



STAFF REPORT

TOWN COUNCIL MEETING OF MARCH 13, 2012

TO: Honorable Mayor and Members of the Town Council

FROM: Matt Lopez, Assistant Planner *ML*

DATE: March 1, 2012

SUBJECT: MONTE CLAIRE UNIT 2, LOT 5 – CERTIFICATE OF AMENDMENT FOR THE NON-DEVELOPMENT MEANDERING WETLAND AND DRAINAGE EASEMENT

STAFF RECOMMENDATION

That the Town Council approve and adopt the attached Resolution to amend lot 5 of Monte Claire Unit 2 by abandoning a portion of the existing Non-Development Meandering Wetland and Drainage Easement on Final Map Book Z, Page 73, sheets 5 and 10 by recording the certificate of Correction, Modification, or Amendment document.

REQUEST

Michael and Lisa Newman have submitted an application requesting an amendment/modification to lot 5 of the Monte Claire Estates Unit 2 Final Map. Specifically, the owner wishes to fill 0.09-acres of wetlands in order to develop a single-family dwelling on their property (15% impervious, 85% to remain pervious). The U.S. Army Corps of Engineers (USACE), Fish & Game (DFG), and the Regional Water Quality Control Board (RWQCB) have all given their approvals for the Newman request (Section 404 authorization, Streambed Alteration Agreement, 401 Water Quality Certification). Final approval is needed from the Town (Certificate of Amendment), as required by the recorded Monte Claire Unit 2 Final Map.

The Newman's, as part of their mitigation for impacting the wetlands, will be preserving, in perpetuity, an additional 1.16-acres of sensitive land on their parcel that is adjacent to existing onsite preserved wetlands. USACE required this of the Newman's to offset the 0.09-acres that are being impacted by their proposed development. The Newman's must also provide annual biological reports to USACE, among other requirements, for the newly protected land (if approved by Council). All USACE requirements of the newly protected land are provided in the USACE approved Preserve Management Plan (attached).

BACKGROUND

On June 16, 2009, the Town Council approved a similar Map Amendment/Modification request by Dick and Janice Crawford (Monte Claire Unit 2, lot 7; Council Resolution No. 09-18). As mitigation for the Crawford request to impact 0.05-acres of wetlands, USACE required the Crawford's to pay \$6,450 into a Wetland Conservation Fund. As mitigation for the Newman's proposed request to fill 0.09-acres of wetlands, USACE has required that the Newman's mitigate onsite (1.16-acres) should the Town approve the requested Map Amendment/Modification. Staff feels that the Newman's required onsite mitigation is more appropriate than paying into a Wetland Conservation Fund.

ISSUE STATEMENT AND DISCUSSION

Michael and Lisa Newman would like to construct a home (Figure 1, attached) on lot 5 located at the end of the cul-de-sac of Monte Claire Unit 2 subdivision. The Newman's hired Foothill Associates to investigate the impacts from their proposed development and the mitigation needed to receive approval from the US Army Corps of Engineers, Fish & Game and the California Regional Water Quality Control Board. Those approvals have all been obtained (Section 404 authorization, Streambed Alteration Agreement, 401 Water Quality Certification). Final approval is needed from the Town (Certificate of Amendment), as required by the recorded Monte Claire Unit 2 Final Map.

The preliminary storm water discharge plan is attached (Figure 2). Detail, per Foothill Associates: The front (north) of the property includes pervious surfaces that will collect runoff from impervious and pervious surfaces and naturally drain to a detention basin and drop inlet to a spreader trench feature and approximately 100-feet of overland flow through a bio-filter area / natural vegetated swale before entering the wetland. Flows from the back of the residence will be directed to a level spreader / infiltration trench with dual detention chambers to treat the water prior to infiltrating back into the wetland area. These facilities will ensure onsite drainage is treated prior to entry into the wetland system and will minimize indirect effects resulting from storm water.

As part of the proposed project, a revised conservation and non-development meandering wetland and drainage easement would be recorded for the property (Perpetual Conservation Easement Grant) as required by USACE for mitigation (see attached). The non-development meandering wetland and drainage easement would be recorded with Placer County and would be managed according to the Monte Claire CC&R's as well as the newly executed and USACE approved Preserve Management Plan (attached).

Staff has prepared and attached the Certificate of Amendment to record with the Placer County Recorder's Office, should the Council approve the request. Staff will be working with the applicant's Surveyor on the legal description of the easement to be amended (and recorded with the Certificate of Amendment) should the Council approve the applicant's request.

Since the easement was dedicated to the Town of Loomis on the Final Map, the Town must abandon the specific easement per the Streets and Highway Code Section 8300. Under the findings, if the legislative body finds from all the evidence submitted that the easement described in the notice of

hearing in unnecessary for present or prospective public use, the legislative body may adopt a resolution vacating the easement.

Under the Owners Statement on the Final Map it states:

“Non-development meandering wetland and drainage easements as shown on this map, within the non-development meandering wetland and drainage easement areas there shall be no grading, filling or construction of any structures except as approved by the Town of Loomis. There shall be no temporary or permanent storage of materials or equipment and no dumping of trash, lawn or garden clippings, oil, chemicals, or other toxic materials into the non-development meandering wetland and drainage easement areas. Trimming or other maintenance activities are allowed for fire protection, the elimination of diseased or dead growth, and for thinning as necessary to maintain drainage. This offer is not intended by the owner to permit access, ingress or egress by the members of the general public.”

Final Map also states:

“The non-development meandering wetland and drainage easement areas allow for the flow of drainage waters through the waters/wetlands areas under the jurisdiction of the US Army Corps of Engineers. The exact location of the meandering wetland and drainage easement may change naturally from time to time. Prior to any changes to the non-development meandering wetland and drainage easement areas, the property owner must obtain approval from the Town of Loomis. Any changes need to be consistent with the current regulation of the USACE, Fish and Wildlife Service and CA Dept of Fish and Game.....”

Since the development of the Monte Claire Unit 2 Subdivision was approved (Jan. 2004), and the extensive issues regarding tree and wetland preservation, all future development projects have been required to provide building envelopes on each lot when there are tree and wetland/drainage conflicts. After Tentative Map approval for this subdivision, staff requested that the developer obtain approval from the US Army Corps of Engineers to cross the wetlands since it was unlikely that a residential development would not encroach the wetlands in the future. The developer refused to do so and, as a result, the Crawford property (lot 7) and now the Newman property (lot 5) have received the necessary USACE approvals to do so.

Trees - The submitted Tree Evaluation Report prepared by Robert Props (ISA, Board Certified Master Arborist #1317B) identified 46 protected oak trees on the Newman property. The proposed development will require the removal of ten (10) protected trees. The applicant will be required to mitigate for the removal of the protected trees per the Town’s Tree Preservation and Protection Ordinance. All protection measures are to be put into place prior to grading/erosion plan approvals and the start of work onsite. The following inspections are recommended by the arborist to occur prior to or during the course of construction:

- One site visit to attend pre-construction meeting with Project Manager and Town staff to review approved plans, permits, conditions of approval and review installation of oak tree protective fencing as approved by Town staff;
- Up to two site visits to monitor clearing, underground construction and grading activities and to inspect for potential root disturbance; and
- One site visit will be required for a final inspection prior to preparation of the letter to certify compliance with the approved protective/preservation measures.

ATTACHED

1. Draft Resolution and Certificate of Correction, Modification, or Amendment
2. Figure 1 – Proposed Project and Impact to Waters of the U.S.
3. Figure 2 – Preliminary Storm Water Discharge Plan
4. Approved Permits from USACE, DFG, RWQCB
5. Final Map, Book Z, Page 73, sheets 5 and 10
6. Preserve Management Plan & Perpetual Conservation Easement

TOWN OF LOOMIS

ATT. 1

RESOLUTION NO. 12-__

A RESOLUTION OF THE COUNCIL OF THE TOWN OF LOOMIS APPROVING AND ADOPTING THE AMENDED LOT 5 BY ABANDONING THE EXISTING NON-DEVELOPMENT MEANDERING WETLAND AND DRAINAGE EASEMENT ON FINAL MAP BOOK Z, PAGE 73, SHEETS 5 AND 10 BY RECORDING THE CERTIFICATION OF CORRECTION, MODIFICATION, OR AMENDMENT DOCUMENT

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LOOMIS AS FOLLOWS:

1. In accordance with the provisions of California Government Code Section 66470 and 66472.1; and Streets and Highway Code Section 8300 in the Town of Loomis, has been received by this Council and public hearing thereon has been held as required by State Law.
2. It is hereby found that the easements described in Book Z of Parcel Maps, Page 73 can be amended as approved by the Corps of Engineers and California Regional Water Quality Control Board.
3. That the non-development meandering wetland and drainage easement can be vacated by the Town provided that the easement is unnecessary for present or prospective public use and all conditions of the Corps of Engineers, California Regional Water Quality Control Board and the Town have been met.
4. IT IS HEREBY ORDERED that the easement portion described in Book Z of Parcel Maps, Page 73 and prepared under the Certificate of Correction, Modification, or Amendment document is abandoned and shall as of the date of recording of this Resolution, no longer constitute a Non-Development Meandering Wetland and Drainage Easement.
5. The Town Clerk is hereby directed to cause a certified copy of this Resolution and Order, attested to be said Clerk under the seal of the Town of Loomis, to be recorded in the Office of the Placer County Recorder with the Certificate of Correction, Modification, or Amendment document.

PASSED AND ADOPTED this 13th day of March, 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor

Attest:

APPROVED AS TO FORM:

Town Clerk

Town Attorney

RECORDING REQUESTED BY
Peter s. Brewster
Professional Land Surveyor
2954 Alhambra Drive, Cameron Park, CA 95682

PRELIMINARY DRAFT 1

AND WHEN RECORDED MAIL THIS DEED TO:

NAME Town of Loomis Public Woks Department
ADDRESS 6140 Horseshoe Bar Road
CITY, STATE Loomis, CA
ZIP 95650

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF CORRECTION, MODIFICATION, OR AMENDMENT

Pursuant to the authority outlined in the California Government Code Sections 66470 and 66472.1, I hereby certify the following correction, modification, or amendment to apply to that certain Subdivision Map, entitled "SUBDIVISION NO. 03-10 MONTE CLAIRE UNIT 2 A PORTION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 SECTION 28, T.11N., R.7E., M.D.B.&M." recorded on May 28, 2004 in Book Z at Page 73 of Subdivision Maps (Z-73) in the Office of the Placer County Recorder, California.

At the regular meeting of the Town of Loomis Town Council, a noticed public hearing, on _____, 201__, Resolution of Vacation Number ____-____ was passed and filed for record on _____, 201__. At the meeting the findings required to authorize the abandonment of the following easements were made:

DESCRIBED IN EXHIBITS "A" AND DELINEATED IN EXHIBIT "B" ATTACHED HERETO AND MADE PART HEREOF, WHICH DESCRIPTION IS BY THIS REFERENCE INCORPORATED HEREIN.

All of the present fee owners of the property affected by this Certificate of Correction are as follows:

Lisa Newman and Michael Newman

SURVEYOR'S CERTIFICATE



Peter S. Brewster, PLS 6490

December 7, 2011
Date



TOWN SURVEYOR'S CERTIFICATE

This certificate has been examined this _____ day of _____, 200__, for conformance with Section 66471 and 66472.1 of the Subdivision Map Act.

Steven C. Speights, R.C.E. 22030
Town Surveyor
County of Placer, California

Date

EXHIBIT A
LEGAL DESCRIPTION

PRELIMINARY DRAFT 1
**ALL THAT PORTION OF A WETLAND AND DRAINAGE EASEMENT OVER LOT 5,
MONTE CLAIRE UNIT 2 SUBDIVISION TO BE ABANDONED**

All that certain real property situate in the County of Placer, State of California described as follows:

A portion of the Northwest Quarter of the Northeast Quarter of Section 28, Township 11 North, Range 7 East, M.D.B. & M., described as follows:

Being a portion of Lot 5, more specifically a portion of the Non-Development Meandering Wetland and Drainage Easement shown on that certain subdivision map entitled "SUBDIVISION NO. 03-10 MONTE CLAIRE UNIT 2 A PORTION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 SECTION 28, T.11N., R.7E., M.D.B. & M.", recorded on May 28, 2004 in Book Z at Page 73 of Subdivision Maps (Z-73) in the Office of the Placer County Recorder, more particularly described as follows:

Beginning at the Northwest corner of the herein described easement, a point in the Westerly line of the above mentioned Lot 5, from whence the Northwest corner of said Lot 5, marked by a railroad spike pursuant to the aforementioned Subdivision Map (Z-73), set in the cul-de-sac of Monte Claire Lane, bears the following three (3) record courses, VIZ: North 30°18' 17" West 189.92 feet to a 3/4 inch rebar with plastic cap stamped LS 4715; North 58°10' 50" West 193.60 feet to a 3/4 inch rebar with plastic cap stamped LS 4715; and North 00°11' 02" East 50.00 feet; thence from said **POINT OF BEGINNING**, along the bounds of the "Non-Development Meandering Wetland and Drainage Easement" affecting said Lot 5, the following record seventeen (17) courses pursuant to the aforementioned Subdivision Map (Z-73), VIZ: North 56°25'20" East 30.84 feet; thence North 84°00'51" East 13.17 feet; thence North 10°42'10" East 45.41 feet; thence North 15°21'15" East 19.60 feet; thence North 21°59'07" East 10.48 feet; thence North 51°47'39" East 24.08 feet; thence North 54°01'06" East 21.05 feet; thence North 67°00'21" East 9.47 feet; thence North 85°55'17" East 12.52 feet; thence South 87°47'09" East 12.37 feet; thence South 79°36'29" East 11.53 feet; thence South 18°53'24" East 10.52 feet; thence South 74°39'22" East 23.91 feet; thence North 48°26'04" East 10.85 feet; thence North 86°02'25" East 7.06 feet; thence South 55°53'10" East 4.37 feet; thence North 64°07'37" East 23.84 feet; thence (cite North 47°47'00" East) 6.09 feet to the Northeast corner of the herein described easement; thence continuing along the bounds of the aforementioned "Non-Development Meandering Wetland and Drainage Easement" South 00°42'07" East 12.58 feet; thence South 11°07'41" West 29.35 feet to the Southeast corner of the herein described easement; thence continuing along the bounds of the aforementioned "Non-Development Meandering Wetland and Drainage Easement" (Cite North 86°02'52" West) 9.84 feet; thence continuing along the bounds of the aforementioned "Non-Development Meandering Wetland and Drainage Easement" the following record twenty-nine (29) courses pursuant to the aforementioned Subdivision Map (Z-73), VIZ: South 23°55'13" West 3.31 feet; thence North 56°20'04" West 26.73 feet; thence South 28°42'02" West 5.74 feet; thence South 60°05'06" West 14.16 feet;

thence North 72°44'58" West 6.91 feet; thence South 70°86'52" West 3.96 feet; thence South 28°25'36" West 7.45 feet; thence North 72°32'50" West 13.38 feet; thence South 32°02'01" West 9.16 feet; thence North 15°40'03" West 8.99 feet; thence South 57°33'43" West 5.92 feet; thence South 87°40'19" West 17.35 feet; thence South 44°32'07" West 16.91 feet; thence South 42°58'46" West 12.25 feet; thence South 73°44'04" West 10.50 feet; thence South 39°57'27" West 14.24 feet; thence South 16°29'52" West 9.91 feet; thence South 01°46'32" East 22.97 feet; thence South 51°43'12" West 13.53 feet; thence South 35°34'26" West 7.61 feet; thence South 06°28'52" East 7.36 feet; thence South 47°08'15" East 18.16 feet; thence South 17°42'03" East 9.05 feet; thence South 38°28'47" West 7.74 feet; thence North 78°41'28" West 16.37 feet; thence South 47°04'19" West 7.16 feet; thence South 03°45'19" East 11.04 feet; thence South 12°00'22" West 4.49 feet to the Southwest corner of the herein described easement and the Westerly line of the aforementioned Lot 5; thence continuing along the bounds of the aforementioned "Non-Development Meandering Wetland and Drainage Easement" affecting Lot 5 and along the aforementioned Westerly line of said Lot 5, North 30°48'17" West 63.34 feet to the point of beginning.

Containing 0.1942 acres or 8,461.02 square feet.

A portion of Placer County Assessor's Parcel Number 046-040-090.

See Exhibit "B" attached hereto and made part of this document for schematic diagram delineating entire easement.

The basis of bearings for this Legal Description is identical to that of the aforementioned Monte Claire Unit 2 Subdivision Map (Z-73). All distances are horizontal ground distances.

END OF DESCRIPTION



Peter S. Brewster, PLS 6490

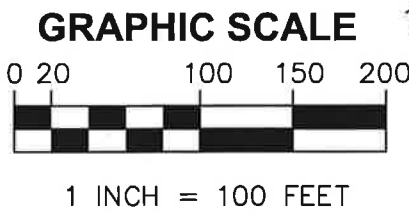
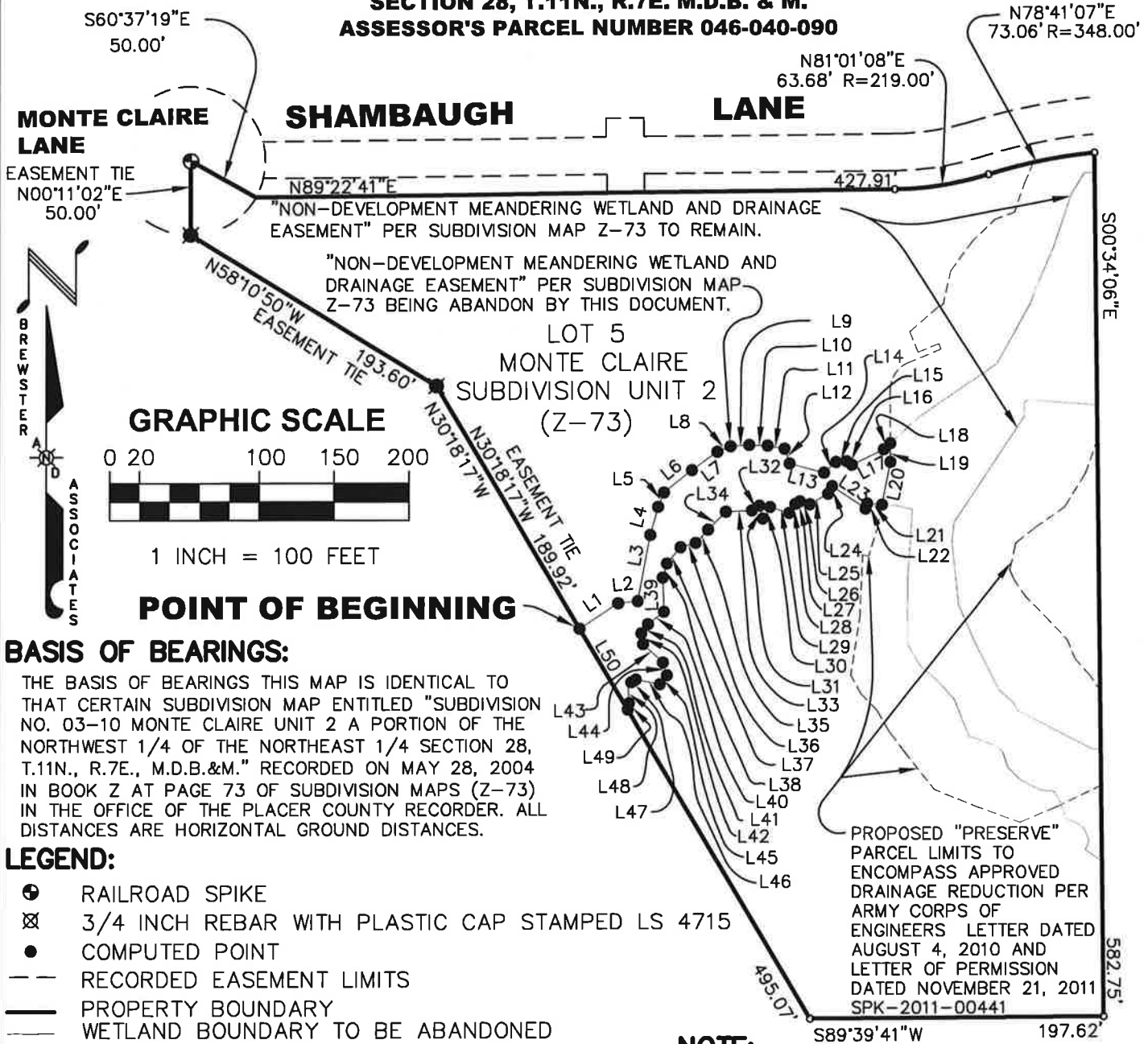
December 23, 2011

Date



PRELIMINARY EXHIBIT "B" DRAFT 1

LOT 5
MONTE CLAIRE SUBDIVISION UNIT 2
BOOK Z, PAGE 73
TOWN OF LOOMIS PLACER COUNTY, CA
SECTION 28, T.11N., R.7E. M.D.B. & M.
ASSESSOR'S PARCEL NUMBER 046-040-090



BASIS OF BEARINGS:

THE BASIS OF BEARINGS THIS MAP IS IDENTICAL TO THAT CERTAIN SUBDIVISION MAP ENTITLED "SUBDIVISION NO. 03-10 MONTE CLAIRE UNIT 2 A PORTION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 SECTION 28, T.11N., R.7E., M.D.B.&M." RECORDED ON MAY 28, 2004 IN BOOK Z AT PAGE 73 OF SUBDIVISION MAPS (Z-73) IN THE OFFICE OF THE PLACER COUNTY RECORDER. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES.

