

YUBA COUNTY, CALIFORNIA

BOARD OF SUPERVISORS

DECEMBER 6, 2005

The Honorable Board of Supervisors of the County of Yuba met in regular session on the above date, commencing at 6:00 p.m., within the Government Center, Marysville, California, with a quorum being present as follows: Supervisors Dan Logue, Mary Jane Griego, Donald Schrader, and Hal Stocker. Supervisor John Nicoletti was absent. Also present were County Administrator Kent McClain, County Counsel Daniel Montgomery, and Clerk of the Board of Supervisors Donna Stottlemeyer. Madam Chair Griego presided.

CONSENT AGENDA

Upon motion of Supervisor Stocker, seconded by Supervisor Logue, and carried with Supervisor Nicoletti being absent, the Board took the following actions:

A. Administrative Services

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| 1) Adopted Resolution No. 2005-278, which is on file in Yuba County Resolution Book No. 36, which is entitled: "RESOLUTION REGARDING THE USE OF COUNTY CONFERENCE AND MEETING ROOMS." | ADOPT
RESOLUTION
NO. 2005-278 |
| 2) Declared surplus property and set date of December 10, 2005 for public auction. | DECLARE
SURPLUS |
| 3) Approved formal amendments to service agreements for the development of the Yuba County Multi-Hazard Mitigation Plan with Matthew Lechowick, Janice Rhodd, and Stacey Brucker and authorized the Chair to execute same. | APPROVE
AMNDMNTS. |

B. Board of Supervisors

- | | |
|--|-----------------|
| 1) Appointed Mr. Ronald Weaver to the Fish and Game Advisory Commission as the District One Representative for a term to expire December 31, 2006. | APPOINT
REP. |
| 2) Appointed Mr. Schuyler Pennington to the Fish and Game Advisory Commission as the District Three Representative for a term to expire December 31, 2008. | APPOINT
REP. |

- C. Clerk of the Board of Supervisors APPROVE
MINUTES
- 1) Approved minutes of the regular meetings of November 8 and 15, 2005, as written.
 - 2) Appointed Ms. Ethel Jorgensen to the Yuba County Commission on Aging as the At-large Representative for a term to expire March 4, 2006. APPOINT
REP.
 - 3) Appointed William Drake to Yuba County Resource Conservation District for a term to expire November 30, 2007. APPOINT
REP.
- D. Clerk-Recorder/Elections
- 1) Accepted certification of the Canvass of Election returns for the Special Election of November 8, 2005. ACCEPT
CANVASS
 - 2) Adopted Resolution No. 2005-279, which is on file in Yuba County Resolution Book No. 36, which is entitled: "RESOLUTION APPROVING THE APPLICATION FOR FUNDS UNDER THE VOTING MODERNIZATION BOND ACT OF 2002." ADOPT
RESOLUTION
NO. 2005-279
 - 3) Adopted Resolution No. 2005-280, which is on file in Yuba County Resolution Book No. 36, which is entitled: "RESOLUTION APPROVING THE APPLICATION FOR FUNDS UNDER THE HELP AMERICAN VOTE ACT OF 2002." ADOPT
RESOLUTION
NO. 2005-280
- E. Community Development: Authorized a Budget Transfer in the total amount of \$188,917 from Account No. 101-0000-331-12-00 (Construction Permits) to various line items for new Plan Checker II position, equipment and new vehicles. AUTHORIZE
BUDGET
TRANSFER
- F. County Counsel
- 1) Approved Petition for Detachment of land from South Yuba Water District identified as Assessor Parcel No. 22-060-003 and authorized the Chair to execute same. APPROVE
DETACHMNT.
 - 2) Authorized hiring of Chief Deputy County Counsel at E step. AUTHORIZE
HIRE
- G. Health and Human Services: Adopted Resolution No. 2005-281, which is on file in Yuba County Resolution Book No. 36, which is entitled: "AUTHORIZE THE CHAIR OF THE BOARD TO ACCEPT CHILD WELFARE SERVICES OUTCOME IMPROVEMENT PROJECT (CWSOIP) FUNDS FROM CALIFORNIA DEPARTMENT OF SOCIAL SERVICES ON BEHALF OF THE YUBA COUNTY HEALTH AND HUMAN SERVICES DEPARTMENT FOR THE PERIOD OF JULY 1, 2005 THROUGH JUNE 30, 2006 AND AUTHORIZE THE TRANSFER OF SAID FUNDS; ADOPT
RESOLUTION
NO. 2005-281

