

**TRACY HILLS SPECIFIC PLAN  
RECIRCULATED  
DRAFT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT  
VOLUME III  
OCTOBER 2015**

**APPENDIX K**

SETTLEMENT AGREEMENT, CITY OF TRACY, CITY OF LIVERMORE,  
COUNTY OF ALAMEDA, LTA AND SIERRA CLUB, DATED DECEMBER  
1998



SETTLEMENT AGREEMENT

This is a Settlement Agreement dated for convenience of the Parties hereto as of this 31st day of December, 1998, and is entered into between the City of Tracy ("Tracy") a municipal corporation, the City of Livermore ("Livermore") a municipal corporation, the County of Alameda ("Alameda") a political subdivision of the State of California, Lakeside Tracy Associates ("LTA") A California Limited Partnership, and the Sierra Club ("Sierra Club") a non-profit association for the purpose of settlement of that certain action filed in San Joaquin County Superior Court, Action No. CV004283 and transferred to Sacramento County Superior Court, Action No. 98 CS01791.

RECITALS

WHEREAS the Parties share a common interest in responsible and environmentally sound land development of the East Alameda County Planning Area, the City of Tracy, and Western San Joaquin County; and

WHEREAS, on or about January 5, 1998, Tracy approved entitlements for a development project sponsored by LTA and known as Tracy Hills ("Tracy Hills" or "Project") and certified an Environmental Impact Report ("EIR") bearing State Clearinghouse No. 95122045, as being adequate and in compliance with the California Environmental Quality Act ("CEQA"); and

WHEREAS, on February 5, 1998, Alameda, Livermore and the Sierra Club

Y903  
filed a joint petition for Writ of Mandate pursuant to CEQA seeking injunctive and other relief arising out of the approval of the Tracy Hills Project; and

WHEREAS, on February 5, 1998, the County of Fresno ("Fresno") filed a Petition for Writ of Mandate (Superior Court action no. CV004283, now consolidated action no. 98CS01791, Sacramento County), pursuant to CEQA seeking injunctive and other relief arising out of the approval of the Tracy Hills Project.

WHEREAS, on March 20, 1998, the San Joaquin County Local Agency Formation Commission ("LAFCO") approved an annexation of ± 3500 acres of the Tracy Hills Project into the City of Tracy; and

WHEREAS, on May 15, 1998, LAFCO denied the County of Alameda's Request For Reconsideration of the March 20, 1998 approval; and

WHEREAS, the Parties desire to resolve their differences in connection with the City of Tracy's approval of the Tracy Hills Project, and to establish a long term working relationship to avoid such disagreements in the future for other land development projects to the maximum extent feasible; and

WHEREAS the Parties also wish to encourage the use of alternative forms of transportation to reduce the number of vehicles that utilize regional road systems connecting San Joaquin and Alameda Counties.

WHEREAS, the Parties by this agreement have established a fair and equitable

arrangement by which to mitigate significant regional traffic impacts as a result of urban development in the East Alameda County Planning Area (which for purposes of this Agreement shall include Livermore and its sphere of influence), Tracy and Western San Joaquin County (which for purposes of this Agreement shall include the undeveloped lands west of I-5).

WHEREAS, the Parties desire to work cooperatively to provide funding for alternative forms of transportation and to facilitate trip reduction programs, and to provide financing, engineering and construction funding for regional traffic improvements where necessary.

NOW, THEREFORE, it is agreed as follows:

1. Formation of Joint Powers Authority.

The governmental Parties to this Settlement Agreement shall enter into a Joint Exercise of Powers Agreement ("JPA") in the form and content substantially as set forth in Exhibit 1 hereto. Without limitation or modification of the express powers set forth therein, the JPA shall govern the collection and expenditure of traffic fees and monies paid on its behalf, the undertaking of studies and analyses of regional transportation issues arising from an imbalance of job creation in East Alameda County Planning Area and household formation in Tracy and Western San Joaquin County, and identification and implementation of trip reduction and transportation systems management practices for Major Development Projects. The governmental

Parties shall endeavor to obtain the participation of San Joaquin County as a signatory to the JPA, but the failure of San Joaquin County to join the JPA shall not prevent formation of the JPA.

2. Funding for Regional Transportation Study.

Upon formation of the JPA and demand therefrom, LTA shall pay the sum of \$174,000 to the JPA to be expended solely and exclusively to fund technical and professional services for a study of regional transportation impacts resulting from job creation in the East Alameda County Planning Area and household formation in Tracy and Western San Joaquin County; identification and implementation of trip reduction and transportation systems management practices for Major Development Projects; costs and expenses of the County in connection with formation of the JPA; selection of transportation improvement projects; and the calculation of development impact fees pursuant to applicable law in order to fund such improvements.

3. Consideration of Regional Impacts.

Alameda County, the City of Livermore and the City of Tracy agree to consider regional implications of Major Development Projects. A Major Development Project for purposes of this Agreement is:

- a. Residential project in excess of one hundred (100) detached single family dwelling units.

b. A commercial office project in excess of 250,000 square feet of gross leasable area.

c. An industrial project in excess of 10 acres.

d. A mixed use development project with any one use exceeding the parameters described in Section 3(a), (b) or (c) above.

The governmental Parties agree to consider in good faith the results and recommendations of the Joint Powers Authority insofar as trip reduction and transportation systems management practices and regional traffic impact fees are concerned. In reviewing Major Development Projects, the governmental Parties agree to recognize those regional environmental impacts that extend beyond jurisdictional boundaries. To the extent that the governmental Parties hereto incorporate the results and recommendations of the JPA into conditions of approval of any Major Development Project, no governmental Party hereto shall object to, undertake any action in law or equity to challenge, set aside or review the approvals or entitlements granted to such Major Development Project on the grounds of traffic and/or transportation impacts. The provisions hereof shall not be construed to limit the authority or legislative discretion of the governmental Parties, but rather shall be construed as a forbearance and covenant not to object during administrative and/or legislative proceedings regarding approval for a Major Development Project and further as a covenant not to sue over such approvals or otherwise seek judicial

relief.

4. Notification.

The governmental Parties agree to notify each other, in writing, at the earliest possible time, but at no time later than issuance of a Notice of Preparation, Notice of Preparation of a Negative Declaration or similar public notice, when the project description is sufficiently finite and definite to allow for meaningful comment and discussion of Major Development Projects in the East Alameda County Planning Area or Western San Joaquin County and the City of Tracy, and shall thereafter, if requested by the other party, meet, confer and consult within a reasonable time regarding the potential regional environmental impacts of a major development project.

5. Transportation Impact Fee.

For purposes of compromise and settlement of this litigation only and not as precedent for the recommendations of the JPA, the Parties agree to the establishment and levy of a Transportation Impact Fee on the Tracy Hills project as part of the Specific Plan approval to be collected by the City of Tracy for use by the Authority. The Impact Fee shall be levied on each dwelling unit within the Tracy Hills project upon issuance of a building permit.



a. Amount of Fee

The amount of the fee shall be \$1000.00 per residential dwelling unit.

b. Condition of Approval

The City of Tracy and LTA agree that the terms of this Section 5 constitute compliance with Condition No. 29 of the existing entitlements and further agree to impose a new condition of approval on the Specific Plan approval for the Tracy Hills project that states the following:

“The Project developer(s) shall be required to pay the Transportation Impact Fee established pursuant to the written Agreement by and between the City of Tracy, LTA, the Sierra Club, the County of Alameda, and the City of Livermore to the City of Tracy prior to issuance of building permits for any residential portion of the Project. Said condition shall be incorporated into any development agreement or similar agreement if entered into by the developer and the City of Tracy. Said condition shall constitute the only regional traffic impact fee charged against the Project.”

The City of Tracy agrees to levy and collect and remit to the JPA, less any reasonable administrative costs and credits, and LTA agrees to pay the Impact Fee, as adjusted for any applicable credits set forth in Section 6 below.

c. Specific Designation For Use of the Fee

The Transportation Impact Fee in the amount of \$1000.00 per residential dwelling until shall be collected for use by the JPA in the following manner:

(i) \$500.00 of the fee shall be applied to regional transportation improvement projects within San Joaquin County to improve Interstate 205 and Interstate 580. Regional transportation improvement projects do *not* include any city or county arterial improvements;

(ii) \$500.00 of the fee shall be applied to regional transportation improvement projects within San Joaquin County that are specifically recommended by the JPA and implemented for purposes of reducing the number of vehicle trips on either I-205 or I-580 bound for outside the County of San Joaquin through the County of Alameda on I-580, or diverting or reducing trips on Corral Hollow/Tesla Road; Patterson Pass Road; and/or Grant Line and Old Altamont Pass Roads;

d. In addition to the foregoing Transportation Impact Fee, LTA shall pay to the JPA a fee of \$500 per dwelling unit paid at building permit issuance, said fee to be adjusted by not more than 2.5% per annum for increases in the cost of living as determined annually by the Engineering News Record (ENR) index for road construction costs. In no event shall the per dwelling unit fee be less than \$500 per unit. Such monies are authorized to be expended by the JPA solely for purposes of the transportation improvement projects or trip reduction projects within Alameda County set forth in Exhibit 2 hereof. The JPA shall disburse such monies to Alameda or Livermore as they shall jointly direct in writing or in accordance with cooperative agreements by and between Alameda, Livermore, Caltrans, Alameda

County Transportation Authority or similar entities.

6. Credits and Adjustments

a. The San Joaquin Council of Governments ("COG") in November, 1994, adopted a regional traffic impact fee of \$454 per dwelling unit. As of the execution date hereof, the City of Tracy has not approved or adopted the COG fee.

If at any time during the buildout of the Tracy Hills project, the City of Tracy: (i) adopts the COG fee; (ii) adopts its own similar regional transportation fee for regional transportation improvement projects within San Joaquin County and specifically for improvements to I-205 and I-580; or (iii) requires as a condition of project approvals, the actual construction or financing of a regional transportation improvement projects, then LTA shall receive an automatic dollar for dollar credit against the portion of the fee set forth in Section 5(c)(i) hereof in an amount not to exceed \$500 per dwelling unit.

b. In the event that LTA undertakes any of the following trip reduction or Transportation Systems Management Practices, it shall receive an automatic dollar for dollar credit for the costs thereof against the portion of the fee set forth in

Section 5(c)(ii):

- commuter subscription bus service;
- carpool/vanpool subsidies;
- ride share matching;
- transit ticket sales and subsidies;
- shuttle to transit lines;
- telecommuting programs;

- Altamont Commuter Express ("ACE") subsidies or capital improvements;
- other rail, bus or transit subsidies;
- dedication of land for park and ride or construction of improvements;
- dedication of land or construction of track and station improvements for the Altamont Commuter Express (or similar rail service);
- any other trip reduction or transportation systems management programs approved by the JPA for Major Development Projects.

(c) LTA shall receive a dollar for dollar credit against the portion of the fee set forth in Section 5(c)(i) or 5(c)(ii) for amount paid to the JPA in Section 2, in an amount not to exceed \$500 per dwelling unit.

7. Open Space Conservation Reservation

Following execution hereof, but prior to issuance of the first building permit for a residential unit in the Tracy Hills project, LTA shall record a conservation easement materially in the form set forth in Exhibit 3 in favor of the United States Fish and Wildlife Service or its nominee for the lands described and depicted in Exhibit 4 hereof. The conservation easement shall be consistent with all conditions of approval for Tracy Hills.

8. Integrated Agreement.

This Agreement supersedes any prior agreement, whether written or oral and shall be effective once it is fully executed by all Parties.

9. Effective Date.

This Agreement will become effective upon its execution by all Parties.

Should this Agreement not be fully executed by January 31, 1999, or such later

date as may be agreed to by the Parties in writing, any Party may terminate this Agreement by giving 30 days written notice of intent to do so to all other Parties. The defaulting Party may within said 30 days period cure the default.

10. Heirs, Successors, and Assigns.

The terms, provisions, and conditions contained in this Agreement are covenants that run with the land and shall be binding upon and inure to the benefit of the Parties and each of them and their heirs, successors, and assigns.

11. No Admissions Made.

This is an Agreement of compromise. Accordingly, the Parties agree that none of its provisions constitute, or shall be construed as, an admission or as evidence concerning the validity of entitlements issued by the City of Tracy for the Tracy Hills Project. The Parties also agree that nothing contained in this Agreement shall be admissible in any litigation other than litigation to enforce its provisions.

12. Counterpart Originals.

This Agreement may be executed in any number of counterparts, and each of these executed counterparts shall have the same force and effect as an original instrument and as if all of the Parties to the aggregate counterparts had signed the same instrument.

13. Further Assurances.

The Parties shall execute, acknowledge, and deliver such additional documents

or instruments as may be necessary to carry out the intent of this Agreement, including, but not limited to, those expressly referred to in this Agreement.

