathartes aura*), red-tailed hawk (*Buteo jamaicensis*), mourning dove (*Zenaida macroura*), and western kingbird (*Tyrannus verticalis*) are representative of the avian species observed during the recent survey. A single burrowing owl (*Athene cunicularia*) was observed on a hillside above one of the on-site stock ponds during the 2005 survey.

A variety of mammals are expected to occur within the greater project vicinity, although the intensity of cultivation at the site likely limits use of on-site habitats by mammalian species. California ground squirrel (*Spermophilus beecheyi*) and coyote (*Canis latrans*) were observed during the 2005 and 2006 surveys. Raccoon (*Procyon lotor*), striped skunk (*Mephitis mephitis*), desert cottontail (*Sylvilagus audubonii*), and black-tailed hare (*Lepus californicus*) are known to occur in the greater project vicinity and are expected to occur within the project site. Mountain lion (*Felis concolor*) and bobcat (*F. rufus*) are known from the low Sierra Nevada foothills and may also occur in the project area on occasion. A number of species of small rodents including mice (*Mus musculus*, *Reithrodontomys megalotis*, and *Peromyscus maniculatus*) and voles (*Microtus californicus*) also are likely to occur.

Based on habitat types present, a limited number of amphibians and reptiles may use habitats within the immediate project vicinity, however bullfrog (*Rana catesbeiana*) was the only amphibian observed during the 2005 and 2006 surveys. No reptiles were observed. Pacific chorus frog (*Pseudacris regilla*) and western fence lizard (*Sceloporus occidentalis*) are expected to occur on-site; western rattlesnake (*Crotalis viridis*) are also common in the area and could potentially be found at the site.

TABLE 2
WILDLIFE SPECIES OBSERVED DURING THE 2005 AND 2006 SURVEYS

Birds

Snowy egret	<i>Egretta thula</i>
Mallard	<i>Anas platyrhynchos</i>
Turkey vulture	<i>Cathartes aura</i>
Red-tailed hawk	<i>Buteo jamaicensis</i>
Burrowing owl	<i>Athene cunicularia</i>
Mourning dove	<i>Zenaida macroura</i>
Western kingbird	<i>Tyrannus verticalis</i>
Yellow-billed magpie	<i>Pica nuttalli</i>
Western meadowlark	<i>Sturnella neglecta</i>
Brewer's blackbird	<i>Euphagus cyanocephalus</i>

Mammals

California ground squirrel	<i>Spermophilus beecheyi</i>
Coyote	<i>Canis latrans</i>

Amphibians

Bullfrog	<i>Rana catesbeiana</i>
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WATERS OF THE U.S. AND WETLANDS: Waters of the U.S., including wetlands, are broadly defined under 33 Code of Federal Regulations (CFR) 328 to include navigable waterways, their tributaries, and adjacent wetlands. State and federal agencies regulate these habitats and Section 404 of the Clean Water Act requires that a permit be secured prior to the discharge of dredged or fill materials into any waters of the U.S., including wetlands. Both CDFG and ACOE have jurisdiction over modifications to riverbanks, lakes, stream channels and other wetland features.

Jurisdictional wetlands are vegetated areas that meet specific vegetation, soil, and hydrologic criteria defined by the ACOE *Wetlands Delineation Manual* (ACOE, 1987).

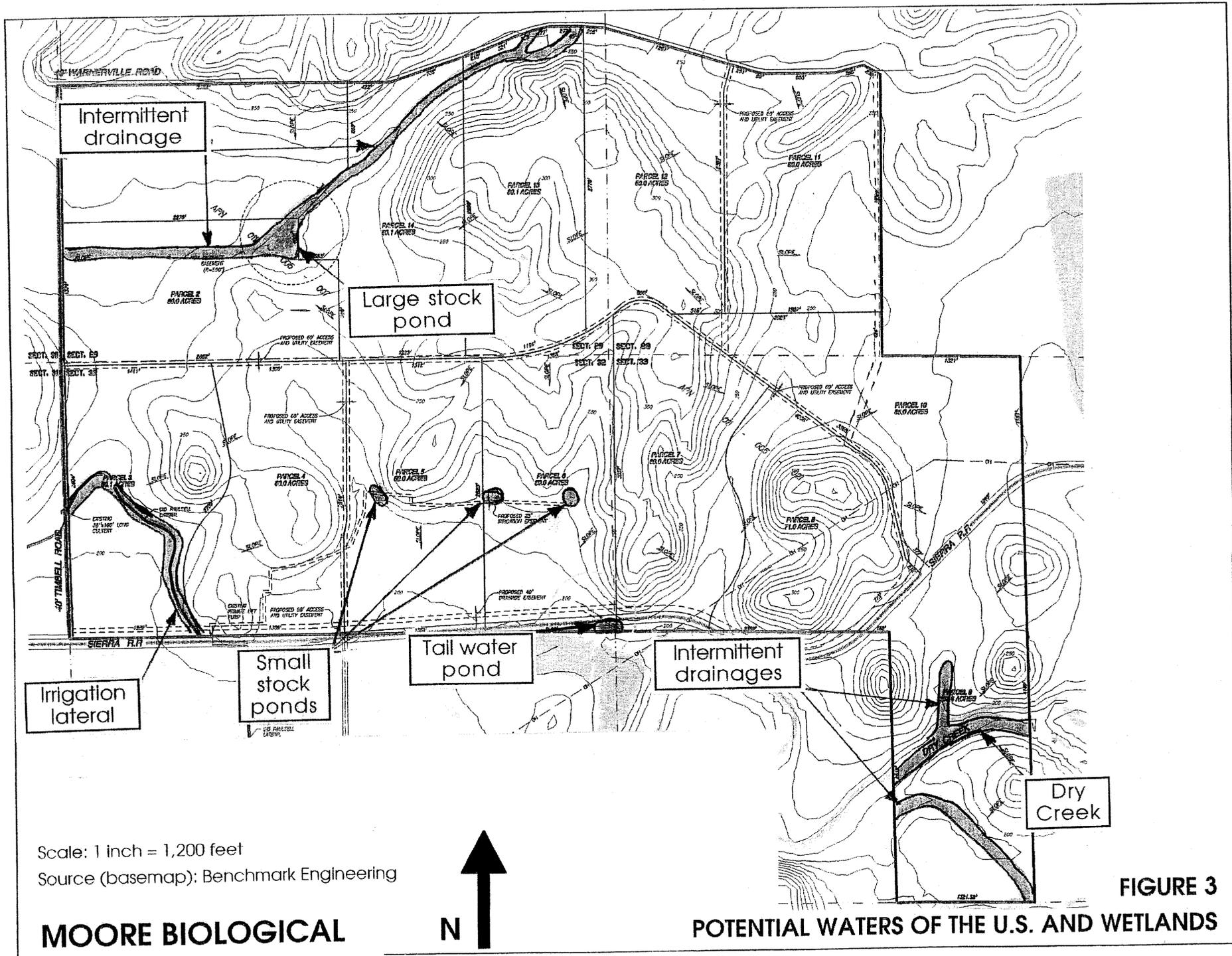
Waters of the U.S. are drainage features or water bodies as described in 33 CFR 328.4. ACOE holds sole authority to determine the jurisdictional status of waters of the U.S., including wetlands. Jurisdictional wetlands and Waters of the U.S. include, but are not limited to, perennial and intermittent creeks and drainages, lakes, seeps, and springs; emergent marshes; riparian wetlands; and seasonal wetlands. Wetlands and Waters of the U.S. provide critical habitat components, such as nest sites and a reliable source of water, for a wide variety of wildlife species.

ACOE has recently asserted jurisdiction over irrigation ditches in situations where water flows out of jurisdictional Waters of the U.S. via gravity, is conveyed in the ditches, and has an opportunity to return to jurisdictional Waters of the U.S. However, in cases where water is lifted (i.e., pumped) out of jurisdictional Waters of the U.S., or pumped out of the ground, the receiving irrigation ditches are generally not jurisdictional. ACOE has also asserted jurisdiction over relatively isolated wetlands with no direct tributary connection to jurisdictional Waters of the U.S., using adjacency to jurisdictional Waters of the U.S. (which is broadly interpreted as "neighboring") as a basis. A recent (June 19, 2006) Supreme Court ruling discusses both created ditches and "adjacency", concluding that ACOE has exceeded their regulatory authority in the past by overly-broad interpretation of the limits of Clean Water Act jurisdiction.

As only the ACOE holds the authority to determine jurisdiction or non-jurisdiction, a wetland delineation would need to be conducted and submitted to ACOE to firmly establish the extent of jurisdictional Waters of the U.S., including wetlands, within the project site. Thus, the following discussion of on-site potentially jurisdictional wetlands should be viewed only as a preliminary assessment.

We observed a number of potentially jurisdictional waters of the U. S. and wetlands within the site (Figure 3). With the exception of the three small stock ponds in the south-central portion of the site, all of the potential waters of the U.S. are situated in topographically low areas that are not suited for either home site or access roads.

Dry Creek traverses through the southeast corner of the site and is the most notable on-site drainage. Dry Creek is a Waters of the U.S., under the jurisdiction of agencies including ACOE, CDFG, and the California Regional Water Quality Control Board (RWQCB). There are two intermittent tributaries to Dry Creek in the southeast "panhandle" of the site.



53

There is another intermittent tributary to Dry Creek located in the northwest portion of the site. This drainage is depicted as an intermittent "blue-line" stream on the USGS topographic map (Figure 2) and flows west off-site and into Dry Creek several miles to the southwest of the site. There is an impoundment on this drainage that has created a large stock-pond in the northwest portion of the site (Figure 3). This pond held several feet of water during both the 2005 and 2006 surveys, supports fish, and appears to be perennial. Despite its created nature, such impoundments of Waters of the U.S. fall under the jurisdiction of resource and regulatory agencies.

