

The Paskenta Band of Nomlaki Indians
Application for Conveyance of Fee Land to Trust Status

December 6, 2005

Submitted by:

Paskenta Band of Nomlaki Indians
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The Paskenta Band of Nomlaki Indians of California

The Paskenta Band of Nomlaki Indians

Application for Conveyance of Fee Land to Trust Status

1.0 Identification of Parties and Request for Action

1.1 Identification of the Tribe

The Paskenta Band of Nomlaki Indians, California (the "Tribe") is a federally-recognized Indian Tribe and is eligible for the special programs and services offered by the federal government to Indian Tribes because of its status. *See Federal Register*, Vol. 70, November 25, 2005, 71194, 71196.

1.2 Definition of the Proposed Action

The proposed action requested by this document is the conveyance of title to ten (10) parcels of land (collectively, the "Sites") into trust status for the Tribe. The Sites consist of the following:

Ten parcels of land totaling approximately 320.71 acres more or less, located contiguous to the Paskenta Indian Reservation in an unincorporated area approximately three miles south of the City of Corning, Tehama County, California. For ease of reference, the Sites are described in "areas" in the supporting reports. Area 1 is a five acre site located contiguous to and north of the Paskenta Indian Reservation along Liberal Avenue. Areas 2-3 is a 48.2 acre site that is located adjacent to the northern boundary of the Paskenta Indian Reservation and bisected by Barham Avenue. Area 4 is a 267.62 acres site that is located approximately one mile south of Areas 1-3 and adjacent to the southern edge of the Paskenta Indian Reservation. *See Exhibit 1.*

PARCEL	ASSESSOR'S PARCEL NUMBER	ACRES	CURRENT LEGAL OWNER
1	087-230-14	5.0	Paskenta Band of Nomlaki Indians
2	087-230-40	2.11	Paskenta Band of Nomlaki Indians
2	087-230-41	10.21	Paskenta Band of Nomlaki Indians
2	087-230-42	10.26	Paskenta Band of Nomlaki Indians
2	087-230-43	5.06	Paskenta Band of

- Everett Freeman
Chairperson
- Andrew Freeman
Vice Chairperson
- Leslie Lohse
Treasurer
- Geraldine Freeman
Secretary
- David Swearinger
Member at Large

2	087-280-09	2.5	Nomlaki Indians Paskenta Band of Nomlaki Indians
2	087-280-10	10	Paskenta Band of Nomlaki Indians
2	087-280-21	5.80	Paskenta Band of Nomlaki Indians
3	087-230-23	1.35	Paskenta Band of Nomlaki Indians
4	087-320-05	267.62	Paskenta Band of Nomlaki Indians
	Total	320.71	

The Sites are owned by the Tribe and located adjacent to the exterior boundaries of the Tribe's existing reservation. See Exhibits 1-4. The Sites are unimproved parcels with a history of agriculture. Area 4 is subject to the Williamson Act, but the contract is subject to a non-renewal contract that became effective on January 1, 2002 and all restrictions will expire on January 1, 2011. See Exhibit 7.

The Tribe seeks to acquire the Sites in trust status in furtherance of its self-determination, including for the purpose of ensuring that uses of said sites incompatible with the Tribe's self-governance and self-determination does not occur. Specifically, the Tribe does not plan to change the current use of the property, but instead is strategically acquiring property for purposes of creating a barrier between the Tribe's Reservation and anticipated attempts by commercial developers to develop the Sites and other similar property for purposes inconsistent with the Tribe's current and future governmental needs. Said incompatible uses include proposals by the former owners and nearby landowners to construct fast food businesses, recreational vehicle parks, hotels, and other businesses that would create traffic congestion and limit access to the Tribe's reservation.

Legal descriptions of the Sites divided into three Areas (1, 2-3, and 4) are attached hereto as Exhibits 2-4.

Apart from the usual and customary role of the Bureau of Indian Affairs in supervising trust property, the Tribe does not anticipate requesting particular BIA services as a result of this application.

1.3 Tribal Council Resolution Authorizing the Acquisition of Trust Land

The Tribal Council of the Tribe adopted a resolution requesting that the Secretary of the Interior take the Site into trust status for the benefit of the Tribe and authorizing the Tribal Chairman to take the necessary steps to enable the Secretary to acquire the parcel in trust. A copy of that resolution is attached hereto as Exhibit 5.

2.0 Citation of Statutory Authority

2.1 Statutory Authority for Accepting Land into Trust

The Secretary shall accept any real property located in Tehama County, California, for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary if, at the time of such conveyance or transfer, there are not adverse legal claims to such property, including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe's service area pursuant to the authority of the Secretary under the Act of June 18, 1934 (25 U.S.C. 461 et seq.)

25 U.S.C. § 1300m-3(a).

The Secretary has authority to acquire land in trust for the benefit of an Indian Tribe pursuant to Section 5 of the Indian Reorganization Act ("IRA"), 25 U.S.C. § 465.

Section 465 provides in pertinent part as follows:

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands ... within or without existing reservations ... for the purpose of providing land for Indians ... Title to any lands ... acquired pursuant to this Act ... shall be taken in the name of the United States in trust for the Indian Tribe or individual Indian for which the land is acquired, and such lands ... shall be exempt from state and local taxation.

The Tribe's stated purposes for acquisition of the land will enable the Tribe to achieve self-sufficiency and rectify damage resulting from prior termination policy under the California Rancheria Act. The resulting federal protections offered by trust status will facilitate the growth of existing Tribal industry and would assure the Tribe's future generations the continued use of its existing reservation. Such goals are consistent with the legislative history of the Indian Reorganization Act (25 U.S.C. § 465) to rehabilitate Tribal economic life, conserve and develop Indian lands and resources," preserving and increasing the amount of Indian lands, and for the economic advancement and self-determination of Indian communities.

The regulations governing the process by which the Secretary exercises her discretionary authority to take land into trust are found at 25 CFR Part 151. The Secretary has authority to approve the acceptance of property in trust for the benefit of the Tribe.

