

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

DEPT: Public Works *[Signature]*

BOARD AGENDA # 6:45 p.m.

Urgent Routine

AGENDA DATE August 21, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Continuation of the Public Hearing to Adopt a Resolution Approving the Reversion to Acreage of the Del Rio Lago Subdivision Final Map as Shown in Book 43 of Maps, at Page 85, Stanislaus County Records

STAFF RECOMMENDATIONS:

1. Hold the public hearing concerning the reversion to acreage of the Del Rio Lago Subdivision Final Map.
2. Adopt the attached Resolution Approving the Reversion to Acreage of the Del Rio Lago Subdivision Final Map as Shown in Book 43 of Maps, at Page 85, Stanislaus County Records pursuant to sections 66499.11 *et seq.*, of the California Government Code.
3. Approve the attached "Reversion to Acreage Map", reverting to acreage all of the Del Rio Lago Subdivision as shown.

(Continued on Page 2)

FISCAL IMPACT:

Government Code section 66499.17 (Subdivision Map Act) requires the release of fees and deposits held by the County to the current owners of the property and the release of all improvement security, except those retained to accomplish the purpose of the Subdivision Map Act. Public Works holds a balance of \$6,580 from previous fees paid. Total cost to conduct the reversion to acreage will exceed that amount. These costs include document processing and recording, and staff time. Because the costs previously incurred to process the subdivider's application and the costs to process the reversion are in excess of those held by the County, the excess costs will be covered in the Chief Executive Office Operations & Services' budget. Funds are available in the current fiscal year's budget. (Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2012-431

On motion of Supervisor _____, Seconded by Supervisor _____

and approved by the following vote,

Ayes: Supervisors: _____

Noes: Supervisors: _____

Excused or Absent: Supervisors: _____

Abstaining: Supervisor: _____

1) _____ Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION: THIS PUBLIC HEARING WAS CANCELED - NO ACTION TAKEN (SEE 8/21/2012 ITEM C-1 RECOMMENDATION NO. 2)

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Continuation of the Public Hearing to Adopt a Resolution Approving the Reversion to Acreage of the Del Rio Lago Subdivision Final Map as Shown in Book 43 of Maps, at Page 85, Stanislaus County Records

STAFF RECOMMENDATIONS (Continued):

4. Find that this project is categorically exempt pursuant to section 15305(c) of the California Environmental Quality Act Guidelines.

FISCAL IMPACT (Continued):

An application fee of \$2,475 was paid to the Stanislaus County Planning Department on April 3, 2003, for processing of a rezone and tentative subdivision map application allowing for the creation of the Del Rio Lago Subdivision. The fee was used to cover staffing and materials costs associated with the environmental review, public notification, publication, public meetings, and other activities associated with processing of the application. The fee also covered application review costs for the County's Public Works Department and Department of Environmental Resources. All application fees were exhausted during the process and there are no remaining funds available for release.

DISCUSSION:

On July 23, 2012 the Board of Supervisors received a letter from Petrulakis Law & Advocacy, APC, requesting a second 30-day continuance of the Public Hearing previously scheduled on July 24, 2012. The Board of Supervisors agreed to the continuance of this Public Hearing to allow the Bank of Stockton time to negotiate a new subdivision improvement agreement and provide the required securities.

The Del Rio Lago Subdivision is a 47-lot subdivision of a 43.8 acre site located on Carver Road in the Del Rio area, north of Modesto, with an average parcel size in excess of 20,000+ square feet. The project features include a 10 plus acre combination lake and drainage basin with extensive landscaping throughout. The site consists of leveled agricultural land, used in the past primarily for peach production. Single-family dwellings are located to the north and east, and farmland and ranchettes to the south and west. This project is at the edge of the developed area surrounding the Del Rio Country Club. The site is east of the Stanislaus River, separated by Carver Road, a steep bluff, and farmland in the river flood plain.

The history of this site is fairly extensive. In December of 1991, the Board of Supervisors approved General Plan Amendment 89-6, Rezone 89-11, and Tentative Parcel Map Application No. 89-5 - Del Rio Vista, to divide the property into 33 parcels of at least one acre. Although it received several time extensions the tentative map for that project expired.