In addition to the relatively natural drainages discussed above, the site contains a few small stock ponds that are situated just north of an existing farm road (Figure 3). These ponds can be filled by opening valves from an irrigation line that traverses generally east to west in the south portion of the site. During the winter 2005 survey, the ponds held up to 2 feet of water and during the 2006 survey, the eastern two were dry and tThese stock ponds are believed to be non- jurisdictional because they are entirely created, maintained, and hydrologically manipulated for agricultural purposes.

There is an open irrigation lateral that traverses northwest to southeast across the southwest corner of the site (Figure 3). This ditch is labeled the "Pausell Extension Lateral" on the USGS topographic map (Figure 2). The Pausell Extension Lateral derives water from Cashman Creek, several miles north of the site, presumably via gravity. Inspection of USGS topographic maps does not reveal a downstream point of connection between the Pausell Extension Lateral and surface drainages. Further review of the hydrology and management of the Pausell Extension Lateral would need to be undertaken to determine its jurisdictional status.

Finally, there are some minor irrigation ditches that serve two small areas in the southern part of the site that have been leveled an irrigated for grazing. These irrigation ditches provide irrigation water to the fields and also serve to collect excess tail-water. All of these on-site irrigation ditches are believed to be non- jurisdictional because they originate and terminate within the site and are entirely created and hydrologically manipulated for agricultural purposes.

SENSITIVE SPECIES: The likelihood of occurrence of other listed, candidate, and sensitive species in the project site is generally considered low. Table 3 provides a summary of the listing status and habitat requirements of sensitive species that have been

documented in the greater project vicinity or for which there is potentially suitable habitat in the site. This table also includes an assessment of the likelihood of occurrence of each of these species at the project site. The evaluation of the potential for occurrence of each species is based on the distribution of regional occurrences (if any), habitat suitability, and field observations.

While the project site may have provided habitat for a subset of the sensitive species in Table 3 at some time in the past, land leveling, irrigation, and intensive small grain farming have substantially modified natural habitats in the vicinity, including at the site. Through reviewing Table 3, it becomes apparent that the likelihood of occurrence of listed, candidate, and other sensitive species within the project site is generally considered low.

SENSITIVE PLANTS: Sensitive plants that occur in the greater project vicinity generally occur in relatively undisturbed areas and are largely found within unique vegetation communities and/or habitats such as vernal pools and seasonal wetlands which are not found within the project site. Due to the intensity of cultivation, maintenance of roads and ditches, and associated lack of suitable habitat, the likelihood of occurrence of sensitive plants within the site is considered low.

Sensitive plants identified in the CNDDDB (2006) search area include Colusa grass (*Neostapfia colusana*), hairy orcutt grass (*Orcuttia pilosa*), San Joaquin Valley orcutt grass (*Orcuttia inaequalis*), Greene's tuctoria (*Tuctoria greenei*), and Hoover's calycadenia (*Calycadenia hooveri*). Besides Hoover's calycadenia, the rest of the sensitive plants depend on vernal pool habitats that are not present in the body of the site. Due to its apparently perennial hydrologic regime and impacts from farming and grazing, the large impoundment provides poor quality habitat for vernal pool species. However, the pond but does support a fringe of seasonal wetland hydrophytes around its edges and while considered unlikely, sensitive plants could occur within this wetland.

Greene's tuctoria is listed as a federally endangered species that occurs in vernal pools. Interestingly, there is a 1987 occurrence of Greene's tuctoria reported in the northwest quarter of Section 32, which is within the southwest portion of the site. The CNDDDB reports that when the site was revisited in 1995, intensive dryland farming was underway, no suitable habitat remained and Greene's tuctoria, and the plants could not be found (CNDDDB, 2006).

TABLE 3

SENSITIVE PLANT AND WILDLIFE SPECIES DOCUMENTED OR POTENTIALLY OCCURRING IN THE GREATER PROJECT VICINITY

Common Name	Scientific Name	Federal Status ¹	State Status ²	CNPS List ³	Habitat	Potential for Occurrence in the Project Site
Wildlife						
Tricolored blackbird	<i>Agelaius tricolor</i>	None	SC	N/A	Seeks cover in emergent wetland vegetation, especially tule and cattail, also in trees and shrubs.	Low: no suitable breeding habitat exists within the site for tricolored blackbird. This species may occasionally fly over or forage at the project site. The nearest documented occurrence for this species is approximately 5.5 miles south of the site (CNDDDB, 2006).
Burrowing owl	<i>Athene cunicularia</i>	None	SC	N/A	Annual or perennial grasslands, deserts and scrublands, subterranean nester, dependent upon burrowing mammals.	Present: a single burrowing owl was observed on a hillside above one of the on-site stockponds during the 2005 survey. There are other ground squirrel burrows within the site that appear suitable for this species. Burrowing owls have not been documented in the Paulsell topographic quadrangle (CNDDDB, 2006).
Vernal pool invertebrates	<i>Lepidurus packardi</i> & <i>Branchinecta lynchi</i>	E & T	None	N/A	Vernal pools and seasonally wet depressions within the Central Valley.	Extremely low to none: no vernal pools exist within the project site. The small stock ponds in the south part of the site are highly managed, but may be suitable for fairy and tadpole shrimp. The site is within designated vernal pool critical habitat Unit 15 E (USFWS 2006a). The only record of vernal pool invertebrates in the Paulsell topographic quadrangle (CNDDDB, 2006) is a 1993 observation of tadpole shrimp in Section 25, approximately one mile west of the site.
California tiger salamander	<i>Ambystoma californiense</i>	T	None	N/A	Breeds in seasonal water bodies such as deep vernal pools or stock ponds. Requires small mammal burrows for summer refugia.	Extremely low to none: there are no vernal pools in the site. Based on the presence of fish, the large impoundment appears unsuitable for breeding. The small stock ponds in the south part of the site are highly managed and appear too small to support breeding tiger salamander. Further, the intensity of cultivation across most of the site renders the on-site grassland very poor quality aestivation habitat. Most importantly, the species has not been found in the area; the nearest occurrence of California tiger salamander recorded in the CNDDDB (2006) is approximately 7 miles northwest of the site. The site is not within Designated Critical Habitat for California tiger salamander (USFWS, 2006b).

TABLE 3

SENSITIVE PLANT AND WILDLIFE SPECIES DOCUMENTED OR POTENTIALLY OCCURRING IN THE GREATER PROJECT VICINITY

Common Name	Scientific Name	Federal Status ¹	State Status ²	CNPS List ³	Habitat	Potential for Occurrence in the Project Site
Plants						
Hoover's calycadenia	<i>Calycadenia hooveri</i>	None	None	1B	Valley and foothill grassland and cismontane woodland. Found on rocky, exposed and barren soils.	Very low to none: the vast majority of the project site is farmed in oats, which is not suitable habitat for Hoover's calycadenia. The grassland habitats on the non-farmed hill tops are not rocky, with exposed and barren soils. The nearest documented occurrence of this species is located approximately 6 miles south of the site (CNDDDB, 2006).
San Joaquin Valley orcutt grass	<i>Orcuttia inaequalis</i>	T	E	1B	Vernal pools within the Central Valley.	Extremely low to none: no vernal pools exist within the site and the on-site ponds provide very poor quality habitat for sensitive vernal pool species. The nearest documented occurrence of San Joaquin Valley orcutt grass is located approximately 4 miles south of the site (CNDDDB, 2006).
Hairy orcutt grass	<i>Orcuttia pilosa</i>	E	E	1B	Vernal pools. Endemic to the Sacramento Valley.	Extremely low to none: no vernal pools exist within the site and the on-site ponds provide very poor quality habitat for sensitive vernal pool species. The nearest documented occurrence of hairy orcutt grass is located 3.75 miles south of the project site (CNDDDB, 2006).
Colusa grass	<i>Neostapfia colusana</i>	T	E	1B	Large, deep vernal pools.	Extremely low to none: no vernal pools exist within the site and the on-site ponds provide very poor quality habitat for sensitive vernal pool species. The nearest documented occurrence of Colusa grass within the project site is approximately 1 mile north of the site (CNDDDB, 2006).
Greene's tuctoria	<i>Tuctoria greenei</i>	E	R	1B	Vernal pools within the Central Valley.	Extremely low to none: there are no vernal pools in the site and the on-site ponds provide very poor quality habitat for this species. Interestingly, there is a 1987 occurrence of Greene's tuctoria reported in the southwest portion of the site. When the site was revisited in 1995, no habitat remained and Greene's tuctoria could not be found (CNDDDB, 2006).

¹ T= Threatened; E = Endangered.

² T = Threatened; R = Rare; SC=State of California Species of Special Concern; E = Endangered.