The Secretary has generally delegated authority over the Bureau of Indian Affairs ("BIA") and Departmental Indian affairs matters, including the authority to acquire land in trust for the benefit of Indian tribes, to the Assistant Secretary for Indian Affairs. See

209 DM 8. The Assistant Secretary and Deputy Commissioner for Indian Affairs have further delegated the authority to approve or disapprove non-gaming trust acquisitions to the BIA Regional Directors.

Acquisition of title to the Sites in trust will promote tribal self-determination and will be consistent with the Paskenta Band Restoration Act, 25 U.S.C. § 1300m. It will also help to rectify the Tribe's previous loss of land as a result of the California Rancheria Act.

3.0 Statement of Need for Trust Land / Purpose Statement

Since 1934, the federal government has supported the acquisition of lands into trust for tribes for purposes of self-determination and economic self-sufficiency. The overall purpose of this application is to provide increased long-term socio-economic security for the Tribe through land acquisition to benefit the Tribe's efforts of enhancing self-determination. The Tribe plans to continue to use the Sites for their current use after acquisition. The proposed acquisition would also provide greater control over land use matters associated with the Reservation by transferring jurisdiction over land use decisions from the County of Tehama to the Tribe and federal government.

Between March 19, 1851, and January 7, 1852, the United States entered 18 treaties with the "Indians of California." See *Thompson v. United States*, 122 Ct.Cl. 348; 1952 WL 5988 (Ct.Cl. 1952). The Indians of California agreed to the set aside of an estimated 8,518,900 acres pursuant to the 18 unratified treaties and in return for relinquishment of claims to individual aboriginal territory. See *Indians of California v. United States*, 102 Ct.Cl. 837, 1944 WL 1079 (Ct.Cl. 1944). In reliance on the treaties, many Indians moved to the lands that were ostensibly set aside for their use and occupancy. The 18 treaties were transmitted by President Millard Fillmore to the United States Senate for ratification. However, the State of California and its miners protested the reservation of lands for Indians, and the U.S. Senate refused to ratify the treaties, leaving the Indian signatories without a protected interest in the lands ceded by the treaties or the promised reservations. On June 28, 1852, the Senate refused to advise and consent to the ratification of all 18 treaties and ordered that resolutions rejecting the treaties be laid before the President. The treaties quitclaimed to the United States any and all lands to which Indians may have a claim. See *Thompson v. United States*, 122 Ct.Cl. 348; 1952 WL 5988 (Ct.Cl. 1952). Because the Senate also sealed the file on these treaties, the tribes were not notified of the Senate's failure to ratify the treaties until 1905. See H.R. Rep. No. 801, 103rd Cong., 2nd Session, 2 (1994).

The Paskenta Band of Nomlaki Indians did not make a claim for lands in California pursuant to the "act to ascertain and settle land claims in the State of California." See *Thompson v. United States*, 22 Ct.Cl. 348, 1952 WL 5988 (Ct.Cl. 1952); and 9 Stat. 631-634. All persons (including Indians) were required to submit claims for lands and that failure to do so within two years of the date of the Act rendered the land part of the public domain. No individual Indians or tribes made such claims. See *Thompson v. United States*, 122 Ct.Cl. 348; 1952 WL 5988 (Ct.Cl. 1952).

California Indians fully performed their part of the bargain. Thereafter, in 1928, Congress authorized the Court of Claims to hear, adjudicate and render final judgment and determine the equitable amount due from the United States on all claims of the "Indians of California" may have against the United States for takings of land from them in the State of California without compensation. *See Thompson v. United States*, 122 Ct.Cl. 348; 1952 WL 5988 (Ct.Cl. 1952). As a result of such claims, the Court of Claims entered a net award of \$5,024,842.34. *See Indians of California v. United States*, 102 Ct.Cl. 837, 1944 WL 1079 (Ct.Cl. 1944).

As a result of this history, the plight of the Indians in California became a topic of noted scholars and philanthropists who urged Congress to provide a remedy to homeless Indians in the State. Congress thereafter authorized an investigation of the existing conditions of Indians in Northern and Central California, and directed the Commissioner of Indian Affairs to report to Congress "some plan to improve the same."¹ In response to a public outcry by civil and religious leaders over the treatment of California Indians, Congress, on March 3, 1905, appointed C.E. Kelsey, a San Jose attorney and officer of the Northern California Indian Association, as special agent to the Commissioner of Indian Affairs for the purpose of reporting to the Commissioner on the condition of Indians within the State of California.² Kelsey found that the Indians had been forced from their traditional homelands and were living on worthless land in distressing conditions. He recommended to the Commissioner of Indian Affairs that the government purchase land for individual Indian families or communities in tracts not exceeding ten acres. Kelsey recommended that the land purchased "be of good quality and proper water supply... [and be]... located in the neighborhoods in which the Indians wish to live."

In his final report to the Commissioner, Kelsey attributed the continuing decreases in Indian population in the State to the lack of a secure Indian land base. Kelsey emphasized the need for immediate relief for the homeless Northern California Indians.³ He recommended that Congress buy small parcels of land for these destitute and displaced Indians, and indicated "that the land should be of good quality with proper water supply, and shall be located in the neighborhoods in which the Indians wish to live."⁴

Kelsey's report was submitted to Congress through the Commissioner of Indian Affairs and the Secretary of the Interior with a recommendation that his plan for California Indians be adopted. On March 29, 1906, the Commissioner of Indian Affairs, after a comprehensive review, approved Kelsey's report and "strongly urge[d] that Congress be requested to make an appropriation of sufficient amount to enable the

¹ Act of March 3, 1905, 33 Stat. 1048, 1058.

² *See* Report of C.E. Kelsey to the Commissioner of Indian Affairs (hereinafter "Kelsey Report").

³ *See* Kelsey Report, at 15. "It seems clear to your special agent that the Northern California Indians have not had a 'square deal,' and that it is not too late to do belated justice. The landless Indians cannot be placed in status quo ante, but they can be given what is sometimes expressed as 'a white man's chance,' and it ought to be possible to put an end to the periodical wiping out of Indian children."