LEGEND:

- ⊕ RAILROAD SPIKE
- ⊗ 3/4 INCH REBAR WITH PLASTIC CAP STAMPED LS 4715
- COMPUTED POINT
- - - RECORDED EASEMENT LIMITS
- PROPERTY BOUNDARY
- WETLAND BOUNDARY TO BE ABANDONED
- - - PROPOSED PRESERVE PARCEL LIMITS
- WETLAND AND DRAINAGE EASEMENT TO REMAIN

SURVEYOR'S CERTIFICATE:

THIS MAP WAS PREPARED UNDER MY DIRECTION.

PETER S. BREWSTER, PLS 6490

DECEMBER 22, 2011

DATE



NOTE:

FOR LINE TABLE SEE SHEET TWO

BREWSTER & ASSOCIATES

SURVEYING THE GOLD COUNTRY SINCE 1979

ENGINEERING
 LAND SURVEYING
 LAND USE PLANNING

2954 Alhambra Drive
 Cameron Park CA 95682
 (530) 677-3348 (fax) 676-5373
 brewsterandassociates@comcast.net

EXHIBIT "B"

PRELIMINARY

DRAFT 1

LINE TABLE

LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1	N56°25'20"E	30.84	L26	N72°44'58"W	6.91
L2	N84°00'51"E	13.17	L27	S70°36'52"W	3.96
L3	N10°42'10"E	45.41	L28	S28°25'36"W	7.45
L4	N15°21'15"E	19.60	L29	N72°32'50"W	13.38
L5	N21°59'07"E	10.48	L30	S32°02'01"W	9.16
L6	N51°17'39"E	24.08	L31	N15°10'03"W	8.99
L7	N54°01'06"E	21.05	L32	S57°33'43"W	5.92
L8	N67°00'21"E	9.47	L33	S87°10'19"W	17.35
L9	N85°55'17"E	12.52	L34	S44°32'07"W	16.91
L10	S87°47'09"E	12.37	L35	S42°58'46"W	12.25
L11	S79°36'29"E	11.53	L36	S73°44'04"W	10.50
L12	S18°53'24"E	10.52	L37	S39°57'27"W	14.24
L13	S74°39'22"E	23.91	L38	S16°29'52"W	9.91
L14	N48°26'04"E	10.85	L39	S01°46'32"E	22.97
L15	N86°02'25"E	7.06	L40	S51°43'12"W	13.53
L16	S55°53'10"E	4.37	L41	S35°34'26"W	7.61
L17	N64°07'37"E	23.84	L42	S06°28'52"E	7.36
L18	N47°17'00"E	6.09	L43	S47°08'15"E	18.16
L19	S00°12'07"E	12.58	L44	S17°12'03"E	9.05
L20	S11°07'41"W	29.35	L45	S38°28'47"W	7.74
L21	N86°02'52"W	9.84	L46	N78°41'28"W	16.37
L22	S23°55'13"W	3.31	L47	S47°04'19"W	7.16
L23	N56°20'04"W	26.73	L48	S03°45'19"E	11.04
L24	S28°12'02"W	5.74	L49	S12°00'22"W	4.49
L25	S60°05'06"W	14.16	L50	N30°18'17"W	63.34

ATT. 2

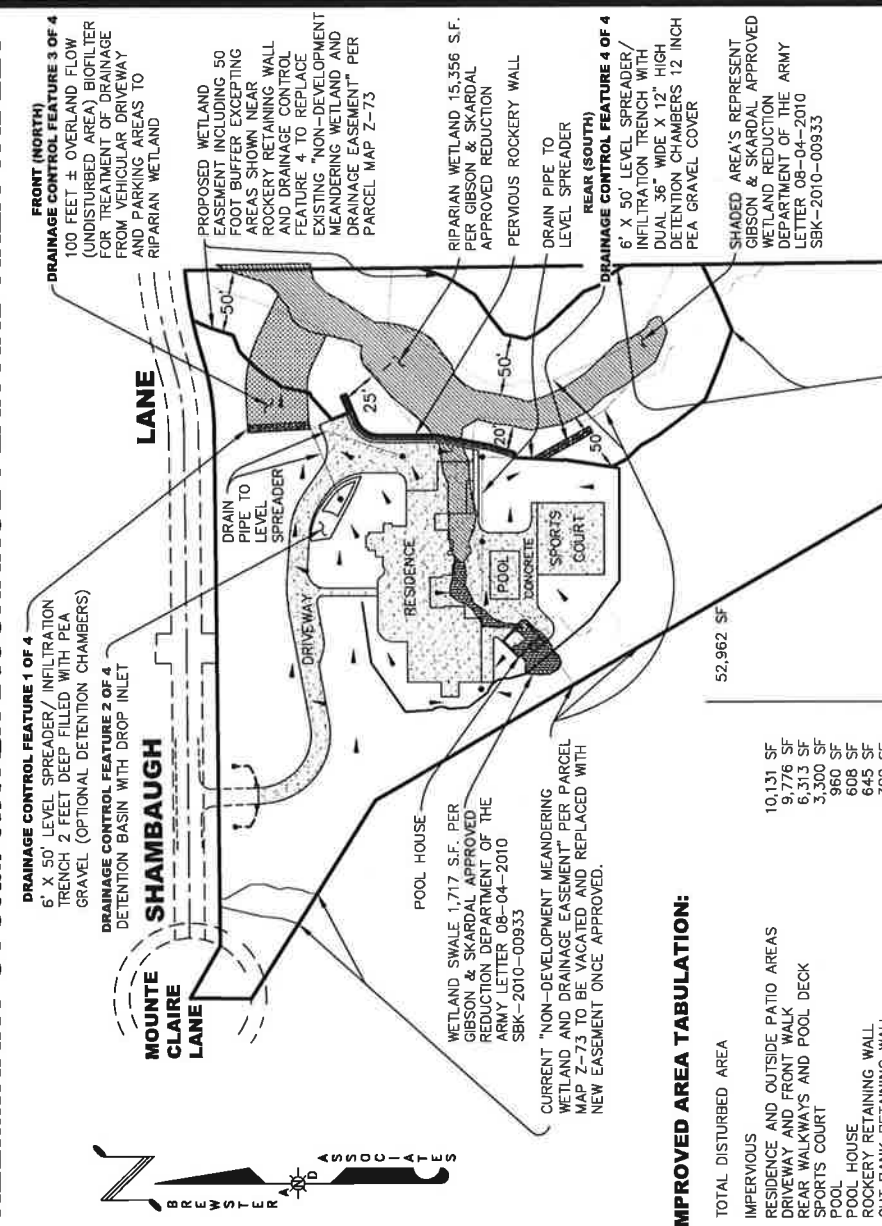


IMPACTS TO WATERS OF THE U.S.					
CLASSIFICATION		IMPACTS	AVOIDED	TOTAL	
RIVERINE WETLANDS					
Riparian Wetland		0.05		0.30	0.35
Wetland Swale		0.04			0.04
TOTAL		0.09	0.30	0.39	
OTHER FEATURES					
	Limit of Study		Project Area		

PROPOSED PROJECT AND IMPACTS TO WATERS OF THE U.S.



PRELIMINARY STORM WATER DISCHARGE PLAN AND AREA TABLES



IMPROVED AREA TABULATION:

TOTAL DISTURBED AREA	52,962 SF
IMPERVIOUS	10,131 SF
RESIDENCE AND OUTSIDE PATIO AREAS	9,776 SF
DRIVEWAY AND FRONT WALK	6,313 SF
REAR WALKWAYS AND POOL DECK	3,300 SF
SPORTS COURT	960 SF
POOL	608 SF
POOL HOUSE	645 SF
ROCKERY RETAINING WALL	300 SF
CUT BANK RETAINING WALL	300 SF
TOTAL	32,033 SF IMPERVIOUS
PERVIOUS	20,929 SF
GROSS PARCEL AREA	209,523 SF

WETLAND IMPACT TABULATION:

16,988 SF	EXISTING WETLAND AREA APPROVED AUGUST 4, 2010 DEPARTMENT OF THE ARMY (SPK-2010-00933)
15,356 SF	TOTAL RIPARIAN WETLAND PER GIBSON & SKORDAL
2,027 SF	WETLAND EFFECTED BY CONSTRUCTION
13,229 SF	NET REMAINING RIPARIAN WETLAND REMAINING SUBSEQUENT TO CONSTRUCTION
1,717 SF	TOTAL WETLAND SWALE PER GIBSON & SKORDAL
1,434 SF	WETLAND SWALE EFFECTED BY CONSTRUCTION
283 SF	NET REMAINING WETLAND SWALE SUBSEQUENT TO CONSTRUCTION
150,658 SF	PROPOSED REPLACEMENT WETLAND EASEMENT

LEGEND:

- INDICATES WATER FLOW DIRECTION
- DROP INLET
- SF SQUARE FEET
- INDICATES IMPERVIOUS AREA

PREPARED AND SURVEYED BY:
BREWSTER & ASSOCIATES
 2954 ALHAMBRA DRIVE
 CAMERON PARK, CA 95682
 (530) 677-3348 (fax) 676-5373
 brewsterandassociates@comcast.net

PETER S. BREWSTER PLS 6490

AUGUST 10, 2011
DATE

ENGINEERED BY:
PETITE & ASSOCIATES
 3449 NORTH SHINGLE ROAD
 SHINGLE SPRINGS, CA 95682
 (530) 677-6682 fax (866) 659-0976
 e-mail larrypetite@sbcglobal.net

D. LARRY PETITE R.C.E. 41033

AUGUST 10, 2011
DATE

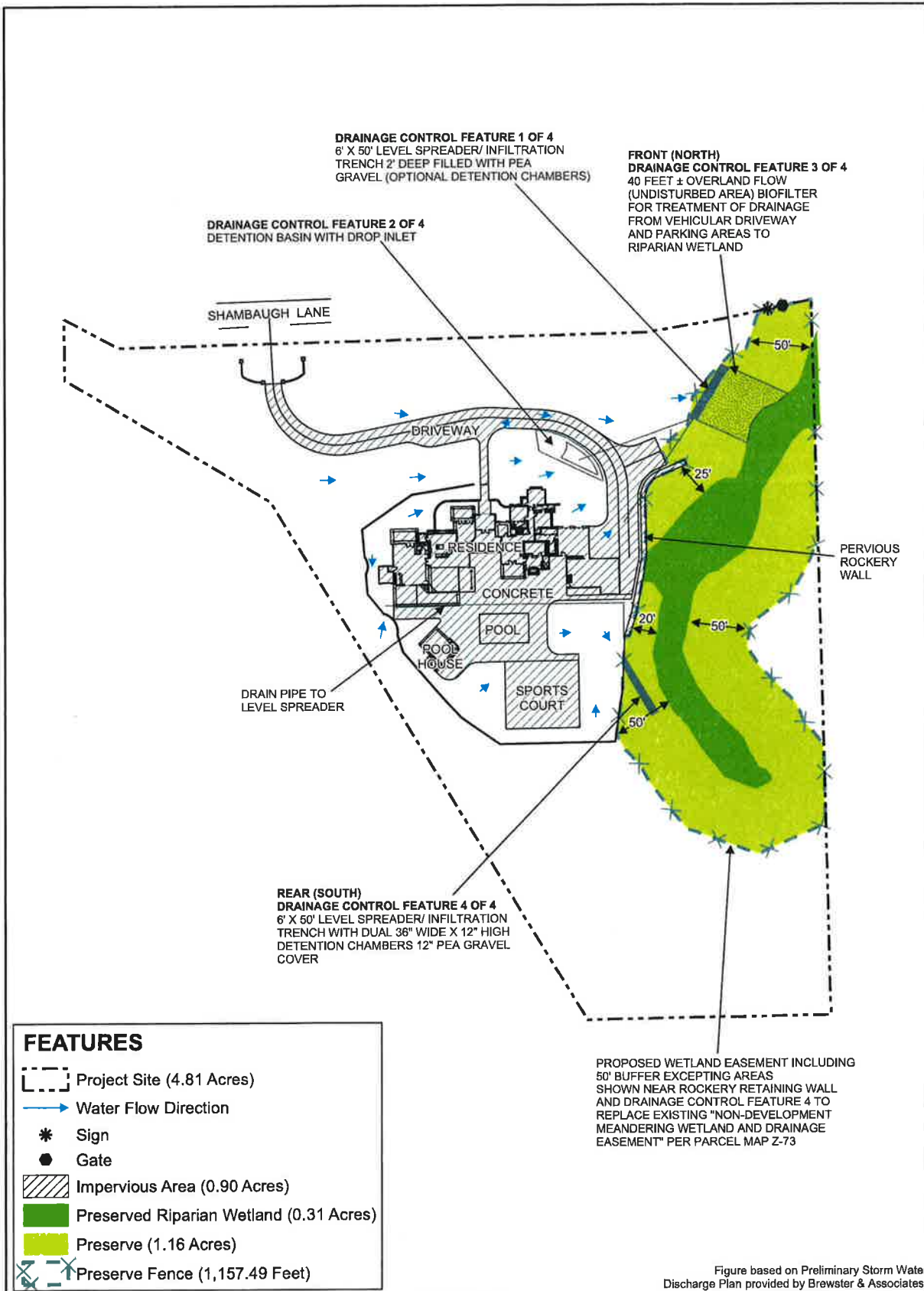
CONTRACTOR:
 GARY STARBUCK
 STARBUCK CONSTRUCTION INC
 P.O. BOX 2249
 GRANITE BAY, CA 95746
 (916) 773-3050 CELL (916) 531-3050

PRELIMINARY STORM WATER DISCHARGE PLAN AND AREA TABLES

ASSESSOR'S PARCEL NUMBER 046-040-090

LOT 5 MONTE CLAIRE SUBDIVISION UNIT NUMBER 2 (2-73)
 2700 MONTE CLAIRE LANE, LOOMIS, CALIFORNIA 95650

JOB NUMBER	T-10781	PROJECT NUMBER	
DRAWN BY	P.S. BREWSTER	SCALE	1 INCH = 100 FEET
DATE	AUGUST 10, 2011	SHEET NUMBER	SHEET 1 OF 1
			1 FOOT CONTOUR INTERVAL



MONTE CLAIRE ESTATES II LOT 5 PRESERVE





REPLY TO
ATTENTION OF

Att. 4

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922

November 21, 2011

Regulatory Division (SPK-2011-00441)

Mr. Michael Newman
2340 Clubhouse Drive
Rocklin, California 95765-5616

Dear Mr. Newman:

This letter of permission (LOP) authorizes your proposed activities in approximately 0.09 acres of waters of the United States, including wetlands, for the Lot 5 at Monte Claire Estates project. The project is located in Section 28, Township 11 North, Range 7 East, Mount Diablo Meridian, Latitude 38.778°, Longitude -121.197°, Town of Loomis, Placer County, California.

The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer. **Work in waters of the United States must be in accordance with the following conditions of authorization and the general LOP conditions listed in Attachment A, "General LOP Conditions":**

Special Conditions:

1. All terms and conditions of the November 17, 2011 Section 401 Water Quality Certification are expressly incorporated as conditions of this permit.

2. To mitigate for the loss of 0.09 acres of waters of the United States and indirect impacts to 0.24 acres of waters of the United States, you shall purchase 0.38 credits of seasonal wetland habitat at Toad Hill Mitigation Bank. Evidence of this purchase shall be provided to this office prior to initiation of construction activities within waters of the U.S.

3. You shall establish and maintain a 1.16-acre preserve containing 0.31 acres of preserved waters of the United States, as depicted on the exhibit entitled *Monte Claire Estates II Lot 5 Preserve, Figure 2*, dated November 15, 2011, in perpetuity. The purpose of this preserve is to insure that functions and values of the aquatic environment are protected.

4. You shall place the 1.16-acre preserve in a separate "preserve" parcel prior to discharging dredged or fill material into waters of the U.S.

5. Prior to initiation of construction activities within waters of the U.S., you shall implement the following measures to ensure long-term viability of the on-site preservation area:

a. Establish a fully-funded endowment to provide for maintenance and monitoring of the preserve parcel.

b. Record the conservation easement language, included as Attachment B of the November 17, 2011 revision of the *Monte Claire Estates II Lot 5 Preserve Management Plan*, maintaining the preserve parcel as wetland preserve and wildlife habitat in perpetuity.

c. Provide copies of the recorded documents to the Corps of Engineers no later than 30 days prior to the start of construction of any of the activities authorized by this permit.

6. To insure that the preserve is properly managed, you shall manage it in accordance with the November 17, 2011 revision of the *Monte Claire Estates II Lot 5 Preserve Management Plan*, prepared by Foothill Associates.

7. You shall record this LOP with the Registrar of Deeds or other official charged with the responsibility for maintaining records of title to or interest in real property against areas designated to be preserved as wildlife habitat.

8. To protect the integrity of the preserve and avoid unanticipated future impacts, no roads, utility lines, trails, benches, equipment or fuel storage, grading, firebreaks, mowing, grazing, planting, discing, pesticide use, burning, or other structures or activities shall be constructed or occur within the preservation area without specific, advance written approval from the Corps of Engineers.

9. To assure success of the preserve, you shall monitor the preserve as described in the final approved preserve management plan. This period shall commence upon completion of the authorized fill activity, but not later than one year after the initiation of fill activity. The primary focus of this monitoring shall be to assure that the preserve is successfully established and maintained as wetland and wildlife habitat and not adversely affected by surrounding development.

10. You shall submit monitoring reports to this office, by December 31st of each year.

11. You shall have a biologist, who is familiar with riparian wetland habitats; monitor all construction activities within 100 feet of the preserve boundary. The monitor shall ensure no unauthorized activities occur within the preserve boundary during project implementation.

12. The Grantee shall not assign its rights or obligations under the required conservation easement except to an organization/individual qualified to hold such interests under the applicable laws and committed to holding this easement exclusively for conservation purposes. The Corps shall be notified in writing of any intention to reassign the conservation easement to a new grantee and shall approve the selection of the grantee. The new grantee shall accept the assignment in writing and a copy of this acceptance shall be provided to the Corps. The conservation easement shall then be re-recorded and indexed in the same manner as any other instrument affecting title to real property. A copy of the newly recorded conservation easement shall be furnished to the Corps within 90 days of recordation.

13. You and your authorized contractor shall allow representatives from this office to inspect the authorized activity and all preservation and avoidance areas at any time deemed necessary to ensure that work is being or has been accomplished in accordance with the terms and conditions of this permit.

14. To prevent unauthorized fills and unforeseen impacts to avoided or adjacent waters, you shall install fencing and appropriate signage around the entire outer boundary of any required buffers and

avoided and preserved waters of the U.S. within the project area, prior to initiation of construction activities within waters of the U.S. All fencing surrounding the on-site preserve shall allow unrestricted visibility of these areas to discourage vandalism, destruction or disturbance, as well as enable wildlife passage. Examples of appropriate fencing include post-and-cable, wrought iron or similar type. The signage shall be placed at all access points into the preserve and shall contain the Corps identification number (SPK-2011-00441), contact information for the preserve manager and a statement that the site is a wetland preserve.

General Conditions:

1. The time limit for completing the work authorized by this permit ends on November 21, 2016. If you find that you need more time to complete the authorized activity, submit a request for time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of these requirements if you abandon the permitted activity. This permit may be transferred upon request provided the work complies with the terms and conditions of this authorization. When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. Should you wish to cease to maintain the authorized activity or abandon it without a good faith transfer, you must obtain a permit modification from this office.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register.

4. You must insure that the work complies with the conditions of Section 401 water quality certification for this project.

5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.


This letter contains a proffered permit for your proposed project. If you object to this decision, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this decision, submit a completed RFA form to the South Pacific Division Office at the following address: Mr. Tom Cavanaugh, Administrative Appeal Officer, Army Engineer District-South Pacific (CESPD-PDS-O), 1455 Market Street, San Francisco CA 94103-1399, Phone 415-503-6574, FAX 415-503-6646.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the NAP fact sheet. It is not necessary to submit an RFA for the Division Office if you do not object to the decision in this letter.

We appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing the customer survey on our website under *Customer Service Survey*. Please refer to identification number SPK-2011-00441 in any correspondence concerning this project. If you have any questions, please contact Mr. William Ness at our California North Branch Office, 1325 J Street, Room 1350, Sacramento, California 95814, or by email at: William.W.Ness@usace.army.mil, or by telephone 916-557-5268. For more information regarding our program, please visit our website at www.spk.usace.army.mil/regulatory.html.

For and on the behalf of Colonel William J. Leady, District Engineer.

Sincerely,


Nancy Arcady Haley
Chief, California North Branch

Enclosures

Copies Furnished without enclosures:

Mr. Ken Whitney, Foothill Associates, 590 Menlo Drive, Suite 1, Rocklin, California 95765-3724
Mr. Bob Hosea, Department of Fish and Game, 1701 Nimbus Road, Suite A, Rancho Cordova,
California 95670-4503
Ms. Genevieve Sparks, Central Valley Regional Water Quality Control Board, 11020 Sun Center
Drive #200, Rancho Cordova, California 95670-6114

ATTACHMENT A: General LOP Conditions

1. **Navigation.**
 - (a) No activity may cause more than a minimal adverse effect on navigation.
 - (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
 - (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by the LOP or other Corps permit.
6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to

impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration activities).

10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
11. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
13. **Temporary Fills.** Temporary fills must use only clean material and removed in their entirety and the affected areas returned to pre-construction elevations, contours and conditions within 45 days of activity completion. The affected areas must be revegetated with appropriate native plants.
14. **Utility lines.**
 - (a) Installation of a utility line must not be designed or constructed (e.g., backfilling technique) in such a manner as to drain waters of the U.S.
 - (b) Any trench constructed must be backfilled and returned to pre-activity contours and conditions. During construction, the top 6 –12 inches of topsoil must be removed and stockpiled separately. Following installation, the stockpiled topsoil will be replaced on top, and seeded with appropriate native vegetation.
 - (c) Material resulting from trench excavation may be temporarily sidecast into waters of the U.S. for no more than three months, provided the material is not placed in such a manner that it may be dispersed by currents or other forces.
15. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.
16. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
17. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
18. **Endangered Species.**
 - (a) No activity is authorized under LOP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under LOP which “may affect” a

- listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
- (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.
 - (c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.
 - (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the LOP.
 - (e) Authorization of an activity by LOP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

19. **Historic Properties.**

- (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
- (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.
- (c) Non-federal permittees must notify the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the notification must state which historic properties may be affected by the proposed work and include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research,

consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

- (d) The district engineer will notify the prospective permittee whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the applicant shall not begin work until notified by the Corps that Section 106 consultation is completed.
 - (e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.
20. **Designated Critical Resource Waters.** Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.
- (a) Discharges of dredged or fill material into waters of the United States are not authorized by LOP for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters, unless the district engineer, in coordination with appropriate resource agencies, determines that the impacts to the critical resource waters will be no more than minimal.
21. **Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:
- (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the activity site (i.e., on site).
 - (b) Mitigation, in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) is required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
 - (c) Compensatory mitigation at a minimum 2:1 ratio for permittee responsible or in-lieu fee, or a minimum of 1:1 at a Corps-approved compensatory mitigation bank is required for all losses of waters of the U.S., including wetlands. Because the likelihood of success is greater and the

- impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.
- (d) For development activities, unless specifically authorized by the Corps (e.g. discrete crossing, wetland fills, bank stabilization, stream and/or riparian habitat enhancement) as part of the activity, all intermittent and perennial streams, open waters, wetlands and other special aquatic sites within the site must be avoided and preserved with the following elements:
- i. A buffer, extending a minimum of 50-feet from either side of the ordinary high water mark of the stream, or to the limits of the FEMA-mapped 100-year floodplain, whichever is greater, or to the property boundary, is established and maintained. At the discretion of the District Engineer, this may not apply to linear activities with a narrow right-of-way perpendicular to the stream.
 - ii. Any trails, utilities, roads and other infrastructure, except specifically designated crossings and/or water quality/storm water management facilities, must be located outside of the prescribed buffer.
 - iii. All above ground crossing of stream must ensure fish passage, especially for anadromous fisheries. Permittees must employ bridge designs that span the stream or river, utilize pier or pile supported structures, or involve large bottomless culverts with a natural streambed, where the substrate and streamflow conditions approximate existing channel conditions. Approach fills in waters of the United States OHWM are not authorized except where avoidance has specifically been determined to be impracticable by the District.
 - iv. All detention or water quality basins must be constructed and sited outside of the stream and riparian area and the activity may not adversely affect pre-construction flows within the stream.
 - v. Channelization, piping, realignment or relocation of intermittent or perennial drainage(s) is not authorized except when, as determined by the District, it would result in no net loss of functions of the aquatic ecosystem within the watershed.
 - vi. Fencing and appropriate signage must be installed around the entire perimeter of the preserve and avoided wetlands. All fencing surrounding mitigation, preservation, avoidance, and buffer areas must allow unrestricted visibility of these areas to discourage vandalism or disposing of trash or other debris in these areas. Signage must contain the District's identification number, contact information for the preserve manager, if applicable, and a statement that the site is a preserve.
 - vii. To ensure proper management of the preserve(s), a specific and detailed preserve management plan for the preserve should be developed and submitted to the Corps. This plan must describe in detail any activities that are proposed within the preserve area(s) and the long term funding and maintenance of each of the preserve area(s).
 - viii. The permittee shall place wetlands, other aquatic areas, and any vegetative buffers preserved as part of mitigation for impacts into a separate "preserve" parcel prior to discharging dredged or fill material into waters of the United States, except where specifically determined to be impracticable by the District. Permanent legal protection shall be established for all preserve parcels, following District approval of the legal instrument.
- (e) Compensatory mitigation will not be used to increase the acreage impact or losses allowed by the LOP. However, compensatory mitigation will be used, as necessary, to ensure that an activity already meeting the established acreage limit also has minimal impacts.
- (f) Compensatory mitigation plans for activities in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of vegetated riparian areas next to open waters. In some cases, vegetated riparian areas may be the only compensatory mitigation required. Vegetated riparian areas should consist of native species. The width of the required vegetated riparian

area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area must be a minimum of 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

- (g) The permittee may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.
- (h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the activity to the minimal level.
- (i) The permittee shall complete compensatory mitigation required by special conditions of the LOP verification before or concurrent with construction of the authorized activity, except when specifically determined to be impracticable by the District. When compensatory mitigation involves use of a mitigation bank or in-lieu fee program, payment shall be made before commencing construction.
- (j) The permittee shall record the LOP with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property against areas (1) designated to be preserved as part of mitigation for authorized impacts, including any associated covenants or restrictions, or (2) where structures such as boat ramps or docks, marinas, piers, and permanently moored vessels will be constructed in or adjacent to navigable waters (Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act). The recordation shall also include a map showing the surveyed location of the authorized structure and any associated areas preserved to minimize or compensate for adverse impacts.

22. **Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified LOP's to be issued in this process, individual 401 Water Quality Certification must be obtained or waived. The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality. The activity must comply with any special case-specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification.

23. **Transfer of LOP's.** If the permittee sells the property associated with a LOP, the permittee may transfer the LOP to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the LOP and the name and all available contact information, including company name, addresses, telephone numbers and e-mail, must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this LOP are still in existence at the time the property is transferred, the terms and conditions of this LOP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this LOP and the associated liabilities associated with compliance with its terms and conditions, the transferee must sign and date below.”

(Transferee)

(Date)

24. **Compliance Certification.** Each permittee who received an LOP from the Corps must submit a signed certification regarding the completed work and any required mitigation within 45 days after completing construction activities. The certification form must be forwarded by the Corps with the LOP and will include:
 - (a) A statement that the authorized work was done in accordance with the LOP authorization, including any general or specific conditions;
 - (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
 - (c) The signature of the permittee certifying the completion of the work and mitigation.
25. **Single and Complete Activity.** The activity to be covered under an LOP must be a single and complete activity. Only one LOP may be used for the same single and complete activity.
26. **Inspection.** The permittee shall allow Corps representatives to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the LOP. The permittee will be notified in advance of an inspection.
27. **Bank Stabilization.** Any bank stabilization shall include the use of vegetation or other biotechnical design to the maximum extent practicable must be reviewed by the Corps on a case-by-case basis and may not qualify for LOP authorization, unless the Corps determines the impact would be minimal.
28. **Federal Agencies.** For activities undertaken by other federal agencies, the application shall include a copy of the National Environmental Policy Act, including signed Categorical Exclusion, document(s) and final agency determinations regarding compliance with Section 7 of the Endangered Species Act, Essential Fish Habitat under the Magnusson-Stevens Act, and Section 106 of the National Historic Preservation Act.
29. **Histosols and Fens.** LOP authorization is revoked for activities in histosols, fens, and in wetlands contiguous with fens. Fens are defined as slope wetlands with a histic epipedon that are hydrologically supported by groundwater. Fens are normally saturated throughout the growing season, although they may not be during drought conditions.
30. **Springs.** Activities proposed within 100 feet of the point of groundwater discharge of a natural spring must be reviewed by the Corps on a case-by-case basis and may not qualify for LOP authorization, unless the Corps determines the impact would be minimal. A spring source is defined as any location where ground water emanates from a point in the ground. For purposes of this condition, springs do not include seeps or other discharges which lack a defined channel.
31. **Lake Tahoe.** In the Lake Tahoe basin, proposed activities must be reviewed by the Corps on a case-by-case basis and may not qualify for LOP authorization. Activities in this area may also be authorized under Regional General Permit 16 or through a standard permit.



**California Regional Water Quality Control Board
Central Valley Region**

Katherine Hart, Chair



Matthew Rodriguez
Secretary for
Environmental
Protection

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

Edmund G. Brown Jr.
Governor

17 November 2011

Michael and Lisa Newman
2340 Clubhouse Drive
Rocklin, CA 95765

CERTIFIED MAIL
7010 1670 0002 0652 8731

**CLEAN WATER ACT §401 TECHNICALLY CONDITIONED WATER QUALITY
CERTIFICATION; MICHAEL AND LISA NEWMAN, MONTE CLAIRE ESTATES II, LOT 5
PROPERTY PROJECT (WDID#5A31CR00310), PLACER COUNTY**

This Order responds to your 27 October 2011 application submittal for the Water Quality Certification for construction of a private residence project permanently impacting approximately 0.10 acre and temporarily impacting approximately 0.02 acre of waters of the United States.

This Order serves as certification of United States Army Corps of Engineers' Letter of Permission permit (SPK#2010-00933) under the Clean Water Act Section 401, and a Waste Discharge Requirement under the Porter-Cologne Water Quality Control Act.

WATER QUALITY CERTIFICATION STANDARD CONDITIONS:

1. This Order serves as a Water Quality Certification (Certification) action that is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and §3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial Certification action shall be conditioned upon total payment of the full fee required under 23 CCR §3833, unless otherwise stated in writing by the certifying agency.
4. This Certification is valid for the duration of the described project. This Certification is no longer valid if the project (as currently described) is modified, or coverage under Section 404 of the Clean Water Act has expired.

California Environmental Protection Agency



5. All reports, notices, or other documents required by this Certification or requested by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) shall be signed by a person described below or by a duly authorized representative of that person.
 - a. For a corporation: by a responsible corporate officer such as (1) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function; (2) any other person who performs similar policy or decision-making functions for the corporation; or (3) the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor.
 - c. For a municipality, State, federal, or other public agency: by either a principal executive officer or ranking elected official.

6. Any person signing a document under Standard Condition number 5 shall make the following certification, whether written or implied:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

ADDITIONAL TECHNICAL CERTIFICATION CONDITIONS:

In addition to the above standard conditions, Michael and Lisa Newman shall satisfy the following:

1. Michael and Lisa Newman shall notify the Central Valley Water Board in writing 7 days in advance of the start of any work within waters of the United States or State. The notification should include the name of the project and the WDID number, and should be sent to the Central Valley Water Board Contact person indicated in this Certification.
2. Except for activities permitted by the United States Army Corps of Engineers under §404 of the Clean Water Act, soil, silt, or other organic materials shall not be placed where such materials could pass into surface water or surface water drainage courses.
3. All areas disturbed by project activities shall be protected from washout or erosion.
4. Michael and Lisa Newman shall maintain a copy of this Certification and supporting documentation (Project Information Sheet) at the Project site during construction for review by site personnel and agencies. All personnel (employees, contractors, and subcontractors) performing work on the proposed project shall be adequately informed and trained regarding the conditions of this Certification.
5. All temporarily affected areas will be restored to pre-construction contours and conditions upon completion of construction activities.

6. Michael and Lisa Newman shall perform surface water sampling: 1) when performing any in-water work; 2) in the event that project activities result in any materials reaching surface waters; or 3) when any activities result in the creation of a visible plume in surface waters. The monitoring requirements in Table 1 shall be conducted upstream out of the influence of the project, and within 300 feet of the work area. The sampling frequency may be modified for certain projects with written permission from Central Valley Water Board staff.

Table 1:

Parameter	Unit	Type of Sample	Minimum Sampling Frequency	Required Analytical Test Method
Turbidity	NTU	Grab ⁽¹⁾	Every 4 hours during in-water work	(2)
Settleable Material	ml/L	Grab ⁽¹⁾	Every 4 hours during in-water work	(2)
Visible construction related pollutants ⁽³⁾	Observations	Visual Inspections	Continuous throughout the construction period	—
Temperature	°F (or as °C)	Grab ⁽¹⁾	Every 4 hours during in-water work	(2)
pH	Standard Units	Grab ⁽¹⁾	Every 4 hours during in-water work	(2)
Dissolved Oxygen	mg/L & % saturation	Grab ⁽¹⁾	Every 4 hours during in-water work	(2)

⁽¹⁾ Grab sample shall not be collected at the same time each day to get a complete representation of variations in the receiving water.

⁽²⁾ Pollutants shall be analyzed using the analytical methods described in 40 CFR Part 136; where no methods are specified for a given pollutant, method shall be approved by Central Valley Water Board staff.

⁽³⁾ Visible construction-related pollutants include oil, grease, foam, fuel, petroleum products, and construction-related, excavated, organic or earthen materials.

A surface water monitoring report shall be submitted to the Central Valley Water Board Contact person indicated in this Certification within two weeks of initiation of sampling and every two weeks thereafter. In reporting the monitoring data, Michael and Lisa Newman shall arrange the data in tabular form so that the sampling locations, date, constituents, and concentrations are readily discernible. The data shall be summarized in such a manner to illustrate clearly whether the project complies with Certification requirements. The report shall include surface water sampling results and visual observations, certified laboratory reports, and chain of custody records, and calculations of the turbidity increase in the receiving water applicable to the natural turbidity conditions specified in the turbidity criteria below.

7. The Central Valley Water Board adopted a *Water Quality Control Plan for the Sacramento River and San Joaquin River*, Fourth Edition, revised September 2009 (Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Turbidity, settleable matter, temperature, pH, and dissolved oxygen limits are based on water quality objectives contained in the Basin Plan and required as part of this Certification.

8. Activities shall not cause turbidity increases in surface water to exceed:

- (a) where natural turbidity is less than 1 Nephelometric Turbidity Units (NTUs), controllable factors shall not cause downstream turbidity to exceed 2 NTUs;
- (b) where natural turbidity is between 1 and 5 NTUs, increases shall not exceed 1 NTU;
- (c) where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent;
- (d) where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs; and
- (e) where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

Except that these limits will be eased during in-water working periods to allow a turbidity increase of 15 NTUs over background turbidity as measured in surface waters at the downstream sampling location. In determining compliance with the above limits, appropriate averaging periods may be applied provided that beneficial uses will be fully protected. Averaging periods may only be assessed by prior approval of the Central Valley Water Board staff.

9. Activities shall not cause settleable matter to exceed 0.1 ml/L in surface waters as measured in surface waters within 300 feet downstream of the project.

10. Activities shall not cause temperature in surface waters to increase more than 5°F above natural receiving water temperature for waters with designated COLD or WARM beneficial uses.

11. Activities shall not cause pH to be depressed below 6.5 nor raised above 8.5 in surface water. Changes in normal ambient pH levels shall not exceed 0.5 in fresh waters with designated COLD or WARM beneficial uses.

12. Activities shall not cause dissolved oxygen to be reduced below 5.0 mg/L for waters designated with the WARM beneficial use, and 7.0 mg/L for waters designated with the COLD or SPWN beneficial uses, in surface water.

13. The discharge of petroleum products or other excavated materials to surface water is prohibited. Activities shall not cause visible oil, grease, or foam in the work area or within 300 feet of the work area. Michael and Lisa Newman shall notify the Central Valley Water Board immediately of any spill of petroleum products or other organic or earthen materials.

14. Michael and Lisa Newman shall notify the Central Valley Water Board immediately if the above criteria for turbidity, settleable matter, temperature, pH, or dissolved oxygen are exceeded.

15. Activities shall not cause degradation of waters of the State.

16. Michael and Lisa Newman shall comply with all California Department of Fish and Game requirements and recommendations, including, but not limited to, those requirements and recommendations described in Streambed Alteration Agreement No. 1600-2011-0101-R2, and any amendments or modifications to that agreement made by the California Department of Fish and Game.
17. The use of netting material (e.g., monofilament-based erosion blankets) that could trap aquatic dependent wildlife is prohibited within the project area, as indicated in the attached map (Figures 1 and 2).
18. Hydroseeding shall be performed with California native seed mix.
19. If surface water is diverted, Michael and Lisa Newman shall develop and submit a Surface Water Diversion and/or Dewatering Plan to the Central Valley Water Board Contact indicated in this Certification at least thirty (30) days prior to commencement of in-water construction. The plan shall include the proposed method and duration of diversion activities, structure configuration, construction materials, equipment, erosion and sediment controls, and a map or drawing indicating the location(s) of diversion and/or dewatering, and discharge points. The Surface Water Diversion and/or Dewatering Plan must be consistent with this Certification.
20. This Certification does not allow water diversion or removal of flow from the receiving water. This Certification is invalid if any water is permanent diverted or removed as a part of the project.
21. When work in the riparian wetland is unavoidable and any dam or other artificial obstruction is being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream, to maintain beneficial uses of the waters of the State below the dam. Construction, dewatering, and removal of temporary cofferdams shall not violate Conditions 8 through 12 of this Certification. If water quality criteria are exceeded, Michael and Lisa Newman shall notify the Central Valley Water Board immediately.
22. Any temporary dam or other artificial obstruction constructed shall only be built from clean materials such as sandbags, gravel bags, water dams, or clean/washed gravel which will cause little or no siltation. Stream flow shall be diverted using gravity flow through temporary culverts/pipes or pumped around the work site with the use of hoses.
23. Refueling of equipment within the floodplain or within 300 feet of the waterway is prohibited. If some critical equipment must be refueled within 300 feet of the waterway, strict spill prevention and countermeasures must be implemented to avoid spills. Refueling areas shall be provided with secondary containment including drip pans and/or placement of absorbent material. No hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, or other construction-related potentially hazardous substances should be stored within a floodplain or within 300 feet of a water body. Michael and Lisa Newman must perform frequent inspections of construction equipment prior to utilizing it near surface waters to ensure leaks from the equipment are not occurring and are not a threat to water quality.

24. Raw cement, concrete or washing thereof, asphalt, drilling fluids or lubricants, paint of other coating material, oil or other petroleum products, or any other substances which could be hazardous to fish and wildlife resulting from or disturbed by project-related activities, shall be prevented from contaminating the soil and/or entering waters of the United States or waters of the State.
25. Concrete must completely cured before coming into contact with waters of the United States and/or waters of the State. Waters of the United States and/or waters of the State that contacts wet concrete must be pumped out and disposed of at an appropriate off-site commercial facility which is authorized to accept concrete wastes.
26. During construction, silt fencing, straw wattles, or other effective management practices must be used along the construction zone to minimize soil or sediment along the embankments from migrating into the waters of the United States and/or waters of the State.
27. Work within the 5 acre project area shall be restricted to periods of low flow or no precipitation.
28. Under this Certification, the replacement, extension, modification, removal, repair, or installation of culverts is not permitted in the non-development meandering wetland and drainage easement and/or conservation easement.
29. All materials resulting from implementation of the project must be removed from the site and disposed of properly.
30. A minimum of a 50-foot buffer zone will need to be placed around the conservation easement from the property line and any structures on the project site to the maximum extent practicable.
31. The riparian vegetation within the buffer zone of the wetland and drainage channel within the project area shall be maintained to the maximum extent practicable.
32. The non-development and meandering wetland and drainage easement may only be modified, not abandoned. The modification of the non-development and meandering wetland and drainage easement may not alter the natural wetland drainage channel on the project site.
33. No grading is permitted within the non-development and meandering wetland and drainage easement, and no grading or placement of physical barriers is permitted in the conservation easement.
34. Michael and Lisa Newman must obtain coverage under the National Pollution Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities issued by the State Water Resources Control Board for this project that is disturbing an area of 1 acre or greater.
35. The Conditions in this Certification are based on the information in the attached "Project Information." If the information in the attached Project Information Sheet is modified or the project changes, this Certification is no longer valid until amended by the Central Valley Water Board.