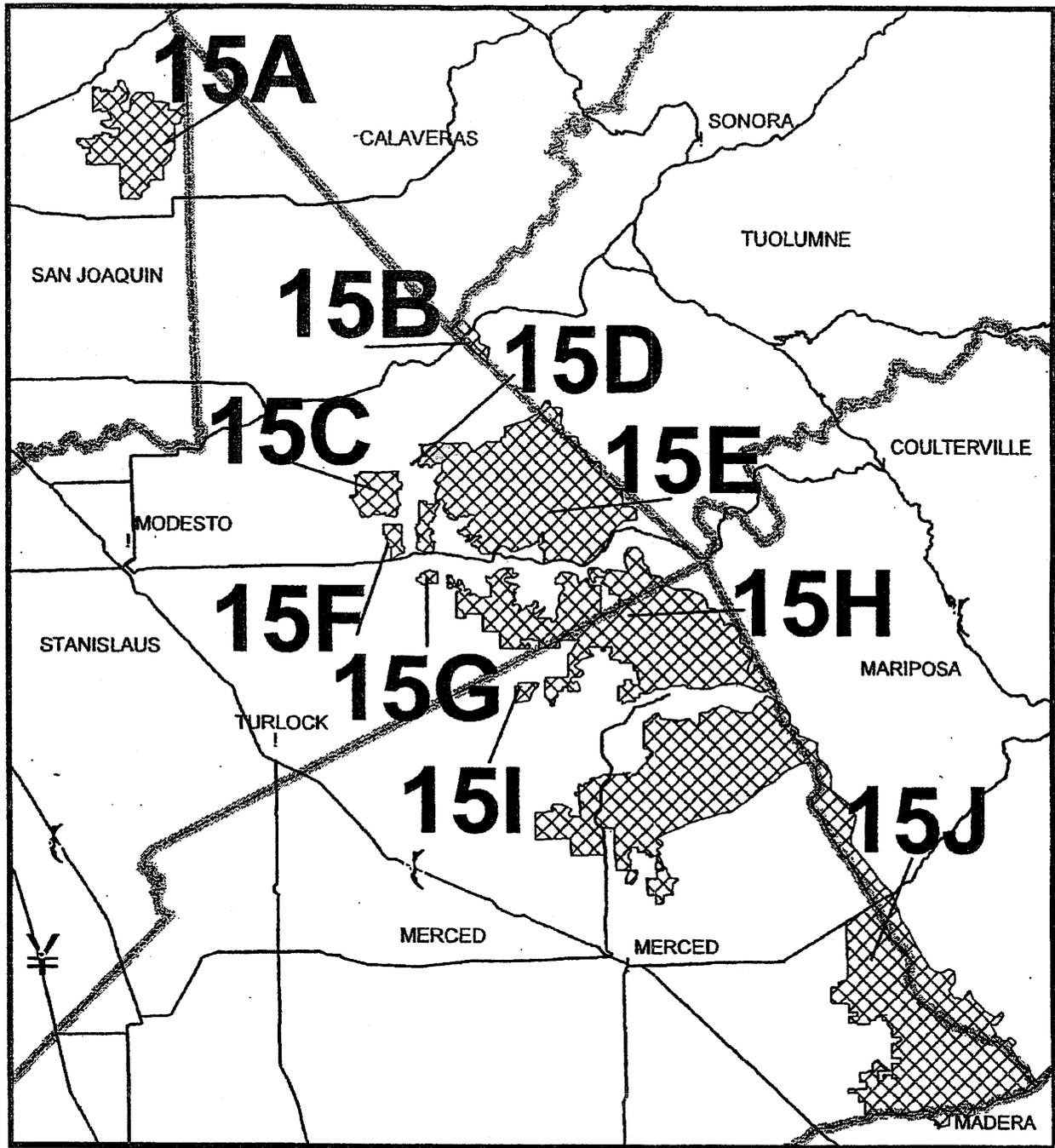
³ CNPS List 1B species includes plants that are rare, threatened, or endangered in California and elsewhere.

The project site is also within an area that has been designated by the U.S. Fish and Wildlife Service (USFWS) as Critical Habitat for a number of vernal pool species, including the four vernal pool species listed in Table 3 (USFWS, 2005a). The site is within the northwest portion of Critical Habitat Unit No. 15E, which is a large polygon of land extending all the way east to the county line (Figure 4). Given the current lack of suitable habitat on-site for vernal pool species, the implications of this designation do not appear in conflict with ongoing or future agricultural use of the site. The existing grassland habitat and open space attributes of the site would be largely preserved with the proposed parcel split involving development of a few homes and access roads. In contrast, intensive residential development (i.e., one or more homes per acre) that would largely change the landscape would seem incompatible with the Critical Habitat designation.

SENSITIVE WILDLIFE: The overall potential for intensive use of habitats within the project site by sensitive wildlife species is also considered low. Two sensitive wildlife species were identified in the CNDDDB search area. These species are vernal pool tadpole shrimp (*Lepidurus packardii*) and tricolored black bird (*Agelaius tricolor*). California tiger salamander (*Ambystoma californiense*), vernal pool fairy shrimp (*Branchinecta lynchi*), and burrowing owl were added to Table 3 based on presence of suitable habitat near the site, the site being in the species' range, and/or species presence.

CALIFORNIA TIGER SALAMANDER: California tiger salamander is a State of California Species of Special Concern and was recently listed as threatened by the USFWS under the Federal Endangered Species Act (USFWS, 2004). In August 2005, USFWS also designated critical habitat for the California tiger salamander (USFWS, 2005b). Review of the USFWS maps of designated critical habitat for California tiger salamander indicates that the project site is not within a proposed Critical Habitat Unit for California tiger salamander. The CNDDDB (2005) contains a record of California tiger salamanders approximately 7 miles northwest of the site.

California tiger salamanders require stock ponds without game fish or deep, large vernal pools, which hold water well into the spring (i.e., April or May) for breeding (Jennings and Hayes, 1994). Following breeding, the young disperse across upland habitats up to 1.3 miles and spend the summer months in subterranean refugia such as small mammal burrows. Relatively deeper vernal pools serve as potential breeding habitat for this



Scale: 1 inch = 11+/- miles
 Source: USFWS, 2005a



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FIGURE 4
CRITICAL HABITAT UNITS 15A-15J

species and the nearby grasslands that contain burrows and cracks are suitable for over-summering.

There are no vernal pools in the site. Based on the presence of fish, the large impoundment appears unsuitable for breeding. The small stock ponds in the south part of the site are highly managed and appear too small to support breeding tiger salamander. Further, the intensity of cultivation across most of the site renders the on-site grassland very poor quality aestivation habitat. The dryland grain fields and formerly irrigated pasture that make up the body of the site do not contain suitable aestivation habitat (i.e., ground squirrel burrows and deep cracks) for this species. Most importantly, the species has not been found in the area; the nearest occurrence of California tiger salamander recorded in the CNDDDB (2006) is approximately 7 miles northwest of the site. Finally, the site is not within a Designated Critical Habitat for California tiger salamander (USWS, 2005b).

BURROWING OWL: The Migratory Bird Treaty Act and Fish and Game Code of California protect burrowing owls year-round, as well as their nests during the nesting season (February 1 through August 31). Burrowing owls are a year-long resident in a variety of grasslands as well as scrub lands that have a low density of trees and shrubs with low growing vegetation; burrowing owls that nest in the Central Valley may winter elsewhere.

The primary habitat requirement of the burrowing owl is small mammal burrows for nesting. The owl usually nests in abandoned ground squirrel burrows, although they have been known to dig their own burrows in softer soils. In urban areas, burrowing owls often utilize artificial burrows including pipes, culverts, and piles of concrete pieces. This semi-colonial owl breeds from March through August, and is most active while hunting during dawn and dusk. The CNDDDB (2005) reports no occurrences of burrowing owls Paulsell topographic quadrangle.

Burrows within the greater project vicinity may be used by nesting burrowing owls and on-site fields represent foraging habitat for this species; there are some suitable burrows associated with the site and surrounding areas. A single burrowing owl was observed occupying a burrow above the westernmost of the three on-site stock ponds during the 2005 survey, which was conducted outside the nesting season (February 1 through August 31). Burrowing owls were not observed in this area or elsewhere in the site during the 2006 survey. No other burrowing owls or burrowing owl signs (i.e. whitewash, pellets

and/or feathers) were observed within or adjacent to the project site. The potential use of other on-site burrows by nesting burrowing owls in the future is possible and can not be precluded at this point in time.

TRICOLORED BLACKBIRD: The tricolored blackbird is a State of California Species of Concern and is also protected by the federal Migratory Bird Treaty Act. Tricolors are colonial nesters requiring very dense stands of emergent wetland vegetation and/or dense thickets of wild rose (*Rosa* sp.) or blackberries (*Rubus* sp.) adjacent to open water for nesting. This species is endemic to California.

No tricolored blackbirds were observed nesting, foraging or perching within the project site during the recent survey. However, tricolored blackbirds likely fly over or forage in the project area on occasion there is suitable nesting and foraging habitat for this species within the San Joaquin River corridor and some of the on-site irrigation ditches. There are tricolored blackbirds recorded in the CNDDDB (2006) within the search area, although the location information is suppressed due to the sensitivity of this species.

VERNAL POOL INVERTEBRATES: In 1994, the USFWS listed three species of Central Valley fairy shrimp and one species of tadpole shrimp as threatened or endangered species under the Federal Endangered Species Act. Vernal pool fairy shrimp was listed as threatened, while Conservancy fairy shrimp (*B. conservatio*), longhorn fairy shrimp (*B. longiantenna*), and vernal pool tadpole shrimp were listed as endangered. All of these species occur in vernal pools and other seasonal wetland habitats throughout much of the Central Valley. Each year, shrimp eggs that lay on the floor of the dry wetlands during the summer hatch after the onset of cold winter rains. The shrimp grow for a few weeks to a couple months, and then lay eggs and die.

There are no vernal pools or seasonal wetlands in the site, although the stock ponds in the site represent marginally, yet potentially suitable habitat for vernal pool fairy shrimp and vernal pool tadpole shrimp. The only record of vernal pool invertebrates in the Paulsell topographic quadrangle (CNDDDB, 2006) is a 1993 observation of tadpole shrimp in Section 25, approximately one mile west of the site.