⁴ *Id.* at 23-24.

Department to carry out the plans proposed.”⁵ The Senate acted on this recommendation by amending the Indian Office appropriation bill to include an additional appropriation of \$100,000 to purchase lands for homeless California Indians. The House assented to the Senate amendment, and the bill was enacted as part of the Indian Office Appropriation Act of 1906. *See* 34 Stat. 325, 333 (1906).⁶ As a result of these actions the Indian Office Appropriation Act of 1906 appropriated \$100,000.00 and authorized the Bureau of Indian Affairs to:

“Purchase for the use of the Indians of California now residing on reservations which does not contain land suitable for cultivation, and for Indians who are not now upon reservations in said State, suitable tracts or parcels of land, water, and water rights in said State. . . as the Secretary of the Interior may deem proper...”

In the decades following 1944, the usefulness of the Rancheria reservation system was debated in the Executive Branch as well as in Congress. Congressional attitudes during this period reflected a desire to rapidly end Indian dependence on federal services, curtail the Indian services bureaucracy, and assimilate Indians into the mainstream of the United States culture. *See e.g. Duncan v. Andrus*, 517 F.Supp. 1, 3 (N.D. Cal., 1977). These objectives were to be accomplished in part by granting legal title to Rancheria land to individual Indians and terminating federal benefits and services to such Indians. *See Duncan v. Andrus*, 517 F.Supp. 1, 3 (N.D. Cal., 1977).

Congress provided authority for the termination of federal supervision over, and distribution of the assets of the through the enactment of the California Rancheria Act. Section 1 of the Act provided that the assets of 41 named rancherias (including the Paskenta Band of Nomlaki Indians) “shall be distributed in accordance with the provisions of this Act.” Section 2(a) of the Act required that a plan be prepared by the Indians of each rancheria or by the Secretary of the Interior after a consultation with the Indians. But, Section 2(b) of the Rancheria Act manifests the clearly permissive character of any execution of the plan, mandating that the plan be carried out only if approved by a majority of the Indians voting in a referendum. *See, id.*

Section 3(c) of the Rancheria Act required the Secretary of the Interior and the Secretary of Health, Education, and Welfare to perform certain duties and provide certain services to the Indians prior to terminating the Rancheria.

“Sec. 3. Before making the conveyances authorized by this Act on any rancheria . . . the Secretary of the Interior is directed:

⁵ Letter from the Secretary of the Interior, dated April 2, 1906, to the Senate Committee on Indian Affairs.

⁶ In addition to authorizing the Secretary of the Interior to purchase land for homeless California Indians, the 1906 Act authorized the Secretary to “fence, survey and mark the boundaries of such Indian Reservations” created thereby. Act of 1906, 34 Stat. 325.

(c) to construct, improve, install, extend or otherwise provide, by contract or otherwise, sanitation facilities, including domestic and community water supplies and facilities, drainage facilities and sewage-waste disposal facilities together with necessary appurtenances and fixtures and irrigation facilities for Indian homes, communities, and lands as he [the Secretary] and the Indians agree, within a reasonable time

See, id.

The Rancheria Act provided an appropriation of over \$300,000.00 for the purpose of making the improvements that the Secretary was required to make under the Act prior to termination. Unfortunately for the Nomlakis and the other rancherias terminated under the Act, none of the money appropriated by Congress under the Act was ever spent to make the improvements contemplated by the Act despite the Bureau of Indian Affairs' promise to make whatever improvements were necessary in order to terminate the Rancheria under then-existing inadequate BIA budgets.

The Paskenta Rancheria, located in Tehama County, California, was one of the 41 rancherias and Indian communities which were terminated under the Rancheria Act, P.L. 85-671.

The Paskenta Band of Nomlaki Indians were first identified in accounts of General John Bidwell documenting various California Indians in 1844. In 1854, the Nomlaki Indians were settled on a Federal reservation established in western Tehama County by the United States. In 1861, the Federal government terminated the "Nome Lackee" reservation and many Nomlaki families were removed to the Round Valley reservation, while other families returned to their traditional homelands in Tehama County.

In a 1919 survey conducted by the Commissioner of Indian Affairs to identify the landless Indians of California, Superintendent O.H. Lipps identified the Paskenta Band of Nomlaki Indians, which numbered less than 90 people and still resided in Tehama County, California. The Nomlaki families making up the Paskenta Board were living on the 80 acre allotment of Andrew Freeman, a full-blooded Nomlaki Indian.

In 1920, the Federal government purchased 260 acres in the foothills of Tehama County, west of the present day town of Paskenta, and established the Paskenta Rancheria for the Nomlaki families living in the area. By 1940, there were only two families remaining on the Paskenta rancheria. Many of the other families had moved off the rancheria due to the lack of adequate housing, electricity, or sanitation on the rancheria. Others left the rancheria to seek gainful employment opportunities.

On April 11, 1961, the Paskenta Rancheria was terminated, the lands sold off and the assets distributed to the descendants of the two remaining families on the rancheria.

In 1994, Congress passed the Paskenta Band Restoration Act. See 25 U.S.C. § 1300m *et seq.*

On April 18, 1998, the Paskenta Band of Nomlaki Indians organized a new tribal government under the provisions of Indian Reorganization Act through the adoption of a Constitution that was subsequently approved by the Secretary of the Interior on May 18, 1998.

On November 30, 2000, the Tribe acquired in trust its initial reservation comprising approximately 1899 acres. In accordance with 25 U.S.C. § 1300m-3(b), any subsequent acquisitions are to be made part of the Tribe's reservation.

The Tribe now seeks to acquire lands that it can convey to the United States in trust for the Tribe for the purpose of reestablishing and expanding its Reservation land base. The Tribe has determined that in order to meet the needs of the Tribe, it is necessary to acquire land in trust in an easily accessible location central to the membership. The Sites meets those needs and acquisition of the land will assist in the Tribe's efforts to preserve the existence of the Tribe and regain land lost during the illegal termination of the Tribe pursuant to the California Rancheria Act. Likewise, acquisition of the Sites will enhance Tribal self-determination by ensuring that certain lands adjacent to the Tribe's reservation are not used in a manner contrary to the Tribe's governmental and commercial interests.