36. The 2004 Mitigated Negative Declaration for the Tentative Subdivision Map is augmented by the conditions contained within this Certification to protect water quality and beneficial uses of the waters of the State. The conditions contained within this Certification pertain to biology, hydrology and water quality impacts, as required by California Public Resource Code Section 21081.6 and CEQA Guidelines, California Code of Regulations Section 15097.
37. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under State and Federal law. The applicability of any State law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to ensure compliance with this Certification.
 - (a) If Michael and Lisa Newman or a duly authorized representative of the project fails or refuses to furnish technical or monitoring reports, as required under this Certification, or falsifies any information provided in the monitoring reports, Michael and Lisa Newman are subject to civil liability, for each day of violation, and/or criminal liability.
 - (b) In response to a suspected violation of any condition of this Certification, the Central Valley Water Board may require Michael and Lisa Newman to furnish, under penalty of perjury, any technical or monitoring reports the Central Valley Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 - (c) Michael and Lisa Newman shall allow the staff(s) of the Central Valley Water Board, or an authorized representative(s), upon the presentation of credentials and other documents, as may be required by law, to enter the project premises for inspection, including taking photographs and securing copies of project-related records, for the purpose of assuring compliance with this Certification and determining the ecological success of the project.
38. Michael and Lisa Newman shall provide a Notice of Completion (NOC) no later than 30 days after the project completion. The NOC shall demonstrate that the project has been carried out in accordance with the project's description (and any amendments approved). The NOC shall include a map of the project location(s), including final boundaries of any in situ restoration area(s), if appropriate, and representative pre and post construction photographs. Each photograph shall include a descriptive title, date taken, photographic site, and photographic orientation.
39. Michael and Lisa Newman shall record an executed perpetual conservation easement grant with Placer County as proposed in the 401 Water Quality Certification application package dated 26 October 2011, and shall comply with United States Army Corps of Engineers and United States Fish and Wildlife Service and/or California Department of Fish and Game on-site compensatory mitigation requirements. The boundaries of the conservation easement shall be consistent with the United States Army Corps of Engineers' Preliminary Jurisdictional Determination dated 4 August 2010, and at the discretion of United States Army Corps of Engineers and United States Fish and Wildlife Service and/or California Department of Fish and Game. The recorded executed conservation easement shall be consistent with California Civil Code Sections 815-816.

40. Michael and Lisa Newman shall provide evidence of all on-site and off-site compensatory mitigation requirements, including, but not limited to, the purchase of mitigation credits and recordation of a perpetual conservation easement grant as required by United States Army Corps of Engineers and United States Fish and Wildlife Service and/or California Department of Fish and Game.

Compensatory mitigation must comply with the State of California's 1993 Wetlands Conservation Policy, which ensures no overall net loss of wetlands for impacts to waters of the State.

Evidence of meeting compensatory mitigation requirements of this project shall be provided to the Central Valley Water Board prior to proceeding with the activity authorized by this Certification.

Evidence of compliance with on-site compensatory mitigation requirements include providing a copy of the fully executed perpetual conservation easement grant recorded with Placer County to the Central Valley Water Board.

Evidence of compliance with off-site compensatory mitigation requirements include providing a letter from the United States Army Corps of Engineers or United States Fish and Wildlife Service approved compensatory mitigation bank. The letter must be (a) on the compensatory mitigation bank's letterhead; (b) signed by a authorized representative of the compensatory mitigation bank; (c) indicate the United States Army Corps of Engineers' SPK number, (d) describe the project name and location; and (e) detail the type of compensatory mitigation credits purchased for the project's impacts.

41. This Certification is effective after the Town of Loomis files the 2004 Mitigated Negative Declaration and a Notice of Determination with the State Clearinghouse. Non-fulfillment of this Condition deems this Certification invalid.

ADDITIONAL STORM WATER QUALITY CONDITIONS:

Michael and Lisa Newman shall also satisfy the following additional storm water quality conditions:

1. During the construction phase, Michael and Lisa Newman must employ strategies to minimize erosion and the introduction of pollutants into storm water runoff. These strategies must include the following:
 - (a) the Storm Water Pollution Prevention Plan must be prepared during the project planning and design phases and implemented, as appropriate, before construction; and
 - (b) an effective combination of erosion and sediment control Best Management Practices (BMPs) must be implemented and adequately working prior to the rainy season and during all phases of construction.
2. Michael and Lisa Newman must minimize the short and long-term impacts on receiving water quality from the Monte Claire Estates II, Lot 5 Project by implementing the following post-construction storm water management practices and as required by the local agency permitting the project, as appropriate:

- (a) minimize the amount of impervious surface;
- (b) reduce peak runoff flows;
- (c) provide treatment BMPs to reduce pollutants in runoff;
- (d) ensure existing waters of the State (e.g., wetlands, vernal pools, or creeks) are not used as pollutant source controls and/or treatment controls;
- (e) preserve and, where possible, create or restore areas that provide important water quality benefits, such as riparian corridors, wetlands, and buffer zones;
- (f) limit disturbances of natural water bodies and natural drainage systems caused by development (including development of roads);
- (g) identify and avoid development in areas that are particularly susceptible to erosion and sediment loss, or establish development guidance that protects areas from erosion/ sediment loss;
- (h) control post-development peak storm water run-off discharge rates and velocities to prevent or reduce downstream erosion, and to protect stream habitat.


CENTRAL VALLEY WATER BOARD CONTACT:

Genevieve Sparks, Environmental Scientist
11020 Sun Center Drive #200
Rancho Cordova, California 95670-6114
gsparks@waterboards.ca.gov
(916) 464-4745

WATER QUALITY CERTIFICATION:

I hereby issue an Order certifying that any discharge from the Michael and Lisa Newman, Monte Claire Estates II, Lot 5 Project (WDID#5A31CR00310) will comply with the applicable provisions of §301 ("Effluent Limitations"), §302 ("Water Quality Related Effluent Limitations"), §303 ("Water Quality Standards and Implementation Plans"), §306 ("National Standards of Performance"), and §307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Resources Control Board Water Quality Order No. 2003-0017 DWQ "Statewide General Waste Discharge Requirements For Dredged Or Fill Discharges That Have Received State Water Quality Certification (General WDRs)".

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with Michael and Lisa Newman's project description and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the *Water Quality Control Plan for the Sacramento River and San Joaquin River*, Fourth Edition, revised September 2009.


for Pamela C. Creedon
Executive Officer

Enclosure: Project Information

Attachments: Figure 1 – Project Location Map
Figure 2 – Site Plan Map

cc: See enclosure, page 15

PROJECT INFORMATION

Application Date: 27 October 2011

Applicant: Michael Newman
2340 Clubhouse Drive
Rocklin, CA 95765

Applicant Representatives: Krysten Shields
Foothill Associates
590 Menlo Drive, Suite 1
Rocklin, CA 95765

Project Name: Monte Claire Estates II, Lot 5 Project

Application Number: WDID#5A31CR00310

Type of Project: Construction of a Private Residence Project

Timeframe of Project Implementation: Work within the 5-acre project area shall be restricted to periods of low flow or no precipitation.

Project Location: Section 23, Township 11 North, Range 7 East, MDB&M. Latitude: 38°46'43.31" North and Longitude: -121°11'51.07" West

County: Placer County

Receiving Water(s) (hydrologic unit): Wetlands, unnamed tributaries to Secret Ravine, which drains into Dry Creek, Sacramento Hydrologic Basin, American River Hydrologic Unit #514.23, Folsom Reservoir HSA

Water Body Type: Riparian Wetland, Riverine Wetland Swale

Designated Beneficial Uses: The *Water Quality Control Plan for the Sacramento River and San Joaquin River*, Fourth Edition, revised September 2009 (Basin Plan) has designated beneficial uses for surface and ground waters within the region. Beneficial uses that could be impacted by the project include: Municipal and Domestic Water Supply (MUN); Agricultural Supply (AGR); Industrial Supply (IND), Hydropower Generation (POW); Groundwater Recharge (GWR), Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Spawning, Reproduction, and/or Early Development (SPWN); and Wildlife Habitat (WILD). A comprehensive and specific list of the Beneficial Uses applicable for the project area can be found at http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/

303(d) List of Water Quality Limited Segments: The wetlands, unnamed tributaries draining into Secret Ravine, Secret Ravine, and Dry Creek are the receiving waters for this project. The project does not impact an already impaired water body. The most recent list of approved water quality limited segments can be found at: http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml

Project Description: The approximately 1.25 acre Monte Claire Estates II, Lot 5 Project consists of constructing an approximately 7,800-square foot private residence, driveway, parking lot, sports court, pool, and maintenance building within the Monte Claire Estates II subdivision.

The project is located on a 5 acre lot within the unincorporated area of the Town of Loomis, in the southwestern portion of Placer County, as indicated on Figures 1 and 2. The wetlands and unnamed tributaries drain into Secret Ravine, which flow into Dry Creek. Secret Ravine provides the best opportunities for restoration of anadromous fish spawning areas within the Dry Creek Watershed.

A non-development and meandering wetland and drainage easement was established on the 5 acre lot as illustrated in the Subdivision Map for Monte Claire Unit 2, recorded with Placer County on 28 May 2004. The non-development and meandering wetland and drainage easement is approximately 0.40 acre in size.

On 4 August 2010, approximately 0.40 acre of waters of the United States was determined to be on the project site in a re-verification of prior wetland delineation completed in 2003. Of the approximately 0.40 acre of waters of the United States, approximately 0.35 acre was delineated as riparian wetland and approximately 0.05 acre as riverine wetland swale.

Permanent impacts to the waters of the United States result from a portion of the private residence will be constructed over the non-development and meandering wetland and drainage easement, and 290 cubic yards of clean fill. The proposed orientation of the private residence on the 5 acre lot will result in the fill of approximately 0.05 acre of riparian wetland and approximately 0.05 acre of riverine wetland swale. Approximately 0.30 acre of the non-development and meandering wetland and drainage easement will not be impacted and will be placed in a conservation easement as part of the on-site compensatory mitigation.

The eastern portion of the private residence and associated facilities will abut the conservation easement. The private residence and associated facilities will be partially separated from the conservation easement by a pervious rockery wall. The approximately 0.30 acre riparian wetland covered by the conservation easement will include a 50-foot buffer from the property line and any structures on the project site, to the maximum extent practicable.

To manage storm water runoff, a detention basin with a drop inlet will be installed along the inside of the driveway.

In addition, the approximately 0.30 acre riparian wetland within the conservation easement will be used as a detention basin for storm water runoff from the private residence and associated facilities. Storm water runoff from northern and southern portions of the property will be routed through two 6-foot wide, 50-foot long level spreader/infiltration trenches filled 2-feet deep with pea gravel drainage into the riparian wetland. Each level spreader/infiltration trench will drain into a biofilter for treatment of drainage prior to entering the wetland.

Compensatory mitigation for the impacts to the waters of the United States includes on-site and off-site components. For the on-site component of compensatory mitigation, the remaining approximately 0.30 acre of the non-development and meandering wetland and drainage easement will be placed into perpetual conservation easement, consistent with California Civil Code Sections 815-816.

Off-site compensatory mitigation will include the purchase of mitigation bank credits for approximately 0.10 acre of direct impacts and approximately 0.02 acre of indirect impacts from a United States Army Corps of Engineers or United States Fish and Wildlife Service approved mitigation bank.

The Monte Claire Estates II, Lot 5 Project will result in approximately 0.10 acre of permanent impacts and approximately 0.02 acre of temporary impacts to the waters of the United States.

Preliminary Water Quality Concerns: The Monte Claire Estates II, Lot 5 Property Project involves construction disturbing one (1) or more acres of land.

Potentially significant water quality impacts that may result from the project, including, but not be limited to the:

- (a) relocation or modification of a natural wetland drainage channel on-site;
- (b) increase in the amount of impervious surfaces within of the project site;
- (c) removal or reduction of riparian vegetation or other vegetation from the buffer zone of wetlands or drainages on or downstream of the project site;
- (d) implementation of construction activities resulting in temporary increases of turbidity and settleable matter on or downstream of the project site;
- (f) discharge of pollutants that exceed water quality standards set forth in the Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River*, Fourth Edition, revised September 2009; or
- (g) impairment of beneficial uses of a receiving water body.

Adherence with the conditions of this Certification will result in less than significant impacts to water quality by the Monte Claire Estates II, Lot 5 Project.

Proposed Mitigation to Address Concerns: Conditions to reduce potentially significant water quality impacts to a level of less than significant are included in this Certification.

Fill/Excavation Area: No soil, rock, or sediment will be removed from the 0.10 acre of waters of the United States.

Approximately 290 cubic yards of clean soil will be placed into 0.10 acre of waters of the United States.

Dredge Volume: None

United States Army Corps of Engineers File Number: SPK# 2010-00933

United States Army Corps of Engineers Permit Number: Michael and Lisa Newman applied with the United States Army Corps of Engineers for a Letter of Permission on 22 August 2011.

California Department of Fish and Game Streambed Alteration Agreement:
1600-2011-0101-R2

Possible Listed Species: Swainson's hawk, Burrowing owl, Giant garter snake, Vernal pool fairy shrimp, Vernal pool tadpole shrimp, Valley elderberry longhorn beetle, Bogg's Lake hedge-hyssop, Slender orcutt grass

Status of CEQA Compliance: The Town of Loomis approved the Mitigated Negative Declaration on 20 January 2004 for the #03-10 Monte Claire Unit 2 Tentative Subdivision Map. A Notice of Determination was filed by the Town of Loomis with the Placer County Clerk's Office on 2 March 2004.

As a Responsible Agency under California Environmental Quality Act, the Central Valley Water Board reviewed the Mitigated Negative Declaration.

As augmented by the conditions to protect water quality and beneficial uses of the waters of the State contained within this Certification, the mitigation measures pertaining to biology, hydrology and water quality specified in the approved Mitigated Negative Declaration for the project, the Central Valley Water Board found that impacts to water quality were adequately addressed.

Mitigation for impacts to water quality is discussed in the "Proposed Mitigation to Address Concerns" section above, and the "Compensatory Mitigation" section below.

With regard to the remaining impacts identified in the Mitigated Negative Declaration, the corresponding mitigation measures proposed are within the responsibility and jurisdiction of another public agency, and not within the jurisdiction of the Central Valley Water Board.

Compensatory Mitigation: As required by the United States Army Corps of Engineers, United States Fish and Wildlife Service, and/or the California Department of Fish and Game, Michael and Lisa Newman will comply with all compensatory mitigation requirements for impacts to the waters of the United States and/or waters of the State, and other impacts.

The Central Valley Water Board is not requesting compensatory mitigation for the Monte Claire Estates II, Lot 5 Project.

Evidence of this purchase shall be provided to the Central Valley Water Board prior to proceeding with the activity authorized by this permit.

Application Fee Provided: Total fees of \$888.00 have been submitted to the Central Valley Water Board as required by 23 CCR §3833b(3)(A) and by 23 CCR §2200(e).

DISTRIBUTION LIST

Will Ness
United States Army Corp of Engineers
Sacramento District Office
Regulatory Division
650 Capitol Mall, Suite 5-200
Sacramento, CA 95814-4708

Bob Hosea
Department of Fish and Game
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670

Bill Jennings
CA Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204

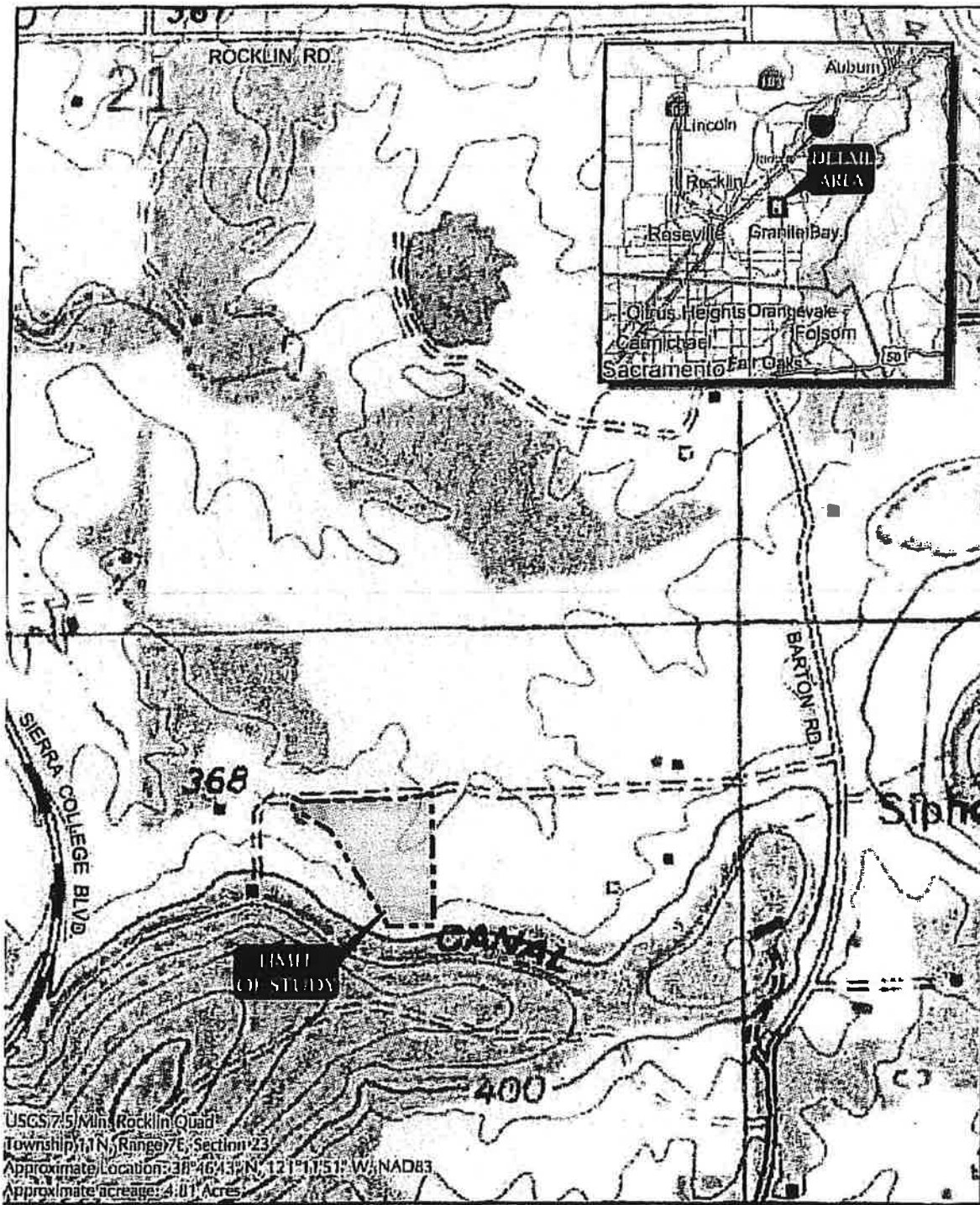
(Electronic copy only) Bill Orme
State Water Resources Control Board
401 Certification and Wetlands Unit Chief

(Electronic copy only) Dave Smith
Wetlands Section Chief (W-3)
United States Environmental Protection Agency

Matt Lopez, Interim Planning Director
Town of Loomis
3665 Taylor Road
Loomis, CA 95660

Krysten Shields
Foothill Associates
590 Menlo Drive, Suite 1
Rocklin, CA 95765

Figure 1 – Project Location Map



Source: Figure 1, Site and Vicinity Map, by Foothill Associates, dated 29 March 2011, provided in the 401 Water Quality Certification application package dated 26 October 2011.

CALIFORNIA DEPARTMENT OF FISH AND GAME

North Central Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670-4599
916-358-2900



Streambed Alteration Agreement
Notification No. 1600-2011-0101 -R2
Unnamed seasonal drainage
Michael Newman
Monte Claire Estates Lot 5

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Game (DFG) and Michael Newman (Permittee).

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified DFG on 23 May 2011 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, DFG has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located at an unnamed seasonal drainage and associated wetland, in the County of Placer, State of California; Latitude 38 degrees 46 minutes 43.31 seconds North, Longitude 121 degrees 11 minutes 51.07 seconds West.

PROJECT DESCRIPTION

The project is limited to fill of 0.09 acres of unnamed seasonal drainage and associated wetland for purposes of construction of residence and associated out buildings and facilities. Twenty one trees are slated for removal, 9 of which are diseased or damaged and in need of removal.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: amphibians, and other aquatic and terrestrial plant and wildlife species.

The adverse effects the project could have on the fish or wildlife resources identified above include: permanent loss of habitat; temporary increase in turbidity in affiliated

seasonal and year-round waterways due to increases in sediment runoff from disturbed soils during the seasonal rains.