AND FURTHERMORE, AUTHORIZE THE DIRECTOR OF THE HEALTH AND HUMAN SERVICES DEPARTMENT TO EXECUTE ANY DOCUMENTS AS REQUIRED BY THE ALLOCATION."

H. Public Works

- 1) Authorized a Budget Transfer in the amount of \$150,000 from Account No. 102-9100-431-9000 (Reimbursements) to Account No. 102-9100-431-6200 (Fixed Assets) for purchase of equipment. AUTHORIZE BUDGET TRANSFER
- 2) Adopted Resolution No. 2005-282, which is on file in Yuba County Resolution Book No. 36, which is entitled: "RESOLUTION ADOPTING ESCROW AGREEMENT AND AUTHORIZING CHAIR TO SIGN." ADOPT RESOLUTION NO. 2005-282
- I. Risk Management/Personnel: Authorized catastrophic leave request for Assessor Department employeec. AUTHORIZE LEAVE
- J. Sheriff-Coroner: Approved a Memorandum of Understanding and Letter of Understanding with Clear Channel Communications to provide law enforcement services at Sleep Train Amphitheatre and authorized the Chair to execute same. APPROVE MOU

CLOSED SESSION

The Board retired into closed session at 6:04 p.m. to discuss One Case of threatened litigation pursuant to Government Code §54956.9(b).

The Board returned from closed session at 6:30 p.m. with all Board and staff members present as indicated above. There was no announcement.

PUBLIC COMMUNICATIONS

Mr. Darin Gale, Business Industry Association, felt an update of Community Development fees was needed, however, felt services should increase as well.

The following individuals spoke in support of medical marijuana dispensaries:

- Ms. Bonnie Metcalf, Martel Drive
- Reverend Sister Rosemarie, San Francisco
- Mr. Alan McAfee, Brownsville
- Mr. and Mrs. Bryan Davies, Antelope

Ms. Kathy Barnholdt, Hammonton Smartville Road, urged a safety survey be conducted on Hammonton Smartville Road prior to W. T. Ellis School reopening.

The following individuals urged paving of Township Road prior to the Mater Plan recommendation of 2,010:

- Mr. Paul Baker, Arrowhead Trail
- Ms. Pat Austin, Township Road
- Mr. Jack Gipe, Oat Hills Lane

BOARD OF SUPERVISORS

1) Planning Commission/District Three Representative: Following recommendation of Supervisor Griego, upon motion of Supervisor Schrader, seconded by Supervisor Stocker, and carried with Supervisor Nicoletti being absent, Thomas Durham was appointed to the Yuba County Planning Commission as the District Three Representative for a term to expire December 31, 2008. APPOINT PC REP.

2) Western Aggregates versus County of Yuba/Settlement Agreement: Upon motion of Supervisor Schrader, seconded by Supervisor Stocker, and carried with Supervisor Nicoletti being absent, the Board denied the agreement and returned the matter to Counsel to allow the legal process to continue. DENY AGREEMENT

Mr. Russell Rohleder, Hammonton Road, urged the Board to make no concessions to Western Aggregates.

Mr. Ted Lowe, Marysville, provided written comments which are identified as Exhibit "A" and are attached to and made a part of the record. EXHIBIT A

PUBLIC WORKS

Resource Depletion Surcharge Fund Distribution: Madam Chair Griego continued the matter to December 13, 2005. CONTINUE TO 12/13/05

ORDINANCES AND PUBLIC HEARINGS

The Clerk read the disclaimer.