4.0 Title Insurance and Other Real Estate Issues

4.1 Sites

Three separate grant deeds evidencing the Tribe's ownership of the Sites have been recorded in the County Recorder's office for the County of Tehama, California. See Exhibits 2 - 4 attached hereto.

The following real estate due diligence items have been or will have been performed and completed with respect to the Site:

4.1.1. Title Insurance

First American Title Insurance Company will issue a Commitment for Title Insurance, attached hereto, meeting the federal government's ALTA title policy requirements for the transfer of title from fee to trust. A copy of the Commitment for Title Insurance is attached hereto as Exhibit 6.

The Commitment for Title Insurance issued by First American Title Insurance Company includes various exceptions described in Schedule B thereto. See Exhibit 6. The Tribe does not anticipate that any of the exceptions, including any easements and rights of way or recorded documents will have any material adverse effect on the proposed continued use or the marketability of title.

The Williamson Act conservation contract was the subject of a Notice of Non-Renewal filed with the County of Tehama effective on January 1, 2002. See Exhibit 7. As such, the remaining term of the conservation contract is six (6) years that will expire on January 1, 2011.

The title insurance policy to be issued for the Sites transferred to the United States in trust for the Tribe as part of the fee to trust transfer will name the United States of America as the insured for the Sites.

The Tribe has adopted a Tribal Council resolution accepting the exceptions listed in the Commitment for Title Insurance issued by First American Title Insurance Company. See Exhibit 13.

4.1.2. Survey

An ALTA/ACSM Land Title Survey meeting the federal government's title evidence requirements will be completed for the transfer of title from fee to trust status, if necessary.

4.1.3. Form of Conveyancing Documents

At the closing the Site will be conveyed to the United States in trust for the Tribe pursuant to a Grant Deed substantially in the form attached hereto as Exhibits 8-10. Warranty Deeds are not used in California.

4.1.4. UCC Searches

The Site is being conveyed in trust free and clear of any UCC financing statements.

4.1.5. Inspection

A Phase I Environmental Site Assessment was completed by Analytical Environmental Services in July 2005. See Exhibit 11.

The Phase I Environmental Site Assessment was performed in conformance with the scope and limitations of American Society of Testing and Materials (ASTM) Standard Practice E1527-00, which specifies the appropriate inquiry requirement for the innocent landowner defense under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The Phase I Environmental Site Assessment included historical records review, a database search, site reconnaissance, and interviews. Physical testing of soil or groundwater was not within the scope of Phase I Site Assessment. The Phase I Environmental Site Assessment conducted for the project site did not result in any obvious indication of hazardous material contamination.

4.1.6. Archaeological Report

An archaeological report is attached as Exhibit 12.

5.0 Environmental Compliance Information

5.1 Categorical Exemption

Environmental review under the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4371 *et seq.*, is not required for this action. Under the Council on Environmental Quality’s regulations implementing NEPA, an agency may exclude from NEPA review categories of actions that do not individually or cumulatively have a significant effect on the human environment. *See* 40 C.F.R. §§ 1500.4(b), 1500.5(k), 1508.4. The Bureau of Indian Affairs has categorically excluded actions such as this one in regulations promulgated pursuant to NEPA. *See* BIA NEPA Handbook, Illustration 6 at 4.4(2)(l) (1993). The regulations for “Land Conveyance and Other Transfers” categorically exclude from NEPA review “[a]pprovals and grants of conveyances and other transfers of interest in land where no change in land use is planned”. In addition, BIA regulations also exclude “[l]ands established as or added to a reservation pursuant to 25 U.S.C. § 467 where no change in land use is planned.” *See id.* at 4.4(2)(j).

In our case, the parcels of land the Tribe proposes to transfer into trust status total approximately 320.71 acres more or less and is currently zoned by the County of Tehama as follows:

ASSESSOR'S PARCEL NUMBER	ACRES (Approx.)	Zoning	Permitted Uses
087-230-14	5.0	EA-B:871	UA: Upland Agricultural District 1) livestock grazing 2) farming & animal husbandry 3) ancillary residential AP: Agricultural Preserve
087-230-40	2.11	EA-B:871	EA: Exclusive Agricultural District 1) crop production 2) livestock grazing 3) principal residence of owner or operator
087-230-41	10.21	EA-B:871	EA: Exclusive Agricultural District 1) crop production 2) livestock grazing 3) principal residence of owner or operator
087-230-42	10.26	EA-B:871	EA: Exclusive

087-230-43	5.06	EA-B:871	Agricultural District 1) crop production 2) livestock grazing 3) principal residence of owner or operator EA: Exclusive
087-280-09	2.5	EA-B:871	Agricultural District 1) crop production 2) livestock grazing 3) principal residence of owner or operator EA: Exclusive
087-280-10	10	EA-B:871	Agricultural District 1) crop production 2) livestock grazing 3) principal residence of owner or operator EA: Exclusive
087-280-21	5.80	EA-B:871	Agricultural District 1) crop production 2) livestock grazing 3) principal residence of owner or operator EA: Exclusive
087-230-23	1.35	M1	Light Industrial
087-320-05	267.62	UA-AP	EA: Exclusive
Total	320.71		Agricultural District 1) crop production 2) livestock grazing 3) principal residence of owner or operator

The Tribe has proposed no change in use for the Sites. Further, the Sites, with the exception of Area 4, are not constrained by or subject to the Williamson Act. Accordingly, the Tribe's application to place the land into trust status is categorically exempt from environmental review under NEPA, and neither an Environmental Assessment nor Environmental Impact Statement is required.

The Tribe asserts that the BIA may issue a FONSI and that no Environmental Assessment or Environmental Impact Statement is required for the proposed acquisition of title to the Sites in trust.