STREAM ZONE DEFINED

The Stream Zone comprises all components of a stream, including the channel, bed, banks, and floodplains. The Stream Zone is the land, including vegetation, that bounds a lake or the channel of a stream and that defines the lateral extent of their waters.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to DFG personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify DFG if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, DFG shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that DFG personnel may enter the project site to verify compliance with the Agreement. DFG personnel may only enter the project site when it is safe to do so. When appropriate, DFG personnel shall contact the Permittee prior to entering the construction area.
- 1.5 Authorized Work. The notification, together with all supporting documents submitted with the notification, is hereby incorporated into this agreement to describe the location and features of the proposed project. The Permittee agrees that all work shall be done as described in the notification and supporting documents, incorporating all project modifications, wildlife resource protection features, mitigation measures, and provisions as described in this agreement. Where apparent conflicts exist between the notification and the provisions listed in this agreement, the Permittee shall comply with the provisions listed in this

Initials: 

agreement. The Permittee further agrees to notify DFG of any modifications made to the project plans submitted to DFG. At the discretion of DFG, this agreement will be amended to accommodate modifications to the project plans submitted to DFG and/or new project activities.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

- 2.1 Work Period. The time period for completing the work within the stream zone shall be restricted to periods of low stream flow and dry weather. Construction activities shall be timed with awareness of precipitation forecasts and likely increases in stream flow. Construction activities within the stream zone shall cease until all reasonable erosion control measures, inside and outside of the stream zone, have been implemented prior to all storm events. Revegetation, restoration and erosion control work is not confined to this time period.
- 2.2 Work Period Extensions. At DFG's discretion, the work period may be extended based on the extent of the work remaining, on site conditions and reasonably anticipated future conditions. If the Permittee finds more time is needed to complete the authorized activity, the Permittee shall submit a written request for a work period time extension to DFG. The work period extension request shall provide the following information: 1) Describe the extent of work already completed; 2) Provide specific detail of the activities that remain to be completed within the stream zone; and 3) Detail the actual time required to complete each of the remaining activities within the stream zone. The work period extension request should consider the effects of increased stream conditions, rain delays, increased erosion control measures, limited access due to saturated soil conditions, and limited growth of erosion control grasses due to cool weather. Photographs of the work completed and the proposed work areas are helpful in assisting DFG in its evaluation. Time extensions are issued at the discretion of DFG. DFG will have ten calendar days to approve the proposed work period extension. DFG reserves the right to require additional measures designed to protect natural resources.
- 2.3 Stream Diversions / Dewatering. If work in the flowing portion of the stream is unavoidable, the entire stream flow shall be diverted around or through the work area during the excavation and/or construction operations. Stream flow shall be diverted using gravity flow through temporary culverts/pipe's or pumped around the work site with the use of hoses. When any dam or other artificial obstruction is being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream to maintain aquatic life below the dam pursuant to Fish and Game Code section 5937. The temperature of the diverted water will not be allowed to become elevated such that it may be deleterious to aquatic organisms downstream. The dissolved oxygen concentration of the diverted water will not be allowed to drop to a level that may be deleterious to

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downstream aquatic life. Any temporary dam or other artificial obstruction constructed shall only be built from clean materials such as sandbags, gravel bags, water dams, or clean/washed gravel which will cause little or no siltation.

- 2.4 **Bird Nests.** It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird except as otherwise provided by the Fish and Game Code. No trees that contain active nests of birds shall be disturbed until all eggs have hatched and young birds have fledged without prior consultation and approval of a Department representative. If construction is scheduled during the breeding season then a breeding bird survey will be conducted no more than 15 days prior to the start of construction by a Department approved biologist. All active bird nests will be marked following the survey to avoid destruction by equipment. If nesting raptors are identified within the area, a non-disturbance buffer will be established around the nest site. The size of the non-disturbance buffer and any other restrictions will be determined through consultation with the Department following completion of the survey.
- 2.5 **Vegetation Removal.** Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. Except for the trees specifically identified for removal in the notification, no native trees with a trunk diameter at breast height (DBH) in excess of four (4) inches shall be removed or damaged without prior consultation and approval of a Department representative. Using hand tools (clippers, chain saw, etc.), trees may be trimmed to the extent necessary to gain access to the work sites. All cleared material/vegetation shall be removed out of the riparian/stream zone.
- 2.6 **Sediment Control.** Precautions to minimize turbidity/siltation shall be taken into account during project planning and implementation. This may require the placement of silt fencing, coir logs, coir rolls, straw bale dikes, or other siltation barriers so that silt and/or other deleterious materials are not allowed to pass to downstream reaches. Passage of sediment beyond the sediment barrier(s) is prohibited. If any sediment barrier fails to retain sediment, corrective measures shall be taken. The sediment barrier(s) shall be maintained in good operating condition throughout the construction period and the following rainy season. Maintenance includes, but is not limited to, removal of accumulated silt and/or replacement of damaged silt fencing, coir logs, coir rolls, and/or straw bale dikes. **The use of monofilament netting based erosion control blankets is prohibited within the stream zone or associated riparian areas.** The Permittee is responsible for the removal of non-biodegradable silt barriers (such as plastic silt fencing) or the netting surrounding coir logs and/or rolls, after the disturbed areas have been stabilized with erosion control vegetation (usually after the first growing season). Upon Department determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation shall be halted until effective Department approved control devices are installed or abatement procedures are initiated.

Initials: 

2.7 Pollution Control. Utilize Best Management Practices (BMPs) to prevent spills and leaks into water bodies. If maintenance or refueling of vehicles or equipment must occur on-site, use a designated area and/or a secondary containment, located away from drainage courses to prevent the runoff of storm water and the runoff of spills. Ensure that all vehicles and equipment are in good working order (no leaks). Place drip pans or absorbent materials under vehicles and equipment when not in use. Ensure that all construction areas are covered by a site-wide spill response plan and have proper spill clean up materials (absorbent pads, sealed containers, booms, etc.) to contain the movement of any spilled substances. Any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. Any of these materials, placed within or where they may enter a stream or lake by the Applicant or any party working under contract or with the permission of the Permittee, shall be removed immediately. DFG shall be notified immediately by the Permittee of any spills and shall be consulted regarding clean-up procedures.

3. Compensatory Measures

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

3.1 Site Restoration. All exposed/disturbed areas and access points within the stream zone left barren of vegetation as a result of the construction activities shall be restored using locally native grass seeds, locally native grass plugs and/or a mix of quick growing sterile non-native grass with locally native grass seeds. Seeded areas shall be covered with broadcast straw and/or jute netting (**monofilament erosion blankets are not authorized**). Riparian trees and native shrubs removed as a result of construction activities shall be mitigated on site to maximum extent possible.

3.2 Purchase of Mitigation Credits. The project proponent will purchase mitigation credits through an approved mitigation bank for impacts to 0.09 acres or will make an in-lieu fee payment as compensation for the projected impacts. The project proponent will submit proof of either the in-lieu fee or purchase of the mitigation credits to the Department prior to the Department's execution of this agreement.

4. Reporting Measures

Permittee shall meet each reporting requirement described below.

4.1 The Permittee shall notify DFG within two working days of beginning work within the stream zone of an unnamed seasonal drainage and associated wetland. Notification shall be submitted as instructed in Contact Information section below. Email notification is preferred.

Initials: 

- 4.2 Upon completion of the project activities described in this agreement, the work area within the stream zone shall be digitally photographed. Photographs shall be submitted to DFG within two days of completion. Photographs and project commencement notification shall be submitted as instructed in Contact Information section below. Email submittal is preferred.

CONTACT INFORMATION

Any communication that Permittee or DFG submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or DFG specifies by written notice to the other. Refer to the project's Notification Number when submitting documents to DFG.

To Permittee:

Michael Newman
2340 Clubhouse Drive
Rocklin, CA 95765
(916) 848-0241
mnewman@abc-seniors.com

To DFG:

Department of Fish and Game
North Central Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670
Attn: Lake and Streambed Alteration Program
Notification #1600-2011-0101 R2
Fax: 916-358-2912
bhosea@dfg.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute DFG's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

Initials 

SUSPENSION AND REVOCATION

DFG may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before DFG suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before DFG suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused DFG to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes DFG from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects DFG's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

The Permittee shall notify DFG where conflicts exist between the provisions of this agreement and those imposed by other regulatory agencies. Unless otherwise notified, the Permittee shall comply with the provision that offers the greatest protection to water quality, species of special concern and/or critical habitat.

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

Initials: 

AMENDMENT

DFG may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by Permittee and DFG.

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter DFG approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to DFG a completed DFG "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). DFG shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of DFG's signature, which shall be: 1) after Permittee's signature; 2) after DFG complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire five years from the date of DFG signature, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any

Initials: 


provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

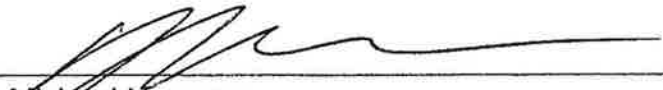
This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify DFG in accordance with FGC section 1602.

Initials. 

CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR MICHAEL NEWMAN



Michael Newman
Property Owner



Date

FOR DEPARTMENT OF FISH AND GAME



Kent Smith
Regional Manager

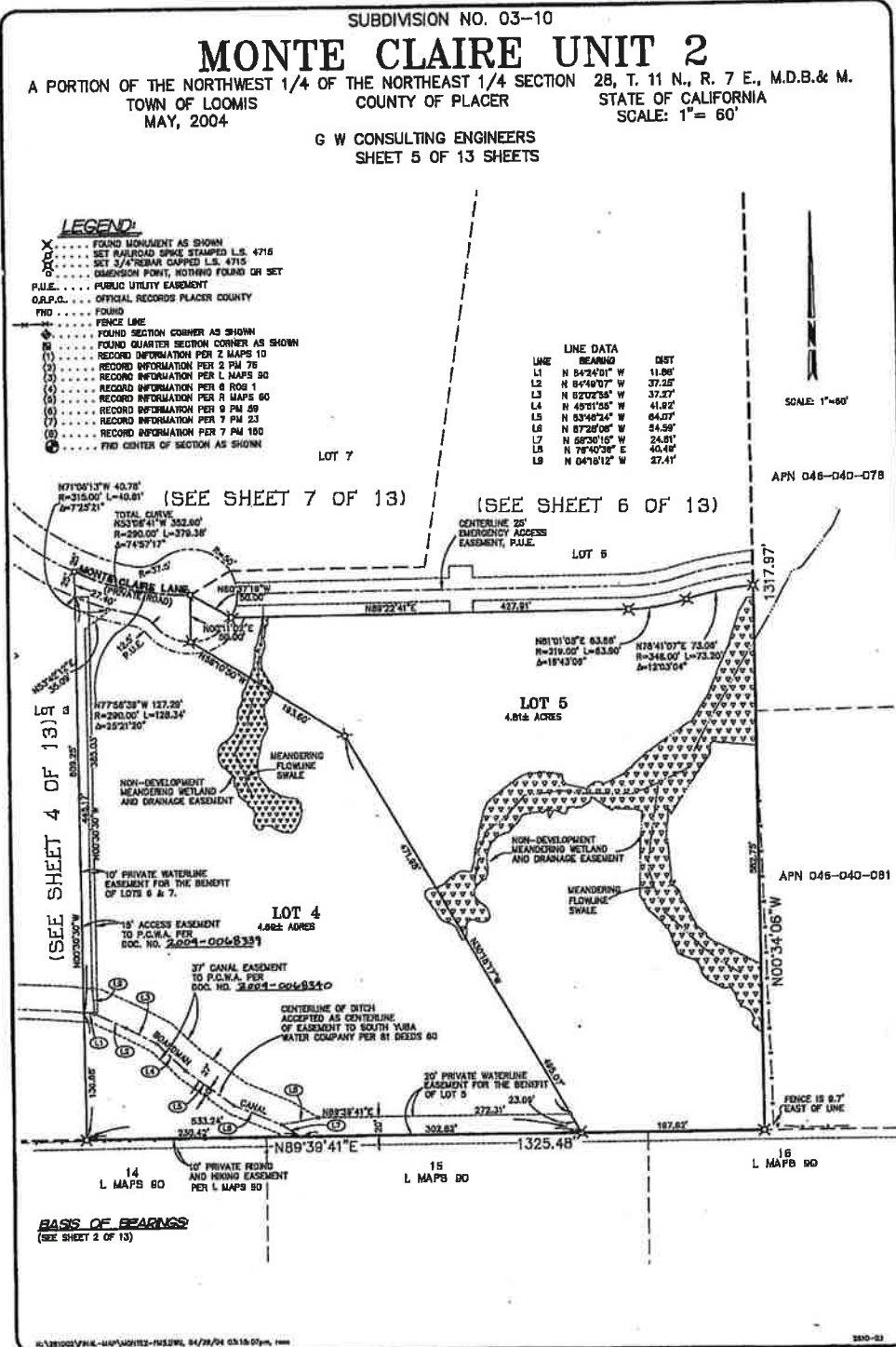


Date

Prepared by: Bob Hosea
Environmental Scientist

Initials: 

AT.5



SUBDIVISION NO. 03-10

MONTE CLAIRE UNIT 2

A PORTION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 SECTION 28, T. 11 N., R. 7 E., M.D.B. & M.
COUNTY OF PLACER STATE OF CALIFORNIA
MAY, 2004

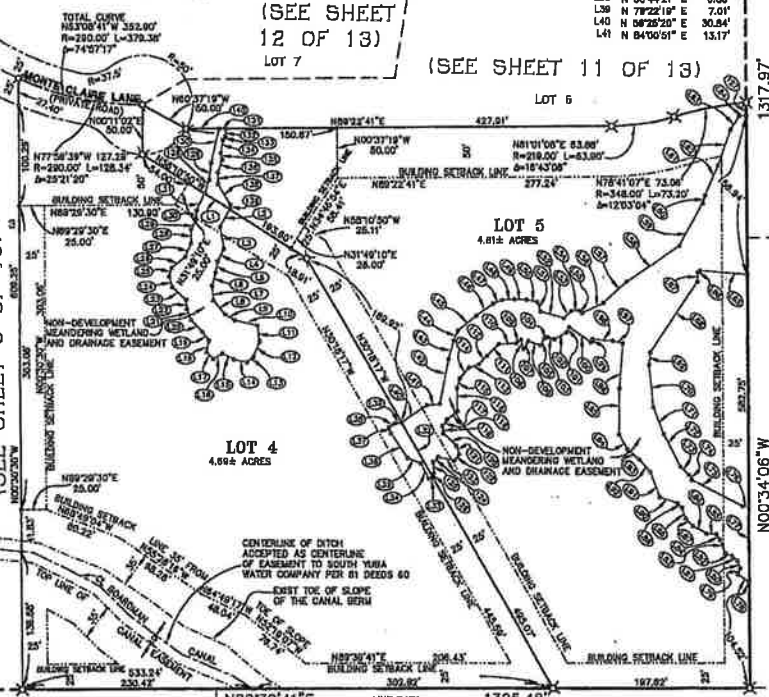
G W CONSULTING ENGINEERS
SHEET 10 OF 13 SHEETS

INFORMATIONAL SHEET ONLY

THIS SHEET CONTAINS ADDITIONAL INFORMATION TO BE RECORDED IN CONFORMANCE WITH SECTION 66434.2 OF THE SUBDIVISION MAP ACT. THE ADDITIONAL INFORMATION SHOWN ON THIS SHEET IS FOR INFORMATIONAL PURPOSES, DESCRIBING CONDITIONS AS OF THE DATE OF FILING AND IS NOT INTENDED TO AFFECT RECORD TITLE INTEREST. THE INFORMATION IS DERIVED FROM PUBLIC RECORDS OR REPORTS AND DOES NOT IMPLY THE CORRECTNESS OR SUFFICIENCY OF THOSE RECORDS OR REPORTS BY THE PREPARER OF THIS ADDITIONAL INFORMATION SHEET.

LINE	BEARING	DIST
L1	N 86°10'50" W	28.80'
L2	N 28°21'41" E	18.80'
L3	N 10°03'32" E	21.87'
L4	N 28°15'48" E	14.06'
L5	N 11°03'48" E	11.15'
L6	N 13°45'44" E	14.08'
L7	N 05°24'59" W	18.08'
L8	N 40°28'18" W	18.12'
L9	N 58°11'30" W	11.34'
L10	N 77°17'58" W	22.00'
L11	N 09°13'43" W	18.40'
L12	N 22°42'22" E	16.57'
L13	N 48°28'54" E	8.66'
L14	N 78°00'33" W	13.40'
L15	N 61°02'08" W	12.89'
L16	N 59°06'48" E	10.80'
L17	N 44°54'48" W	9.70'
L18	N 11°03'28" E	19.05'
L19	N 38°11'01" W	10.81'
L20	N 42°22'48" W	18.07'
L21	N 21°43'07" W	11.49'
L22	N 05°09'27" W	8.72'

LINE	BEARING	DIST
L42	N 10°42'10" E	48.41'
L43	N 18°21'15" E	18.80'
L44	N 21°50'07" E	10.48'
L45	N 51°17'59" E	24.08'
L46	N 54°01'08" E	21.05'
L47	N 87°00'21" E	9.47'
L48	N 85°50'17" E	13.92'
L49	N 87°47'09" E	12.37'
L50	N 79°28'29" E	11.53'
L51	N 18°33'24" E	10.52'
L52	N 74°39'22" E	23.91'
L53	N 48°28'01" E	10.85'
L54	N 80°02'25" E	7.05'
L55	N 56°30'10" E	4.37'
L56	N 84°07'37" E	23.84'
L57	N 47°17'00" E	31.60'
L58	N 58°27'45" E	64.14'
L59	N 28°54'02" E	47.25'
L60	N 18°28'12" E	8.34'
L61	N 33°28'57" E	33.33'
L62	N 18°40'02" E	37.41'
L63	N 31°07'54" E	16.90'
L64	N 38°21'12" E	21.01'
L65	N 85°33'34" E	47.05'
L66	N 83°48'32" W	2.94'
L67	N 01°28'24" E	9.58'
L68	N 27°04'42" E	38.83'
L69	N 05°43'10" E	42.28'
L70	N 22°36'19" E	24.05'
L71	N 27°04'42" E	38.83'
L72	N 48°34'53" E	12.40'
L73	N 27°10'18" E	8.08'
L74	N 02°42'22" E	58.98'
L75	N 37°45'58" E	88.28'
L76	N 03°34'58" E	76.10'
L77	N 64°35'54" W	13.92'
L78	N 23°28'57" E	8.23'
L79	N 23°42'25" E	8.38'
L80	N 49°33'34" E	7.27'
L81	N 66°43'11" W	6.84'
L82	N 21°22'28" W	14.93'
L83	N 33°28'13" E	6.13'
L84	N 58°11'01" E	6.42'
L85	N 61°32'43" E	15.74'
L86	N 44°21'37" W	10.88'
L87	N 18°32'47" W	11.31'
L88	N 48°31'58" W	6.17'
L89	N 70°14'10" W	19.07'
L90	N 21°18'11" W	26.58'
L91	N 41°43'23" W	16.23'
L92	N 41°43'23" W	16.23'
L93	N 30°13'24" W	17.65'
L94	N 00°28'02" E	45.22'
L95	N 03°59'08" E	45.33'
L96	N 78°41'18" E	10.33'
L97	N 86°02'02" E	20.82'
L98	N 23°51'3" E	3.31'
L99	N 58°20'04" W	28.73'
L100	N 28°21'05" E	8.74'
L101	N 80°09'08" W	14.18'
L102	N 72°44'28" W	6.81'
L103	N 70°36'24" W	3.89'
L104	N 28°31'18" W	7.45'
L105	N 72°32'50" W	13.38'
L106	N 32°32'01" W	9.18'
L107	N 15°10'03" W	8.99'
L108	N 87°34'45" W	8.92'
L109	N 87°10'18" W	17.35'
L110	N 44°32'07" W	16.81'
L111	N 42°08'40" W	12.25'
L112	N 21°43'24" W	13.23'
L113	N 21°43'24" W	13.23'
L114	N 39°37'27" W	14.24'
L115	N 18°28'02" W	9.91'
L116	N 01°48'22" W	22.87'
L117	N 81°45'18" W	11.54'
L118	N 33°34'28" W	7.81'
L119	N 06°28'52" E	7.39'
L120	N 47°08'15" E	18.18'
L121	N 17°12'03" E	8.05'
L122	N 38°28'47" E	7.74'
L123	N 78°41'28" W	18.37'
L124	N 47°04'18" W	7.16'
L125	N 03°45'18" E	11.54'
L126	N 12°02'22" W	4.48'
L127	N 002°00'0" W	13.46'
L128	N 18°09'28" E	14.24'