A. Public Hearing - Appeal of Tentative Subdivision Tract Map TSTM 2004-0044 (Meadows Subdivision) and Filing Fee Waiver Request of \$350: Following Power Point presentation on Meadows Subdivision Tentative Subdivision Tract Map TSTM 2004-0044

by Associate Planner Zach Thomas, County Counsel Daniel Montgomery asked respondent if there was any objection to including a copy of the power point presentation presented at the Planning Commission hearing as part of the administrative record.

Following a brief recess from 7:32 p.m. to 7:38 p.m., appellant and respondent advised of no objection.

Following comments from Olivehurst Public Utility District Operations Manager Tim Shaw, appellant, regarding parkland land reservation and funding, Respondent Attorney William Neasham recapped and provided additional written findings regarding denying the appeal, park improvement fees collected to date, and a letter dated December 6, 2005 from Richard Floch and Associates which are part of the administrative record.

Madam Chair Griego advised of attendance at the Planning Commission hearing and opened the public hearing.

Mr. Gabriel Ortega, Marysville, urged the Board to uphold the appeal.

Supervisor Logue left the meeting at 8:19 p.m.

The Board recessed at 8:21 and reconvened at 8:27 p.m. with all Board and staff members present as indicated above.

Following a roll call vote with Supervisors Logue, Schrader, Stocker and Griego voting in support, with Supervisor Nicoletti being absent, the Board approved the motion of intent to deny the appeal, directed staff to return to the Board with findings and a decision, and denied filing fee waiver request. INTENT TO DENY APPEAL

B. Ordinance – Title 13/Community Development Fees/First Reading: County Administrator Kent McClain advised fees have not been increased since 1993 and further stated a nexus study was prepared and meetings have been conducted with the development community. Madam Chair Griego opened the public hearing. No one came forward.

Upon motion of Supervisor Schrader, seconded by Supervisor Logue, and carried with Supervisor Nicoletti being absent, the public hearing was closed, the first reading was waived, and the Board introduced an ordinance amending Title 13 of the Yuba County Ordinance Code relating to Community Development fees, including Planning Division, Building Division, Environmental Health Division and Code Enforcement. WAIVE READING

C. Ordinance – Community Facilities District No. 2005-1/Notice of Special Tax Lien/Levying Special Taxes: Following presentation by County Counsel Daniel Montgomery, upon motion of Supervisor Schrader, seconded by Supervisor Logue, and carried with Supervisor Nicoletti being absent, the public hearing was closed, and the Board adopted Resolution No. 2005-283, which is on file in Yuba County Resolution Book No. 36, which is entitled: "RESOLUTION DECLARING RESULTS OF SPECIAL ELECTION AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN"; and waived the first reading and introduced ordinance levying special taxes within Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements).

ADOPT
RESOLUTION
NO. 2005-283
AND
WAIVE
FIRST
READING

D. Public Hearing – Resolution Adopting Negative Declaration of Environmental Effect /Ordinance Amendment 2005-002 (Yuba County) and Ordinance adding Chapter 12.42/Neighborhood Commercial Zone: Principal Planner Stacey Jolliffe presented a Power Point presentation recapping the Neighborhood Commercial zoning and responded to Board inquiries. Madam Chair Griego opened the public hearing. No one came forward.

Upon motion of Supervisor Schrader, seconded by Supervisor Stocker, and carried with Supervisor Nicoletti being absent, the public hearing was closed, and the Board adopted Resolution No. 2005-284, which is on file in Yuba County Resolution Book No. 36, which is entitled: "RESOLUTION OF ADOPTION FOR A NEGATIVE DECLARATION FOR ORDINANCE AMENDMENT 2005-0002 (YUBA COUNTY)"; and waived reading, and adopted Ordinance No. 1357, which is on file in Yuba County Ordinance Book No. 18, which is entitled: "AN ORDINANCE ADDING CHAPTER 12.42 TO THE YUBA COUNTY ORDINANCE CODE IN THE COUNTY OF YUBA."