14. Litigation Costs.

Except as may be otherwise provided, each of the Parties shall bear its own attorneys' fees and costs in any and all of the actions referred to in this Agreement, except that in the event legal action is necessary to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to an award of reasonable attorneys fees and costs.

15. Construction by California Law.

This Agreement is entered into in the State of California and shall be construed and interpreted in accordance with its laws.

16. Use of Terms.

As used herein, whenever the context so requires, the neuter gender includes the masculine and feminine, and the singular gender includes the plural, and vice versa. Defined terms are to have their defined meaning regardless of the grammatical form, number, or tense of such terms.

17. Representation of Comprehension of Documents.

In entering into this Agreement, the Parties represent that they have relied upon the legal advice of their attorneys who are the attorneys of their choice. The Parties further represent that the terms of this Agreement have been completely read

by and explained to them by their attorneys, and that they fully understand and voluntarily accept those terms.

18. Authorship.

Each Party and counsel for each Party has reviewed and revised this Agreement, and accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendment of it.

19. Authority to Execute.

Each of the Parties represents and warrants that each has full power to enter into this Agreement and that no portion of the claims covered by the releases have been assigned, encumbered, or transferred.

20. Entire Agreement; Amendment.

This Agreement contains the entire Agreement between the Parties with regard to the matters set forth. This Agreement may be amended or modified only by an agreement in writing executed in the same manner as this Agreement.

21. Exhibits.

All exhibits appearing in the text of this Agreement are incorporated herein by this reference.

22. Dismissal of Claims

In consideration of the mutual covenants and obligations of the Parties as set forth herein, the County of Alameda, the Sierra Club, and the City of Livermore agree to dismiss their respective claims and causes of action set forth in County of Alameda et al v. City of Tracy et al, bearing Action No. CV 004283, in and for the County of San Joaquin [transferred to the County of Sacramento pursuant to Code of Civil Procedure (CCP) section 394a], with prejudice. The dismissing Parties further agree not to object to the Project in any further administrative or legislative proceedings to or maintain any action of law or equity to prevent the issuances of any further entitlements for the Tracy Hills Project, save and except to enforce the provisions of the Settlement Agreement. Notwithstanding the foregoing to the contrary, dismissing Party Sierra Club does not hereby waive or relinquish its right to comment orally or in writing on the matter of further entitlements for this Project provided that such comment does not constitute an objection to issuance of such entitlements.

23. Mutual Releases.

a. Tracy and LTA release and forever discharge Alameda, Livermore and the Sierra Club and its past, present and future elected and appointed officers, directors, commission members, employees, servants, agents, representatives, attorneys, and successors from any and all claims, demands, obligations, and causes



of action of any nature whatsoever, past, present or future, whether known or unknown, whether existing or arising hereafter, whether based in tort, contract, statute, Constitution (including inverse condemnation) or other legal theories of recovery and whether for compensatory or punitive damages, which arise out of or in any way relate to the Tracy Hills project approval.

b. Alameda, Livermore and Sierra Club release and forever discharge the LTA, the record owners, and each of them, and their past, present and future elected and appointed officers, directors, board members, employees, servants, agents, representatives, attorneys, successors, and assigns from any and all claims, demands, obligations, and causes of action of any nature whatsoever, past, present and future, whether known or unknown, whether existing or arising hereafter, whether based in tort, contract, statute, Constitution, or other legal theories of recovery and whether for compensatory or punitive damages, which arise out of or in any way relate to the Tracy Hills project approval.

c. Alameda, Livermore and Sierra Club release and forever discharge Tracy and its past, present and future elected and appointed city council members, planning commissioners, officers, directors, board members, employees, servants, agents, representatives, attorneys, and successors from any and all claims, demands, obligations and causes of action of any nature whatsoever, past, present and future, whether known or unknown, whether existing or arising hereafter, whether based in

tort, contract, statute, Constitution, or other legal theories of recovery and whether for compensatory or punitive damages, which arise out of or in any way relate to the Tracy Hills project approval.

d. The mutual releases in subparagraphs (a) through (c) of this Section specifically include any and all claims, whether or not now known or suspected to exist and whether or not specifically or particularly described herein. The Parties expressly waive and any right to assert hereafter that any claim has been omitted from the terms of these releases through ignorance, oversight, error or any other cause, and further expressly waive any right that they may have under the provisions of California Civil Code Section 1542, which reads as follows:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially effected his settlement with the debtor.”**

24. Condition Regarding Payment of Fees.

The JPA shall be formed upon execution of this Settlement Agreement by each of the signatory Parties taking those actions necessary to complete formation of the JPA.

a. The obligation of LTA to provide payment to the JPA in the amount of \$174,000 pursuant to Section 2 above, shall accrue upon execution of this

Settlement Agreement and is due and payable within ninety (90) days of execution and final approval of all Parties. The payment shall be made payable to the County of Alameda to be held in trust for the benefit of the JPA, to be disbursed in accordance with this Agreement upon formation of the JPA.

b. The obligation of LTA to pay the Transportation Impact Fee pursuant to Section 5(a) above and the additional JPA fee pursuant to Section 5(d) above (for purposes of this paragraph only "the JPA fees") is conditioned upon Tracy issuing building permits for the dwelling units within the Project. The obligation of LTA to pay the JPA fees set forth in Section 5 herein, arises at the time the building permit is issued to LTA and/or its successor in interest, payment of which is a condition precedent to issuance of a building permit. Pursuant to Section 5 above, the fees shall be levied on each dwelling unit within the Project upon issuance of a building permit.

NOW, THEREFORE, the Parties have executed this Agreement.

DATED: JAN 5 1999

COUNTY OF ALAMEDA  
State of California

By Keith Carson  
Its: Chairman, Board of Supervisors

APPROVED AS TO FORM:

Lorenzo E. Chambliss  
LORENZO E. CHAMBLISS

ATTEST:

Clerk of the Board of Supervisors

By Debra J. Burns  
Deputy Clerk

DATED:

CITY OF TRACY, a Municipal Corporation  
STATE OF CALIFORNIA

By \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

ATTEST:

By \_\_\_\_\_  
City Clerk

DATED:

COUNTY OF ALAMEDA  
State of California

By \_\_\_\_\_  
Its: Chairman, Board of Supervisors

APPROVED AS TO FORM:

\_\_\_\_\_

ATTEST:

Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

DATED: 12-22-98

CITY OF TRACY, a Municipal Corporation  
STATE OF CALIFORNIA

By *Dan Bellini*  
Its: Mayor

APPROVED AS TO FORM:

*Debra E. Corbett*

ATTEST:

By *Sharon Smith*  
City Clerk

DATED:

CITY OF LIVERMORE, a Municipal Corporation  
STATE OF CALIFORNIA

By: John D. Stein  
Its: City Mayor

APPROVED AS TO FORM:

Daniel Hedeman

ATTEST:

By: Mimi Albrecht  
City Clerk

DATED:

LAKESIDE TRACY ASSOCIATES, a California Corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

DATED:

SIERRA CLUB, a non-profit association

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

SRM:kag  
J:\WPDMNRSW\208\03\AGREE\PAAGR.CLN

DATED: \_\_\_\_\_

CITY OF LIVERMORE, a Municipal Corporation  
STATE OF CALIFORNIA

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:  
\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

DATED: 12/21/98

Lakeside/Tracy Development Associates,  
A California Limited Partnership

~~LAKESIDE TRACY ASSOCIATES~~, a California Corporation

By: Grupe Ventures, Inc., a California corporation,  
its Development Manager

By: *[Signature]*  
Its: VP

APPROVED AS TO FORM:

*[Signature]*

DATED: \_\_\_\_\_

SIERRA CLUB, a non-profit association

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:  
\_\_\_\_\_

SRM:kag  
J:\WPDMNRSW\208\03\AGREE\PAAGR.CLN

DATED: \_\_\_\_\_

CITY OF LIVERMORE, a Municipal Corporation  
STATE OF CALIFORNIA

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:  
\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

DATED: \_\_\_\_\_

LAKESIDE TRACY ASSOCIATES, a California Corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:  
\_\_\_\_\_

DATED: 4 Jan 99

SIERRA CLUB, a non-profit association

By: David Nesmith  
Its: SF Bay Chapter Conservation Staff

APPROVED AS TO FORM:  
John B...

SRM:kag  
J:\WPDMNRSW\208\03\AGREE\PAAGR.CLN



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

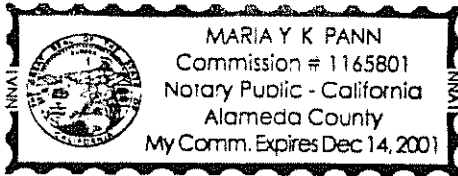
County of ALAMEDA } SS.

On Jan. 4, 1999, before me, MARIA Y.K. PANN, NOTARY PUBLIC  
Date / Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared DAVID EARL ALESMITH  
Name(s) of Signer(s)

- personally known to me
- 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.



Place Notary Seal Above

WITNESS my hand and official seal.  
Maria Y.K. Pann  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Settlement Agreement

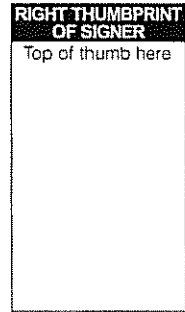
Document Date: Jan. 4, 1999 Number of Pages: Pg 19

Signer(s) Other Than Named Above: None

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: Sierra Club

MEMORANDUM FOR THE DIRECTOR, FBI

MEMORANDUM FOR THE DIRECTOR, FBI

RE: [Illegible]

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EXHIBIT 1

**FORM OF JOINT POWERS AGREEMENT**

This is a Joint Exercise of Powers Agreement by and between the County of Alameda ("Alameda") a political subdivision of the State of California, the City of Tracy ("Tracy") a municipal corporation and the City of Livermore ("Livermore") a municipal corporation, and is dated for convenience of the parties this \_\_\_ day of November, 1998.

**RECITALS**

WHEREAS, Tracy, Alameda and Livermore desire to work cooperatively to provide funding for alternative forms of transportation to facilitate trip reduction programs in the I-580, I-205, I-5, state route 120, state route 84, and I-680 commute corridors of Alameda County and San Joaquin County and to finance, engineer and construct regional traffic improvements where necessary; and

WHEREAS, Tracy, Alameda and Livermore have determined that the creation of a Joint Powers Authority is the most appropriate manner in which to accomplish their collective goals while at the same time accommodating their individual interests; and

WHEREAS, California Government Code Section 6500 et. seq., provides that Tracy, Alameda and Livermore may, by agreement, jointly exercise any power

common to them, and it is the intent of these parties to so fully utilize these statutory authorities to enter into this Agreement.

1. Joint Powers Authority Created

There is hereby created the City of Tracy/County of Alameda/City of Livermore Joint Powers Authority ("the Authority" or "the JPA") to exercise in the manner set forth in this Agreement the powers common to each of the signatory parties. The primary purpose of the Authority shall be the collection and expenditure of Transportation Impact Fees as further described herein. The members of the Authority are: City of Tracy, California; the County of Alameda, California; and the City of Livermore, California. The Authority shall be a public entity separate from the Agencies. No debt, liability or obligation of the Authority shall constitute a debt, liability or obligation of any Agency and each Agency's obligation hereunder is expressly limited only to the appropriation and contribution of such funds as may be levied pursuant to this Agreement or as the Agencies may otherwise agree. Unless the exercise of any power or the carrying out of any act is required by the laws of either state to be exercised or carried out in a certain manner, any conflict between such laws or the provisions of this Agreement must be resolved by application of the more stringent provision or requirement.

2. Boundaries

The boundary of the Authority shall be the boundaries of the City of Tracy

and the City of Livermore and their respective spheres of influence as they may be amended and/or determined by LAFCO and the East Alameda County Planning Area.

3. Powers

The Authority shall have the following powers to be exercised in accordance with the provisions of the laws of California:

- a. to make and enter into contracts;
- b. to apply for and accept grants, advances and contributions;
- c. to provide funding to public or private entities for the acquisition of property, and/or to facilitate financing, planning, design and construction of regional traffic mitigation improvements, as described and defined herein;
- d. to employ or contract for the services of agents, consultants and such other persons or firms as necessary;
- e. to promulgate recommendations governing the establishment and management of fees on new development, including, without limitation, the construction, management, maintenance, operation and control of any public or private facilities established pursuant to this Agreement;
- f. to acquire, hold or dispose of property, including exercise of the power of eminent domain under the provisions of Code of Civil Procedure sections 1230.010 et seq. or other applicable laws of the State of California, as these sections exist and as they may be amended from time to time;

- g. to sue and be sued in its own name;
- h. to incur debts, liabilities or obligations, subject to limitations herein set forth;
- i. to adopt, as authorized by law, ordinances or resolutions necessary to carry out the purposes of this Agreement;
- j. to adopt annually a budget setting forth all administrative, operational and capital expenses for the Authority, together with the apportionment of such expenses by levy against each Agency to the extent as set forth herein.
- k. to carry out any function or collect and disburse any funds as provided in that certain agreement entitled "Settlement Agreement" dated \_\_\_\_\_, 1998, by and between the City of Livermore, City of Tracy, Lakeside Tracy Associates, County of Alameda and the Sierra Club.

l. Without limitation of Section 4 of the Settlement Agreement, Authority shall not undertake the review of, or comment upon individual proposed development projects within member agency jurisdiction, and member agencies shall have no obligation to submit proposed development projects for review by this authority.