LINE	BEARING	DIST	LINE	BEARING	DIST
L129	N 08°11'01" E	18.81'	L133	N 13°27'58" W	8.83'
L130	N 13°07'33" E	34.99'	L134	N 18°41'06" E	13.17'
L131	N 82°32'41" E	6.67'	L135	N 01°54'34" W	11.67'
L132	N 04°07'51" E	7.43'	L136	N 30°54'00" W	23.49'
L133	N 27°27'42" E	4.65'	L137	N 42°17'18" E	4.82'
L134	N 10°32'00" E	12.75'	L138	N 82°22'41" E	32.81'

NOTES:

1. THE PROPERTY WITHIN THIS SUBDIVISION IS LOCATED WITHIN 1,000 FEET OF LAND UTILIZED OR ZONED FOR AGRICULTURAL OPERATIONS AND RESIDENTS/OCCUPANTS OF THE PROPERTY MAY BE SUBJECT TO INCONVENIENCE OR DISCOMFORT ARISING FROM USE OF AGRICULTURAL CHEMICALS, INCLUDING, BUT NOT LIMITED TO, AGROBIKES, FERTILIZERS, FUNGICIDES, HERBICIDES, PESTICIDES, PREDATORS, AND RODENTICIDES, AND FROM PURSUIT OF AGRICULTURAL OPERATIONS, INCLUDING, BUT NOT LIMITED TO, CROP PROTECTION, CULTIVATION, HARVESTING, FLOWING, PROCESSING, PACKING, SHIPPING, SPREADING, AND ANIMAL KEEPING AND RELATED ACTIVITIES WHICH MAY GENERATE DUST, LIGHT, NOISE, OIL, SMOKE, AND TRAFFIC. THE TOWN HAS ADOPTED POLICIES TO ENCOURAGE AND PRESERVE AGRICULTURAL LANDS AND OPERATIONS WITHIN AND IN THE VICINITY OF THE TOWN. RESIDENTS/OCCUPANTS OF PROPERTY WITHIN THIS SUBDIVISION SHOULD BE PREPARED TO ACCEPT INCONVENIENCE OR DISCOMFORT AS NORMAL AND NECESSARY TO AGRICULTURAL OPERATIONS.
2. THE NON-DEVELOPMENT MEANDERING WETLAND AND DRAINAGE EASEMENT AREAS ALLOW FOR THE FLOW OF DRAINAGE WATERS THROUGH THE WATERS/MEANDERING AREAS UNDER THE JURISDICTION OF THE U.S. ARMY CORPS OF ENGINEERS. THE EXACT LOCATION OF THE MEANDERING WETLAND AND DRAINAGE EASEMENT MAY CHANGE NATURALLY FROM TIME TO TIME. PRIOR TO ANY CHANGES TO THE NON-DEVELOPMENT MEANDERING WETLAND AND DRAINAGE EASEMENT AREAS, THE PROPERTY OWNER MUST OBTAIN THE APPROVAL OF THE TOWN OF LOOMIS. ANY CHANGES MADE TO BE CONSISTENT WITH THE CURRENT REGULATIONS OF THE U.S. ARMY CORPS OF ENGINEERS, U.S. FISH AND WILDLIFE SERVICE AND CALIFORNIA DEPARTMENT OF FISH AND GAME. WITHIN THE NON-DEVELOPMENT MEANDERING WETLAND AND DRAINAGE EASEMENT AREAS THERE SHALL BE NO GRADING, FILLING OR CONSTRUCTION OF ANY STRUCTURES EXCEPT AS APPROVED BY THE TOWN OF LOOMIS. THESE SHALL BE NO TEMPORARY OR PERMANENT STORAGE OF MATERIALS OR EQUIPMENT AND NO DUMPING OF TRASH, LAWN OR GARDEN CLIPPINGS, OIL, CHEMICALS OR OTHER TOXIC MATERIALS, TRASH OR OTHER MAINTENANCE ACTIVITIES ARE ALLOWED FOR THE PROTECTION, THE ELIMINATION OF OBSTACLES OR DEAD GROWTH, AND FOR TRIMMING AS NECESSARY TO MAINTAIN DRAINAGE.

ATT. 6

Monte Claire Estates II Lot 5 Preserve Management Plan

Placer County, California

Prepared for:

Michael and Lisa Newman

October 28, 2011

Revised: November 17, 2011

Updated: December 12, 2011

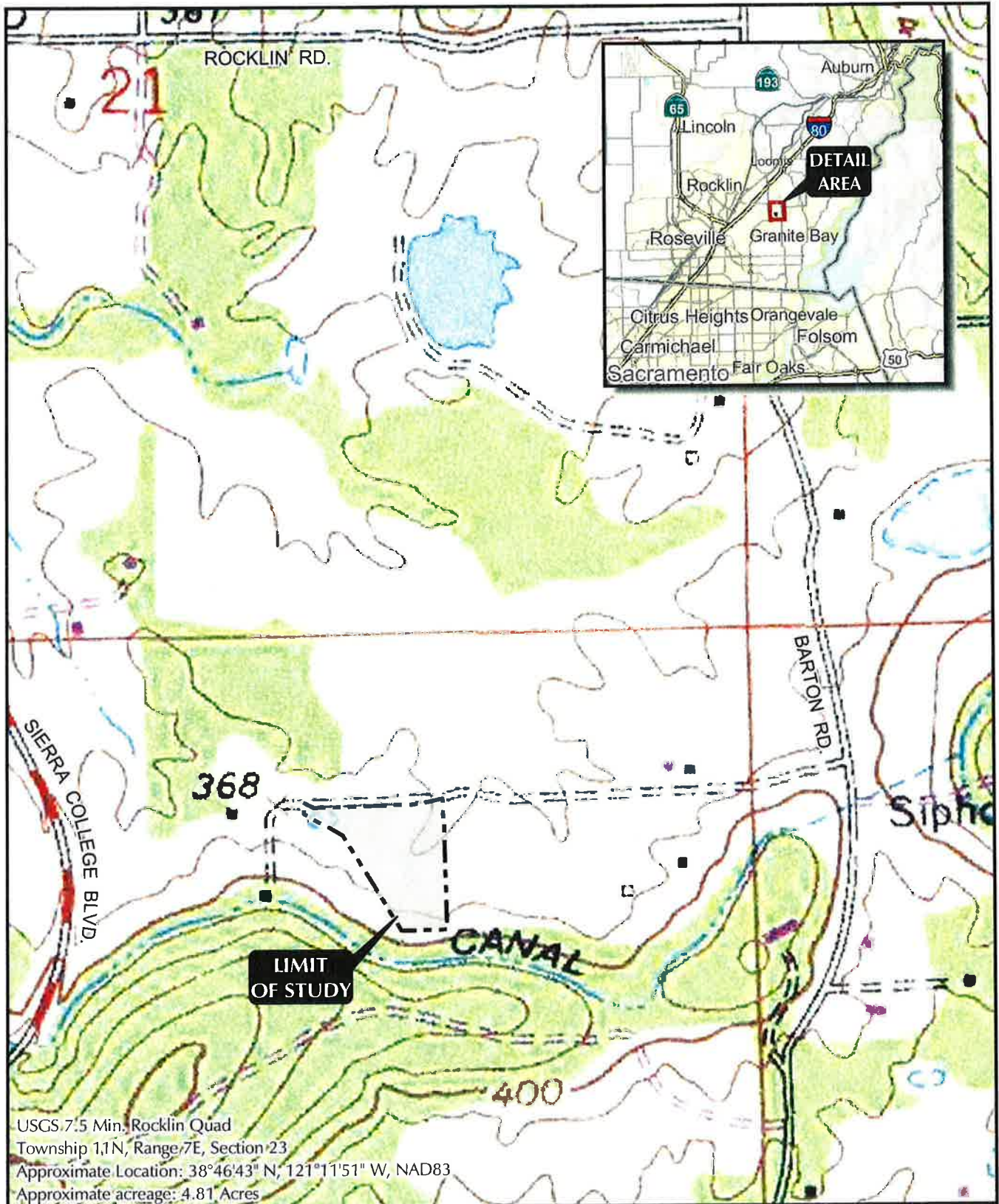
Submitted by:

 **FOOTHILL ASSOCIATES**

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SITE AND VICINITY

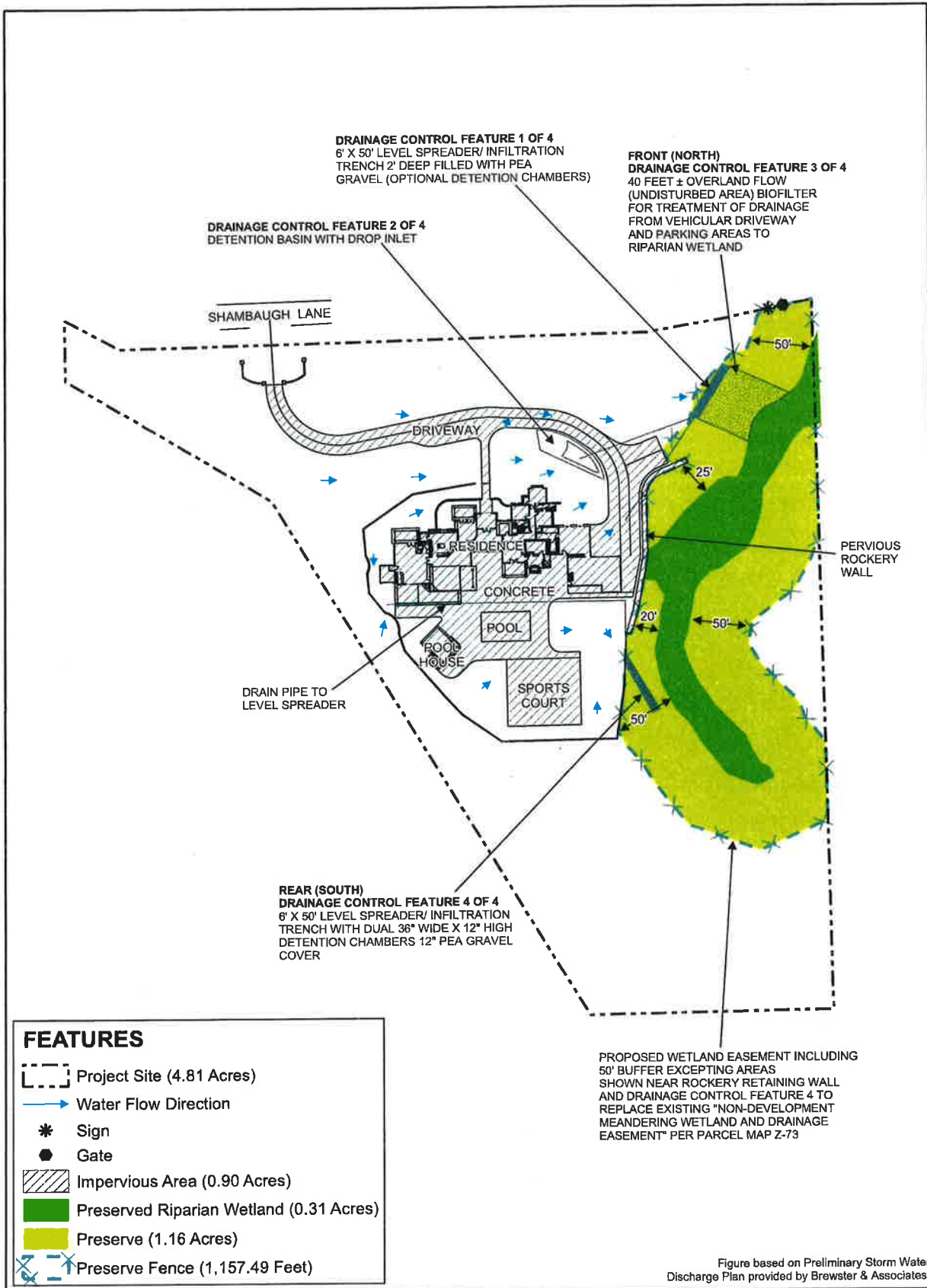
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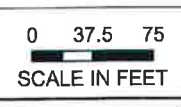
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FIGURE 1



MONTE CLAIRE ESTATES II LOT 5 PRESERVE



1.2 Topography and Hydrology

Topography on the project site ranges from relatively level to moderately sloped, with the steeper terrain located in the southern portion of the site. The site is located at the base of the Sierra foothills approximately two miles south of Secret Ravine. The site supports no perennial aquatic features. The hydrology of the site is dependent on seasonal storm water run off and precipitation, primarily between November and March. Annual average precipitation is 18-25 inches. Aquatic features identified and mapped within the Preserve are riparian wetland.

1.3 Biological Resources

1.3.1 Preserved Habitats

Preserved biological communities on the Monte Claire Estates II Lot 5 site include: riparian wetland, oak woodland, and annual grassland habitat composed primarily of non-native species. In addition to serving as habitat, the onsite annual grasslands also function as a buffer between the developed portions of the Project and the wetlands of the Preserve in some areas.

1.3.1.1 Oak Woodland

A portion of the project site contains oak woodland habitat associated with the aquatic features the project site. Oak species within this community include blue oak, interior live oak, and valley oak. Understory species within this vegetation community include coffeeberry (*Rhamnus* sp.), and poison oak (*Toxicodendron diversilobum*). Oak woodland habitat supports breeding, foraging, and shelter habitat for several species of wildlife.

1.3.1.2 Annual Grassland

The plant community covering the majority of the site is annual grassland, which is characterized primarily by an assemblage of non-native grasses and herbaceous species. Dominant grass species consists of barley (*Hordeum marinum*), ryegrass (*Lolium*), ripgut brome (*Bromus diandrus*), soft chess (*Bromus hordeaceus*), barbed goatgrass (*Aegilops triuncialis*), rattlesnake grass (*Briza minor*), and wild oat (*Avena fatua*). Common herbaceous species onsite include black mustard (*Brassica nigra*), California horkelia (*Horkelia californica*), vetch (*Vicia villosa*), St. John's wort (*Hypericum perforatum*), brodiaea (*Brodiaea elegans*), fiddleneck (*Amsinckia* sp.), clover (*Trifolium repens*), milkthistle (*Silybum marianum*), and bindweed (*Convolvulus arvensis*).

There are scattered oak trees within portions of the grasslands. Oak species within the annual grassland include blue oak (*Quercus douglasii*), interior live oak (*Quercus wislizeni*), and valley oak (*Quercus lobata*).

1.3.1.3 Riparian Wetlands

A total of 0.35 acre of riverine riparian wetlands has been mapped on the site. These features are associated with an unnamed tributary to Secret Ravine that drains from south to north along the western boundary of the site. Riverine riparian wetlands are defined by

a hydrologic regime with a unidirectional flow of water. These conditions support the growth of woody riparian species (e.g. willow, cottonwood) along with other wetland plant species.

1.4 Plan Goal

The goal of this Plan is to ensure that the preserved wetland and upland habitats within the Preserve are maintained in good condition such that they will continue to support the flora and fauna that the Preserve was established to protect (Conservation Values), in perpetuity, and to define the specific methods necessary to meet this goal. Conservation Values are defined as the physical, biological, and environmental processes needed to maintain the Preserve. Specific management strategies designed to maintain the Conservation Values are discussed in **Section 4.0**.

It should be noted that while it is the intent of this Plan to comply with the Project's existing federal permits, if any discrepancies between this Plan and the federal permits exist, the federal permits override the Plan stipulations unless approved by the Corps.

2.0 PRESERVE PERSONNEL

The Preserve Manager and Monitoring Biologist are the primary personnel that will oversee, monitor and coordinate the maintenance of the Preserve. They are intended to work together as a team to accomplish the management of the Preserve by exchanging information, problem solving and generally having a proactive relationship.

2.1 Preserve Manager

The Preserve will be managed by The Habitat Management Foundation pursuant to the Conservation Easement (**Attachment B**), and this Plan. The Habitat Management Foundation will manage and maintain the Preserve as outlined in this Plan and will designate a Preserve Manager. Funding for the perpetual management and care of the Preserve will be provided for by an endowment as described under **Section 9.0**.

2.1.1 Preserve Manager Responsibilities

The Preserve Manager's responsibilities and duties shall include but not be limited to:

- Coordinating trash removal.
- Conducting minor thatch/exotic plant management when necessary with Monitoring Biologist.
- Review monitoring data, and recommend and coordinate with the Corps and the Owner of the Preserve for any remedial action.
- Maintain a Log for the Preserve. This Log will contain a record of all activities, correspondence and determinations regarding the Preserve.
- General Inspections of the Preserve as required by this Plan.
- Coordinating a bi-annual Biological Inspection by the Monitoring Biologist.
- Arrange for any corrective action necessary to ensure the performance of the habitat at the Preserve, as required by this Plan.

2.2 Monitoring Biologist

The Preserve Manager shall retain a qualified professional biologist to act as the Monitoring Biologist for the Preserve. The Monitoring Biologist will be responsible for conducting the biological inspections required for the Preserve, and should be familiar with the local flora and fauna, and shall have knowledge of seasonal wetland habitat functions and values.

2.2.1 Monitoring Biologist Responsibilities

Overall, duties of the Monitoring Biologist may include but are not limited to:

- Conducting the Biological Inspections, collecting data on the Preserve and preparing reports required by this Plan.

- Evaluating site conditions and recommending remedial action to the Preserve Manager.
- Evaluating wetland function and conducting erosion monitoring tasks.
- Evaluating the accumulation of dead vegetative matter (thatch) and recommending removal if needed.
- Evaluate the presence of newly introduced non-native (exotic) plant species and recommend management, if needed.

2.3 Changes in Personnel

If the Preserve Manager or the Monitoring Biologist is changed, the outgoing and incoming personnel will tour the Preserve together, and the former will advise the latter of recent activities, problem areas, and any administrative difficulties.

3.0 CORPS NOTIFICATION

The U.S. Army Corps of Engineers (Corps) requires notification when certain management and maintenance activities are undertaken within the Preserve. It is also recognized that the Preserve Manager needs be able to carry out management and maintenance activities in a timely and responsive manner. All notifications and communications will be copied to the Owner. Therefore, the following notification requirements have been defined.

3.1 No Notification Required

If an activity in this Plan does not have a specific requirement for notification, is not a Prohibited Activity (see **Section 6.0**), and review and approval or a permit is not required, then Corps notification is not required. If an activity was not anticipated by this Plan, and therefore is not mentioned, Corps review and approval is required.

3.2 Notification

For those activities noted in this Plan as requiring Corps notification, the following action will be taken. All efforts will be made to outline the activities for the coming year in the annual letter report, which is submitted by December 31st of each calendar year. If this is not possible, then the Preserve Manager will submit a separate letter to the Corps. This letter will include a written description of the activity, including when the activity will take place and what methodology will be used, as well as a map showing what areas will be targeted. The Corps will have thirty (30) days to contact the Preserve Manager to discuss the activity if the Corps does not approve. If the Preserve Manager is not contacted within thirty (30) days, then the activity will be considered approved. Notification will be made either by fax, email, registered mail, or overnight transmittal.

3.3 Review and Approval

For those activities noted in this Plan as requiring review and approval from the Corps, the following action will be taken. All efforts will be made to outline the activities for the coming year in the annual letter report, which is submitted by December 31st of each calendar year. If this is not possible, then the Preserve Manager will submit a separate letter to the Corps. This letter will include a written description of the activity, including when the activity will take place and what methodology will be used, as well as a map showing what areas will be targeted. The Corps will have thirty (30) days to review, discuss, and approve the activity. Notification will be made either by fax, email, registered mail, or overnight transmittal.

3.4 Activities Requiring a Permit

Some of the activities mentioned in this Plan have the potential to “impact” wetlands or waters of the U.S. The term “loss of waters of the U.S.”, which is the closest term defined in the Federal Register to “impact”, is defined on page 2,094 of the Federal Register, Volume 67, No. 10 / Tuesday, January 15, 2002 / Notices, as follows:

Waters of the U.S. that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the U.S. is the threshold measurement of the impact to the existing waters for determining whether a project may qualify for a Nationwide Permit (NWP); it is not a net threshold calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of streambed includes the linear feet of stream bed that is filled or excavated. Waters of the U.S. temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours or elevations after construction, are not included in the acreage or linear foot measurements of loss of waters of the U.S. or loss of stream bed, for the purposes of determining compliance with the threshold limits of the NWPs.

The purpose of this section is to clarify, that while this Plan may call out the maintenance activities as allowed in the Preserve, this does not mean that the activity does not require a separate authorization (permit) under Section 404 of the Clean Water Act. Also, if a project will not result in the permanent loss of wetlands or waters of the U.S., only temporary loss or “impact”, a permit is still required. Specific maintenance activities may also qualify for the Clean Water Act Section 404(f) exemption for maintenance. If there is a question regarding whether a maintenance activity will require a Corps permit, the Preserve Manager will seek guidance from the Corps.