In 1992, the Board adopted the Del Rio Community Plan, which required development of this property to be via Planned Development with densities of no greater than 1 unit per acre.

Continuation of the Public Hearing to Adopt a Resolution Approving the Reversion to Acreage of the Del Rio Lago Subdivision Final Map as Shown in Book 43 of Maps, at Page 85, Stanislaus County Records

In 2001, the property was the subject of a proposed 78 unit single family residential project also called Del Rio Vista (Tentative Subdivision Map # 2001-01). The 78 units, of varying sizes, would have created a density of approximately 0.56 units per acre. The Board denied the project in January 2003, primarily due to potential traffic related issues and because it had a density higher than allowed by the Del Rio Community Plan.

On December 14, 2004, the vesting tentative map for the current project (Rezone Application #2003-06 and Vesting Tentative Subdivision Map Application #2003-02 - Del Rio Lago) was approved. On April 22, 2008, the Board of Supervisors approved the Subdivision Improvement Agreement and the filing and recording of the final map for the Del Rio Lago Subdivision.

The zoning of the property is Planned Development District (P-D) and, while the development schedule has expired, the property is subject to the development standards approved by the Board on December 14, 2004. If the Board approves the reversion recommended here, development of the property will require the adoption of a new development plan and development schedule specific to that project.

Under the 2008 SIA, Paramount, LLC, agreed to complete the subdivision improvements within two years and provided the County with performance bonds through Western Insurance Company in the total amount of \$7,733,350 as security for the construction of all the subdivision improvements. As allowed by the SIA and because of the downturn in the economy, on March 31, 2010, Stanislaus County Public Works extended the time for construction of the subdivision improvements to April 22, 2012. Subsequently, on February 4, 2011, the Bank of Stockton acquired the property through a foreclosure sale. While the Bank is bound by the SIA as the successor owner of the property, the Bank never formally sought the consent of the County to assume the obligations under it as required by the SIA.

To date, no subdivision improvements have been constructed, nor are there any securities available to fund the completion of the improvements. On March 19, 2012, the Department of Public Works informed the Bank of Stockton that the SIA would expire as of April 22, 2012, and that a further extension would be conditioned upon entering a new subdivision improvement agreement and providing new improvement security and insurance. Neither the Bank, nor any other prospective developer/investor, has stepped forward to commit to performing the subdivision improvements. Further, on September 13, 2011, a bankruptcy court in Utah, issued an order declaring the liquidation of the bonding company, Western Insurance Company. As a consequence, even if subdivision improvements were begun, no bond funds would be available to guarantee their completion.

Government Code sections 66499.11 *et seq.*, authorizes the County to return subdivided land to its pre-subdivision condition. Reversion itself does not affect the underlying zoning, it will remain P-D. At the conclusion of the reversion, certain dedications and all residential lots of the subdivision will be eliminated. At the same time, the owners will be relieved of the obligation to complete the improvements under the subdivision improvement agreement and the improvement securities and insurance coverage requirements will be released.

Continuation of the Public Hearing to Adopt a Resolution Approving the Reversion to Acreage of the Del Rio Lago Subdivision Final Map as Shown in Book 43 of Maps, at Page 85, Stanislaus County Records

Reversion is appropriate because the subdivision created 47 single family residential lots and there is no longer any commitment or financial backing to perform the subdivision improvements. It is possible that lots could be sold to individuals without the necessary improvements required for the lots to be developed and without the financial means to construct them.

The Final Map included a dedication of land adjacent to Carver Road that was needed to serve the development. After reversion, this dedication will be unnecessary and staff recommends it be vacated and abandoned.

In order to revert the subdivision to acreage the Board must make the findings stated on the accompanying resolution. These findings are supported by facts set forth above and staff recommends that the reversion to acreage be approved. The findings are as follows:

1. That the forgoing recitations are true; and
2. Dedications or offers of dedication to be vacated or abandoned by the reversion to acreage are unnecessary for present or prospective public purposes; and
3. None of the improvements required to be made have been made within two years from the date the final map was filed for record, or within the time allowed by agreement for completion of the improvements, whichever is the later; and
4. Retention of all the fees previously paid by the subdivider is necessary in accordance with sections 66499.17 and 66499.19 of the California Government Code and County Code § 20.32.070, in order to accomplish the purposes of the Subdivision Map Act and to offset a portion of the County's cost to process the subdivision of the property and the reversion; and
5. The reversion shall be effective, in accordance with Government Code section 66499.18, upon the map being filed for record by the County Recorder, and thereupon all dedications and offers of dedication not shown on the map shall be of no further force or effect; and
6. When effective, all improvement security held by the County shall be returned to the current owner, or owners, of the property.