4. Organization

The authority shall be governed by a Board of Directors which shall exercise all powers and authority on behalf of the Authority. The Board is empowered to establish its own procedures. The Board may do any and all things necessary to carry

out the purposes of this Agreement.

a. Board Members

The Board shall consist of one (1) member of the governing body of each of the Agencies. Upon execution of this Agreement, the governing body of each Agency shall by resolution or other appropriate action appoint its representative to serve on the Board and one of its members to serve as an alternate member of the Board after his or her appointment, until a successor is selected. Each member and alternate shall serve at the pleasure of the governing body of the appointing Agency. Any change in appointment of a member or alternate shall be by resolution of the governing body of the appointing Agency.

b. Vote

Each Board Member shall have one vote. Any action of the Board must be by unanimous vote of the Board.

c. Meetings of the Board

(1) Regular Meetings

The Board shall hold at least one regular meeting each year. The date, hour and place at which each such regular meeting shall be held shall be fixed by resolution of the Board.

(2) Special Meetings

Special meetings of the Board may be called in accordance with

applicable law.

(3) Notice of Meetings

All meetings of the Board shall be held subject to the provisions of Ralph M. Brown Act, sections 54960 et seq. of the California Government Code, and applicable laws and regulations of the of the County of Alameda, the City of Livermore and the City of Tracy.

(4) Minutes of Meetings

The Board shall cause minutes of all meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to each Agency.

d. Bylaws

The Board shall adopt by resolution from time to time such by-laws, rules or regulations for the conduct of its affairs as may be required.

5. Budget

The fiscal year of the Authority shall be the year beginning October I and ending September 30. For each fiscal year, the Authority shall adopt a budget in accordance with applicable laws. A unanimous vote of the Authority Board shall be necessary for a budget to be adopted. At the same time as the budget is adopted, the Authority shall establish the dues of each Agency, if necessary.

Surplus funds generated by the Authority shall be credited against future dues of the



Agencies, or may be returned to the Agencies in proportion to the contribution of each Agency during the term of this Agreement.

6. Administrative Services of the JPA

The Authority shall appoint a Finance Officer to serve the combined functions of the treasurer and auditor pursuant to California Government Code section 6506.6 as it now exists or as it may be amended from time to time. The Finance Officer shall serve as the depository and have custody of all Authority funds from whatever source, and shall perform the following functions in accordance with applicable law:

- a. Receive and receipt for funds for the Authority and place them in appropriate accounts of a financial institution, checking accounts or interest bearing government accounts to the credit of the Authority, and invest any surplus funds in accordance with Government Code section 53601 or applicable law, as that section exists or as it may be amended from time to time;
- b. Draw warrants or otherwise be responsible to certify the payment of demands against the Authority when approved by the Authority or by a person authorized by the Authority to so approve;
- c. Pay any sums due from Authority money, or any portion thereof, only upon warrants or other equivalent certification pursuant to procedures established by the Authority;
- d. Verify and report in writing on the first day of October, January April and

July of each year to the Authority, as well as the amount of receipts and the amount paid out since the last report to the Authority; and

e. Pursuant to Government Code section 6506.6 or applicable law, as it may be amended from time to time, the Finance Officer shall cause an independent audit of the accounts and records to be conducted by a certified public accountant or public accountant. This independent audit shall comply with the requirements of section 6505 of the Government Code or other applicable law, as it now exists or as it may be amended from time to time. In each case, the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under section 26909 of the Government Code or applicable law, as it now exists or as it may be amended from time to time. The audit shall conform to generally accepted auditing standards.

f. In the event of termination of the Authority where there is a successor public entity which will carry on the activities of the Authority and assume its obligations, Authority funds, including any interest earned on deposits, and property remaining upon termination of the Authority and after payment of all obligations, shall be transferred to the successor public entity. There is no successor public entity which would carry on any of the activities of the Authority or assume any of its obligations, Authority funds, including any interest earned on deposits, and property remaining upon termination of the Authority and after payment of all obligations,

shall be returned in proportion to the contribution of each Agency during the term hereof.

7. Study Of Regional Impacts.

The purpose of the Authority will also be to undertake a study of the regional transportation impacts resulting from residential development in the Central Valley serving the local and Bay Area employment base. The study will, to the extent of funding available, identify: (1) additional specific programs and physical improvements necessary to help alleviate congestion in Alameda and San Joaquin Counties along the I-580, I-680, state route 84, I-205, I-5, and state route 120 commute corridors; (2) regional mass transit needs for inter-county commute trips; and (3) trip reduction and transportation systems management practices for Major Development Projects in the jurisdiction of the parties.

For purposes of this Agreement a Major Development Project is defined as:

- a. A residential project in excess of one hundred (100) detached single family dwelling units.
- b. A commercial office project in excess of 250,000 square feet of gross leasable area.
- c. An industrial project in excess of 10 acres.
- d. A mixed use development project with any one use exceeding the parameters described in Sections a, b, c, or d above.

Upon the completion of the study of regional transportation impacts, the Authority shall conduct a noticed public hearing and shall make specific recommendations to its member agencies. If such recommendations involve the payment of fees by Major Development Projects, the Authority shall comply with the provisions of Sections 6600 *et seq.*, of the Government Code insofar as is necessary to:

- (i) identify the purpose of the fee;
- (ii) identify the use to which the fee is to be put;
- (iii) determine the reasonable relationship between the fees' use and the type of development project on which the fee is imposed;
- (iv) determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

In recommending to its member agencies the adoption of a fee, the Authority shall consider and credit such member agencies for fees already imposed for the regional transportation measures. By way of example only, Livermore and Alameda County currently charge a Tri-Valley Transportation Commission Fee (TVTC) of \$1,500 per unit and Tracy imposes a similar fee of \$1,500 per unit on the Tracy Hills Project.

(SIGNATURES)

## PROJECT LIST

I-580 HOV Lanes between Santa Rita Road and Greenville Road

State Route 84 Expressway

Isabel Route 84/I-580 Interchange

I-680 HOV Lane Improvements

Altamont Commuter Rail Operating Costs and Track Improvements

Funding Truck Climbing, truck bypass, or HOV lanes on I-580 through Altamont Pass

Rural Road Improvements (Tesla Road, Patterson Pass Road) in an amount not to exceed 20% or \$500.00 c.3 fee component per unit; rural road improvements shall not include improvements to increase carrying capacity of the roads.

BART parking and commuter parking projects

## EXHIBIT 2

EXHIBIT 3

The following information was obtained from the records of the  
 Department of the Interior, Bureau of Land Management, and  
 the Bureau of Reclamation, regarding the land parcels  
 described herein. The information was obtained from the  
 records of the Department of the Interior, Bureau of Land  
 Management, and the Bureau of Reclamation, and is being  
 furnished to you for your information. The information  
 is being furnished to you for your information and is not  
 to be used for any other purpose. The information is  
 being furnished to you for your information and is not  
 to be used for any other purpose. The information is  
 being furnished to you for your information and is not  
 to be used for any other purpose.

RECORDING REQUESTED BY, AND  
WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONSERVATION EASEMENT GRANT

THIS CONSERVATION EASEMENT GRANT is made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ by \_\_\_\_\_

(together "Grantor"), in favor of the CALIFORNIA DEPARTMENT OF FISH AND GAME ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in the County of San Joaquin, State of California, more particularly described in Exhibit "A" attached hereto and incorporated by this reference (the "Property"); and

WHEREAS the Property possesses wildlife and native habitat values (collectively, "conservation values") of great importance to Grantor, the people of San Joaquin County and the people of the State of California; and

WHEREAS, the Property provides habitat for the San Joaquin kit fox (*Vulpes macrotis mutica*), California red-legged frog (*Rana aurora draytoni*), riparian woodrat (*Neotoma fucipes riparia*), burrowing owl (*Speotyto cunicularia hypugea*), western pond turtle (*Clemmys marmorata*), western spadefoot (*Scaphiopus hammondi*), California tiger salamander (*Ambystoma californica*), and large flowered fiddleneck (*Amsinckia grandiflora*); and

WHEREAS, the Department of Fish and Game has, pursuant to the Fish and Game Code section 1802, jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat to sustain populations of those species; and

WHEREAS, Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and to protect in perpetuity the conservation values of the Property in accordance with the terms of this Conservation Easement for the benefit of this generation and the generations to come;

NOW THEREFORE in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and Civil Code section 815, et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. Purpose. It is the purpose of this Easement to preserve, protect, and maintain the San Joaquin kit fox (*Vulpes macrotis mutica*) and its habitat as well as any other current or future listed or special-status plant or animal species known or with potential to occur at the Project site, described in Exhibit "B" attached hereto, and for which the Grantee requires mitigation in relation to the Project. Grantor and all successors and assigns under this Easement, covenant with Grantee to do or refrain from doing, severally and collectively, the acts mentioned later in this Easement. Grantee is conveyed the rights enumerated in this Easement for itself and its successors, agents, and assigns. This easement is also intended to provide mitigation as set forth in the Habitat Conservation Plan for Grupe Communities, Inc., Tracy Hills Project ("Tracy Hills HCP") and its corresponding Implementing Agreement.

2. Rights of Grantee. To accomplish the purpose of this Easement the following rights are, subject to the limitations contained in this Easement, conveyed to Grantee by this Easement:

2.1 Protection of Conservation Values. To preserve, restore, and protect the conservation values of the Property.

2.2 Entrance Upon Property. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and to otherwise enforce the terms of this Easement, and to carry out conservation activities described in this Easement; provided that entry shall be upon prior notice to Grantor and at the frequency provided in Section 6 of this Easement; and provided further that Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

2.3 Prevention of Inconsistent Activities. Except as expressly set forth in this Easement or approved in writing by Grantee, to prevent any activity on or use of the Property that is inconsistent with the habitat conservation purposes of this easement and to require or carry out the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

2.4 Structures. To install, operate, and maintain structures for the purpose of reestablishing, protecting, and enhancing fish and wildlife habitat, including the taking of construction materials to and from the Property. Any improvements shall be made solely at Grantee's expense, and shall not adversely affect the existing ranching and grazing rights of Grantor. Grantee shall not install fencing on the Property except as



is necessitated by unforeseen changes in the land uses on the Property or Grantor's contiguous property which will destroy or diminish the habitat value of the Property, or except as otherwise mutually agreed by Grantor and Grantee. Any fencing installed by Grantee pursuant to the provisions of this Easement shall be installed at Grantee's sole cost and expense.

2.5 Vegetation. To establish or reestablish vegetation through seedings or natural succession. Grantee shall have the right to introduce any new indigenous wildlife, or plants, or indigenous threatened and/or endangered species provided the introduction does not interfere with the economical grazing and raising of livestock. As used in this Easement, "livestock" shall mean cattle, sheep, and a limited number of riding stock as are necessary to carry out normal ranching and grazing operations on the Property. "Livestock" shall not include any exotic animals as defined under California law. Grantee shall not have the right to introduce any new exotic or non-indigenous wildlife, plants, or non-indigenous, and/or endangered species to the Property without the express written permission of Grantor.

2.6 Manipulation. To, at Grantee's expense, manipulate vegetation, topography, and hydrology on the Property through diking, pumping, water management, excavation, pesticide application, fertilizing, and other appropriate practices, provided that the manipulation does not interfere with the economical grazing and raising of livestock.

2.7 Surveys and Photographs. To, at Grantee's expense, make surveys, take photographs, and prepare other documentation as may be necessary or desirable to administer the provisions of this Easement.

3. Prohibited Uses. Except as expressly set forth in this Easement or approved in writing by Grantee and the United States Fish and Wildlife Service ("USFWS"), any activity on or use of the Property inconsistent with the habitat conservation purposes of this Easement is prohibited. Without limiting the generality of the foregoing, unseasonal watering, use of herbicides, rodenticides, or weed abatement activities, incompatible fire protection activities and any and all other uses which may adversely affect the preservation purposes of this Easement are prohibited except as expressly set forth in this Easement or approved in writing by Grantee and USFWS. Grantor shall not authorize the use by Grantor, Grantor's agents, or any third party of off-road vehicles except as reasonably necessary for use by Grantor in livestock ranching operations. Surface entry for exploration or extraction of minerals is prohibited, except as expressly set forth in this Easement or approved in writing by Grantee and USFWS.

4. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to exclusive possession of the Property, the right to convey the remaining interest in the Property so long as the conveyance is in a manner that does not interfere with the purposes of this Easement, the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited herein and

are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, Grantor reserves the rights listed in paragraphs 4.1 to 4.7.

4.1 Continuance of Existing Operations. To continue Grantor's existing operations on the Property in a reasonable and prudent manner in accordance with sound ranching and grazing practices and subject to the terms and conditions of this Easement; to maintain, repair, and replace all existing improvements and developments on the Property, including roads, fences, corrals, water storage, and distribution systems, signs, troughs, and any other manmade structures; and to exercise the other rights set forth in this Easement. Any other activity, use, or development of the Property shall be subject to the prior written approval of Grantee and USFWS, which shall not be unreasonably withheld and which shall be based upon a determination of whether such actions materially degrade the Property's conservation values.

4.2 Predator Control. Predators such as, coyotes, red and grey foxes, bobcats, and mountain lions may be controlled by approved species-specific methods after procuring authorization for the legal take of target predators from the Department of Fish and Game. Kit foxes may not be taken under any predator control activity or method.

4.3 Rodent Control. To conduct rodent control on the Property, in accordance with existing and future applicable laws and regulations and consistent with the provisions of this Easement, in the following manner:

(a) Grantor shall comply with restrictions on the label of the rodenticide container and with applicable agricultural policies of San Joaquin County.

(b) All rodenticide must be legally approved and used in accordance with applicable laws and regulations.

4.4 Reversion to Natural Condition. To allow all or any portion of the Property to revert to its natural condition.

4.5 Mineral Rights. Mineral rights, including hydrocarbons appurtenant to the Property. Development of mineral rights shall cause no disturbance to the surface estate nor materially degrade the Property's conservation values. Nothing herein shall prohibit Grantor from pooling Property with other properties for oil and gas purposes nor shall it prohibit slant drilling under the Property from other property so long as there is no surface entry onto the Property for oil and gas purposes nor disturbance to the surface of the Property.

4.6 Posting of Property. To post the Property and to prosecute and eject trespassers.

4.7 Hunting and Fishing. To hunt and fish on the Property in accordance with all existing and future federal, state, and local fish and game laws and regulations and to allow invitees to do the same.

5. Grantee's Remedies: If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor and USFWS of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. In furtherance of the mutual commitments made in the Tracy Hills HCP Implementing Agreement, the USFWS shall have the right to enforce the terms of this Easement as provided herein. If Grantor fails to cure the violation within fifteen (15) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a fifteen (15) day period, fails to begin curing such violation within the fifteen (15) day period, or fails to continue diligently to cure such violation until finally cured, Grantee and/or USFWS 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 by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury. Grantee may also bring an action at law or in equity to recover any damages to which it may be entitled for violation of the terms of this Easement including damages for the injury of environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee'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 Civil Code section 815, et seq., are incorporated herein by this reference and this grant is made subject to all of the rights and remedies set forth therein. If at any time in the future Grantor or any subsequent transferee uses or threatens to use such lands for purposes not in conformance with the stated conservation purposes contained herein, notwithstanding Civil Code 815 et seq., the California Attorney General, USFWS, or third-party entities organized for conservation purposes have standing as interested parties in any proceeding affecting this Easement.

5.1 Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation or negligence under the terms of this Easement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, costs of suit and attorneys' fees and fees for expert witnesses, shall be borne by Grantee.

Faint, illegible text covering the majority of the page. The text appears to be a dense block of information, possibly a list or a detailed report, but the characters are too light and blurry to transcribe accurately.

5.2 Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

5.3 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property.

6. Access. This Easement does not convey a general right of access to the public; however, access for monitoring terms and purposes of this Easement and information regarding San Joaquin Kit Fox biology shall be reserved to Grantee or to the designee of Grantee. Access to the Property shall be subject to the following conditions:

6.1 Reasonable Access. Grantee shall have reasonable access, by vehicles or other appropriate reasonable modes of transportation, to the Property on and across existing roads on the Property. In the event that the use of existing roads or rights-of-way over the Property is not practical for any reason, Grantor and Grantee may agree upon an alternative designated route for access to and from the Property so that damage to ranch operations or to habitat preservation can be reasonably avoided.

6.2 Frequency of Access. Grantee shall be allowed access to the Property on a limited basis of approximately six (6) times per year. Grantee shall be allowed four (4) regularly scheduled visits to the Property on or about the first day of the months of April, May, June, and July of each year, subject to at least forty-eight (48) hours prior notice to Grantor. Grantee shall be allowed two (2) other unscheduled visits per year, upon at least forty-eight (48) hours prior notice to Grantor. Nothing herein shall be construed to limit Grantor and Grantee from mutually agreeing to allow Grantee more visits to the Property than those set forth in this Easement. As a result of this limited use, Grantee shall not be required to bear any road maintenance cost.

6.3 Other Arrangements. Nothing in this Easement shall limit Grantor and Grantee's rights to agree to access without advance notice under mutually satisfactory written terms. Grantee shall not be allowed to maintain any locks on gates entering the Property. Grantee shall be allowed access through any locks purchased and maintained by Grantor; however, nothing in this Easement shall be interpreted to limit the powers and the authority of Grantee to perform patrols as governed by the laws of the State of California.

7. Costs of Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind including transfer costs, costs of title and documentation review,

expenses incurred from other state agency reviews, and costs related to the ownership, operation, upkeep, and maintenance of the Property.

7.1 Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

7.2 Hold Harmless. Grantor 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's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expense, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' 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 related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Grantee Indemnified Parties; (2) the obligations specified in paragraphs 7 and 7.1; and (3) the existence or administration of this Easement. Grantee acknowledges that Section 2056 of the California Fish and Game Code shall apply.

7.3 Condemnation. The habitat conservation purposes are presumed to be the best and most necessary public use as defined at CCP section 1240.680, notwithstanding CCP sections 1240.690 and 1240.700.

8. Assignment. This Easement is transferable. In the event of a transfer by Grantee, Grantee shall give Grantor and USFWS at least thirty (30) days prior written notice of the transfer, and may assign its rights and obligations under this Easement only to an organization acceptable to USFWS that is a qualified organization at the time of transfer under section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under Civil Code section 815, et seq. (or any successor provision then applicable), including a perpetual right of entry, upon reasonable notice, on the part of USFWS identical to that granted to Grantee by the terms of this Easement. As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out, and notice of such restrictions shall be recorded in the county where the Property is located. Prior to any such transfer, Grantee shall obtain the written approval of USFWS of the proposed Transferee. Grantee shall not release, modify, relinquish or abandon its rights and obligations under this Easement without the prior written consent of USFWS, which consent shall not be unreasonably withheld.

9. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee and USFWS of the intent to

transfer of any interest at least fifteen (15) days prior to the date of such transfer. Grantee and USFWS shall have the right to approve all subsequent transfers to ensure that all subsequent claimants or transfers have notice of the included restrictions. 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.

10. Estoppel Certificates. Upon request by Grantor, Grantee shall within fifteen (15) days execute and deliver to Grantor any document, including 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.

11. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Grantee: Department of Fish and Game  
Regional Manager, Region 2  
1701 Nimbus Road, Suite A  
Rancho Cordova, California 95670

Department of Fish and Game  
Legal Affairs Division  
1416 Ninth Street, 12th Floor  
Post office Box 944209  
Sacramento, California 95814-2090

To USFWS: Field Supervisor  
Sacramento Field Office  
U.S. Fish and Wildlife Service  
3310 El Camino Avenue, Suite 130  
Sacramento, California 95821-6340

or to such other address as any party from time to time shall designate by written notice to the other.

12. Recordation. Grantor shall promptly record this Easement in the official records of San Joaquin County, California and immediately notify Grantee through the mailing of a conformed copy of the recorded easement. Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

### 13. General Provisions

13.1 Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California.

13.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Civil Code section 815, et seq. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

13.3 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.

13.4 Entire Agreement. This Easement sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

13.5 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

13.6 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 and shall continue as a servitude running in perpetuity with the Property.

13.7 Captions. The captions in this Easement have been inserted solely for convenience of reference and are not a part of this Easement and shall have no effect upon construction or interpretation.

13.8 Counterparts. The parties may execute this Easement 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.



IN WITNESS WHEREOF Grantor and Grantee have entered into this Easement  
the day and year first above written.

GRANTOR:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_

(Note: CDFG has a separate form (Certificate of Acceptance) for their approval, which  
is attached to this Easement.)

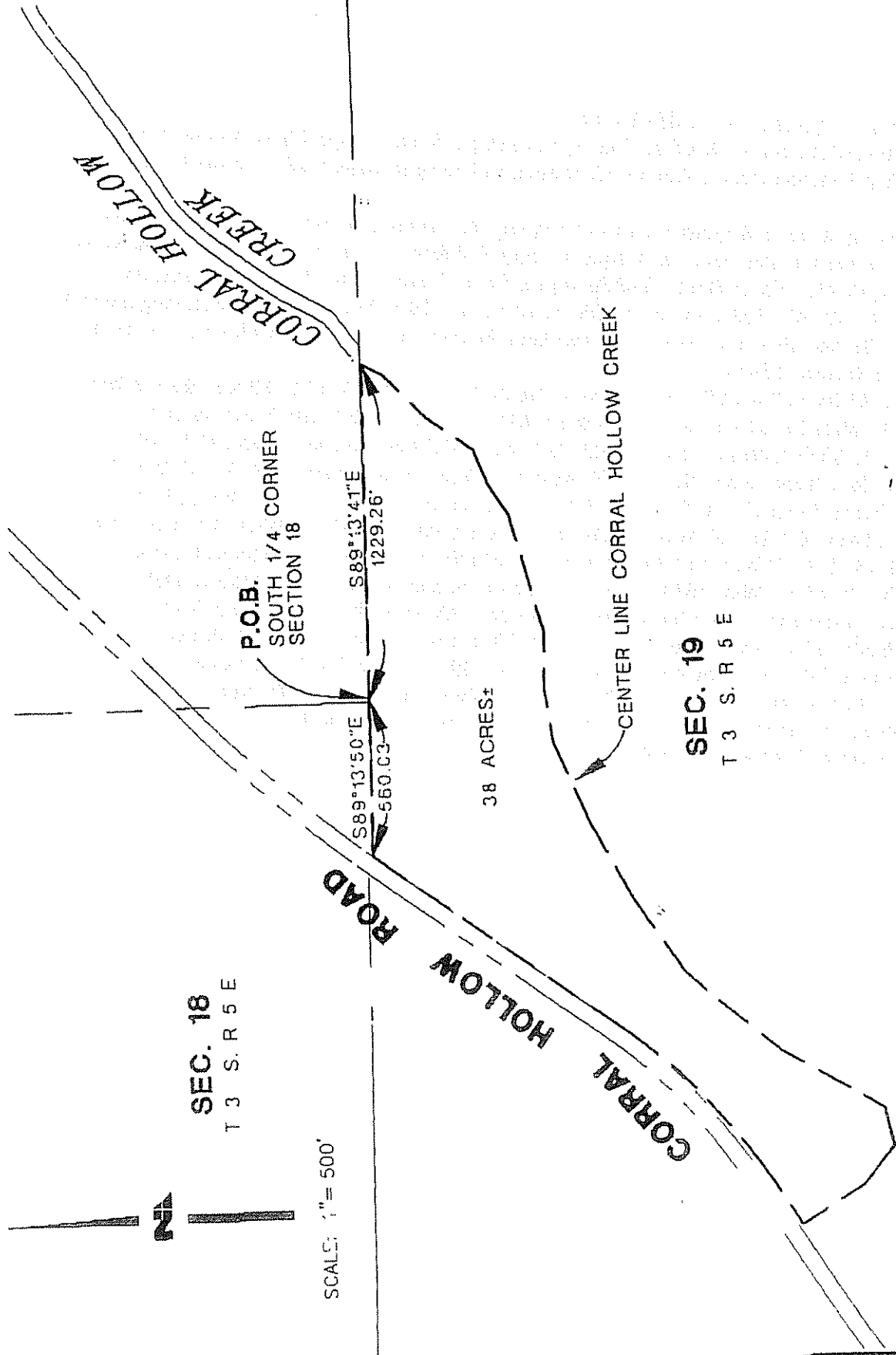
EXHIBIT 4

*Parcel One - (East of Corral Hollow Road)*

A portion of the north half of Section 19, Township 3 South, Range 5 East, Mount Diablo Base and Meridian, San Joaquin County, California, and being more particularly described as follows:

Beginning at the south quarter corner of Section 18, Township 3 South, Range 5 East, Mount Diablo Base and Meridian, San Joaquin County, California, as shown on that Record of Survey filed April 25, 1995, in Book 33 of Surveys at Page 57 San Joaquin County Records; thence South  $89^{\circ} 13' 41''$  East along the North line of Section 19 1229.26 feet; thence leaving the north line of Section 19, the following courses along the center line of Corral Hollow Creek, as shown on said Record of Survey:

South  $30^{\circ} 08' 02''$  West 92.24 feet; thence South  $46^{\circ} 57' 04''$  West 216.82 feet; thence South  $36^{\circ} 17' 43''$  West 204.00 feet; thence South  $69^{\circ} 01' 09''$  West 137.27 feet; thence South  $58^{\circ} 07' 21''$  West 132.80 feet; thence South  $75^{\circ} 03' 45''$  West 441.77 feet; thence South  $87^{\circ} 43' 01''$  West 210.96 feet; thence South  $82^{\circ} 21' 19''$  West 200.34 feet; thence South  $68^{\circ} 02' 57''$  West 310.31 feet; thence South  $62^{\circ} 54' 01''$  West 316.26 feet; thence South  $57^{\circ} 15' 15''$  West 330.51 feet; thence South  $41^{\circ} 35' 39''$  West 450.60 feet; thence South  $31^{\circ} 51' 57''$  West 418.38 feet; thence South  $78^{\circ} 01' 47''$  West 143.80 feet; thence North  $51^{\circ} 43' 26''$  West 170.94 feet; thence North  $31^{\circ} 16' 07''$  West 268.84 feet to a point on the southeasterly line of Corral Hollow Road; thence northeasterly along the southeasterly line of Corral Hollow Road the following courses: North  $58^{\circ} 29' 36''$  East; thence along a 1937.99 foot radius curve to the left, through a central angle of  $21^{\circ} 40' 34''$  (long chord bears North  $47^{\circ} 39' 19''$  East 728.81 feet) an arc length of 733.18 feet; thence North  $36^{\circ} 49' 02''$  East 1101.06 feet to a point on the north line of Section 19; thence South  $89^{\circ} 13' 50''$  East, along the north line of Section 19 560.03 feet to the Point of Beginning and containing 38.45 acres, more or less.



SEC. 18  
T 3 S. R 5 E

SEC. 19  
T 3 S. R 5 E

SCALE: 1" = 500'



NOLTE and ASSOCIATES, Inc.  
Engineers / Planners / Surveyors



EXHIBIT 1

Parcel Two (Portions of Sections 18 and 19, west of Corral Hollow Road)

Portions of the south half of Section 18 and the north half of Section 19, Township 3 South, Range 5 East, Mount Diablo Base and Meridian, San Joaquin County, California, and being more particularly described as follows:

Commencing at the northwest corner of said Section 19 as shown on that Record of Survey filed April 25, 1995, in Book 33 of Surveys at Page 57 San Joaquin County Records; thence South  $00^{\circ}26'45''$  West 747.45 feet along the west line of Section 19 to the True Point of Beginning of the following described parcel; thence continuing South  $00^{\circ}26'45''$  West 598.81 feet, along the west line of Section 19, to a point being the northeast corner of Section 24, Township 3 South, Range 4 East, Mount Diablo Base and Meridian; thence, South  $00^{\circ}27'02''$  West 1545.02 feet along the line common to Sections 19 and 24 to a point in the center line of Corral Hollow Creek; thence along the center line of Corral Hollow Creek, the following courses: North  $29^{\circ}37'37''$  East 144.84 feet; thence North  $62^{\circ}31'55''$  East 311.66 feet; thence South  $83^{\circ}41'47''$  East 154.08 feet; thence South  $50^{\circ}03'25''$  East 114.36 feet; thence North  $75^{\circ}03'38''$  East 202.88 feet; thence North  $84^{\circ}39'38''$  East 116.50 feet; thence North  $43^{\circ}01'41''$  East 371.67 feet; thence North  $37^{\circ}31'09''$  East 153.04 feet; thence North  $20^{\circ}52'54''$  East 72.74 feet; thence North  $41^{\circ}52'09''$  East 101.36 feet; thence North  $17^{\circ}13'45''$  East 222.99 feet; thence North  $15^{\circ}00'39''$  West 159.04 feet; thence North  $32^{\circ}15'20''$  East 89.60 feet; thence North  $69^{\circ}05'42''$  East 100.6 feet; thence North  $38^{\circ}27'12''$  East 66.92 feet; thence North  $11^{\circ}19'19''$  East 449.58 feet; thence South  $68^{\circ}11'40''$  East 623.34 feet; thence South  $31^{\circ}16'07''$  East 139.32 feet to a point on the northwesterly line of Corral Hollow Road, all as shown on said Record of Survey; thence northeasterly along the northwesterly line of Corral Hollow Road the following courses: North  $58^{\circ}29'36''$  East 164.01 feet; thence North  $40^{\circ}40'13''$  East 111.26 feet; thence leaving the northwesterly line of Corral Hollow Road, North  $32^{\circ}43'43''$  West, 132.38 feet; thence, North  $84^{\circ}24'35''$  West, 137.28 feet; thence North  $67^{\circ}10'34''$  West, 100.10 feet; thence North  $62^{\circ}34'33''$  West, 398.95 feet; thence North  $81^{\circ}29'49''$  West, 192.76 feet; thence South  $64^{\circ}37'50''$  West, 516.59 feet; thence South  $35^{\circ}36'05''$  West, 218.42 feet; thence South  $11^{\circ}25'41''$  West, 251.48 feet; thence South  $32^{\circ}39'01''$ , West, 223.33 feet; thence South  $63^{\circ}24'11''$  West, 294.92 feet; thence North  $47^{\circ}29'41''$  West, 552.61 feet; thence North  $24^{\circ}55'21''$  East, 584.76 feet; thence North  $52^{\circ}45'03''$  East, 351.21 feet; thence North  $59^{\circ}10'54''$  East, 321.51 feet; thence North  $38^{\circ}54'46''$  East, 414.80 feet; thence North  $39^{\circ}05'58''$  East, 369.49 feet to a point on the north line of said Section 19, that bears North  $89^{\circ}13'50''$  West, 2,759.48 feet from the south one-quarter corner of said Section 18, Township 3 South, Range 5 East; thence, North  $74^{\circ}42'05''$  East, 233.47 feet; thence North  $33^{\circ}15'08''$  East, 152.01 feet; thence North  $23^{\circ}34'56''$  East, 297.88 feet; thence North  $26^{\circ}13'35''$  East, 245.35 feet; thence North  $31^{\circ}42'43''$  East, 169.52 feet; thence North  $43^{\circ}45'08''$  East, 540.42 feet; thence North  $44^{\circ}45'37''$  East, 572.00 feet; thence North  $17^{\circ}15'12''$  West, 277.55 feet; thence South  $41^{\circ}52'19''$  West, 400.10 feet; thence South  $46^{\circ}08'52''$  West, 723.26 feet; thence South  $60^{\circ}29'07''$  West, 270.53 feet; thence South  $26^{\circ}56'14''$  West, 214.58 feet; thence South  $37^{\circ}15'01''$  West, 908.10 feet; thence South  $74^{\circ}16'31''$  West, 128.43 feet to a point on the north line of said Section 19 that bears South  $89^{\circ}13'50''$  East, 1,018.53 feet from the northwest corner of said Section 19; thence South  $89^{\circ}56'25''$  West, 294.09 feet; thence South

60°37'18" West, 184.17 feet; thence South 08°52'00" West, 260.92 feet; thence South 27°52'22" West, 113.97 feet; thence South 54°51'11" West, 139.57 feet; thence South 72°34'38" West, 163.53 feet; thence South 53°00'08" West, 257.96 feet to the True Point of Beginning and containing 76 acres, more or less.

[Faint, mostly illegible text, likely a survey description or legal notice]



SCALE: 1" = 500'

SEC. 18  
T 3 S. R 5 E

SOUTH QTR. CORNER SEC. 18

P.O.C.

S89°13'50"E  
1018.53'

S89°13'50"E  
2759.48'

NW CORNER SEC. 19

76 ACRES±

T.P.O.B.

N00°26'45"E  
747.45'

588.81'

S61°02'06"E  
2890.91'

S00°27'02"W  
1545.02'

CENTER LINE

CORRAL HOLLOW CREEK

CORRAL HOLLOW ROAD

SEC. 19  
T 3 S. R 5 E

# EXHIBIT 2



NOLTE and ASSOCIATES, Inc.  
Engineers / Planners / Surveyors

## Parcel 3 -

All of Sections 1, 2, 12, and 13 Township 3 South, Range 4 East, Mount Diablo Base and Meridian, San Joaquin County, California.

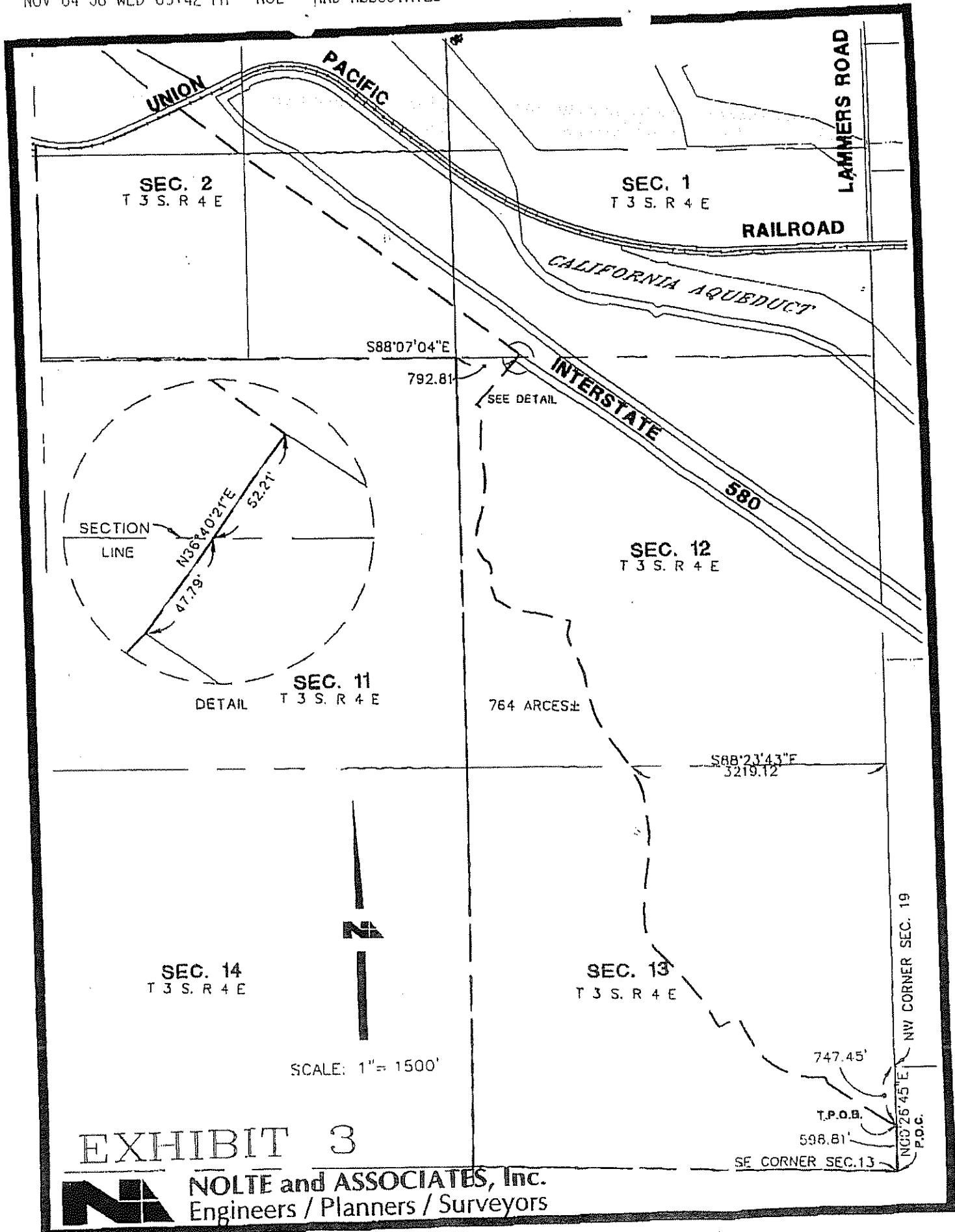
Excepting therefrom:

All lands lying generally northerly and easterly of the following described line:

Commencing at the southeast quarter corner of Section 13, Township 3 South, Range 4 East, Mount Diablo Base and Meridian, San Joaquin County, California, as shown on that Record of Survey filed April 25, 1995, in Book 33 of Surveys at Page 57 San Joaquin County Records; thence North  $00^{\circ}26'45''$  East, along the east line of Section 13, 598.81 feet to a point 747.45 southerly of the northwest corner of Section 19, Township 3 South, Range 5 East, Mount Diablo Base and Meridian, said point being the True Point of Beginning of the herein described line; thence North  $67^{\circ}35'08''$  West, 91.49 feet; thence North  $53^{\circ}52'14''$  West, 918.37 feet; thence North  $19^{\circ}27'23''$  West, 85.89 feet; thence South  $86^{\circ}29'50''$  West, 46.95 feet; thence along a 921.00 foot radius curve to the right, through a central angle of  $67^{\circ}18'29''$ , and an arc length of 1,081.94 feet; thence North  $26^{\circ}02'50''$  West, 364.68 feet; thence South  $59^{\circ}38'46''$  West, 262.44 feet; thence North  $28^{\circ}16'13''$  West, 403.22 feet; thence North  $37^{\circ}55'13''$  West, 327.23 feet; thence North  $41^{\circ}09'03''$  West, 332.87 feet; thence North  $44^{\circ}09'02''$  West, 227.78 feet; thence North  $38^{\circ}01'06''$  West, 118.29 feet; thence North  $22^{\circ}07'14''$  West, 94.16 feet; thence North  $13^{\circ}23'41''$  West, 112.23 feet; thence North  $00^{\circ}47'05''$  West, 229.37 feet; thence North  $05^{\circ}22'22''$  East, 407.17 feet; thence North  $09^{\circ}49'42''$  East, 209.52 feet; thence North  $03^{\circ}22'32''$  East, 360.12 feet; thence North  $05^{\circ}28'26''$  West, 342.08 feet; thence North  $07^{\circ}39'38''$  West, 199.20 feet; thence North  $18^{\circ}35'04''$  West, 161.45 feet; thence North  $25^{\circ}16'54''$  West, 207.07 feet to a point on the north line of said Section 13 that bears North  $88^{\circ}23'43''$  West, 3,219.12 feet from the east corner common to Sections 12 and 13; thence North  $34^{\circ}16'35''$  West, 287.89 feet; thence North  $34^{\circ}24'10''$  West, 246.44 feet; thence North  $28^{\circ}23'51''$  West, 163.75 feet; thence North  $22^{\circ}16'32''$  West, 109.35 feet; thence North  $15^{\circ}09'06''$  West, 302.13 feet; thence North  $09^{\circ}05'35''$  West, 257.61 feet; thence North  $21^{\circ}40'10''$  West, 328.32 feet; thence North  $28^{\circ}05'28''$  West, 104.88 feet; thence North  $10^{\circ}41'12''$  West, 118.71 feet; thence North  $15^{\circ}51'30''$  East, 162.70 feet; thence North  $72^{\circ}57'58''$  West, 321.66 feet; thence North  $78^{\circ}35'43''$  West, 260.79 feet; thence North  $73^{\circ}29'57''$  West, 238.21 feet; thence North  $57^{\circ}32'34''$  West, 185.62 feet; thence North  $17^{\circ}43'19''$  West, 252.76 feet; thence North  $15^{\circ}24'52''$  East, 144.97 feet; thence North  $16^{\circ}18'02''$  West, 107.32 feet; thence North  $53^{\circ}28'23''$  West, 77.09 feet; thence North  $32^{\circ}20'42''$  West, 120.34 feet; thence North  $08^{\circ}22'25''$  West, 196.02 feet; thence North  $10^{\circ}59'42''$  East, 175.33 feet; thence North  $20^{\circ}34'45''$  East, 170.92 feet; thence North  $07^{\circ}48'15''$  East, 336.20 feet; thence North  $00^{\circ}09'36''$  East, 144.59 feet; thence North  $08^{\circ}00'32''$  West, 330.77 feet; thence North  $03^{\circ}33'44''$  East, 523.83 feet; thence North  $54^{\circ}38'14''$  West, 83.61 feet; thence North  $43^{\circ}40'36''$  East, 758.85 feet; thence North  $36^{\circ}40'21''$  East, 47.79 feet to a point on the north line of said Section 12 that bears South  $88^{\circ}07'04''$  East, 792.81 feet from the northwest corner of said Section 12; thence continuing North  $36^{\circ}40'21''$  East 52.21 feet to a point on the southwesterly right of way of Interstate Highway 580; thence northwesterly along the southwesterly line of Interstate Highway 580 to the Union Pacific Railroad Company right of



way; thence westerly along the south line of the Union Pacific Railroad Company right of way to the west line of Section 2 and containing 764 acres, more or less.



# EXHIBIT 3

**N** **NOLTE and ASSOCIATES, Inc.**  
 Engineers / Planners / Surveyors

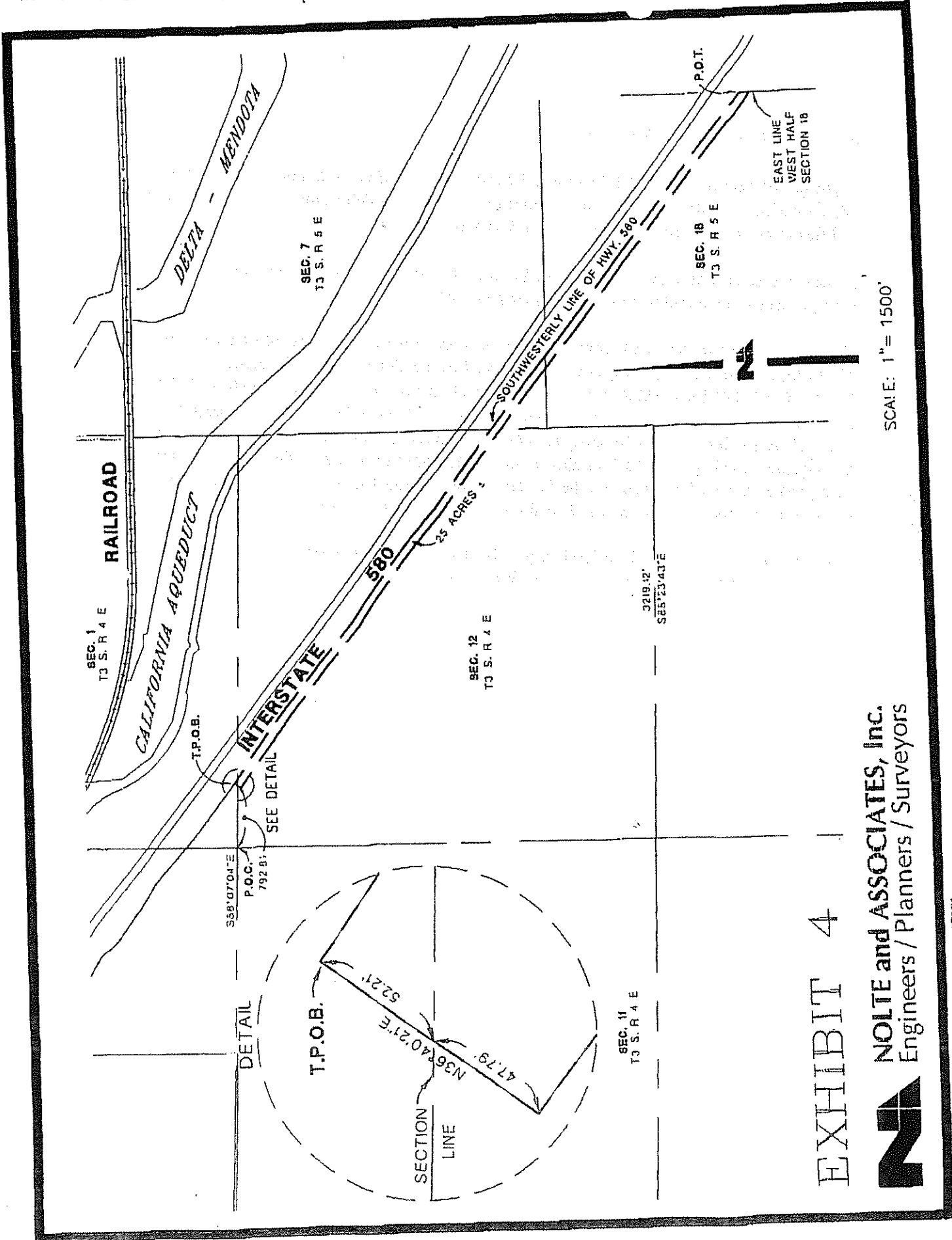
Parcel 4 - (Southwesterly Side I-580)

A portion of Sections 1 and 12 Township 3 South, Range 4 East, and a portion of Sections 7 and 18, Township 3 South, Range 5 East, Mount Diablo Base and Meridian, San Joaquin County, California being more particularly described as following:

A continuous strip of land uniformly one hundred feet in width lying to the right of, adjacent and contiguous to, and parallel with the following described line:

Commencing at the southwest corner of Section 1 as shown on that Record of Survey filed April 25, 1995, in Book 33 of Surveys at Page 57 San Joaquin County Records; thence South  $88^{\circ} 07' 04''$  East 792.81 feet, along the south line of Section 1; thence North  $36^{\circ} 40' 21''$  East 52.21 feet to a point on the southwesterly line of Interstate Highway 580, being the True Point of Beginning of the following described line; thence, southeasterly along the southwesterly line of Interstate Highway 580, as shown on said Record of Survey, to the Point of Terminus, being the east line of the west one half of fractional Section 18, said west half comprising Government Lots 1, 2, 3, 4, 5, and 6, and containing 25 acres, more or less.

The sidelines of the above described strip of land shall be lengthened or shortened as required to terminate on said east line of the west one half of Section 18.



SCALE: 1" = 1500'

EXHIBIT 4

**NOLTE and ASSOCIATES, Inc.**  
Engineers / Planners / Surveyors



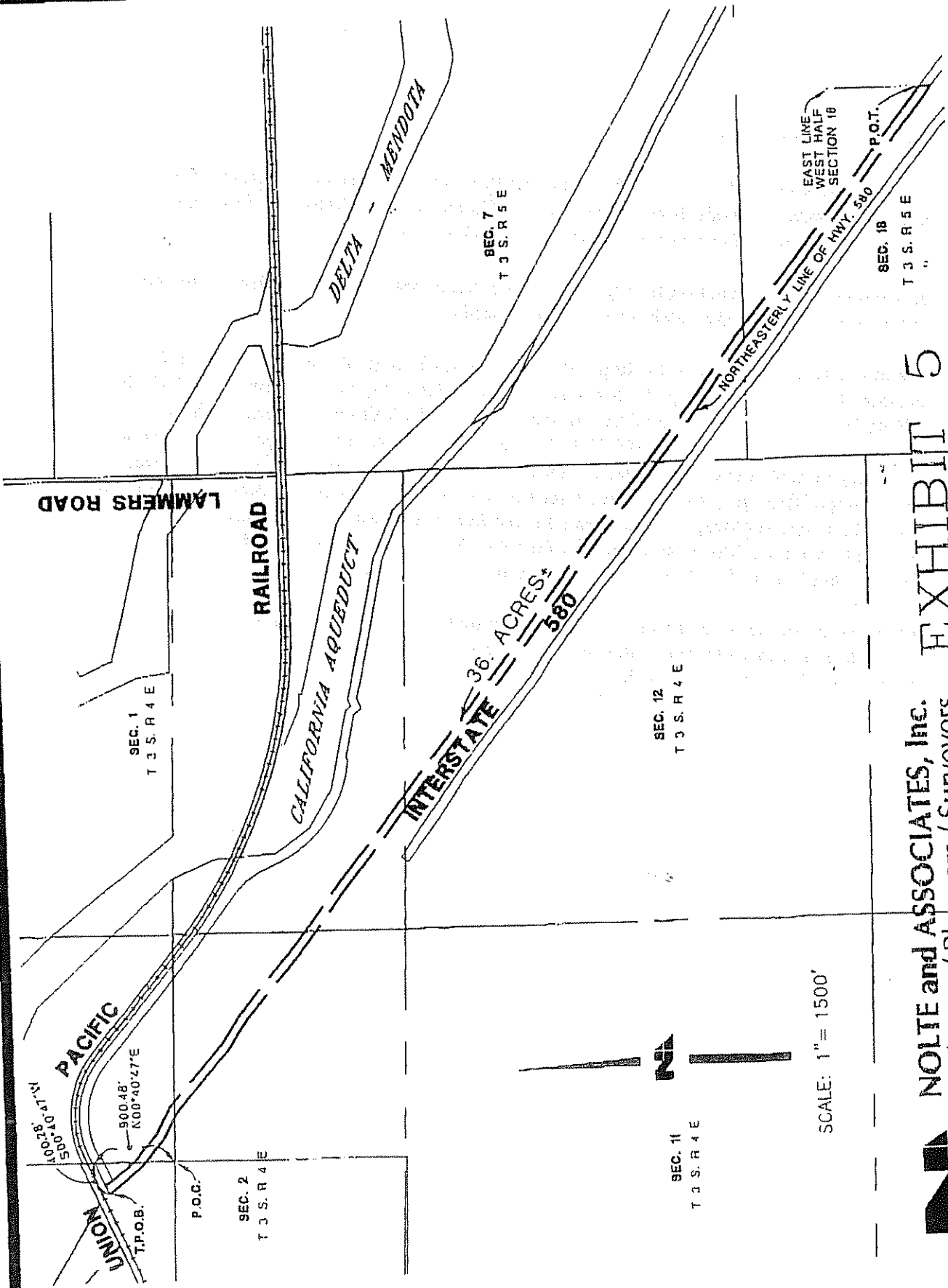
Parcel 5 - (Northeasterly Side I-580)