Conclusions and Recommendations

- The site consists of intensively farmed dryland grain fields, irrigated pastures, and annual grassland habitats.
- We observed no areas that appear highly suitable habitat for sensitive plants known from the greater project vicinity. The on-site ponds provide very poor quality habitat for sensitive vernal pool species. The likelihood of occurrence of listed, candidate, and other sensitive plants within the site is considered extremely low to none.
- A single burrowing owl was observed in the site during the 2005 survey. Although nesting has not been documented on-site, pre-construction surveys for burrowing owls within 250 feet of any access road or home site development is recommended for construction activities between February 1 and August 31. If active nests are found, a qualified biologist should determine the need (if any) for temporal restrictions on construction. The determination should be made pursuant to criteria set forth by CDFG (1995).
- The likelihood of occurrence of other sensitive wildlife species in the project site is considered low. The site does not contain highly suitable breeding or aestivation habitat for California tiger salamander or highly suitable habitat vernal pools for vernal pool fairy and tadpole shrimp. The created stock ponds in the site represent very marginal, yet potentially suitable habitat for these species.
- The site is within an area that has been designated by the USFWS as Critical Habitat for a number of vernal pool species, including the two vernal pool species listed in Table 3 (USFWS, 2005a). Given the current lack of suitable habitat on-site for vernal pool species, the implications of this designation do not appear in conflict with ongoing agricultural use of the site. The existing grassland habitat and open space attributes of the site would be largely preserved with the proposed parcel split involving development of a few homes and access roads. In contrast, intensive residential development (i.e., one or more homes per acre) that would largely

change the landscape would seem incompatible with the Critical Habitat designation.

- Beyond the potential occurrence of sensitive bird species that may fly over or forage in the site, no other sensitive wildlife species are expected to occur on-site on more than an occasional or transitory basis.
- There are a number of potential jurisdictional waters of the U. S. and wetlands within the site. Dry Creek is a Waters of the U.S., under the jurisdiction of both ACOE and CDFG. A few intermittent tributaries to Dry Creek, including an impounded stock pond are also believed to be jurisdictional. A few small stock ponds, a section of the Pausell Extension Lateral, and some minor irrigation ditches have some potential to be regulated, but are believed to be non-jurisdictional.
- No encroachment into potential jurisdictional waters of the U. S. and wetlands is anticipated as a result of the proposed agricultural parcel split, as home sites and roads would almost invariably be sited in topographically high areas, to avoid drainage or flooding problems. In the unlikely event that project development requires that fill, utility lines, structures (i.e. culverts, road crossings, outfall structures, etc.) be placed within potential Waters of the U.S., wetland permits and/or certification should be obtained from ACOE, CDFG, and RWQCB.

Thank you, again, for asking Moore Biological Consultants to conduct this work. Please call me at (209) 745-1159 with any questions.

Sincerely,



Diane S. Moore, M.S.
Principal Biologist

References

- ACOE (U.S. Army Corps of Engineers). 1987. Technical Report Y87-1. U.S. Army Corps of Engineers Waterways Experiment Station, Vicksburg, MI.
- CDFG. 1995. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game, Sacramento, California. September 25.
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- USFWS (United States Fish and Wildlife Service). 1999. Conservation Guidelines for the Valley Elderberry Longhorn Beetle. July 9.
- USFWS. 2004. Part II, Department of the Interior, Final Rule: Determination of Threatened Status for the California Tiger Salamander. Federal Register vol. 69, No. 149, August 4, 2004, pp. 47212 - 47248.
- USFWS. 2005a. Part II, Department of the Interior, Fish and Wildlife Service. 50 CFR Part 17: Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon; Evaluation and Economic Exclusions from August 2003 Final Designation, Final Rule. Federal Register Vol. 70, No. 154, August 11
- USFWS. 2005b. Part II, Department of the Interior, Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Tiger Salamander, Central Population; Final Rule. Federal Register Vol. 70, No. 162, August 23, 2005, pp. 49390 - 49458.

Stanislaus County

Planning and Community Development

1010 10th Street, Suite 3400
Modesto, CA 95354

Phone: (209) 525-6330
Fax: 525-5911

Mitigation Monitoring Plan

Adapted from CEQA Guidelines sec. 15097 Final Text, October 26, 1998

October 11, 2006

1. **Project title and location:** Vesting Tentative Parcel Map Application No. 2006-02 - Furtado Family Trust
2. **Project Applicant name and address:** Andrew Katakis
Timbell-Warnerville Partners, LLC
P.O. Box 1747
Modesto, CA 95353
3. **Person Responsible for Implementing Mitigation Program:** Andrew Katakis
4. **Contact person at County:** Carole Maben, Associate Planner
(209) 525-6330

MITIGATION MEASURES AND MONITORING PROGRAM:

List all Mitigation Measures by topic as identified in the Mitigated Negative Declaration and complete the form for each measure.

IV. BIOLOGICAL RESOURCES

- No. 1 Mitigation Measure: Prior to the recording of the parcel map, and prior to construction of any on-site residences, or any roads to serve any new residences, or any other on-site improvements, all creeks, ponds, seasonal swales, wetlands, and vernal pools within 100 feet of the centerline of proposed access roads shall be accurately mapped and shall be included on the recorded version of the parcel map. Specific language shall be included on the recorded parcel map that prohibits any construction within 100-feet of the identified features without prior authorization and/or permits from the appropriate state or federal regulatory agency, if necessary. The setback may be reduced to 50 feet around the three managed irrigation ponds in the south part of the site. The applicant shall forward copies of all surveys and maps to the Stanislaus County Planning Department and the CDFG for verification prior to recording the parcel map and prior to issuance of any building or grading permit.

- Who Implements the Measure: Applicant.
- When should the measure be implemented: Prior to recording parcel map and ongoing.
- When should it be completed: Ongoing.
- Who verifies compliance: California Department of Fish and Game.
- Other Responsible Agencies: Planning Department to be delivered copies of all correspondence.

authorization from the appropriate state or federal regulatory agency is prohibited. The setback may be reduced to 50 feet around the three managed irrigation ponds in the south part of the site. The applicant shall forward copies of all surveys and maps to the Stanislaus County Planning Department and CDFG for verification prior to issuance of any building or grading permit.

3. *No construction or development of access roads or other improvements shall be allowed within 100 feet of areas that fall within the jurisdiction of the U.S. Army Corps of Engineers (Corps), or CDFG without first obtaining appropriate permits and authorizations from those agencies, if necessary. The setback may be reduced to 50 feet around the three managed irrigation ponds in the south part of the site.*
4. *The applicant shall contact the Corps and CDFG prior to recording the parcel map and prior to construction of any access roadways or other improvements to determine if permits or authorizations are warranted. The applicant shall forward copies of all correspondence with the Corps and/or CDFG to the Stanislaus County Planning Department for verification prior to recording the parcel map.*
5. *Pre-construction surveys for nesting burrowing owls shall be undertaken within 250 feet of any access road or home sites for construction activities between February 1st and August 31st. If active nests are found, construction activities within 250 feet of the natal burrow shall be prohibited until a qualified biologist confirms that the young have fledged and are capable of foraging independently. In the event that active occupied burrows are located within the footprint of proposed construction, the owls may be relocated after the completion of nesting using passive relocation techniques described in CDFG's 1995 Staff Report on Burrowing Owl Mitigation.*
6. *Pursuant to the federal and state Endangered Species Acts, prior to construction, the developer shall be responsible for contacting the US Fish and Wildlife Service and California Department of Fish and Game to determine if any special status plant or animal species are present on the project site, and shall be responsible for obtaining all appropriate permits or authorizations from these agencies, if necessary.*

The Initial Study and other environmental documents are available for public review at the Department of Planning and Community Development, 1010 10th Street, Suite 3400, Modesto, California.

Initial Study prepared by: Carole Maben, Associate Planner

Submit comments to:
Stanislaus County
Planning and Community Development Department
1010 10th Street, Suite 3400
Modesto, California 95354

No. 2 Mitigation Measure: Prior to construction of any new residences or any other on-site improvements, a supplemental biological survey shall be completed that identifies all creeks, ponds, seasonal swales, wetlands, and vernal pools within 100 feet of the proposed construction activities, and shall be accurately mapped for the area(s) proposed for construction. Construction within 100-feet of the identified features without any necessary prior authorization from the appropriate state or federal regulatory agency is prohibited. The setback may be reduced to 50 feet around the three managed irrigation ponds in the south part of the site. The applicant shall forward copies of all surveys and maps to the Stanislaus County Planning Department and CDFG for verification prior to issuance of any building or grading permit.

Who Implements the Measure: Applicant.

When should the measure be implemented: Ongoing.

When should it be completed: Ongoing.

Who verifies compliance: California Department of Fish and Game.

Other Responsible Agencies: Planning Department to be delivered copies of all correspondence.

No. 3 Mitigation Measure: No construction or development of access roads or other improvements shall be allowed within 100 feet of areas that fall within the jurisdiction of the U.S. Army Corps of Engineers (Corps), or CDFG without first obtaining appropriate permits and authorizations from those agencies, if necessary. The setback may be reduced to 50 feet around the three managed irrigation ponds in the south part of the site.

Who Implements the Measure: Applicant.

When should the measure be implemented: Ongoing.

When should it be completed: Ongoing.

Who verifies compliance: U.S. Army Corps of Engineers and/or California Department of Fish and Game

Other Responsible Agencies: Planning Department to be delivered copies of all correspondence.

No. 4 Mitigation Measure: The applicant shall contact the Corps and CDFG prior to recording the parcel map and prior to construction of any access roadways or other improvements to determine if permits or authorizations are warranted. The applicant shall forward copies of all correspondence with the Corps and/or CDFG to the Stanislaus County Planning Department for verification prior to recording the parcel map.

Who Implements the Measure: Applicant.

When should the measure be implemented: Prior to recording the parcel map and ongoing.

When should it be completed: Ongoing.

Who verifies compliance: U.S. Army Corps of Engineers and/or California Department of Fish and Game

Other Responsible Agencies: Planning Department to be delivered copies of all correspondence.

No. 5 Mitigation Measure: Pre-construction surveys for nesting burrowing owls shall be undertaken within 250 feet of any access road or home sites for construction activities between February 1st and August 31st. If active nests are found, construction activities within 250 feet of the natal burrow shall be prohibited until a qualified biologist confirms that the young have fledged and are capable of foraging independently. In the event that active occupied burrows are located within the footprint of proposed construction, the owls may be relocated after the completion of nesting using passive relocation techniques described in CDFG's 1995 Staff Report on Burrowing Owl Mitigation.

Who Implements the Measure: Applicant.