Some of these activities may also need a Streambed Alteration Agreement from the California Department of Fish and Game (CDFG). Pursuant to Section 1600 of the California Fish and Game Code, CDFG requires entities to obtain a Streambed Alteration Agreement for activities affecting the bed, bank, or channel of a lake, river, stream, or drainage, as defined by CDFG.

3.5 Emergency Situations

Should an emergency situation arise that requires immediate action in an upland area, and would normally require that the Corps be notified or have review and approval authority, the Corps will be notified verbally within forty-eight (48) hours of the corrective action, with written confirmation of the actions taken within one (1) week. In these situations, “emergency” is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship.

Should an emergency situation arise that requires immediate action in a wetland or waters of the U.S., but would normally require that a permit be obtained from the Corps, the following may apply as stated in 33 CFR 325.2 - Processing of Applications:

Emergency Procedures - Division engineers are authorized to approve special processing procedures in emergency situations. An “emergency” is a situation which would result in an unacceptable hazard to life, a significant loss of

property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.

Emergency procedures may be approved by the Division Engineer; however, these circumstances will require advance approval from the Corps. The Corps should be notified in all cases of any emergency situation.

California Fish and Game Code Section 1610 outlines emergency procedures that also may apply.

4.0 LONG TERM MANAGEMENT OF THE PRESERVE

4.1 Adaptive Management

In preparing a management plan for habitat to be preserved, it must be acknowledged that there will undoubtedly be future developments in habitat and species management that may affect how the Plan Goal is met. Before considering any management action, the Preserve Manager must consider the Plan Goal, which is to ensure that the protected wetland habitats within the Preserve are maintained in good condition such that it will continue to support the flora and fauna of the wetlands, in perpetuity. Furthermore, this Plan cannot anticipate all possible site conditions. Therefore, if a condition arises which is not specifically addressed by this Plan, the Preserve Manager may upon review and approval by the Corps, adopt techniques not described here. This management plan can only provide guidance for adopting new technologies or practices as they are developed. Ultimately, the Preserve Manager in coordination with the Monitoring Biologist, the Owner, and the Corps must determine the appropriate management decision for a given situation. The following management strategies, approved uses, and restrictions are intended to provide a framework for the long-term management and operation of the Preserve.

4.2 Preserve Management During Project Construction or Adjacent Construction

In general, when there is any construction and/or maintenance within a portion of the Preserve or adjacent to the Preserve, the following protection measures will be implemented:

- The minimum necessary construction area will be used.
- The Preserve Manager will set construction limits that do not encroach on any preserved wetlands.
- The limits of the construction area will be delineated using high visibility construction fencing.
- If appropriate, a Stormwater Pollution Prevention Plan (SWPPP) will be prepared and best management practices will be adopted to control sediment and erosion during construction.
- The Preserve Manager will advise contractors on the location of wetland features or other sensitive habitats.
- The Preserve Manager will also conduct a post-construction inspection to determine if those conducting the construction need to do any post-construction remediation.

4.3 Preserve Management Activities and Guidelines

The following outlines management and maintenance activities that are allowed within the Preserve.

4.3.1 Authorized Access

The intent of the Preserve is to maintain the habitats of these areas in perpetuity. Prohibiting unauthorized access to the Preserve will further this goal.

All maintenance of stormwater treatment facilities in the buffer area should be restricted to the immediate area where maintenance is occurring, and accessed through the least damaging access point possible. Thatch management, vegetation management, and maintenance of the drainage control features are permitted activities and will adhere to the guidelines included in this management plan.

Access to the Preserve in emergency or law enforcement situations, by medical, fire or law enforcement personnel or vehicles is allowed. Access to the Preserve by the Owner and the Corps is authorized at all times.

4.3.2 Thatch Management

Historically, grassland and oak savannah/woodland habitats burned periodically due to the occasional wildfire. These fires would burn dead plant material or thatch, keeping it from building up. Native ungulates, and later cattle, would have inhabited the grasslands. The grazing and trampling action of these animals would have reduced the amount of dead plant material as well. In the Preserve, thatch has an opportunity to build up because of the lack of fires and grazing. During the Biological Inspection (described in **Section 8.2**), the Monitoring Biologist will make a determination as to the extent of thatch accumulation and if it is adversely impacting the Preserve habitats. Two methods for managing thatch are outlined below.

4.3.2.1 Controlled Burns

Controlled burning is an excellent way to eliminate accumulated plant matter and also serves to reduce cover of non-native annual grasses (Pollak and Kan 1996). While prescribed burning is an effective tool in the long-term management of thatch accumulation, this Preserve currently has residential development and oak woodland surrounding it, making controlled burns a potential public safety hazard and probably an unrealistic management practice. When carefully planned with the local fire authorities, some controlled burns have been successfully conducted in urban areas. To protect the integrity of the Preserve, controlled burns will not occur without specific, advance written approval from the Corps and through coordination with local fire protection authorities.

4.3.2.2 Mowing

Another method to remove thatch is the mechanical mowing of the site. In order for mowing to be effective for thatch removal, the cut material would need to be removed from the site. Notification to the Corps is required prior to mowing for thatch control.

4.3.3 Non-Native Plant Species Management

Prior to Project implementation, the site, including the Preserve, functioned with a number of exotic species, some of which had become naturalized. These are predominantly annual species that occur in grasslands. It is unreasonable to require or

expect eradication of established exotic species within the Preserve. The required management of non-native plants will therefore be limited to the management of newly introduced exotic pest plants and controlling the spread of existing exotic pest plant populations that are a threat to the Conservation Values. The Monitoring Biologist and the Preserve Manager can refer to the species found on the California Invasive Plant Council (CAL-IPC) List A, List B, and Red Alert List to assist them in determining if a plant is an exotic plant species of concern, and which species should be given priority for management. The current lists have been included as **Attachment C**; however this list may be updated from time to time by CAL-IPC. The new list will be appended to this Plan as it is updated.

In addition to the Preserve Manager looking for these target species and others during the General Inspection, the Monitoring Biologist will also assess the presence of any newly introduced exotic pest plant species during the Biological Inspection and recommend removal as needed. Three methods of removing or controlling these species are outlined below.

4.3.3.1 Hand/Mechanical Removal

Hand removal or use of small hand powered or handheld equipment (such as a Weed Wrench or a chainsaw) should always be the preferred method of removing exotic pest plant species from the Preserve. If hand removal methods are tried and found to be ineffective, or the problem is too widespread for hand removal to be practical, then mechanical methods (use of larger equipment with motors such as mowers) or biological controls as described below can be implemented. To protect the integrity of the Preserve, any means for removing vegetation will not occur without approval by the Corps as set forth in **Section 3.0**.

4.3.3.2 Biological Controls

There are several natural insect enemies of yellow star thistle that have been introduced from Europe to act as biological controls against this invasive species. The hairy weevil develops within the seed head of the flower, feeding on the seeds. The Placer County Agricultural Commissioner would be the point of contact for use of these biological controls within the Preserve. The Agricultural Department should be contacted to determine if there is a program for providing the hairy weevil for biological control, or if it is determined that yellow star thistle control is needed.

Currently, studies are being conducted on the effectiveness of the milfoil weevil in controlling populations of Eurasian milfoil. Care should be taken in identifying milfoil if it becomes problematic, as there are several species of milfoil native to California.

If biological control methods are tried and found to be ineffective or if biological control methods are not available for the target species, then herbicides can be used, but only as outlined below. To protect the integrity of the Preserve, biological controls will not occur without approval by the Corps as set forth herein.

4.3.3.3 Use of Herbicides for Non-Native/Exotic Pest Plant Management

To protect the integrity of the Preserve, pesticide and herbicide use will not occur without specific, advance written approval by the Corps. Herbicides can be used only for the management of aggressive exotic pest plants that do not respond to hand removal techniques. Only pesticides and herbicides that have been approved by the Corps will be allowed, and must be applied according to the label. This approval does not obviate the need for the Preserve Manager to obtain any other applicable approvals for the use of these chemicals. Any actions taken will be described in the Annual Report.

4.3.4 Tree Removal

If any of the native trees at the Preserve become diseased and are a threat to other trees or are a danger to public safety or private property, removal will be allowed. This statement does not imply permission to undertake the removal of any tree without obtaining any appropriate tree removal permits, if applicable. Non-native tree removal is allowed, consistent with **Section 4.3.3**.

4.3.5 Mosquitoes

If mosquito control is necessary, the local Mosquito Vector Control District will be consulted to select control mechanisms that are the least damaging to the Preserve's habitats. A plan outlining those mechanisms will be submitted to the Corps for approval in accordance with this Plan.

4.3.6 Trash Removal

The Preserve Manager will periodically remove accumulations of trash and other unwanted debris from the Preserve.

5.0 LONG TERM MAINTENANCE OF STRUCTURES AND IMPROVEMENTS

The following paragraphs outline the allowed maintenance of structures and improvements present within the Preserve. If maintenance or replacement activities associated with these structures will impact preserved wetlands or waters of the U.S., the Corps will be notified and any appropriate permits will be obtained (see **Section 3.4**). If wetlands or waters of the U.S. will not be impacted by maintenance or replacement of any of these structures or improvements, then the Preserve Manager will review the plans for the activity to be sure that as little disturbance to the Preserve occurs as possible, but the Corps will not have to be notified. These activities will be described in the Annual Letter Report to the Corps. In addition, disturbed areas will be restored (see **Section 7.0**).

5.1 Drainage Control Structures

There are three stormwater drainage control structures located in the Preserve: two level spreader/infiltration trenches, and one overland flow area that is to be undisturbed (as depicted in Figure 2). Although not expected to occur on a regular basis, if the level spreader/infiltration trenches need to be cleared of vegetation, sediment, etc. that activity will be allowed as long as it is done in compliance with this Plan. Within the Preserve, maintenance activities will be restricted to the minimum area needed to accomplish the task, and will be only take place as needed.

5.2 Drainage Easement

A Town of Loomis meandering wetland and drainage easement also extends through the Preserve and shares the same legal boundaries with the conservation easement governing the Preserve (**Figure 2** Error! Reference source not found.). The original easement was the wetland delineation boundary, and was changed during the 404 permitting process to reflect post construction conditions and current wetland preserve conditions.

5.3 Fencing, Gates, and Signage

The Property Owner is responsible for the maintenance of fences, gates, and signage.

5.3.1 Fencing

Fencing will consist of such materials as post and cable, split rail, barbed wire or open-bar fencing designed to permit wildlife movement. Preserve perimeter fencing will be designed to restrict access (including vehicular access) to the Preserve. Perimeter fencing will be periodically inspected and maintained by the Property Owner.

5.3.2 Gates

As shown on **Figure 2**, one gate is proposed to provide access to the Preserve. The Property Owner is responsible for the maintenance of the authorized gate into the Preserve, and for keeping the gate locked to prevent unauthorized motor vehicle access. The gate allows maintenance vehicles, monitoring personnel and emergency vehicles to

access the Preserve when necessary. Any other gates allowing access into the Preserve are prohibited.

The Preserve Manager is responsible for notifying any party that has installed an unauthorized gate into the Preserve and shall require its removal and replacement with the appropriate fencing.

5.3.3 Signage

As shown on **Figure 2**, one sign will be installed along the perimeter of the Preserve displaying information on site regulations, including “no trespassing,” “no hunting,” “no dumping” and other prohibitions; it will be posted to inform the public about the purpose of the Preserve. The Property Owner is responsible for the maintenance and replacement of all signage, as needed.

5.4 Maintenance Vehicle Access Roads

There are no vehicle access roads located within the Preserve.

6.0 PROHIBITED ACTIVITIES WITHIN THE PRESERVE

This section outlines the restrictions on activities that can take place in the Preserve. It is understood that the following activities are prohibited, except as needed to accomplish the above-mentioned management and maintenance activities or as described below. Additionally, if any of these activities must be undertaken due to special circumstances, they may be reviewed and approved by the Corps and the Owner on a case-by-case basis.

6.1 Access to the Preserve

The intent of the Preserve is to maintain the riparian habitat in perpetuity. Limiting access to the Preserve will further this goal. Pedestrian access to the Preserve is limited in this area, as it is on an occupied private residential lot at the end of a private road. See **Section 4.3.1** for a description of authorized access. No other access to the Preserve is allowed.

6.2 Vegetation Removal

No purposeful killing, removal, or alteration of any existing native vegetation will be allowed in the Preserve except as described in this Plan.

6.3 Burning and Dumping

No burning or dumping of rubbish, garbage or any other fill or waste materials, such as grass clippings, will be allowed in the Preserve. The foregoing prohibition shall not be interpreted to prohibit controlled burning as a method of thatch management.

6.4 Discing

No discing can occur in the Preserve.

6.5 Additional Roads, Trails, Benches and Utility Lines

Roads, trails, benches and utility lines not called out in this Plan will not be allowed in the Preserve, unless advance written approval has been received from the Corps.

6.6 Equipment or Fuel Storage

There will be no equipment or fuel storage within the Preserve.

6.7 Topography

No alteration may be made to the existing topography of the Preserve. This includes leveling or grading. No exploration, development, or extraction of oil, gas or minerals may be made from the Preserve.

6.8 Pesticides and Chemical Agents

Except as needed for management of the habitat as outlined in this Plan and as approved by the Corps, there shall be no use of any pesticides, fungicides, insecticides or any other chemical agents used to kill or suppress plants, animals, or fungi in the Preserve.

6.9 Motor Vehicle Use

No motorized vehicles shall be ridden, brought, used, or permitted on any portion of the Preserve with the exception of the following: 1) motorized vehicular use will be restricted to that required for Preserve maintenance purposes such as invasive species or thatch removal, erosion control, trash removal, and for emergency or law enforcement situations requiring access by medical, fire or law enforcement vehicles, and 2) motorized vehicles access to the Preserve for the maintenance of existing utility easements is allowed, but only with advanced written approval by the Corps.

6.10 Construction

Once adjacent development is complete and the structures and improvements called out in this Plan are in place, no construction shall be allowed in the Preserve with the exception of the activities mentioned in this Plan.

6.11 Non-Native Plants

No non-native plants will be planted in the Preserve.

7.0 REMEDIATION/RESTORATION ACTIVITIES

7.1 Post-Construction Remediation/Restoration

The drainage control features may require periodic post-construction maintenance. These structures or improvements were originally permitted as part of the project through the Corps. For these cases, post-construction remediation/restoration means, for example, restoring the original grade where the intent was not to alter it, temporary erosion control to allow grasses to repopulate, cleaning up construction debris, and generally reverting the area back to pre-construction conditions.

7.2 Timing/Process for Corrective Actions

Minor corrective measures not requiring notification or approval of the Corps (e.g., prevention of unexpected runoff, will be carried out by the Preserve Manager within sixty (60) days, unless site conditions warrant delay (i.e., if soil is saturated and equipment would damage the upland habitat in the Preserve, it may be necessary to delay work until conditions improve). All other corrective actions will take place when conditions are best suited for restoration to occur.

8.0 PRESERVE INSPECTIONS AND REPORTING

8.1 General Inspections

The Preserve Manager shall arrange for a General Inspection to be made to ensure the integrity of the Preserve is being maintained. Inspections will concentrate on an evaluation of the following factors: erosion, fire hazard reduction, trash accumulation, and evidence of unauthorized use by motor vehicles. The entire perimeter of the Preserve should be covered, as well as meandering transects through its interior. An Inspection Sheet (**Attachment D**) will be utilized in order to evaluate the above criteria during each field visit. Previous inspection sheets should be reviewed before each visit in order to determine that a possible or recurring problem area is not missed. If any problems are identified, more frequent inspections will be done in order to closely track any problems as well as to ensure that remedial actions are effective. Evaluation and corrective actions for each factor are described below.

8.1.1 Erosion

If it is determined during the inspection that adjacent sheet-flow drainage is causing any erosion or other adverse effects upon the Preserve, immediate standard erosion control measures (such as the installation of wattles) will be implemented. To the extent possible, drainage issues causing erosion within the Preserve will be addressed through measures implemented outside of the Preserve.

8.1.2 Fire Hazard Reduction

If at any time conditions at the Preserve become a fire hazard, the Preserve Manager will work with the Corps, the Owner, and the local fire authorities to decide on the best method to reduce the fire risk at the Preserve.

8.1.3 Trash Accumulation

The Preserve Manager will arrange for the removal of trash from the Preserve.

8.1.4 Unauthorized Motor Vehicle Use

The perimeter of the Preserve will be inspected for evidence of unauthorized motor vehicle use/access. If necessary, corrective actions will be implemented by the Preserve Manager.

8.2 Biological Inspections

In managing the Preserve, measures must be taken to ensure that the existing conditions are maintained over the long term. Inspections by a qualified Monitoring Biologist will help ensure the long-term integrity of the wetland and upland habitats.

One Biological Inspection will take place during the year and will be performed at the same time as the general inspection. The Biological Inspection of the Preserve will be conducted by the Monitoring Biologist in order to monitor wetland function, thatch accumulation, newly introduced exotic species, and overall Preserve function. The entire

perimeter of the Preserve should be covered, as well as meandering transects throughout its interior. The goal of these surveys is to ensure that the various habitat types are maintained in perpetuity. The inspection is intended to assess the various wetland habitats during the floristic season (spring), as well as focus on upland habitats, problem areas, and assessing the success of remediation activities.

8.2.1 Habitat Function

The purpose of assessing habitat function is to ensure that the preserved wetland and upland habitats continue to have the appropriate hydrologic regime for that habitat type, to monitor anthropogenic influences on the different habitats, and to informally document, by walking, the plant and animal species that are present within, or that are expected to use the meandering transects throughout the Preserve.

8.2.2 Thatch Accumulation

The Monitoring Biologist will make an annual determination as to the extent of thatch accumulation. If excess thatch is present, the Monitoring Biologist will work with the Preserve Manager to determine the best removal practice for the Preserve. Several management practices can be used to address this issue including mowing as described previously.

8.2.3 Newly Introduced Non-Native Plant Species

The Monitoring Biologist will assess the presence of any newly introduced or increasing populations of non-native plant species, by using **Attachment C**, and recommend corrective actions as needed. Special attention will be paid to exotic pest plants.

8.2.4 Preserve Function

The overall Preserve function should be assessed, taking into account the above factors and the purpose of the Preserve, which is to support the flora and fauna of the wetlands and uplands in perpetuity.

8.3 Agency Monitoring/Inspection

The Corps may inspect and monitor the condition of the Preserve at any time the Corps deems necessary.

8.4 Annual Reporting Requirements

The Monitoring Biologist will prepare an Annual Report in conjunction with the Preserve Manager to be submitted to the Corps by December 31st of each year. The report can be in the form of a letter report but will include at minimum, a map of the Preserve, photographs documenting the status of the Preserve, a description of conducted activities, maintenance or management actions as required by this Plan, a description of actions for which Corps notification or approval was not needed, but were carried out during the year, observations from the Biological Inspection, and recommendations for altered management practices as needed. The report will refer to the Corps regulatory branch number for the project, which is 2011-441.

9.0 PRESERVE OWNERSHIP AND FUNDING MECHANISM

9.1 Preserve Owner

The entire Preserve will be owned by the Newman Family.

9.2 Funding Mechanism

9.2.1 Conservation Easement Endowment

The annual cost of holding the Conservation Easement and carrying out the tasks of the Preserve Manager have been determined through consultation with the Preserve Manager and the amount needed yearly was determined by the Property Analysis Record (PAR) (**Attachment E**). PARs are generated through the use of a computer program developed by the Center for Natural Lands Management to allow land trust and preserve management foundations and organizations to better define and understand the financial obligations that come with managing natural areas. The program lists a number of activities, structures, and overhead costs associated with preserve management and allows the user to choose the tasks that apply. These costs are then tabulated and can be printed out for budgeting purposes. The total endowment amount provided is \$13,000.

Inspection Sheet

(Project Name) Preserve

DATE: _____

Preserve Condition	Actions Taken (date and by whom)
Erosion?	
Fencing and Signage?	
Trash Accumulation?	
Unauthorized Construction/Fill?	
Other Notes:	

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

Attention: _____

THIS SPACE FOR RECORDER'S USE ONLY

PERPETUAL CONSERVATION EASEMENT GRANT

THIS PERPETUAL CONSERVATION EASEMENT GRANT (hereinafter "**Easement**") is made this _____ day of _____, 2011, by Michael and Lisa Newman, husband and wife ("**Grantor**"), in favor of The Habitat Management Foundation, a California 501(c)(3) Non-profit Corporation ("**Grantee**" or "**Preserve Manager**").