6.0 Description of Intended Use

6.1 Description of Use of the Sites

The Sites are unimproved and are not productively used at this time. The Sites are contiguous to the Tribe's Reservation. The primary goal in acquiring the Sites is to provide long-term socio-economic security for the Tribe through land consolidation to enhance self-determination through tribal economic development. The Tribe plans to continue the current use of the Sites as continuing the current use will ensure that the Tribe prohibits inconsistent development by non-Indian developers that could injure the Tribe's economic development efforts within the reservation boundaries.

7.0 Location of the Land

7.1 Location and Legal Description of the Site

The property that the Tribe seeks to acquire in trust is located contiguous to its reservation in Corning, California, an unincorporated area of Tehama County. The Sites are also within the aboriginal territory of the Tribe. Exhibit 16 illustrates the location of the Sites. The relevant Tax Assessors Parcel Number are:

PARCEL	ASSESSOR'S PARCEL NUMBER	ACRES	CURRENT LEGAL OWNER
1	087-230-14	5.0	Paskenta Band of Nomlaki Indians
2	087-230-40	2.11	Paskenta Band of Nomlaki Indians
2	087-230-41	10.21	Paskenta Band of Nomlaki Indians
2	087-230-42	10.26	Paskenta Band of Nomlaki Indians
2	087-230-43	5.06	Paskenta Band of Nomlaki Indians
2	087-280-09	2.5	Paskenta Band of Nomlaki Indians
2	087-280-10	10	Paskenta Band of Nomlaki Indians
2	087-280-21	5.80	Paskenta Band of Nomlaki Indians
3	087-230-23	1.35	Paskenta Band of Nomlaki Indians
4	087-320-05	267.62	Paskenta Band of

Total 320.71

The legal description of the Sites are included at Exhibits 2-4.

The property is located near Interstate 5 at its intersection with Liberal Avenue and approximately three miles south of Corning, California.

The Sites are approximately 75 miles north of the BIA offices located in Sacramento, California. The Sites are located near the geographic center of California. The Tribe does not expect that the acquisition of title to the Sites in trust will negatively impact Bureau of Indian Affairs' services or impose additional responsibilities as the Tribe does not anticipate that it will request additional services from the Bureau for the Sites beyond the BIA's usual and customary role of supervision of trust property.

7.2 Area 3 is Contiguous to the Reservation

25 CFR §§ 151.2 and 151.3 do not include a definition of "contiguous" or "adjacent." Rather, Part 151 merely distinguishes between on-reservation and off-reservation acquisitions. Therefore, in order to determine whether the land is contiguous to the Tribe's Reservation, the BIA may look to California law for guidance.

The California Subdivision Map Act provides that "property shall be considered contiguous units, even if separated by roads, streets, utility easement or railroad rights-of-way." See California Government Code § 66424. Hence, despite the fact that Area 2 and Area 3 is bisected by Barham Avenue property they may be considered contiguous pursuant to California law.

According to *People v. Thompson*, 43 Cal. 2d 13, 23, 271 P.2d 507 (1954), if an owner's land is crossed by an easement for a street or highway, the land is to be considered actually contiguous and so as a single parcel or tract.

In a number of cases this view has been applied where the division was by a street or highway in which the owner held the land on both sides of it and owned the fee in the street or highway.

Id. (citing Annotation, 6 A.L.R.2d 1197, 1201). The *Thompson* case also provides that "... it is not considered a separate and independent parcel merely because it was * * * separated by an imaginary line, or even if the two tracts are separated by a highway * * *". *Id.*

Hence, the Tribe requests that the BIA treat Areas 2 and 3 as one parcel for purposes of acquisition of the Sites in trust status.

8.0 Impact on Local Tax Structure

8.1 Impact on Local Tax Structure

The Sites are currently subject to state, county and local fees, real property taxes, and special assessments. Placement of the Sites into trust status will prohibit the state, county and local governments from collecting these real property taxes or special assessments on the property.

The amount of property taxes due for each of the parcels is:

PARCEL	ASSESSOR'S PARCEL NUMBER	ACRES	AMOUNT OF TAXES
1	087-230-14	5.0	\$2,664.88
2	087-230-40	2.11	\$1,257.98
2	087-230-41	10.21	\$6,077.80
2	087-230-42	10.26	\$6,102.72
2	087-230-43	5.06	\$3,486.14
2	087-280-09	2.5	\$1,487.94
2	087-280-10	10	\$5,949.40
2	087-280-21	5.80	\$3,348.16
3	087-230-23	1.35	\$650.72
4	087-320-05	267.62	\$10,135.78
	TOTAL		\$41,161.52

However, the Tribe makes substantial voluntary payments to the County of Tehama, including a pledge to pay to the County a total of \$1,000,000 over five years. To date, the payments from the Tribe to the County have exceeded the \$200,000 per year pledged by the Tribe.

8.2 Projected Lost Revenues

The projected lost property tax revenues to the county and other local government agencies are approximately \$41,161.52 per year, but that amount is not considered significant because of the payments made by the Tribe to the County. See discussion above.

8.3 Effect on Local Governments' Ability to Provide Services

Community infrastructure and services include those public services most directly related to the physical development of Tehama County. These include police and fire protection, water, wastewater management, utilities, solid waste management, public education, and parks and recreation. Placing the Sites in trust will have only a small and insignificant effect, if any, on the local government's provision of these services and will most likely be no greater impact than the effect of the current land status.

The Tehama County Sheriff's Department provides police services for the Reservation and the Sites, as well as the other unincorporated areas near Corning, California, including the Sites. The Sheriff's Department is located within approximately

three miles from the Site. The Sheriff's Department is responsible for law enforcement in Tehama County. In the event of the Sheriff Department's availability, the City of Corning's police department will respond to emergency calls in accordance with a mutual aid agreement between those two agencies. Due to the proximity of the Sites to the community of Corning, the change in land status from fee to trust is not anticipated to have an adverse impact on police demand or response times.