This project is categorically exempt pursuant to California Environmental Quality Act Guidelines Section 15305(c) (Class 5 Categorical Exemption) because this project is a minor alteration in land use limitations and a reversion to acreage in accordance with the Subdivision Map Act.

POLICY ISSUES:

The recommended actions are consistent with the Board's priorities of providing A Safe Community, A Healthy Community and A Well Planned Infrastructure System by protecting potential landowners from a lack of infrastructure.

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STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT PERSON:

Matt Machado, Public Works Director. Telephone: (209) 525-4130.

MM/DH:lc

H:\MATT MACHADO\BOS\Board Agenda Items\Del Rio Lago Reversion\Second Cont. Public Hearing Del Rio Lago Reversion_BOS 8.21.12

PETRULAKIS LAW & ADVOCACY, APC

ATTORNEYS AND COUNSELORS AT LAW

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MODESTO, CALIFORNIA 95354

TELEPHONE 209 522-0500

FACSIMILE 209 522-0700

**GEORGE A. PETRULAKIS
BARBARA J. SAVERY, OF COUNSEL**

**PLANNING & POLICY
ANALYSTS
GILBERT D. BOSTWICK
CHRIS A. ESTHER**

JUL 23 2012 PM3:05

**MAILING ADDRESS
POST OFFICE BOX 92
MODESTO, CA 95353-0092**

July 19, 2012

Via Hand-Delivery

Honorable Chairman William O'Brien and
Honorable Supervisors
1010 10th Street, Suite 6500
Modesto, CA 95354

Re: Request for a Continuance to August 21, 2012 of the Matter Involving the Del Rio
Lago Subdivision Final Map

Dear Chairman O'Brien and Supervisors:

On behalf of the Bank of Stockton ("BOS"), the current owner of the land commonly known as the Del Rio Lago subdivision, we respectfully request a continuance of the above-referenced matter that will appear on your July 24, 2012 agenda to your August 21, 2012 meeting.

The paperwork is not complete to finalize the matter for presentation to the Board.

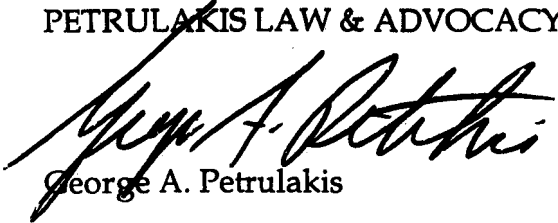
While we did not develop deadlines for processing the necessary documents, I take full responsibility for the request for a second continuance. I should have pursued completion of the matter in a more timely manner.

My apologies for any hardship this has created for the County.

Honorable Chairman William O'Brien and
Honorable Supervisors
July 19, 2012
Page 2

Thank you for your consideration of this matter. I will attend your meeting to answer any questions and am also available at 209-522-0500, extension #1 or george@petrulakis.com.

PETRULAKIS LAW & ADVOCACY, APC

A handwritten signature in black ink, appearing to read "George A. Petrulakis", is written over the printed name below it.

cc: Chief Executive Officer Monica Nino
County Counsel John P. Doering
Deputy County Counsel Thomas E. Boze
Public Works Director Matt Machado
Planning & Community Development
Director Angela Freitas

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
STATE OF CALIFORNIA**

Date:

THE FOLLOWING RESOLUTION WAS ADOPTED:

**A RESOLUTION OF THE BOARD OF SUPERVISORS REVERTING TO ACREAGE THE DEL RIO
LAGO SUBDIVISION FINAL MAP
AS SHOWN IN BOOK 43 OF MAPS, AT PAGE 85**