A portion of Sections 1, 2, and 12 Township 3 South, Range 4 East, and a portion of Sections 7 and 18, Township 3 South, Range 5 East, Mount Diablo Base and Meridian, San Joaquin County, California being more particularly described as following:

A continuous strip of land uniformly one hundred feet in width lying to the left of, adjacent and contiguous to, and parallel with the following described line:

Commencing at the center of Section 2 as shown on that Record of Survey filed April 25, 1995, in Book 33 of Surveys at Page 57 San Joaquin County Records; thence North  $00^{\circ} 40' 47''$  East 900.48 feet to a point on the south line of the Union Pacific Railroad Company right of way; thence South  $66^{\circ} 23' 59''$  West 400.28 feet along the south line of the Union Pacific Railroad Company right of way to a point on the northeasterly line of Interstate Highway 580, being the True Point of Beginning of the herein described line; thence southeasterly along the northeasterly line of Interstate Highway 580, as shown on said Record of Survey, to the Point of Terminus, being the east line of the west one half of fractional Section 18, said west half comprising Government Lots 1, 2, 3, 4, 5, and 6, and containing 36 acres, more or less.

The sidelines of the above described strip of land shall be lengthened or shortened as required to commence on said south line of the Union Pacific Railroad Company right of way and terminate on said east line of the west one half of Section 18.



SCALE: 1" = 1500'

# EXHIBIT 5

**NOLTE and ASSOCIATES, Inc.**  
Engineers / Planners / Surveyors



Parcel 6 - (Corridor along UPRR and California Aqueduct)

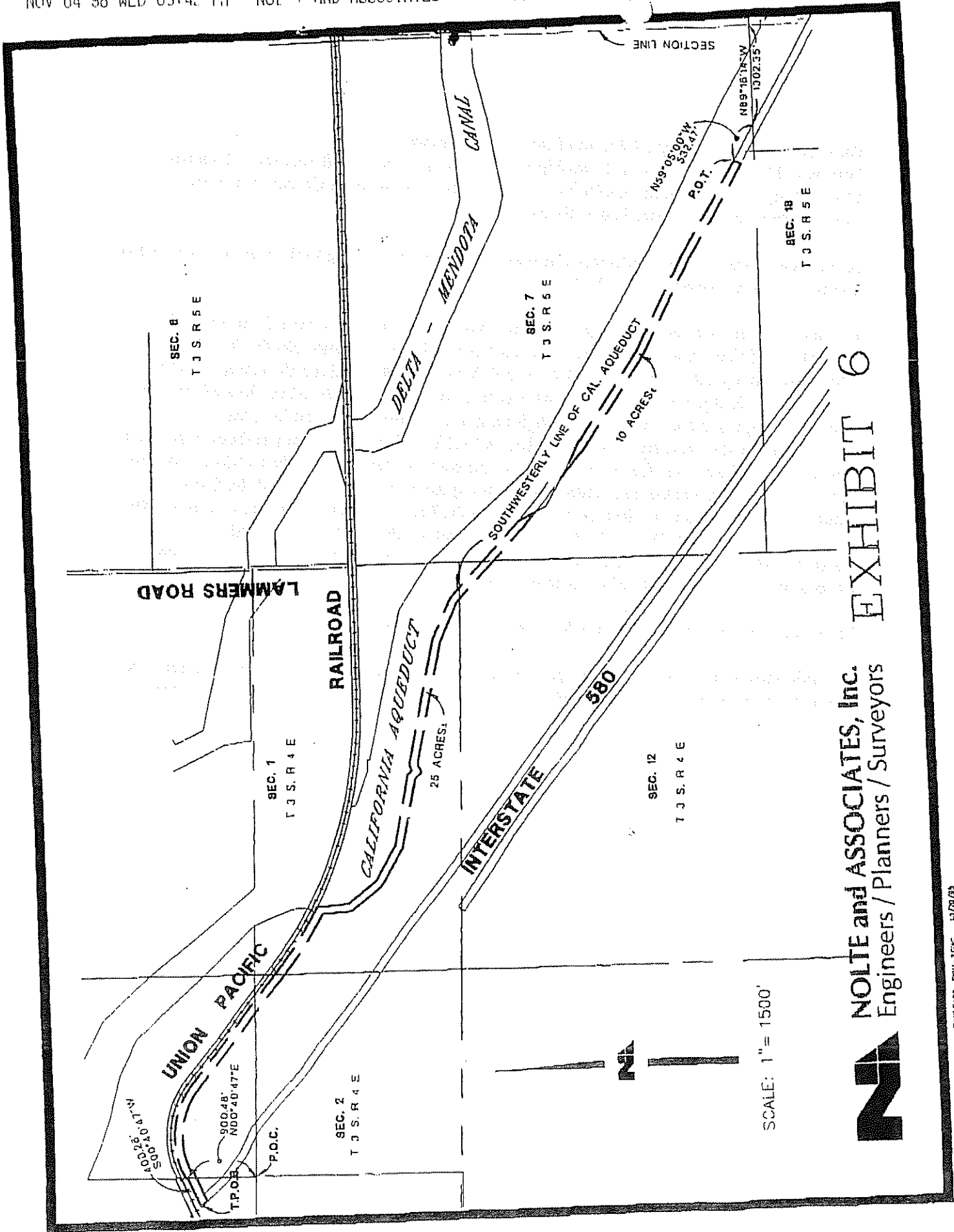
Portions of Sections 1, 2, and 1 Township 3 South, Range 4 East, and Section 7, Township 3 South, Range 5 East, Mount Diablo Base and Meridian, San Joaquin County, California, and being more particularly described as follows:

A continuous strip of land uniformly one hundred feet in width lying to the right of, adjacent and contiguous to, and parallel with the following described line:

Commencing at the center of Section 2 as shown on that Record of Survey filed April 25, 1995, in Book 33 of Surveys at Page 57 San Joaquin County Records; thence North  $00^{\circ} 40' 47''$  East 900.48 feet to a point; thence South  $66^{\circ} 23' 59''$  West 400.28 feet along the south line of the Union Pacific Railroad Company right of way to a point on the northeasterly line of Interstate Highway 580, being the True Point of Beginning of the herein described line; thence northeasterly and southeasterly along the Union Pacific Railroad Company right of way line, as shown on said Record of Survey, to a point on the southwesterly line of the California Aqueduct in Section 1; thence continuing southeasterly, along the southwesterly line of the California Aqueduct, as shown on said Record of Survey, to the Point of Terminus, being a point on which bears North  $59^{\circ} 05' 00''$  West 532.47 feet from a point on the south line of Section 7 which bears North  $89^{\circ} 16' 14''$  West 1302.35 feet from the southeast corner of Section 7, as shown on said Record of Survey, and containing 35 acres, more or less.

Excepting therefrom that portion in Section 2 as described in Parcel 5.

The sidelines of the above described strip of land shall be lengthened or shortened as required to terminate on a line which bears South  $00^{\circ} 34' 03''$  West 267.74 feet from the Point of Terminus.

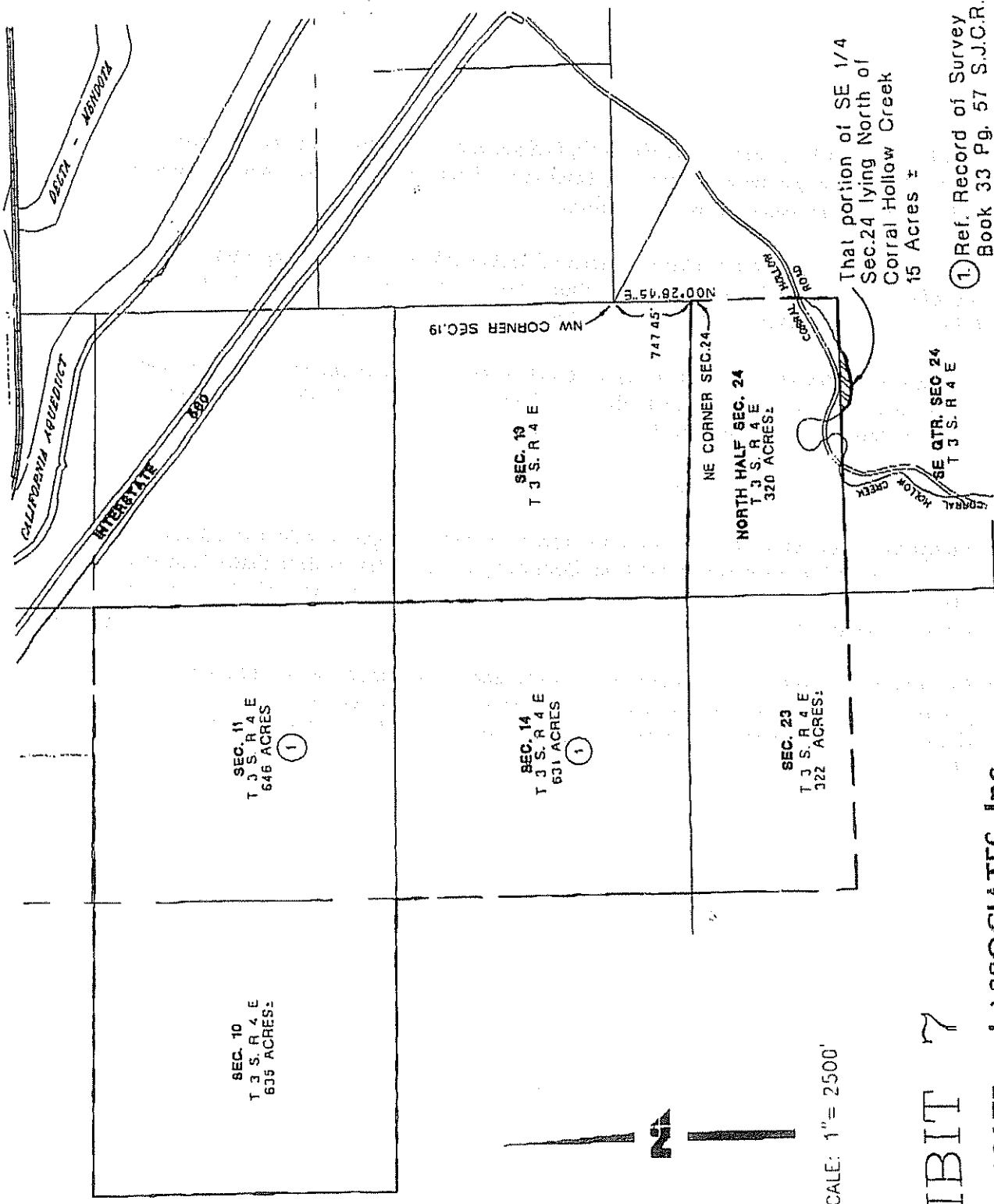


# EXHIBIT 6

NOLTE and ASSOCIATES, Inc.  
Engineers / Planners / Surveyors







That portion of SE 1/4  
 Sec. 24 lying North of  
 Corral Hollow Creek  
 15 Acres ±

1 Ref. Record of Survey  
 Book 33 Pg. 57 S.J.C.R.



SCALE: 1" = 2500'

# EXHIBIT 7

**NOLTE and ASSOCIATES, Inc.**  
 Engineers / Planners / Surveyors



Parcel 7 -

All of Sections 10, 11, and 14, the North Half of Section 23, and the North Half of Section 24, and the Southeast Quarter of Section 24, Township 3 South, Range 4 East, Mount Diablo Base and Meridian, San Joaquin County, California,

Excepting therefrom in the southeast quarter of Section 24 that portion lying south of the center line of Corral Hollow Creek described as Parcel Four of deed recorded June 2, 1950 in Book of Official Records, Volume 1261, Page 233, San Joaquin County Records.