The California Department of Forestry provides fire protection services within the boundaries of the Reservation and to the Sites. Due to the proximity of the Site to Corning, the change in land status from fee to trust is not anticipated to have an adverse impact on fire protection demand or response times because no change in use of the land is planned.

Emergency medical services and hospital services are provided by St. Elizabeth Hospital in Red Bluff, California. No change in the level of service is expected due to the acquisition of the land in trust because there is no change in use planned for the Sites.

Access to water and sewer is not an issue although there is no public water or sewer service. The Sites, like much of the area, utilize wells and septic units. Domestic water for residences is provided by wells. Irrigation water is available in some areas from the Corning Water District. All sewage is handled by private septic tanks. The Tribe has constructed its own wastewater treatment facility, which, if necessary, any development on the Sites could use. However, because there is no change in use of the Sites planned, there is no change in the status of the use of water or sewer planned. Therefore, there will not be any adverse impact on local government.

Electric services are provided by Pacific Gas & Electric. SBC provides telephone service. Because commercial providers are available, there will be no adverse impact on local government.

Solid waste disposal services are provided by Green Waste of Tehama County or Waste Management. Because there is no change in use planned, a solid waste disposal service is readily available for the Sites, and because the Tribe pays for the commercial service, there will be no negative impact on local government.

9.0 Identification of Jurisdictional Issues

9.1 Zoning Issues

In the evaluation of the Tribe's request for the acquisition of trust lands, the reviewing agencies will consider impacts to the state and its political subdivisions, including any jurisdictional problems and potential conflicts of land use that may arise 25 CFR §§ 151.10(e) and 151.10(f). The land under consideration is located within the unincorporated portion of the County of Tehama. The Sites are zoned for agriculture and light industrial. See Section 7.1, above. As noted above, Area 4 is subject to the Williamson Act.

No jurisdictional conflict is anticipated because the Tribe does not plan any change in use of the Sites.

9.2 Compliance With Fire Standards

Because of the current use of the land, the Tribe is not required to comply with any new or additional fire standards for any existing buildings and does not plan to make any change in use of the Sites. Therefore, no jurisdictional conflict exists regarding compliance with existing fire standards.

9.3 Mitigation of Potential Impacts

The Tribe will attempt to mitigate any significant potential impacts arising from acquisition of the Sites in trust status.

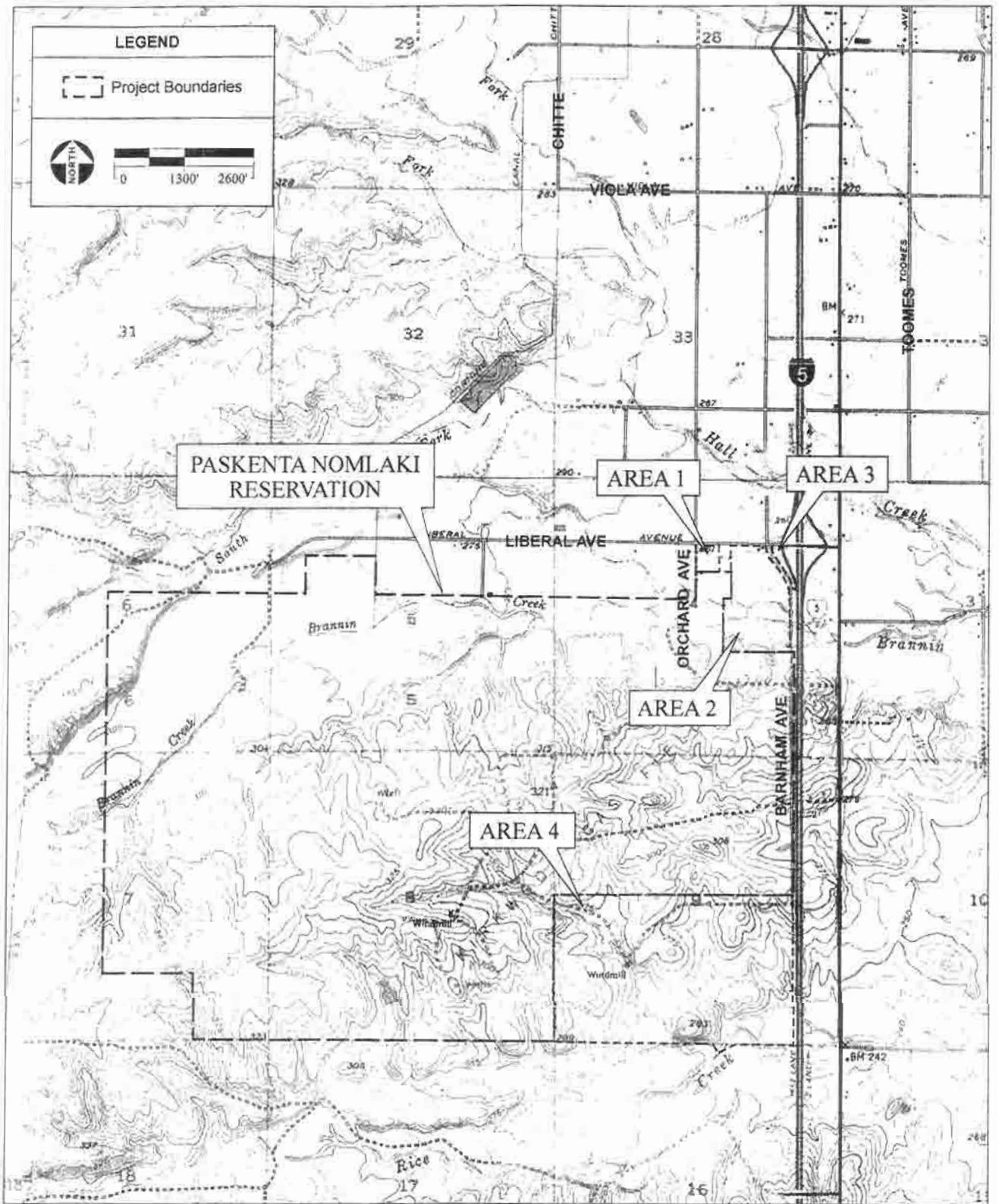
CONCLUSION

The acquisition of the Sites in trust is in the best interests of the Tribe, the local community and the State and will not be detrimental to the surrounding community. Accordingly, the Tribe respectfully requests that the Secretary approve this Application to take the Sites into trust for the benefit of the Tribe.