WHEREAS, on December 14, 2004, the Board of Supervisors approved the Tentative Map 2003-02, for the Del Rio Lago Subdivision, which created 47 single family residential lots, conditioned upon the construction of various subdivision improvements; and

WHEREAS, on January 18, 2007, the Planning Commission approved a one-year time extension for the life of Tentative Map 2003-02; and

WHEREAS, on April 22, 2008, the Board of Supervisors approved the Del Rio Lago Subdivision Final Map and Subdivision Improvement Agreement (the "SIA"), pursuant to California Government Code §66462, subdivision (a); and

WHEREAS, under the terms of the SIA the Subdivider agreed to complete construction of all subdivision improvements within two years and to provide security for the improvements in accordance with County Code § 20.56.030; and

WHEREAS, the Subdivider provided the County with bonds issued by Western Insurance Company in the total amount of \$7,733,350 as security for the construction of the subdivision improvements; and

WHEREAS, on or about March 31, 2010, due to the recession that has decimated the County's housing market, the Director of Public Works authorized an extension of the term of the SIA for two years to April 22, 2012; and

WHEREAS, on or about February 4, 2011, the Bank of Stockton took ownership of the property by way of foreclosure sale; and

WHEREAS, the SIA prohibits assignment without the prior written consent of the County; and

WHEREAS, on or about September 13, 2011, a bankruptcy court in Utah, issued an order declaring the liquidation of the bonding company, Western Insurance Company rendering the bonds unenforceable; and

WHEREAS, on March 19, 2012, the Department of Public Works informed the Bank of Stockton that the SIA would expire as of April 22, 2012, and that the County required a new SIA and new improvement security; and

WHEREAS, the Bank of Stockton has refused to enter into a SIA with the County and to provide adequate security guaranteeing the construction of the subdivision improvements; and

WHEREAS, the time for performance under the SIA has expired and none of the subdivision improvements have been constructed; and

WHEREAS, the sale of any of the 47 residential lots created by the Final Map, without the construction, or the means to construct, the necessary subdivision improvements would be detrimental to the residents of this County; and

WHEREAS, section 66499.11 et seq., of the California Government Code allows subdivided real property to be reverted back to acreage; and

WHEREAS, on June 5, 2012, in accordance with section 66499.12 of the California Government Code, the Board approved action to Initiate Proceedings for Reversion to Acreage of the Del Rio Lago Subdivision Final Map as Shown in Book 43 of Maps, at Page 85, Stanislaus County Records; and Approval to Set a Public Hearing on June 26, 2012 at 9:10 a.m., to Adopt a Resolution Approving the Reversion to Acreage; and

WHEREAS, in accordance with sections 66499.15 and 66451.3 of the California Government Code and section 20.12.110 of the County Code, notice of the public hearing has been given and said hearing has this date been held, and oral and documentary evidence has been received; and