ADOPT
RESOLUTION
NO. 2005-284
AND
ORDINANCE
NO. 1357

E. Public Hearing – Resolution Adopting Mitigated Negative Declaration of Environmental Effect Approving General Plan Amendment 2004-003 (Daher)/Ordinance Rezoning Certain Property/Assessor's Parcel No. 021-033-015: Principal Planner Stacey Jolliffe presented a Power Point presentation recapping the subject property and zone change and responded to Board inquiries. Madam Chair Griego opened the public hearing. No one came forward.

Upon motion of Supervisor Logue, seconded by Supervisor Schrader, and carried with Supervisor Nicoletti being absent, the public hearing was closed, and the Board adopted Resolution No. 2005-285, which is on file in Yuba County Resolution Book No. 36, which is entitled: "RESOLUTION OF ADOPTION FOR A NEGATIVE DECLARATION AND APPROVAL OF GENERAL PLAN AMENDMENT 2004-0003 (DAHER)"; waived reading; and adopted Ordinance No. 1358, which is on file in Yuba County Ordinance Book No. 18, which is entitled: "AN ORDINANCE REZONING CERTAIN PROPERTY IN THE COUNTY OF YUBA."

ADOPT
RESOLUTION
NO. 2005-285
AND
ORDINANCE
NO. 1358

E. Public Hearing -- County Ballots/County Service Area 61 (Peoria Hills Estates)/Resolution Approving Engineer's Report/Impose Assessment of \$284.09: Public Works Director Kevin recapped the ballot process for imposing an assessment and responded to Board inquiries. Madam Chair Griego opened the public hearing. No one came forward.

Clerk of the Board Donna Stottlemeyer opened and counted ballots advising there were 13 "Yes" votes and zero "No" votes.

Upon motion of Supervisor Stocker, seconded by Supervisor Schrader, and carried with Supervisor Nicoletti being absent, the public hearing was closed, and the Board Adopted Resolution No. 2005-286, which is on file in Yuba County Resolution Book No. 36, which is entitled: "RESOLUTION APPROVING AN ENGINEER'S REPORT AND IMPOSING AN ASSESSMENT IN CSA NO. 61 (PEORIA HILLS)." ADOPT RESOLUTION NO. 2005-286

CORRESPONDENCE

Upon motion of Supervisor Schrader, seconded by Supervisor Logue, and carried with Supervisor Nicoletti being absent, the Board accepted the following correspondence:

A. Letter from Yuba Watershed Protection and Fire Safe Council regarding Pre-Disaster Hazard Mitigation Planning. REFER TO STAFF

Referred to Administrative Services/Information Technology and County Administrator

B. Letter from County of Lake Board of Supervisors enclosing adopted ordinance on products containing Pseudoephedrine. No action.

C. Letter from Fremont-Rideout Health Group requesting support of proposal to reclassify Yuba City-Marysville, into the Sacramento-Arden-Arcade-Truckee, CA-NV Combined Statistical Area. REFER TO COMMITTEE

Referred to Human Services Committee

D. Letter from Olivehurst Public Utility District requesting Change in Scope for proposed use of Proposition 12 per Capita Park Funds. REFER TO COMMITTEE

Referred to Land Use and Public Works Committee

E. Letter from United States Fish and Wildlife Services regarding public comment period on review of 31 species in California and Nevada currently listed as endangered or threatened under the Endangered Species Act. No action.

F. Two letters from Governor's Office of Emergency Services advising of disaster designation for contiguous counties due to agriculture losses which included Yuba County. No action.

G. Agenda from State of California Fish and Game for meetings scheduled on December 8 and 9, 2005. No action.

H. Agenda from Central Valley Regional Water Quality Control Board for meetings scheduled on December 8 and 9, 2005. No action.

I. Notice of Petition from State Water Resources Control Board for temporary change involving water transfer from Yuba County Water Agency to the Department of Water Resources and Notice of Public Hearing on January 10, 2006 at 10:00 a.m. in Sacramento. No action.