THE PASKENTA BAND OF NOMLAKI INDIANS
REQUEST FOR CONVEYANCE OF FEE LAND TO TRUST STATUS

EXHIBIT LIST

- Exhibit 1: Vicinity Map(s) & Aerial Photographs
- Exhibit 2: Deed & Legal Description – Area 1
- Exhibit 3: Deed(s) & Legal Description – Areas 2-3
- Exhibit 4: Deed & Legal Description – Area 4
- Exhibit 5: Tribal Council Resolution Requesting Secretary to Take Sites Into Trust
- Exhibit 6: Commitment for Title Insurance
- Exhibit 7: Notice of Non-Renewal of Conservation Contract
- Exhibit 8: [Draft] Grant Deed – Area 1
- Exhibit 9: [Draft] Grant Deed(s) – Areas 2-3
- Exhibit 10: [Draft] Grant Deed – Area 4
- Exhibit 11: Phase I Environmental Site Assessment
- Exhibit 12: Archaeological Report
- Exhibit 13: Tribal Council Resolution Accepting Exceptions of Schedule B

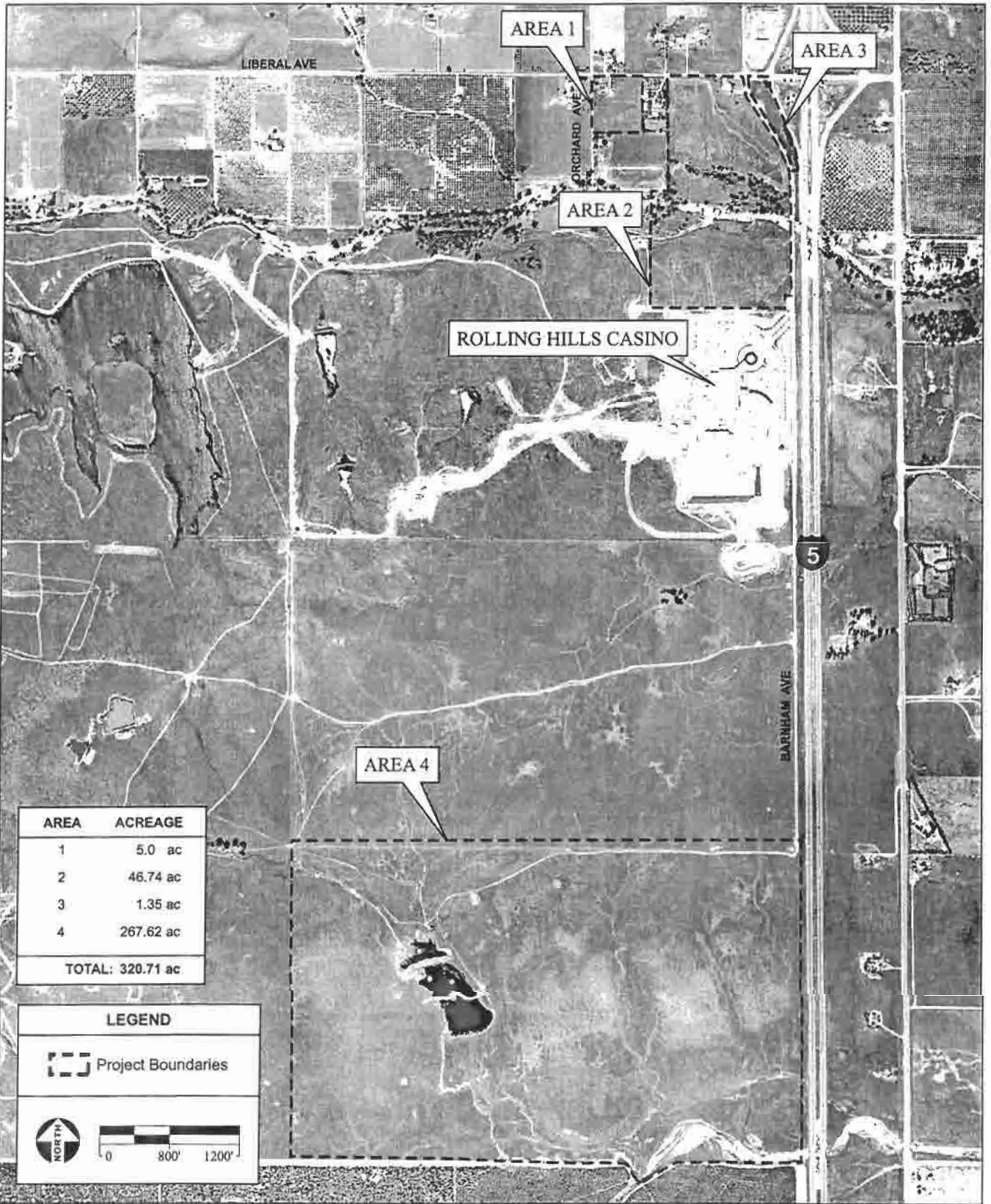


SOURCE: USGS 7.5 Minute Topographic Quadrangle, AES, 2005

Paskenta / 205512 ■

Exhibit A-092705

Project Parcels and Reservation Boundary



SOURCE: GlobeExplorer Aerial Photograph, dated 4/1/04; AES, 2005

Paskenta Corning Property Phase I ESA / 205512 ■

Figure 3
Aerial Photograph

RECORDING REQUESTED BY
AND MAILED TO:

Clerk of the Board
County of Tehama
P.O. Box 250

Red Bluff, CA 96080
RECEIVED

APR 20 2001

TEHAMA COUNTY CLERK OF THE
BOARD OF SUPERVISORS

006530

BOOK 2031 PAGE 374

RECORDED AT REQUEST OF
County of Tehama
at 30 min. past 1:30 PM

MAY 4 2001

OFFICIAL RECORDS
TEHAMA COUNTY, CALIFORNIA
MARY ALICE GEORGE
Recorder
Fee \$ NONE

NOTICE OF NONRENEWAL
OF
AGRICULTURAL LAND USE CONTRACT

The undersigned property owner(s) hereby notify the Board of Supervisors of the County of Tehama that, pursuant to Sections 51236 and 51245 of the California Government Code, they wish to file a (Full) (Partial) nonrenewal of Land Use Contract No. 579, Recorder's Book No. 777, Page No. 1095. Total acreage removed from Contract: 267.62.