Also excepting therefrom in Section 24 that certain strip of land as conveyed to the County of San Joaquin for road by deed dated July 9, 1937 recorded March 1, 1938 in Book of Official Records Volume 605 at 166, San Joaquin County Records.

And containing 2569 acres, more or less.

Excepting therefrom in Section 24 a strip of land one hundred feet in width for railroad purposes as conveyed to Eureka Railroad and Coal Company, a corporation by deed dated January 28, 1891 executed by Annie Carroll recorded in Book "A" of Deeds, Volume 73, Page 590, San Joaquin County Records.

Also excepting therefrom in Section 24 a strip of land one hundred feet in width for railroad purposes as conveyed to Eureka Railroad and Coal Company, a corporation by deed dated October 23, 1889 executed by Lizzie Cleary recorded in Book "A" of Deeds, Volume 58, Page 160, San Joaquin County Records.

MEMORANDUM OF AGREEMENT  
ON ADDITIONAL TERMS

This Memorandum of Agreement on Additional Terms ("MOA") constitutes the first amendment of the Settlement Agreement and is entered into pursuant to Section 20 of the Settlement Agreement. The Parties thereto additionally agree as follows:

1. All terms and phrases defined in the Settlement Agreement apply to this MOA. All recitals in the Settlement Agreement are true and correct and are incorporated herein to the extent necessary to determine the intent of the Parties. Unless explicitly modified by the terms of this MOA, the Settlement Agreement prevails in the event of conflict or inconsistency.

2. Lakeside Tracy Associates ("LTA") shall within ninety (90) days of the date of execution of the Settlement Agreement, request that the City of Tracy ("Tracy") prepare or cause to be prepared pursuant to Public Resources Code Sections 21000 *et seq.*, and California Code of Regulations Title 14, Chapter 3 ("CEQA") supplemental environmental review ("SER") of the wastewater and stormwater discharge impacts (as defined herein) of the Project. Tracy may select professional consultants to undertake such review and LTA shall pay all reasonable costs associated therewith. Wastewater and stormwater discharge impacts may be reviewed in a single or in separate documents at the discretion of Tracy. If processed as

separate documents, LTA and Tracy shall process them concurrently.

3. Tracy shall process such SER in the form of an EIR or SEIR in accordance with CEQA and its local guidelines. Notwithstanding CEQA and such local guidelines to the contrary, the Parties to the MOA shall receive written notice of the (i) scoping of such review; (ii) completion of such review; and (iii) public hearings on the consideration and certification of such review.

4. Notice to the Parties shall be as follows:

COUNTY OF ALAMEDA  
Attn: Scott Gordon  
Bruen & Gordon  
1990 North California Blvd, Ste 940  
Walnut Creek CA 94596

CITY OF LIVERMORE  
Thomas R. Curry, City Attorney  
1052 S. Livermore Avenue  
Livermore, CA 94550

LAKESIDE TRACY ASSOCIATES  
Doug Unruh  
Grupe Communities, Inc. President  
PO Box 7576  
Stockton CA 95267  
3255 W. March Lane 4th Floor  
Stockton CA 95219

SIERRA CLUB  
Attn: Susan Brandt-Hawley  
Brandt-Hawley & Zoia  
A Professional Corporation  
P.O. Box 1659  
Glen Ellen, CA 95442

CITY OF TRACY  
Debra Corbett, City Attorney  
City of Tracy  
325 East Tenth St  
Tracy CA 95376

5. Following completion and certification of the SER for wastewater and stormwater discharge impacts, Tracy and LTA shall consider the SER and the existing entitlements for the Project as a result thereof. Any mitigation measures or

alternatives adopted in the CEQA findings rendered pursuant to Section 15091 of the CEQA Guidelines, shall be incorporated into the existing entitlements for the Project. Alameda, Livermore and the Sierra Club agree that the certification of the SER and the adoption of amendments to the project entitlements as a consequence of the SER shall not insofar as a Party is concerned constitute an act or decision of a public entity under Section 21167 of the Public Resources Code and no Party hereto shall initiate or cause anyone else to initiate any legal proceedings of whatsoever nature to challenge the certification of the SER and the amendment of project entitlements. The terms of this MOA shall not be construed to limit, abrogate or constitute a waiver of Section 22 or 23 of the Settlement Agreement. Nothing herein shall be interpreted to limit Tracy's ability to take any action it deems necessary to comply with CEQA, including but not limited to the filing of a Notice of Determination.

6. Without limitation of the provisions of Section 22 of the Settlement Agreement, the Parties may (i) comment in writing to Tracy on the scope of environmental review; (ii) comment in writing on the draft environmental document at the time it is circulated for public comment; and (iii) comment to Tracy during any public hearings conducted on the SER and amendment to the project entitlements. Such written or oral comments shall be consistent with Section 22 of the Settlement Agreement. In all other respects the Parties agree to be fully bound by the bargained

for conditions of Section 22 of the Settlement Agreement. If at any time during the performance of the obligations herein, the existing approvals and entitlements for the Project are voided or set aside, this MOA shall have no further force and effect whatsoever.

7. The scope of supplemental environmental review ("SER") shall be determined by Tracy in accordance with the requirements of CEQA.

Notwithstanding the foregoing however, the scope shall, at a minimum, contain the following analysis:

a. Project level environmental review of the interim wastewater facility described substantially in the manner set forth in Attachment 1 to this MOA and program level environmental review and cumulative impact analysis of long term wastewater disposal impacts and wastewater treatment infrastructure plans for the Project and those pending and reasonably foreseeable development projects which will participate in the use and financing of such infrastructure, including to the extent of such participation and use, North Schulte, South Schulte, Lammers Road Specific Plan Area, Kagehiro and Saddlebrook development projects.

b. Project level environmental review of alternative facilities for current stormwater discharge plans for the Project (including the facilities described substantially in the manner set forth in Attachment 2 to this MOA) and cumulative impact analysis of stormwater discharge for pending and reasonably foreseeable

development projects likely to utilize or contribute stormwater flows to such alternative stormwater facilities including to the extent of such participation and use, North Schulte, South Schulte, Lammers Road Specific Plan Area, Kagehiro and Saddlebrook development project.

c. Current, short term and long term impacts to water quality resulting from discharge of treated wastewater and stormwater from the Project to Old River and adjacent South Delta waters.

d. Analysis of permit requirements for wastewater and stormwater discharge and consistency of such anticipated discharge from the Project with proposed or adopted state and federal regulatory programs to enhance water quality in Old River and South Delta.

8. LTA agrees that it will not request approval of any final subdivision map for the Project until the certification of the SER. LTA further agrees to any changes to or modifications of conditions of existing entitlements as a consequence of the actions described in paragraph 5 hereof.

9. The Parties executing the Settlement Agreement have initialed this MOA as set forth below.

Dated: ~~JAN 5~~ 1999 \_\_\_\_\_  
County of Alameda

Dated: \_\_\_\_\_  
City of Livermore

Dated: \_\_\_\_\_  
Sierra Club

Dated: \_\_\_\_\_  
Lakeside Tracy Associates

Dated: \_\_\_\_\_  
City of Tracy



9. The Parties executing the Settlement Agreement have initialed this

MOA as set forth below.

Dated:

\_\_\_\_\_  
County of Alameda

Dated:

John D. Steen  
\_\_\_\_\_  
City of Livermore

Dated:

\_\_\_\_\_  
Sierra Club

Dated:

\_\_\_\_\_  
Lakeside Tracy Associates

Dated:

\_\_\_\_\_  
City of Tracy

9. The Parties executing the Settlement Agreement have initialed this

MOA as set forth below.

Dated:

\_\_\_\_\_  
County of Alameda

Dated:

\_\_\_\_\_  
City of Livermore

Dated:

4 Jan 99

David A. Conner  
Sierra Club

Dated:

\_\_\_\_\_  
Lakeside Tracy Associates

Dated:

\_\_\_\_\_  
City of Tracy

9. The Parties executing the Settlement Agreement have initialed this

MOA as set forth below.

Dated:

County of Alameda

Dated:

City of Livermore

Dated:

Sierra Club

Dated:

Lakeside Tracy Associates

Dated:

City of Tracy

Lakeside/Tracy Development Associates,  
A California Limited Partnership

By: Grupe Ventures, Inc.  
a California corporation,  
its Development Manager

DATED:

12/21/98

By:

*[Signature]*

Its:

VP

9. The Parties executing the Settlement Agreement have initialed this

MOA as set forth below.

Dated: \_\_\_\_\_  
County of Alameda

Dated: \_\_\_\_\_  
City of Livermore

Dated: \_\_\_\_\_  
Sierra Club

Dated: \_\_\_\_\_  
Lakeside Tracy Associates

Dated: 12-22-98 \_\_\_\_\_  
City of Tracy

## Tracy Hills Interim Water Reclamation Facility

The Interim Water Reclamation Facility is a joint facility for waste water treatment and water reclamation.

### Report on Waste Discharge

- Identify tributary areas contributing wastewater flows to the interim facility
- Identify wastewater flows (average and peak) based on zoning or land use
- Identify wastewater characteristics
- Review conceptual plan of collection system (prepared by developer's engineer)
- Review constructability, operations and maintenance issues related to collection system
- Identify alternative locations (three or more) for the interim reclamation facility
- Conduct geotechnical evaluation
- Develop schematics of treatment process alternatives (three or more)
- Identify effluent quality and feasibility of land application
- Evaluate treatment process alternatives
- Evaluate sludge digestion alternatives
- Develop effluent disposal alternatives (method of irrigation, schedule)
- Identify operational features (normal, dry season, wet season and emergency conditions) and maintenance issues
- Identify compatibility of interim facility to the permanent facility at the same or different location

### EIR

- Prepare Project Description based on above report of waste discharge study
- Prepare Initial Study/Notice of Preparation (IS/NOP)
- Send IS/NOP to federal, state, local agencies and interested public (including environmental groups)
- Conduct alternatives analysis and identify preferred alternative
- Address impacts of both treatment and disposal facilities
- Develop mitigation measures (if required)
- Address transition from the interim reclamation facility to permanent reclamation facility
- Prepare wastewater cumulative impact analysis (to address impacts from other reasonably foreseeable developments located outside of Tracy Hills boundary which contribute wastewater flows to the interim facility)
- Address how the land will be reclaimed after the interim facility ceases to operate
- Prepare Administrative Draft EIR
- Review by City
- Prepare and Mail Draft EIR to federal, state, local agencies and interested public
- Public hearing
- Prepare responses to Draft EIR comments
- Prepare Administrative Final EIR
- Review by City
- Prepare and Mail Final EIR
- Final EIR certification by City Council

## Tracy Hills Storm Water Disposal Facility

This document lists the tasks required for a technical study and subsequent preparation of an EIR for the Tracy Hills Storm Water Disposal Facility. It is assumed that storm water will be transmitted to nearby gravel pit(s) for disposal through percolation and evaporation. Further, it is assumed no storm water treatment is required and it will be transmitted using open channel or pipes.

### Tracy Hills Stormwater Discharge Plan

Identify tributary areas contributing storm water flows

- Identify design storm event and recurrence interval
- Develop storm water flows based on zoning or land use
- Review conceptual plan of storm water collection system (prepared by developer's engineer)
- Review constructability, operations and maintenance issues related to collection system
- Identify alternative locations (two or more) for the disposal facility
- Conduct geotechnical evaluation
- Identify and review conveyance options (open channel or pipe line)
- Address right-of-way and utility crossings
- Evaluate feasibility of locating disposal facilities
- Verify Dam safety compliance requirements
- Identify operational features (normal, dry season, wet season and emergency conditions) and maintenance issues

### EIR

- Prepare Project Description based on above technical study
- Prepare Initial Study/Notice of Preparation (IS/NOP)
- Send IS/NOP to federal, state, local agencies and interested public (including environmental groups)
- Conduct alternatives analysis and identify preferred alternative
- Address impacts of both conveyance and disposal facilities
- Develop mitigation measures (if required)
- Prepare storm water cumulative impact analysis (to address impacts from other reasonably foreseeable developments located outside of Tracy Hills boundary which contribute storm water flows to the facilities)
- Prepare Administrative Draft EIR
- Review by City
- Prepare and Mail Draft EIR to federal, state, local agencies and interested public
- Public hearing
- Prepare responses to Draft EIR comments
- Prepare Administrative Final EIR
- Review by City
- Prepare and Mail Final EIR
- Final EIR certification by City Council