BOARD AND STAFF MEMBERS' REPORTS

Reports were received on the following:

Supervisor Stocker:

- Spring Valley Development
- Williamson Act and preservation of farmland
- County Pension Plan Funding

Supervisor Schrader

- Memorial adjournment in memory of Mr. Theodore J. Bravos, Mr. Jonathan J. Little, and Mr. Robert J. H. Nicoletti

Supervisor Logue

- Federal Emergency Management Agency remapping

Chair Griego directed a presentation for the Farm Bureau regarding the future of farming in Yuba County

Supervisor Griego

- Memorial adjournment in memory of Mrs. Anna L. Asedo
- Olivehurst Public Utility District Liaison Standing Committee status
- California State Association of Counties Annual Conference November 29 - December 2, 2005 held in San Jose

County Counsel Daniel Montgomery

- Settlement of two cases without retention of outside counsel
- Receipt of \$65,000 regarding resolution of Sharma versus County of Yuba
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ADJOURNMENT

There being no further business to come before the Yuba County Board of Supervisors, the meeting was adjourned at 9:30 p.m. in memory of Mrs. Anna L. Asedo, Mr. Theodore J. Bravos, Mr. Jonathan J. Little, and Mr. Robert J.H. Nicoletti by Madam Chair Griego.



Vice-Chairman

ATTEST: DONNA STOTTEMEYER
CLERK OF THE BOARD OF SUPERVISORS



Approved: December 20, 2005

December 6, 2005

To the Yuba County Board of Supervisors

RE: Western's Supplemental Agreement

Comments by Western that the historical right of way of Hammonton Road could not be located on the ground and had to be replaced by Western's newly constructed haul road are false. The road exists today as it did on the 1947, 1949 and 1973 photo revised USGS maps.

In 1992, Von Geldern Engineering Company did a record of survey for Western filed in Book 60 of Maps at page 15. Hammonton Road is plotted on this map and when put on the same scale as the USGS maps, they all overlay each other. Also, on January 12, 2004, Jerry White and I walked and video taped Hammonton Road from Western's barricade at the east end of the haul road to where Cal Sierra dredged across Hammonton Road. The tape also shows 4wd access roads into public lands.

The sole purpose of Western's construction of the so-called haul road was to restrict the government and public from public lands in sections 5, 6, 31 and 32. Western has created a monopoly in sections 5, 6, 31 and 32 as shown on the BLM map and now wants to further its cause.

Western wants to prepare a supplemental Record of Survey. A supplemental survey should be prepared by a competent independent firm. The survey should show Hammonton Road as it exists from the west barricade to the east barricade. The access roads from Hammonton Road and public lands should also be shown. This will show Western's intent. The instructions from county counsel at the onset of the lawsuit clearly stated that there were multiple roads to be considered. There should be no final payment for cost of suit until the attorney representing the county cleans up the mess that was allowed to happen.

Things got off track and must now be corrected or the county is put in the position of having a county road seized adversely by a private entity.

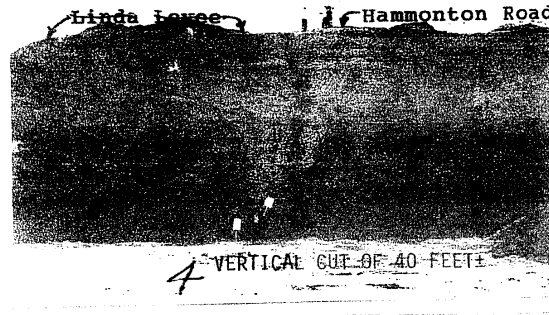
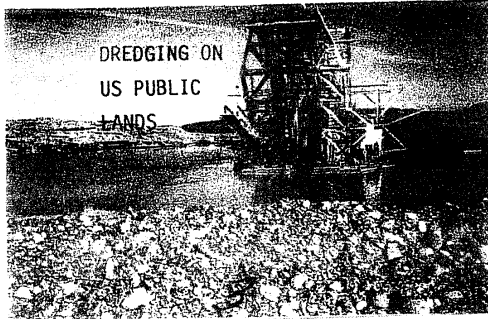
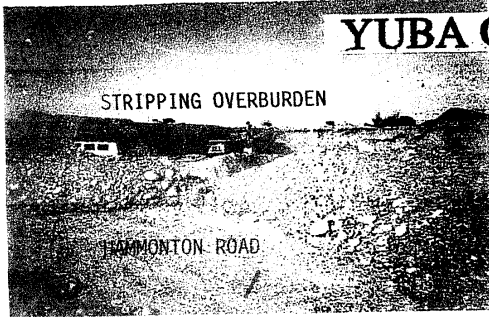
Thank you