When should the measure be implemented: Prior to construction of home sites and access roads between February 1st and August 31st.

When should it be completed: Ongoing.

Who verifies compliance: California Department of Fish and Game.

Other Responsible Agencies: Planning Department to be delivered copies of all correspondence.

No. 6 Mitigation Measure: Pursuant to the federal and state Endangered Species Acts, prior to construction, the developer shall be responsible for contacting the US Fish and Wildlife Service and California Department of Fish and Game to determine if any special status plant or animal species are present on the project site, and shall be responsible for obtaining all appropriate permits or authorizations from these agencies, if necessary.

Who Implements the Measure: Applicant.

When should the measure be implemented: Prior to construction.

When should it be completed: Ongoing.

Who verifies compliance: California Department of Fish and Game and the U.S. Fish and Wildlife Service.

Other Responsible Agencies: Planning Department to be delivered copies of all correspondence.

I the undersigned, do hereby certify that I understand and agree to be responsible for implementing the Mitigation Program for the above listed project.



Persons Responsible for Implementing
Mitigation Program

Date

10-19-06

MITIGATED NEGATIVE DECLARATION

- NAME OF PROJECT:** Vesting Tentative Parcel Map Application No. 2006-02 - Furtado Family Trust
- LOCATION OF PROJECT:** Southeast of the intersection of Tim Bell Road and Warnerville Road, northeast of Waterford area. (APN: 011-005-007 & 011-005-021)
- PROJECT DEVELOPERS:** Andrew Katakis
- DESCRIPTION OF PROJECT:** Request to create 13 parcels of approximately 80 acres in size, one parcel approximately 70 acres in size, and a 117± acre remainder from two existing parcels totaling 1,147 acres in the A-2-40 (General Agriculture) zoning district.

Based upon the Initial Study, dated **October 11, 2006**, the Environmental Coordinator finds as follows:

1. This project does not have the potential to degrade the quality of the environment, nor to curtail the diversity of the environment.
2. This project will not have a detrimental effect upon either short-term or long-term environmental goals.
3. This project will not have impacts which are individually limited but cumulatively considerable.
4. This project will not have environmental impacts which will cause substantial adverse effects upon human beings, either directly or indirectly.

The aforementioned findings are contingent upon the following mitigation measure which shall be incorporated into this project:

1. *Prior to the recording of the parcel map, and prior to construction of any on-site residences, or any roads to serve any new residences, or any other on-site improvements, all creeks, ponds, seasonal swales, wetlands, and vernal pools within 100 feet of the centerline of proposed access roads shall be accurately mapped and shall be included on the recorded version of the parcel map. Specific language shall be included on the recorded parcel map that prohibits any construction within 100-feet of the identified features without prior authorization and/or permits from the appropriate state or federal regulatory agency, if necessary. The setback may be reduced to 50 feet around the three managed irrigation ponds in the south part of the site. The applicant shall forward copies of all surveys and maps to the Stanislaus County Planning Department and the CDFG for verification prior to recording the parcel map and prior to issuance of any building or grading permit.*
2. *Prior to construction of any new residences or any other on-site improvements, a supplemental biological survey shall be completed that identifies all creeks, ponds, seasonal swales, wetlands, and vernal pools within 100 feet of the proposed construction activities, and shall be accurately mapped for the area(s) proposed for construction. Construction within 100-feet of the identified features without any necessary prior*

SUMMARY OF RESPONSES FOR ENVIRONMENTAL REVIEW REFERRALS

PROJECT: VESTING TENTATIVE PARCEL MAP APPLICATION NO. 2006-02 - FURTADO FAMILY TRUST

REFERRED TO:	RESPONDED		RESPONSE			MITIGATION MEASURES		Conditions			
	DATE: OCTOBER 27, 2006	PUBLIC HEARING NOTICE	YES	NO	WILL NOT HAVE SIGNIFICANT IMPACT	MAY HAVE SIGNIFICANT IMPACT	NO COMMENT NON CEQA	YES	NO	YES	No
AGRICULTURE COMMISSIONER	X			X							
AIRPORT LAND USE COMMISSION	X			X							
BUILDING PERMITS DIVISION	X		X		X			X		X	
CA DEPT OF FORESTRY											
CALTRANS DISTRICT 10	X	X		X							
CENTRAL CALIF. INFO. CENTER - CSUS											
CITY OF											
COMMUNITY SERVICES/SANITARY											
CORPS OF ENGINEERS	X	X	X			X		X		X	
COUNTY COUNSEL	X			X							
DENAIR POSTMASTER											
DEPARTMENT OF CONSERVATION	X	X	X			X		X			X
ENVIRONMENTAL RESOURCES	X		X		X			X		X	
OAKDALE FIRE PROTECTION DISTRICT	X	X	X		X			X		X	
STANISLAUS FIRE PREVENTION BUREAU	X	X	X		X			X		X	
FISH & GAME	X	X	X			X		X		X	
OAK VALLEY HOSPITAL DISTRICT	X	X		X							
OAKDALE IRRIGATION DISTRICT	X	X	X		X			X		X	
LAFCO	X	X		X							
EASTSIDE MOSQUITO DISTRICT	X	X		X							
MOUNTAIN VALLEY EMERGENCY MEDICAL	X	X	X				X	X			X
MUNICIPAL ADVISORY COUNCIL:											
PARKS & FACILITIES	X			X							
P.G. & E.	X	X		X							
PUBLIC WORKS	X		X		X			X		X	
PUBLIC WORKS - TRANSIT	X			X							
REDEVELOPMENT											
REGIONAL WATER QUALITY	X	X		X							
StanCOG	X	X	X		X			X			X
SCHOOL DISTRICT 1: OAKDALE	X	X	X		X			X		X	X
SCHOOL DISTRICT 2:											
SHERIFF	X			X							
STANISLAUS COUNTY FARM BUREAU	X	X		X							
STANISLAUS ERC	X		X		X			X			X
STATE CLEARINGHOUSE	X	X	X			X		X		X	
STATE LANDS BOARD											
SUPERVISORIAL DISTRICT 1: O'BRIEN	X			X							
AT&T TELEPHONE COMPANY:	X	X		X							
TUOLUMNE RIVER PRESERVATION TRUST											
UNITED CEREBRAL PALSY	X	X		X							
US FISH & WILDLIFE	X	X	X			X		X		X	
US MILITARY 4 AGENCIES (SB 1462)											
VALLEY AIR DISTRICT	X	X		X	X			X		X	
WATER DISTRICT											
DEPT. OF WATER RESOURCES	X	X	X		X						

- B. PARCEL MAP APPLICATION NO. 2006-02 - FURTADO FAMILY TRUST** - This is a request to create 13 parcels of 80± acres, one 70± acre parcel, and one 117± acre Remainder parcel from two existing parcels totaling 1,147 acres in the A-2-40 (General Agriculture) zoning district. This project site is enrolled in a Williamson Act Contract. The property is located southeast of the intersection of Tim Bell and Warnerville Roads, northeast of the Waterford area. A Mitigated Negative Declaration will be considered.
APN: 011-005-007 and 011-005-021
Staff Report: Carole Maben Recommends **APPROVAL, ALONG WITH AMENDED CONDITION OF APPROVAL NO. 7.**
Report given by Kirk Ford, Assistant Director.
Public hearing opened.
OPPOSITION: Jim DeMartini, Stanislaus County Supervisor, District 5; Nathan Rosasco
FAVOR: Darin Higgens, North Star Engineering Group; Andrew Katakis; Mike Girdner
Public hearing closed.
Public hearing opened.
FAVOR: Andrew Katakis
Public hearing closed.
Layman/Hardie Motioned to Approve 2-5 2-6 (Gammon, Assali, Souza, Poore, Shores, and Mataka). **MOTION DENIED.**
Gammon/Souza, 6-2 (Layman, Hardie), **BASED ON THE STAFF REPORT, INFORMATION PRESENTED AND TESTIMONY, THE COMMISSION FINDS THAT THE PROPOSED DIVISION OF THIS PARTICULAR LAND WOULD NOT SUSTAIN THE ECONOMIC VIABILITY OF CONTINUED AGRICULTURAL USE OF THE PARCELS, AND THAT THE DIVISION WILL RESULT OF RESIDENTIAL DEVELOPMENT NOT INCIDENTAL TO THE COMMERCIAL AGRICULTURE, AND FOR THAT REASON, DENY VESTING TENTATIVE PARCEL MAP APPLICATION NO. 2006-02 - FURTADO FAMILY TRUST.**

<p style="text-align: center;">EXCERPT</p> <p style="text-align: center;">PLANNING COMMISSION</p> <p style="text-align: center;">MINUTES</p> <p style="text-align: center;"> Secretary, Planning Commission</p> <p style="text-align: center;"><u>MARCH 21, 2007</u> Date</p>
--

Allen Matkins

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E-mail: mdurkee@allenmatkins.com
Direct Dial: 415.273.7455 File Number: A0045-136/SF702986.07

March 16, 2007

VIA FAX (209.525.4410) and
HAND DELIVERY

Honorable Chair William O'Brien
and Supervisors
Stanislaus County Board of Supervisors
1010 Tenth Street, Suite 6500
Modesto, CA 95354

*Re: Appeal of Planning Commission Denial of
Parcel Map Application No. 2006-20*

Dear Chair O'Brien and Supervisors:

We represent Timbell-Warnerville Partners, LLC ("Timbell-Warnerville") concerning its Vesting Tentative Parcel Map ("Parcel Map") Application No. 2006-02, and its appeal of the County Planning Commission's denial of that Parcel Map. The Planning Commission's denial was based on their determination that (1) the proposed parcels would be too small to sustain economically viable agriculture, and (2) that the Parcel Map would result in residential development that is not incidental to the commercial agricultural use of the land. For the factual and legal reasons set forth below, we respectfully submit that the Planning Commission was in error on both points.