This notice shall pertain to the following described property: (Legal description or Assessor's Parcel Numbers of that portion of the property to which the nonrenewal applies) (Legal description may be attached hereto as Exhibit "A")

87-320-05

BOOK 2031 PAGE 375

NOTICE OF NONRENEWAL OF AGRICULTURAL LAND USE CONTRACT NO. 579

All owners of the previously described property must sign this Notice of Nonrenewal and all signatures must be properly acknowledged.

OWNER(S)

PRINTED NAME KENNETH L. MYERS DATE 3/23/01

SIGNATURE [Signature] TELEPHONE 925-323-2977

ADDRESS 2419 ASHWOOD DR SE, SA RAMON CA 94563

PRINTED NAME NANCY MYERS BOOTH DATE 3/30/01

SIGNATURE [Signature] TELEPHONE 925-253-7766

ADDRESS 35 MAXINA RD OKINOA CA 94563

PRINTED NAME Lewis L. Hardy DATE April 10, 2001

SIGNATURE [Signature] TELEPHONE (530) 589-4212

ADDRESS 243 East Horizon Drive Oroville CA 95966

PRINTED NAME Kathryn Myers Hardy DATE April 10, 2001

SIGNATURE [Signature] TELEPHONE (530) 589-4212

ADDRESS 243 East Horizon Dr. Oroville CA 95966

ACKNOWLEDGEMENTS FOR OWNER(S)

STATE OF CALIFORNIA)
)
County of ALAMEDA)ss
 Tehama)t

On MARCH 28, 2001 before me, the undersigned, a notary public in and for said state, personally appeared KENNETH L. MYERS

personally known to me (or 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 or she executed the same in the capacity(ies) indicated at the signature point.

WITNESS my hand and official seal.

[Signature of Notary]
Signature of Notary



BOOK 2031 PAGE 376

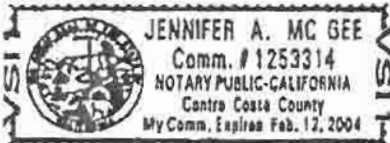
PURPOSE ACKNOWLEDGEMENT

State of CALIFORNIA
County of CONTRA COSTA

On MARCH 30, 2001 before me, JENNIFER A. MCGEE
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

Personally appeared NANCY MYERS BOOTH
NAME(S) OF SIGNER(S)

personally known to me - OR - 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) acted, executed the instrument.



Witness my hand and official seal.

Jennifer A. McGee
SIGNATURE OF NOTARY

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL(S)
- CORPORATE OFFICER(S) title(s)
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- SUBSCRIBING WITNESS
- GUARDIAN/CONSERVATOR
- OTHER

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Type or Type of Document NOTICE OF NONRENEWAL OF AGRICULTURAL LAND USE CONTRACT
Number of Pages _____ Date of Document NO. 579
Signer(s) Other Than Named Above _____

State of California

County of Butte

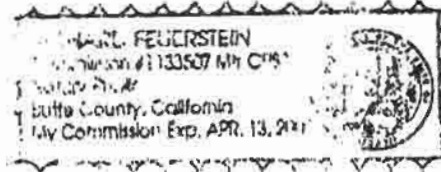
On 04-10-01 before me, Richard Feuerstein

a Notary Public, personally appeared Lewis W. Hardy and
Kathryn M. Hardy personally known to me (or 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.

WITNESS my hand and official seal.

Richard Feuerstein
Notary Public



LEGAL DESCRIPTION

BOOK 2031 PAGE 378
EXHIBIT A

LOCATED IN THE UNINCORPORATED AREA:

ALL THAT PORTION OF THE SOUTH ONE-HALF OF SECTION 9, TOWNSHIP 23 NORTH, RANGE 3 WEST, MOUNT DIABLO MERIDIAN, LYING WESTERLY OF THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE FINAL ORDER OF CONDEMNATION ENTITLED: "THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, VS., W. S. PAYNE, JR., ET AL, DEFENDANTS", CASE NO. 12665, FILED FEBRUARY 9, 1968 A CERTIFIED COPY OF WHICH WAS RECORDED FEBRUARY 9, 1968 IN BOOK 508 AT PAGE 630, OFFICIAL RECORDS OF TEHAMA COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS AND MINERAL RIGHTS, RESERVED BY CHARLES H. ROBERTS ET AL IN DEED DATED SEPTEMBER 14, 1976 AND RECORDED SEPTEMBER 23, 1976 IN BOOK 696, AT PAGE 288, OFFICIAL RECORDS OF TEHAMA COUNTY, BUT EXCEPTING THAT INTEREST, IF ANY, CONVEYED IN THE DEED FROM CHARLES ROBERTS TO CARL R. FRANCK, ET UX, RECORDED MARCH 4, 1986 IN BOOK 1056, PAGE 349, OFFICIAL RECORDS OF TEHAMA COUNTY.

ALSO EXCEPTING THEREFROM ALL REMAINING OIL, GAS AND MINERAL RIGHTS, AS EXCEPTED IN THE DEED FROM CARL R. FRANCK AND BEVERLY J. FRANCK, HIS WIFE, AS JOINT TENANTS, RECORDED SEPTEMBER 19, 2000, INSTRUMENT NO. 11748, OFFICIAL RECORDS

LDS1 --10/05/05bx

END OF DOCUMENT