Ted A. Lowe

12/6/05 EXHIBIT A

12/6/05:Received during public comment period of Item No. 05-704/ds

YUBA GOLDFIELDS



PICTURE NO.1 SHOWS REMOVING OVERBURDEN, FILL MATERIAL, FROM HAMMONTON ROAD DURING LITIGATION OF QUIET TITLE SUIT AGAINST YUBA COUNTY

PICTURE NO.2 SHOWS STRIPPING OVERBURDEN ON U.S. PUBLIC LANDS THE X SHOWS THE WATER SURFACE FOR DREDGING IN RELATION TO THE FILL MATERIAL REMOVED.

PICTURE NO.3 SHOWS THE DREDGE COMING ACROSS U.S. PUBLIC LANDS TOWARDS HAMMONTON ROAD

PICTURE NO.4 SHOWS A VERTICAL CUT 40 FEET± OF HAMMONTON ROAD WHERE IT JOINS OR IS ON U.S. PUBLIC LANDS. THERE ARE PICKETS ON TOP OF HAMMONTON ROAD AND AT THE BASE OF THE CUT. DREDGING THEN PROCEEDED TO A DEPTH OF 120 FEET± BELOW THE BASE OF THE CUT. IT IS NO LONGER POSSIBLE TO GET TO U.S. PUBLIC LANDS WITHOUT CROSSING WESTERN AGGREGATES INC. LANDS. THIS OCCURRED DURING LITIGATION TO DETERMINE THE STATUS OF THE ROAD.

April 15, 2003

To the Board of Supervisors:

In the past, Yuba Consolidated Industries, aka. Yuba Goldfields Inc., etc., through court action, have been ordered to provide the right of ingress and egress and a 60 foot right of way over their lands to various property owners.

A provision was added that Yuba Consolidated etc., would have the right to dredge up existing roads "provided that, in conjunction with the dredging, that defendant Yuba Goldfields, Inc. Provides alternate roads". See Robert Kupfer vs. Yuba Consolidated Industries, etc., No. 23660 Judgment filed in Book 946 O.R. Page 185 Yuba County Records.

This is entirely different from the present situation, because Western Aggregates Inc., sued the county and asked the court to make a determination that Hammonton Road was its private haul road and not a county road. Western was no longer dealing with property owner easements over its land, but was contending with the main road into Hammonton and beyond.

During court litigation, Western dredged across Hammonton Road severing access to U.S. public lands. Western constructed a detour road that traverses around the gold fields and does not provide public access to the U.S. public lands nor does it allow the U.S. Corps of Engineers or the U.S. Bureau of Land Management access to it lands.

Western did not get permission from the county to dredge the road that was being litigated in court and was later determined to be a county road.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT. THE SUPPLEMENTAL OPINION UPON DENIAL OF REHEARING FILED 8116102. On page 38, attached herein, "*The trial court substituted the existing haul road in places where today's road deviates from the historic road. On remand the trial court must ascertain the exact route and width of that road.*"

Hammonton Road exists in its same route since before 1947. This has been proved by U.S. Geological maps. On page 39, attached herein, the appellate opinion states "*We agree with the Attorney General's view: "[I]t would be unsound policy to destroy the public's right to traverse and gain access to the expansive Yuba Gold fields simply because Western and its predecessors destroyed or relocated portions of the original physical location of the public road".*"

I urge that this board follow the intent of the Appellate Opinion, and instruct County Counsel to inform the court that the county will not abandon the route of Hammonton Road that provides access to public lands in Sections 5 and 6, Township 15 North Range 5 East and Sections 31, 32, and 33, Township 16 North, Range 5 East, MDM. County Counsel should be further instructed to demand access on the detour road until Hammonton Road is rebuilt.