I. EXECUTIVE SUMMARY

The Timbell-Warnerville property ("Property") consists of approximately 1,147 acres located in unincorporated Stanislaus County and identified as APNs 011-005-007 and 011-005-021. The Property is subject to Williamson Act Contracts and is zoned General Agriculture A-2 (40), allowing forty-acre lots. The Property is located southeast of the intersection of Tim Bell and Warnerville Roads, northeast of the Waterford area.

The Parcel Map parcels were designed to maximize the ability to farm the parcels, and to minimize any potential drainage issues resulting from any future irrigation (or sprinkling) runoff. The Property has ample water for agricultural irrigation purposes. There is one deep well located on the Property that produces 800 gallons per minute, which is very good production. Several other older wells powered by windmills also are located on the Property and easily could be modernized. According to state testing of the water table in this area, the water table level is quite high.

Chair O'Brien and Supervisors

March 16, 2007

Page 2

Approximately 100 acres of the Property are located in the Oakdale Irrigation District and receive irrigation water from the District.

The Parcel Map seeks to continue the agricultural use of the land. No residential development is proposed. The Parcel Map proposes to divide the Property's two existing legal parcels into a total of fourteen (14) parcels as follows:

- (a) Twelve 80-acre parcels,
- (b) One 70-acre parcel, and
- (c) One 117-acre parcel.

Timbell-Warnerville is comprised of ambitious individuals who are determined to make agricultural uses work on the Property. Contrary to the Planning Commission's determination, the conversion of the Property to residential uses not incidental to agricultural uses is *not* desired, *not* practical, and *not* allowed. All of the applicable County and state land use regulations restrict the Property to agricultural and incidental residential uses, the Property is located in an agricultural area, and the Property's soils and other characteristics make it conducive to agricultural uses.

Under the Subdivision Map Act, the Williamson Act, and the County's local laws, the County legally *cannot* deny the Parcel Map unless the parcels that the Parcel Map would create are either (1) too small to sustain their agricultural use, or (2) the subdivision will result in residential development that is not incidental to the commercial agricultural use of the land. The Planning Commission erroneously based its denial on both of these findings.

As to the first requirement, the state Legislature has established *as a matter of law* that parcels of ten (10) acres in the case of prime agricultural land, or forty (40) acres in the case of land that is not prime, are large enough to sustain agricultural uses. Here, the soils generally are non-prime, and no resulting parcel will be smaller than seventy (70) acres. Moreover, included with this letter is expert evidence underscoring the fact that the lands that comprise the Property are in fact highly conducive to successful, viable agricultural uses at the parcel sizes proposed. The Planning Commission's finding to the contrary was in error and without evidentiary foundation.

As to the second requirement, again, *no* residential development is being proposed in connection with this Parcel Map proposal, and, under the County's *existing* regulations for this property, residential uses that are not incidental to agriculture are *already* prohibited. In other words, the Parcel Map does not seek to nor could it ever "trump" the County's existing laws *prohibiting* such residential uses. The Planning Commission's finding to the contrary was in error and failed to recognize this legal point of Planning and Zoning law.

Each of these points are addressed in detail below.

Chair O'Brien and Supervisors

March 16, 2007

Page 3

II. BACKGROUND AND ANALYSIS

A. *Purpose Behind the Parcel Map*

As stated above, the Parcel Map would parcel the Property into a total of 14 parcels with most parcels at 80 acres each, one parcel at 117 acres and one parcel at 70 acres. Parceling the Property is the first step in making agricultural uses work. As Andrew Katakis, one of the principal partners in Timbell-Warnerville, testified before the Planning Commission, subdividing the Property will allow Timbell-Warnerville greater flexibility in ensuring the success of agricultural uses. Under the Subdivision Map Act, a farmer cannot sell or finance his property unless he sell or finances a legal lot. Gov. Code § 66499.30 Having additional and smaller parcels will allow Timbell-Warnerville to sell certain parcels to farmers who cannot take on a property as large as the existing one. As the attached agricultural viability study shows (*Exhibit A*, attached hereto and incorporated herein by this reference as if set forth in full), farming 80-acre parcels on the Property is absolutely viable. In addition, the sale of the individual parcels (or multiple parcels that could be combined for a single operation) and/or separate leinable parcels will allow Timbell-Warnerville to raise capital to finance its own agricultural uses on the remainder of the parcels. In short, the creation of multiple parcels will better allow Timbell-Warnerville to perpetuate and enhance the agricultural uses of the Property.

On January 12, 2006, Timbell-Warnerville submitted an application to the County for the Parcel Map. Timbell-Warnerville did so after working with County Planning Staff and outside consultants for over a year to determine what size and configuration of parcels would work best for the Property. Although the existing A-2 (40) Zone and related land use regulations allowed Timbell-Warnerville to have 40-acre parcels, which would have given Timbell-Warnerville additional parcels and greater flexibility, Timbell-Warnerville decided on 80-acre parcels because those sizes would be more conducive to agricultural viability.

B. *Applicable Land Use Regulations*

1. *County General Plan and Zoning*

The County General Plan's land use designation for the Property is "Agriculture." This designation "establishes agriculture as the primary use in land so designated, limited agriculturally related commercial services, agriculturally related light industrial uses, and other uses which by their nature are not compatible with urban uses, provided they do not conflict with the primary use." Stanislaus County General Plan at p. 1-23. Here, the proposed agricultural uses under the Parcel Map comply with the General Plan.

The Property's Zoning District is "General Agriculture A-2 (40)," also known simply as "A-2 (40)." The minimum parcel size for land in A-2 (40) is forty (40) acres. Stanislaus Zoning Code ("SZC") § 21.20.060. Agricultural uses and two residential dwelling units per 40-acre parcel are

Chair O'Brien and Supervisors

March 16, 2007

Page 4

principally permitted in the A-2 (40) Zoning District. SZC § 21.20.020. Under the Stanislaus Zoning Code, "agriculture" means the tilling of the soil, the raising of crops, horticulture, viticulture, small livestock farming, dairying, or animal husbandry, including all uses customarily incidental thereto but not including slaughterhouses, fertilizer yards, boneyards or plants for the reduction of animal matter or any other industrial use which is similarly objectionable because of noise, odor, smoke, dust or fumes." SZC § 21.12.020.

Here, the proposed agricultural uses and parcel sizes under the Parcel Map comply with the A-2 (40) Zone. Moreover, because the uses are *restricted* to agriculture and *incidental* residential uses, the Planning Commission's finding that residential uses *not* incidental to agricultural uses would take place was a finding in direct violation of allowed uses and therefore was in error.

2. *The Subdivision Map Act*

Under the Subdivision Map Act (Gov. Code §§ 66410 *et seq.*, "Map Act"), because the Property is subject to a Williamson Act Contract, the County must deny approval of the Parcel Map if the County finds that "either the resulting parcels following a subdivision of that land would be too small to sustain their agricultural use or the subdivision will result in residential development not incidental to the commercial agricultural use of the land." Gov. Code § 66474.4.(a).

Agricultural is presumed *as a matter of law* to be in parcels large enough to sustain their agricultural use if the parcels are at least 10 acres in size in the case of prime agricultural land, and 40 acres in size in the case of land that is not prime agricultural land. Gov. Code § 66474.4(b)(2). Here, once again, the resulting parcels under the Parcel Map all are at least 70 acres in size, so the parcels are presumed as a matter of law to be large enough to sustain their agricultural use.

Moreover, under the Map Act, there is no requirement that the County determine whether agricultural uses on the Property would be "economically viable." In denying the Parcel Map, the Planning Commission approved the following motion:

Based on the Staff Report, information presented and testimony, the Commission finds that the proposed division of this particular land would not sustain the economic viability of continued agricultural use of the parcels, and that the division will result of [*sic*] residential development not incidental to the commercial agriculture, and for that reason deny Vesting Tentative Parcel Map Application No. 2006-02.

The Planning Commission's finding that "the proposed division of this particular land would not sustain the economic viability of continued agricultural use of the parcels" was based on an improper legal standard. The law asks only whether agricultural uses are *possible* on the resulting parcels under the Parcel Map, not whether agriculture will be economically viable. Economic viability is a very subjective term – economic viability can mean one thing to one person and quite a

different thing to another person. Thus, the law does *not* require a finding of economic viability. Instead, the legal standard is simply whether the land itself can sustain agricultural uses. Here, the law, the existing Williamson Act Contract, the County's General Plan and Zoning parcel size minimums and our expert all clearly state that agricultural uses *can and will be sustained* on the parcels proposed. The Planning Commission's finding to the contrary was in error and without evidentiary foundation. The Parcel Map must be approved.

3. *The Williamson Act Contract and the Williamson Act*

The Property is subject to Williamson Act Contract Nos. 71-0418 and 72-0705. The two Williamson Act Contracts are identical, and thus are collectively referred to herein as the "Williamson Act Contract." Under the Williamson Act Contract, the Property may not be used "for any purpose other than the production of agricultural commodities and the compatible uses permitted by [the] A-2, Exclusive Agriculture District." Williamson Act Contract at § 3. Here, the proposed agricultural uses under the Parcel Map comply with this Contractual restriction.

The Williamson Act Contract also provides that "neither party shall take any action by sale or other transfer which will reduce the area of any property under single ownership to less than twenty (20) acres without the written approval of the other." Williamson Act Contract at § 11. Moreover, subdividing the Property is authorized under the Williamson Act Contract – if the Property or any portion of the Property is transferred to a new owner, that new owner must execute a new contract with the same terms as the existing Contract. *Id.*

As to the Williamson Act itself, the state Legislature has declared as follows:

It is in the public interest for local officials and landowners to retain agricultural lands which are subject to contracts entered into pursuant to this act in parcels large enough to sustain agricultural uses permitted under the contracts. For purposes of this section, agricultural land shall be presumed to be in parcels large enough to sustain their agricultural use if the land is (1) at least 10 acres in size in the case of prime agricultural land, or (2) at least 40 acres in size in the case of land which is not prime agricultural land.