RECITALS

- A. Grantor is the sole owner in fee simple of certain real property located in the Town of Loomis, County of Placer, State of California. Grantor intends to develop a portion of this property into a single-family residence. The remainder of this property with natural resource values is intended to be preserved in its natural state. This is the area covered by the Easement, and shall be referred to as the "**Preserve**", which is described in Exhibit A and depicted upon the map Exhibit B, both of which are attached hereto and incorporated herein by this reference.
- B. Grantee is a private non-profit 501(c)(3) corporation under the laws of the State of California, and is authorized to hold conservation Easements under California Civil Code §815 et seq.
- C. "**Corps**" is the United States Army Corps of Engineers within the United States Department of the Army, which is authorized by Federal law to administer the Federal Clean Water Act, Section 404, and other laws and regulations; and
- D. (if required) "**Service**" is the United States Fish and Wildlife Service within the United States Department of the Interior, which is authorized by Federal law to administer the Federal Endangered Species Act and other laws and regulations; and
- E. This Easement provides conservation measures and mitigation for certain impacts located in the Town of Loomis, County of Placer, State of California, described in that certain U.S. Army Corps of Engineers Permit Number SPK-2011-00441, dated November 21, 2011, and is being conveyed in order to enable Grantor to undertake the development of a one-story single-family private residence with associated facilities consisting of a driveway, additional parking, landscaping, an attached

garage, sports court, pool, and maintenance building on a ±5.0-acre lot located within the existing Monte Claire Estates II subdivision in the Town of Loomis, Placer County, California.

- F. The Preserve possesses natural resources with significant ecological and habitat values that benefit endangered, threatened, and other rare species (collectively, "**Conservation Values**"). These natural resources are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people. These values include Waters of the U.S., including wetlands, and the adjacent upland (if applicable list habitats and plant and animal species; include both listed species, and those that are of special significance) other native vegetation and wildlife. These natural resources are of great importance to both Grantor and Grantee.
- G. The Preserve includes the water in wetlands and drainage features, including water resulting from direct precipitation onto the Preserve and/or flows through the drainage features from natural storm events which partially or completely fill depressions on the surface of the Preserve.
- H. The Preserve, consisting of approximately 1.16 acres, has been identified as possessing open space and aquatic habitat values for the protection of wildlife corridors, water quality and drainage detention, and contains 0.31 acre of preserved riparian wetland as well as upland habitat, and buffer zones for such areas. Grantor intends that the Preserve be utilized and maintained in such a manner as to preserve and protect these natural features and resources (the "Conservation Values") which Grantor and Grantee desire to preserve and protect pursuant to the Monte Claire Estates II Lot 5 Preserve Management Plan ("**Plan**") dated December 12, 2011, prepared by Foothill Associates, of which is attached to this Easement as Exhibit C and incorporated herein by this reference.
- I. Grantor intends to convey to Grantee the right to preserve and protect the Conservation Values of the Preserve.
- J. Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Preserve in accordance with the terms of this Easement and the Open Space Management Plan.
- K. The following terms, when used herein, shall have the meanings set forth below:
 - "**Grantor**" means Michael and Lisa Newman or any successor, transferee, or assignee.
 - "**Preserve Manager**" means Grantee, The Habitat Management Foundation, or any successor, assignee, or transferee appointed in accordance with Section 8.
 - "**Preserve**" shall mean the approximately 1.16 acre area appearing on Exhibit B containing a natural wetland features and buffer zones which shall be maintained as a Preserve in accordance with the provisions of Section 3.

"Plan" means the Monte Claire Estates II Lot 5 Preserve Management Plan, prepared by Foothill Associates, dated November 17, 2011 a copy of which is attached hereto as **Exhibit C**.

"Waters of the U.S." means that Area defined in 40 CFR 122.2 as a feature under the regulation of the Federal Clean Water Act.

"Wetland" means that Area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

"Riparian" means those Areas that are those plant communities adjacent to and affected by surface or ground water of perennial or ephemeral water bodies such as rivers, streams, lakes, ponds, playas, or drainage ways. These areas have distinctly different vegetation than adjacent areas or have species similar to surrounding areas that exhibit a more vigorous or robust growth form.

"Uplands" means those habitats that are not riparian or wetlands, including valley oak woodland, grassland/meadow, blue oak woodland, and blue oak savannah.

COVENANTS, TERMS, CONDITIONS, AND RESTRICTIONS

In consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and California Civil Code §815 et seq., Grantor hereby voluntarily grants and conveys to Grantee a Perpetual Conservation Easement over the Preserve of the nature and character and to the extent hereinafter set forth.

1. PURPOSE

It is the purpose of this Easement to ensure that the Preserve will be retained forever in an open space condition and to prevent any use of the Preserve that will impair or interfere with the Conservation Values of the Preserve. Grantor intends that this Easement (i) will assure that the Preserve will be used for such activities as are consistent with the purpose of this Easement and (ii) shall be implemented consistently with the Plan.

2. RIGHTS OF GRANTEE

- A. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:
- B. To preserve and protect (if applicable restore and/or enhance) the Conservation Values of the Preserve in a manner consistent with the Open Space Management Plan;
- C. To enter upon and traverse all portion of the Preserve at all times in order to

have access to the Preserve and to monitor Grantor's compliance with and otherwise enforce the terms of this Easement and to fulfill duties detailed in the Open Space Management Plan, provided that such entry shall not unreasonably impair or interfere with Grantor's use and quiet enjoyment of the Preserve or unreasonably disturb natural resources in the Preserve.

- D. Subject to the exceptions contained in Paragraph 6 herein, to prevent any activity on or use of the Preserve that is inconsistent with the purpose of this Easement and to require the restoration of such Area or features of the Preserve that may be damaged by any inconsistent activity or use; and
- E. To conserve and protect all mineral, air, water and groundwater rights required to protect and to sustain the biological resources of the Preserve (describe more specific types of water rights, use of wells, et al.).

3. PRESERVATION, MAINTENANCE, AND MANAGEMENT OF PRESERVE

- A. Nature of the Preserve, Generally. The Preserve serves for the protection of wildlife corridors, water quality and drainage detention, and contains (generally describe wetlands), upland habitat, and buffer zones for such Areas. Grantor intends that the Preserve be utilized and maintained in such a manner as to preserve and protect the natural features and resources of the area. The Preserve is delineated on Exhibit B. The Preserve shall be an area encumbered by an Easement in favor of the Preserve Manager for the purposes of access to and protection, conserving and preserving in perpetuity the Preserve.
- B. Conservation Easement. Grantor, with recordation of this Easement is granting to The Habitat Management Foundation ("Grantee" or "Preserve Manager") the ability to ensure enforcement of the rules and regulations regarding the Preserve.
- C. Open Space Management Plan. The Preserve shall be actively managed and fenced to control access, as outlined in the Plan.
- D. Preserve Manager. The Preserve Manager shall perform such preservation and the maintenance of the Preserve as set forth in the Plan.
- E. Monitoring Biologist. The Grantee shall retain a competent biologist (the "**Monitoring Biologist**"), professionally trained in matters related to the conservation and preservation of natural resource values, to undertake an annual field review and prepare an annual report, as set forth in Section 3.F, with respect to the Status of the Preserve. Any appointment of a Monitoring Biologist shall be made only after review of the professional background and qualifications of the proposed Monitoring Biologist by, and with the express written consent of, the Preserve Manager.
- F. Structures and Improvements. There are existing and proposed improvements that have been or will be made and structures that are currently present or will be constructed in the Preserve. The placement of and allowed maintenance

activities relating to these structures shall be carried out according to the Plan.

- G. Monitoring and Reporting Activities. The Grantee and/or a Monitoring Biologist shall conduct a single Biological Inspection annually to be performed at the same time as the annual general inspection. The Biological Inspection of the Preserve will be conducted by the Monitoring Biologist in order to monitor wetland function, thatch accumulation, newly introduced exotic species, and overall Preserve function. The entire perimeter of the Preserve shall be covered, as well as meandering transects throughout its interior. The Monitoring Biologist will prepare an Annual Report in conjunction with the Preserve Manager to be submitted to the Corps by December 31st of each year.
- H. Annual Report. By December 31st each year, the Preserve Manager or Monitoring Biologist shall deliver to the Corps a report regarding the status of the Preserve. This report shall contain:
1. A map showing the project location;
 2. Photographs documenting the status of the Preserve;
 3. A narrative summarizing the general condition of the Preserve;
 4. Any recommendations regarding remedial actions or management activities.
- I. Maintenance and Repair. Maintenance and repair of existing and proposed structures and improvements shall be made according to the Plan.

4. PROHIBITED ACTIVITIES

The following activities are prohibited as outlined in federal Section 404 permit No. SPK-2011-00441 (herein called "**Permit**") (Exhibit D) or as outlined in the Plan. No person shall engage in any of the following restricted activities in the Preserve unless that activity is in the future approved by the Corps:

- A. Planting, landscaping, plowing, or cultivation of the Preserve or any portion of such area, shall be done or permitted except for the purpose of enhancing the Preserve through the planting of local native plant species. The irrigation of these plantings will be done in a manner that does not adversely affect the hydrology of any wetlands within the Preserve;
- B. Planting, introduction, or dispersal of non-native or exotic plant species or animal species;
- C. No materials or debris shall be stored or placed (whether temporarily or permanently) within the Preserve or any portion of such area;
- D. No discharge of any dredged or fill material shall be done or permitted within the Preserve or any portion of such area except as consistent with the terms and conditions of the Permit;

- E. No discharge, dumping, disposal, storage or placement of any soil, ashes, trash, refuse, rubbish, grass clippings, cuttings, bio-solids, or other waste materials shall be done or permitted within the Preserve or any portion of such area;
- F. Excavating, dredging, or removing loam, gravel, soil, rock, sand, or other material;
- G. Leveling or grading or otherwise altering the general topography of the Preserve or any portion of such area;
- H. No pesticides, herbicides, rodenticides, or other chemicals shall be used within the Preserve;
- I. Destruction or removal of any natural tree, shrub or other vegetation that exists upon the Preserve shall be done or permitted except **as provided in the Plan**;
- J. Grazing, except as outlined in the Plan;
- K. No motorized vehicles shall be ridden, brought, used or permitted on any portion of the Preserve, except as provided for in the Plan or with prior written approval by the Corps (i applicable, and the Service);
- L. Roads, utility lines, trails, benches, equipment storage, buildings, billboards, signs, or other structures or activities.
- M. Granting use of the land to any third party for off-road vehicle use;
- N. Legally subdividing the Preserve, recording of a subdivision plan, partition, or any other division of the Preserve into two or more parcels;
- O. Paving or otherwise covering of the conservation Property with concrete, asphalt, or any other impervious paving material;
- P. Transferring any appurtenant water right required to maintain and restore the biological resources of the Preserve;
- Q. Granting surface entry for the exploration or extraction of minerals without approval by the Service and the Corps;
- R. Any and all other uses which may adversely affect the purposes of this Easement.

5. GRANTOR'S DUTIES

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Preserve. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Easement.

6. RESERVED RIGHTS

Grantor reserves to itself and to its personal representatives, heirs, successors, assigns, agents, and present and potential future lessees, all rights accruing from its ownership of the Preserve including, but not limited to: (i) the right to engage in or invite others to engage in activity on or use of the Preserve for the purpose of construction of the Project in accordance the terms and conditions of U.S. Army Corps of Engineers Permit No. SPK-2011-00441 including, without limitation, the construction of improvements and structures as outlined in the Plan, including, but not limited to storm water drainage control structures, level spreader/infiltration trenches, and an overland flow area, as well as fencing and signage; (ii) the right to engage or invite others to engage in activity on or use of the Preserve for the purpose of complying with the requirements of any governmental permits or authorizations including, but not limited to, those granted pursuant to the Federal Endangered Species Act, the California Endangered Species Act, Section 404 of the Clean Water Act or Section 1603 of the California Fish and Game Code; (iii) the right to engage in or invite others to engage in all uses of the Preserve that are not expressly prohibited herein and are not inconsistent with the conservation purposes of the Easement (iv) There are three storm water drainage control structures located in the Preserve: two level spreader/infiltration trenches, and one overland flow area that is to be undisturbed. Although not expected to occur on a regular basis, if the level spreader/infiltration trenches need to be cleared of vegetation, sediment, etc. that activity will be allowed as long as it is implemented in a manner consistent with the Plan. Within the Preserve, maintenance activities will be restricted to the minimum area needed to accomplish the task, and will be only take place as needed. (v) A Town of Loomis non-development meandering wetland and drainage easement extends through the Preserve and shares the same legal boundaries with the conservation easement governing the Preserve. The original easement was the wetland delineation boundary, and was changed during the 404 permitting process to reflect post construction conditions and current wetland preserve conditions.

7. REMEDIES

- A. Enforcement Rights. If Grantee or Grantor determines that there is a violation of the terms of this Easement or that a violation is threatened, such party shall give written notice to the other parties of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Preserve resulting from any use or activity inconsistent with the purpose of this Easement, to restore in accordance with the Plan, the portion of the Preserve so injured. If a party fails to cure a violation within thirty (30) days after receipt of written notice thereof from the other party, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the aggrieved party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of terms of this Easement or injury to the

Conservation Values protected by this Easement, including damages for the loss of aesthetic ecological educational, historical, recreation or scientific values and to require the restoration of the Preserve pursuant to the Plan to the condition that existed prior to any such injury. If a party, in its good faith and reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Preserve, such party may pursue its remedies under this paragraph without prior notice to the other party or without waiting for the period provided for the cure to expire. Each party's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and each party agrees that the other party's remedies at law for any violation of the terms of this Easement are inadequate and that such party shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which such party may be entitled, including specific performance of the terms of this Easement, without the necessity of proving actual damages or the inadequacy of otherwise available legal remedies. Each party's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code section 815 et. seq. are incorporated herein by this reference and this Easement is made subject to all of the rights and remedies set forth therein. If at any time in the future Grantor or Grantee or any subsequent transferee or assignee uses or threatens to use the Preserve for purposes not in conformance with the provisions of this Easement, or releases or abandons this Easement in whole or in part, notwithstanding California Civil Code section 815 et. seq., the California Attorney General, or any entity organized for conservation purposes shall have standing as interested parties, and as third party beneficiaries in any proceeding affecting this Easement.

- B. Cost of Enforcement. Reasonable costs incurred by any party enforcing the terms of this Easement, including without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by a violation of the terms of this Easement shall be borne by the breaching party. If a party prevails in any action to enforce the terms of this Easement, such party's costs of suit including, without limitation, attorneys' fees, shall be borne by the other party.
- C. Parties Discretion. Enforcement of the terms of this Easement shall be at the discretion of the respective parties, and any forbearance by Grantor or Grantee to exercise their rights under this Easement shall not be deemed or construed as a waiver by Grantor or Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of their rights under this Easement. No delay or omission by Grantor or Grantee in the exercise of right or remedy upon any breach by Grantor or Grantee shall impair such right or remedy or be construed as a waiver.
- D. Acts Beyond Parties' Control. Nothing contained in this Easement shall be construed to entitle any party to bring any action against Grantor or Grantee for any injury to or change in the Preserve resulting from causes beyond their control, including, without limitation, fire, drought, flood, storm, and earth

movement.

8. ACCESS

Grantee, its successors, assigns, agents, invitees and licensees shall have the right to access the Preserve at all times.

9. COSTS AND LIABILITIES

Except as set forth in this Easement, or as otherwise agreed in writing between the parties hereto, Grantor retains all responsibilities related to the ownership of the Preserve. Preserve Manager (Grantee) assumes all responsibilities related to the operation, upkeep, and maintenance of the Preserve outlined in the Plan.

- A. Taxes: Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Preserve by competent authority, including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.
- B. Hold Harmless: Grantor or its successors shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "**Grantee Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expense, causes of action, claims, demands, or judgments, including without limitation, reasonable attorney's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damages to any property, resulting from any act, omission, condition or other matter occurring on the Preserve, unless caused in whole or in part by the acts or omissions of any of the Grantee Indemnified Parties; and (2) the existence or administration of this Easement, unless caused in whole or in part by the acts or omissions of any of the Grantee Indemnified Parties.

Grantee or its successor shall hold harmless, indemnify, and defend Grantor and its members, directors, officers, employees, agents and contractors and their heirs, personal representatives, successors, and assigns of each of the Grantor Indemnified Parties from and against all liabilities, penalties, costs, losses, damages, expense, cause of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with the administration of this Easement, unless caused by the acts or omission of any of the Grantor Indemnified Parties.

10. ASSIGNMENT

This Easement is transferable, but Grantee shall give Grantor and the Corps at least 30 days' prior written notice of the transfer. Grantee may assign its rights and obligations under this Easement only to an organization that is 1) approved by the Grantor and the Corps; and, 2) a public agency or a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as

amended (or any successor provision then applicable), and the applicable regulations promulgated there under; and 3) authorized to acquire and hold conservation Easements under California Civil Code §815 et seq. (or any successor provision then applicable). As a condition of such assignment or transfer, the Assignee or Transferee shall agree in writing that the conservation purposes that this Easement is intended to advance shall continue to be fulfilled and that the Plan will be followed. In the event of the termination of Grantee's existence, the rights and obligations of Grantee hereunder shall, by that fact itself, and without any further action on the part of any entity, be deemed assigned to an entity approved by the Corps.

11. SUBSEQUENT TRANSFERS

Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Preserve, including without limitation, a leasehold interest. Grantor further agrees to give written notice to the Grantee and the Corps at least fifteen (15) days prior to the date of any Preserve transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

12. CONDEMNATION

The habitat conservation purposes are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure section 1240.680 notwithstanding California Code of Civil Procedure section 1240.609 and 1240.700.

13. ESTOPPEL CERTIFICATES

Upon request by Grantor, Grantee shall within 15 days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement, as may be requested by Grantor.

14. NOTICES

Any notice, demand, request, consent, approval, or communication that the parties desire or is required to give to the others shall be in writing and either serviced personally or sent by first class mail, postage prepaid, address as follows:

To Grantor: Michael and Lisa Newman
2340 Clubhouse Drive
Rocklin, California 95765
Attn: Michael Newman

To Grantee: The Habitat Management Foundation
P.O. Box 118
Rocklin, CA 95677
Attn: Kenneth D. Whitney, Ph.D.

To the United States Army Corps of Engineers:

United States Army Corps of Engineers
Sacramento Regulatory Branch
650 Capitol Mall, Suite 5-200
Sacramento, California 95814-2922
Attn: Chief, Sacramento Valley Office

or to such other address or the attention of such other officer as from time to time shall be designated by written notice to the other.

15. FUNDING

Grantor has provided an escrow fund to Grantee for the purposes of fulfilling all of Grantor's obligations, long-term operations, and maintenance of the Easement under the Plan. Funding shall be transferred to the appropriate transferee or assignee if the Easement is assigned or transferred.

16. RECORDATION

Grantee shall promptly record this instrument in the official records of County of Placer, California and may re-record it at any time as may be required to preserve its rights in this Easement.

17. ADDITIONAL EASEMENTS

Grantor shall not grant any additional Easements, rights-of-way, or other interests in the Preserve, other than a fee or leasehold interest, undivided interest or security interest (mortgage or deed of trust), or grant or otherwise transfer to any other person or entity or to other lands or otherwise abandon or relinquish any Waters associated with the Preserve without the prior written authorization of Grantee given through the Corps. Such authorization will be given unless the Corps, among other things, determines that the proposed interest will adversely impact the functions and values of waters of the U.S. within the Preserve. This paragraph shall not prohibit the transfer of a fee title or leasehold interest in the Preserve that is subject to the terms of this Easement. This paragraph shall also not prohibit the granting of future compatible utility Easements, as authorized by the Corps.

18. AMENDMENT

This Easement may be amended by Grantor and Grantee only by mutual written agreement and with written approval of the Corps. Any such amendment shall be consistent with the purposes of this Easement and shall not affect its perpetual duration.

19. GENERAL PROVISIONS

- A. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California, the Federal Clean Water Act, Federal Endangered Species Act, and other applicable Federal laws.
- B. Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be construed in favor of the grant to effect the Conservation Purpose of this Easement and the policy and purpose of California Civil Code §815 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provisions valid shall be favored over any interpretation that renders it invalid.
- C. Severability. If any provision of this Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Preserve, and supersedes all prior discussions, negotiations, understandings, or agreements related to this Preserve.
- E. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- F. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns shall continue as servitude running in perpetuity with the Preserve.
- G. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- H. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- I. Third-Party Beneficiary. Grantor and Grantee acknowledge that the Corps is a third party beneficiary of this Easement with the right of access to the Easement property and the right to enforce all of the provisions of this Easement.

20. NO MERGER

In the event the Preserve and the Easement are ever owned by the same entity,

there shall be no express or implied merger by operation of law or otherwise. If any party should claim such a merger, the parties agree that any and all terms and conditions of this Easement shall be deemed covenants and restrictions upon the Preserve, which, shall run with the land according to California and/or other applicable law and otherwise exist in perpetuity.

IN WITNESS WHEREOF, Grantor grants, and Grantee accepts, this Easement the day and year first above written.

GRANTOR:

Michael Newman and Lisa Newman,
Husband and Wife

By: Michael Newman

By: Lisa Newman

GRANTEE:

The Habitat Management Foundation,
a California Non-Profit Corporation

By: Kenneth D. Whitney

STATE OF CALIFORNIA

County of _____

On _____, before me, _____,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

Personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