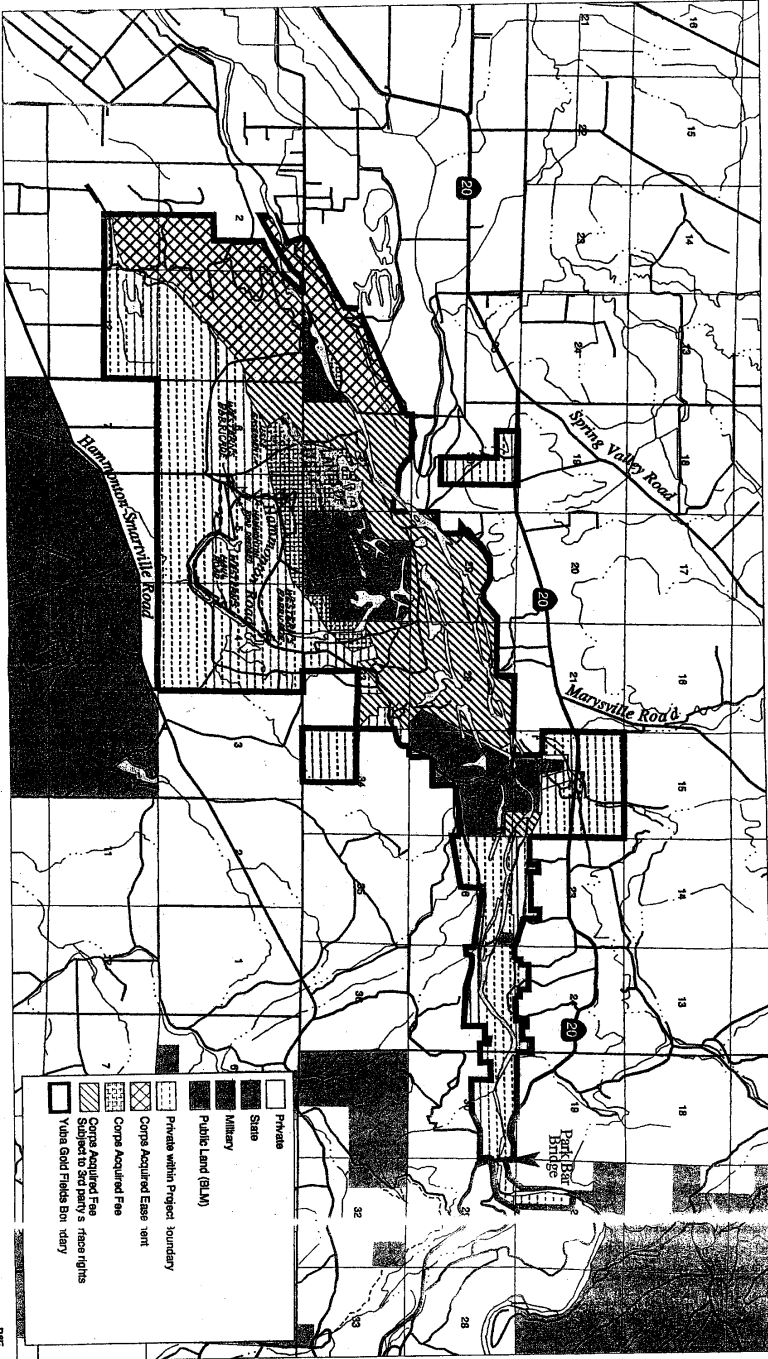
Thank you,



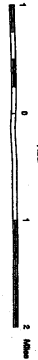
Ted A. Lowe



US DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 1400 SOUTH ROAD OFFICE
 FORT COLLINS, COLORADO 80526
 PHONE: (303) 851-1801



Yuba Gold Fields



T18N

R9E

R10E

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