Gov. Code § 51222.

In other words, as with the Map Act, parcels are presumed to be large enough to sustain agricultural uses if they are 10 acres in size in the case of prime agricultural land, and 40 acres in size in the case of agricultural land that is not prime. Also, again like the Map Act, the Williamson Act does not require a finding of economic viability, but rather that the resulting parcels simply can sustain agricultural uses.

Chair O'Brien and Supervisors
March 16, 2007

Page 6

Because the Williamson Act Contract and the Williamson Act restrict the Property to agriculture and incidental residential uses, and because the proposed parcel sizes are presumed by the Williamson Act as a matter of law to be large enough to sustain agricultural uses, the Planning Commission's finding to the contrary was in error and without evidentiary support. Moreover, as we have stated, our expert has shown that the viability of agricultural uses on the proposed parcels is excellent.

**C. *The Planning Commission's Findings
Were Not Supported by Substantial Evidence***

Finally, although the foregoing background and analysis is reason enough for the Board to approve the Parcel Map, it is important to understand the law concerning the evidence supporting the County's decision on the Parcel Map. The approval of a subdivision map is an adjudicatory decision. *Horn v. County of Ventura*, 24 Cal.3d 605 (1979). A public agency's adjudicatory decision is a discretionary decision, and in making that decision the public agency may not "abuse its discretion." C.C.P. § 1094.5(b). An abuse of discretion exists if the public agency's findings supporting its decision are not supported by "substantial evidence." *Id.*

California courts have explained that "[s]ubstantial evidence is not *any* evidence – it must be reasonable in nature, credible, and of solid value." *Mohalif v. Janovici*, 51 Cal.App.4th 267, 306 fn. 28 (1996), citing *Hill v. National Collegiate Athletic Assn.*, 7 Cal.4th 1, 51 (1994). The focus is on the quality, not the quantity of the evidence. *Id.* at 305. Very little solid evidence may be "substantial." while a lot of weak evidence might be "insubstantial." *Id.*, citing *Toyota Motor Sales U.S.A., Inc. v. Superior Court*, 220 Cal.App.3d 864, 871-872 (1990). Substantial evidence may be contradicted or uncontradicted by other evidence in the record, but a public agency's decision is lawful as long as it is supported by substantial evidence. *Mohalif*, 51 Cal.App.4th at 305 fn. 28.

Here, with all due respect to those who presented evidence to the Planning Commission and the view of the Commissioners themselves, no one person presented expert or science-based evidence that the Parcel Map's resulting parcels could not sustain agricultural uses or that residential uses in violation of existing County laws would result. At most there was *speculation* as to agricultural and residential uses, and conjecture by some farmers that they would not personally farm the Property. As you know, the fact that one farmer would not farm a particular property does not mean that another farmer could not farm the property. As a result, the evidence before the Planning commission was not substantial evidence.

In contrast, by submitting the analysis of a trained agricultural expert to the Board for this appeal, Timbell-Warnerville is presenting to the Board the *only* substantial evidence on this issue. That expert clearly states that "the divided property could sustain agricultural uses" and that the proposed parcels have the "excellent potential" to grow crops. Moreover, the expert's analysis is based on substantial evidence in that he inspected the Property and neighboring properties, and

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

Chair O'Brien and Supervisors
March 16, 2007
Page 7

analyzed federal soil surveys of the Property. We are not aware of any substantial evidence before the Board of Supervisors that contradicts this expert. Even if such evidence existed, the expert report showing that agricultural uses on the proposed parcels is viable is sufficient evidence under the law for the Board to approve the Parcel Map.

□ □ □ □ □

In sum, the Parcel Map complies with all applicable County and State land use laws, the parcels more than meet the minimum size requirements of those applicable laws, our expert confirms that the parcel sizes proposed will sustain agricultural production, the Parcel Map will *not* result in residential development that is not incidental to the commercial agricultural use of the land, and there is no evidence in the record supporting a denial of the Parcel Map.

For these factual and legal reasons, we respectfully request that the Board of Supervisors overturn the Planning Commission's denial and approve the Parcel Map. Thank you for your consideration of this appeal.

Respectfully submitted,

Michael Patrick Durkee

MPD:kab

Attachments

cc: Kirk Ford, Department of Planning and Community Development
Timbell-Warnerville Partners, LLC

FOIADA AG CONSULTING
19088 Martha Lane Jamestown, Ca 95327
(209) 533-0534

TO: Andrew B. Katakis

SUBJECT: Warnerville – Timbell Rd Property: Farming-study for Parcel Map Application No. 2006-02

DATE: March 15, 2007

This Report provides my analysis of whether your Warnerville Timbell Rd. property can sustain agricultural uses at the parcel sizes proposed by your Parcel Map Application No. 2006-02. Under the Parcel Map, the property would be divided into 12 parcels of 80 acres, 1 parcel of 70 acres, and 1 remainder parcel of over 100 acres. As described in more detail below, it is my belief that the divided property could sustain agricultural uses.

My conclusions are based on my inspection of the property and surrounding properties, and my analysis of the existing USDA –NRSC (Natural Resource Conservation Service) soil surveys of the property. Currently on the property, oats and grasses are growing. They are 12" to 24" tall and have good green color, indicating good nitrogen and a lack of standing water. Bordering properties are growing almonds and walnuts, pasture and grain, and farther west on Warnerville Rd, (.4 miles) there are almonds growing from 1 to 5 years old. These fields have similar soil types as your property, Paulsell, Pentz, Peters, & Keyes soils.

Based upon USDA – NRSC surveys, the soil types on the property and of the bordering fields are closely related: Keyes, Paulsell, Penz, Peters, and Raymore. These soil types vary as to slope, depth, clay content and rock – gravel content. The NRSC survey describes the Peters, Pentz & Keys soil complex as highly valued as range pasture and dry land grain.

With increasing loss of prime farmland to development in the central valley, especially Stanislaus and San Joaquin Counties, more farmers are moving to the foothills and planting orchards. These newer plantings of almonds and walnuts can found in neighboring fields to the NW, E, SE, due south, and farther west along Warnerville Rd. The fields due south are Pausell and Ryer soil types. Your property has similar soil types where the irrigated pasture was. (Photo #1) The almonds planted just east of your property (photo #8) and those growing west along Warnerville Rd have the same types of soils. (photos 9, 10, & 11)

Small areas of your property cannot be farmed because of steep slopes and drains - ponds, but most of the ground can (and has been) dry farmed for grain or pasture. If water is available, and I understand it is, permanent, more valuable crops such as almonds or walnuts could be planted at the parcel sizes proposed by Parcel Map 2006-02. Since there are almonds and walnuts growing on similar soil types bordering you and west along Warnerville Rd, there is no reason why they could not be planted on your property.

For generations these soils have been dry land farmed as pasture & grain. With changes and improvements in farming practices, they have the excellent potential to grow other crops.

Steve M Foiada
Foiada Ag Consulting.

Foiada Ag Consulting

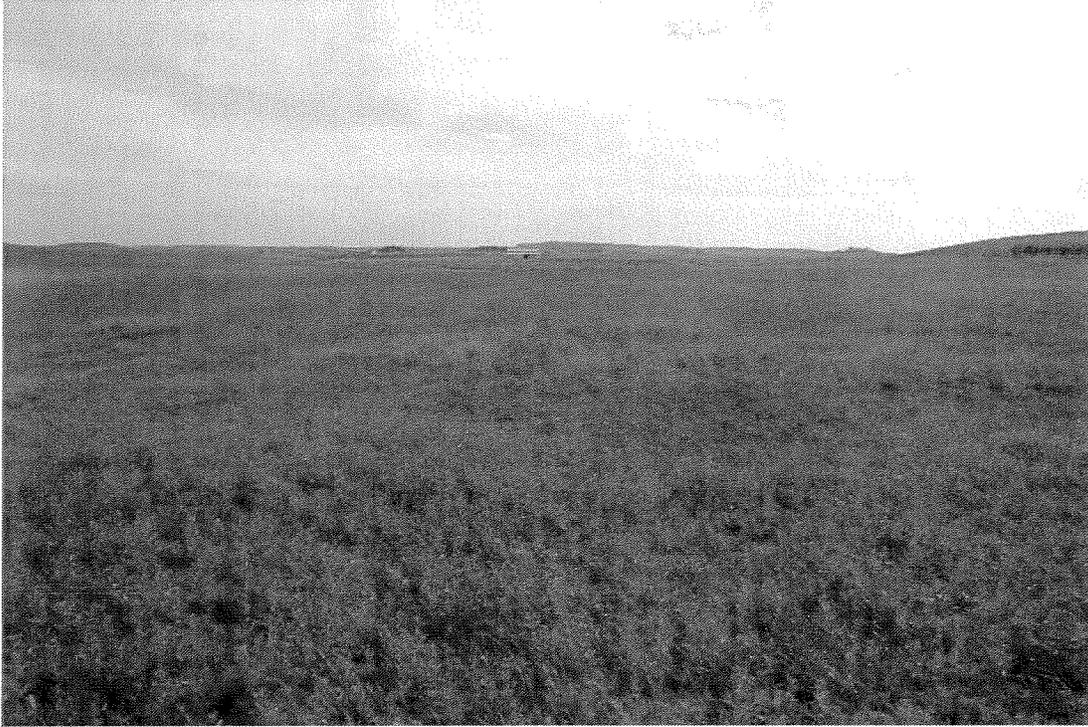


1. View from SW corner showing new almond orchard on similar Pausell soil.



2. Grain planted up to the top of the small hill.

Foiada Ag Consulting



3. Almonds growing to the south.

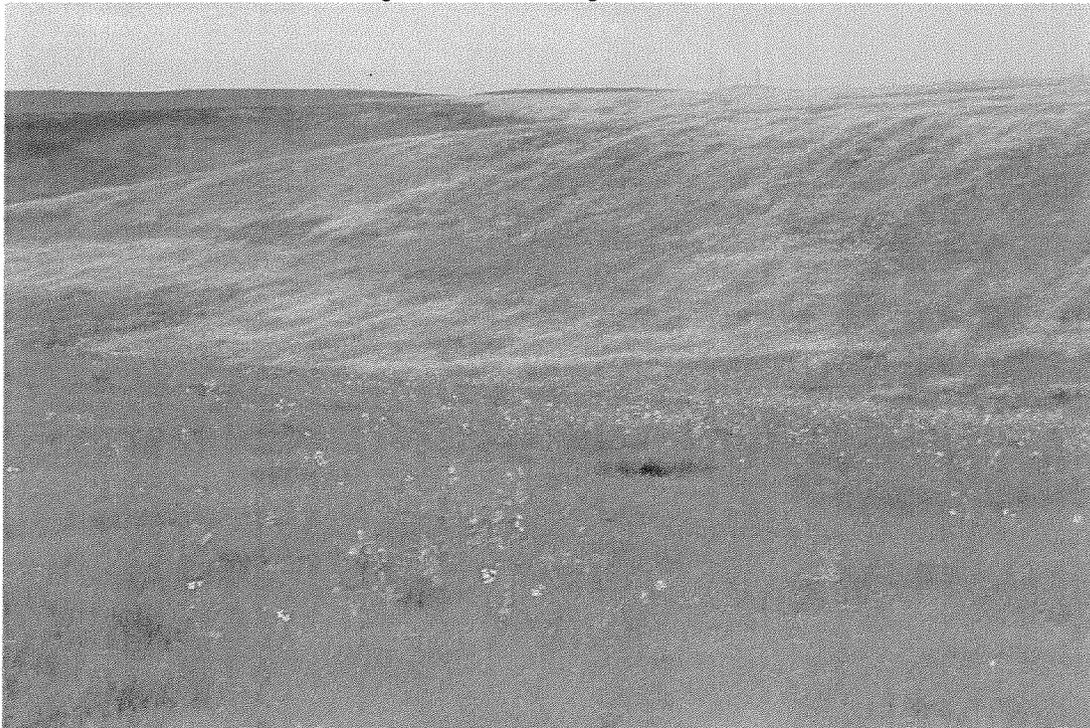


4. Closer view of almonds to south.

Foiada Ag Consulting



5. Pond in NW section of ranch. Irrigation water? Fishing?



6. Mustard in bloom.

Foiada Ag Consulting

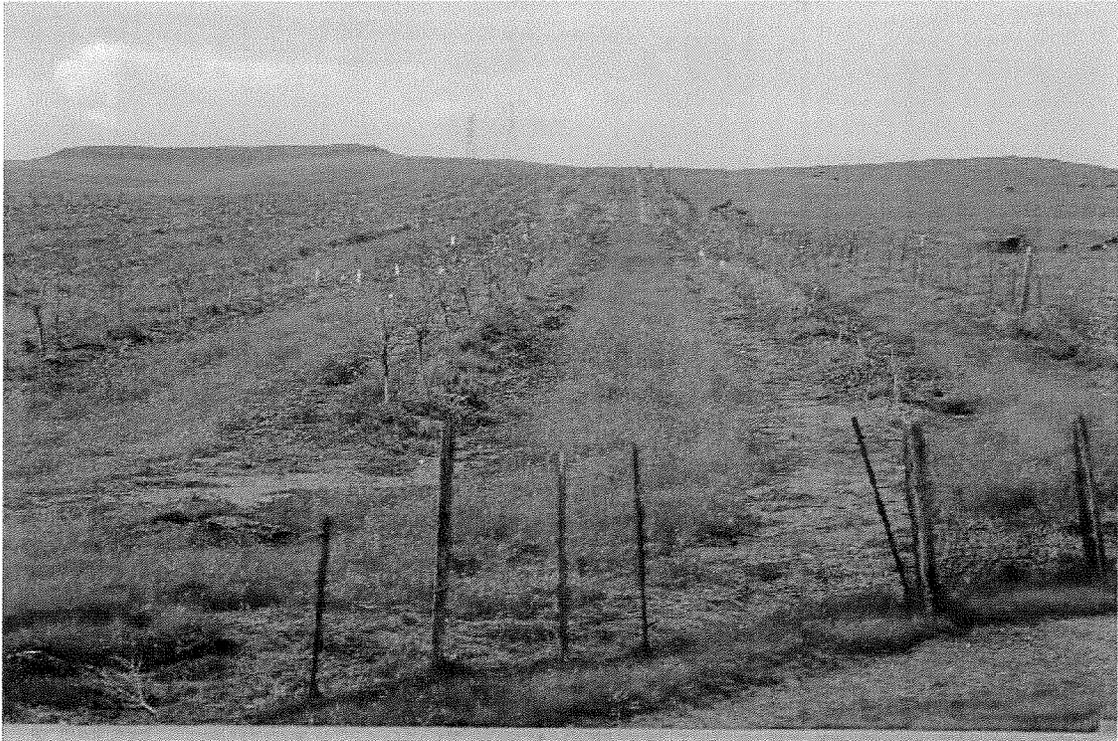


7. Backhoe site where soil was tested. Note different color of soil types and rocks.



8. Almonds planted on ranch to the east. There are similar soil types.

Foiada Ag Consulting



9. Almonds growing .4 miles west on Warnerville Rd. This is the north side of the road on similar soil types as the Katakis property.



10. Older orchard on similar soil types growing adjacent (west) of the above field.

Foiada Ag Consulting



11. Same orchard growing along Warnerville Rd. It has similar soil types as the Katakis property.



12. Katakis property from the NW corner at Timbell & Warnerville. This could easily be trees or vines.



California Equity Management Group Inc.

P.O. Box 1747 Modesto, CA 95353-1747 Tel (209) 549-9249 Fax (209) 549-9299

February 6, 2007

Stanislaus County Department of
Planning and Community Development
& Stanislaus County Board of Supervisors
1010 10th St. Suite 3400
Modesto, CA 95354

RE: Parcel Map Application No. 2006-02 – Furtado Family Trust (APN's 011-005-007 & 021)

To Whom It May Concern:

Please consider this letter to be a formal request from Timbell-Warnerville Partners LLC (hereinafter referred to as the "Applicant") to have our previously denied Parcel Map Application appealed to the Board of Supervisors for reconsideration.

The basis for our appeal is based on the following facts and circumstances:

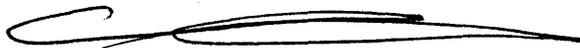
1. It is possible that The Planning Commission's decision to deny the project may have been negatively influenced by one specific neighboring landowner/rancher and one non-neighboring landowner/farmer who made unfounded and untrue statements. It was incorrectly stated that when parceled into 80+/- acre parcels the land could not be economically farmed and/or utilized for any viable agricultural purpose and that the property was being solely parceled off for residential development. The Applicant believes that it can prove that the properties at 80+/- acres can be viable for a variety of farming operations. The Applicant believes that The Commission focused too narrowly on just one aspect of agricultural farming and failed to consider all other farming operations that are acceptable under both The Williamson Act and under the current A2-40 zoning requirements as set forth in The County of Stanislaus Zoning Code.
2. The Applicant provided written letters by the majority of the adjacent landowners who were in support of the project. It was implied that the neighbors were against this project when they were not. Following the denial by The Commission, The Applicant has received more support in favor of the parcel map application. Furthermore, there was no overwhelming negative outcry by the public or adjacent landowners requesting denial of the project. The parcel map does not change the integrity of the property and does not negatively affect the health, safety and welfare of the public and is not a public nuisance.
3. The proposed parcel map met and exceeded many if not all legal requirements of The California Subdivision Map Act as well as the intent of The California Williamson Act, and the zoning

requirements set forth by Stanislaus County. There was no legal basis for the denial and the landowner's legal rights to parcel its property may not have been fully considered.

4. The Applicant worked hand-in-hand with staff for over a year to assure that the project met and exceeded all of the requirements that would be necessary for staff to fully support the proposed parcel map. The Applicant made a concerted effort to increase the size of the parcels and doubled the allowed size under the A2-40 zoning. The Applicant willingly agreed and complied with staff's recommendations and as a result, staff fully supported the project and put it on the agenda as a consented item for approval. The removal of the project as a consent item seemed to have no legal basis and was inconsistent with all the other parcel map applications that have been approved over the years, which were similar in nature. The basis for denying this application was inconsistent with previous public policy.
5. Economic viability for agricultural production or usage on the proposed parcels can be proven to The Board, should this be a current, enforceable, and legal basis for the approval or denial of the parcel map as currently proposed.
6. The Commission's definition as to what is economically viable for an agriculture based operation on an 80+/- acre parcel was very narrowly defined, restrictive, and concentrated on only a parcel's future usage for trees and/or other row crop when the very definition of agriculture is vast and goes beyond the production of trees or other plantings. The State of California, under The Williamson Act, defers to each county for its zoning laws to define what is allowed under each agricultural zoning. The Applicant can prove that an 80+/- acre parcel is consistent with current zoning codes and is economically viable for a variety of commercial based agricultural usages.
7. The Applicant can also prove that it needs to parcel off the property to increase its land value in order to obtain additional financing for future farming development and operations. The Applicant's bank will not advance future draws unless the property is parceled off for additional security. This reason is consistent with almost every other application put forth in front of The Commission to parcel off property currently zoned A2-40. The Applicant's reasons are consistent with public policy in accepting such an application.

The Applicant reserves the right to amend, modify, and supplement their reasons and statements in support of its appeal.

Sincerely,



Andrew B. Katakis
Managing Member – Timbell-Warnerville Partners LLC

CC: Stanislaus County Board of Supervisors