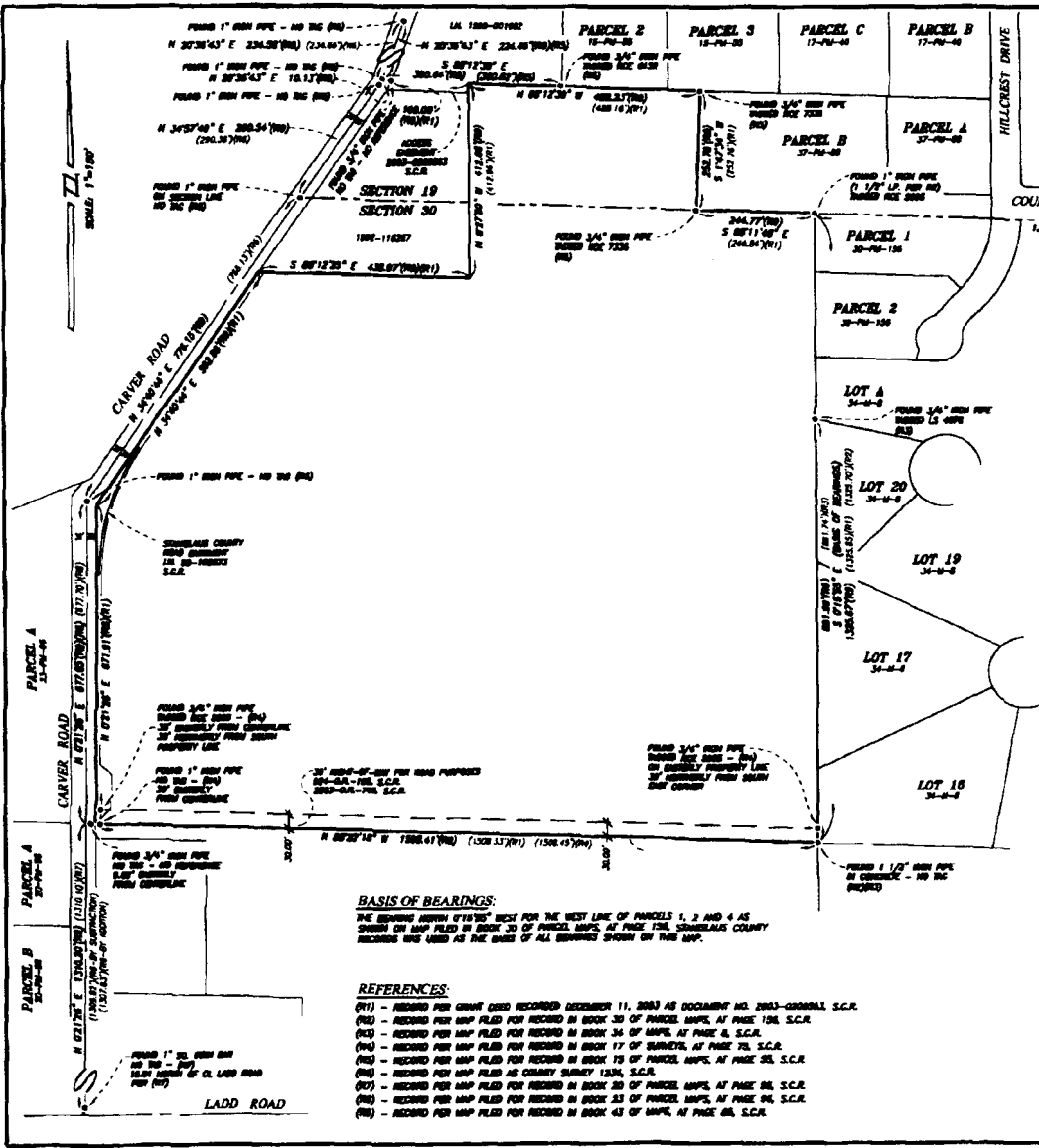
WHEREAS, the subject property is within the 1992 Del Rio Community Plan and is zoned Planned Development, subject to the December 14, 2004 Development Standards and Development Schedule; and

WHEREAS, the proposed reversion to acreage is consistent with the General Plan, the 1992 Del Rio Community Plan, and zoning.

NOW THEREFORE BE IT RESOLVED that the Board of Supervisors, of the County of Stanislaus, State of California, hereby finds and determines as follows:

1. That the forgoing recitations are true; and
2. Dedications or offers of dedication to be vacated or abandoned by the reversion to acreage are unnecessary for present or prospective public purposes; and
3. None of the improvements required to be made have been made within two years from the date the final map was filed for record, or within the time allowed by agreement for completion of the improvements, whichever is the later; and
4. Retention of all the fees previously paid by the subdivider is necessary in accordance with sections 66499.17 and 66499.19 of the California Government Code and County Code § 20.32.070, in order to accomplish the purposes of the Subdivision Map Act and to offset a portion of the County's cost to process the subdivision of the property and the reversion; and
5. The reversion shall be effective, in accordance with Government Code section 66499.18, upon the map being filed for record by the County Recorder, and thereupon all dedications and offers of dedication not shown on the map shall be of no further force or effect; and
6. When effective, all improvement security held by the County shall be returned to the current owner, or owners, of the property.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Director of Public Works is hereby ordered to file the final map for record by the County Recorder.



LEGEND:

- OVERALL BOUNDARY REFERRED TO ACREAGE INSTRUMENT NUMBER
- 34-M-9 BOOK 36 OF MAPS, AT PAGE 8 OFFICIAL RECORDS
- P.M. PARCEL MAP
- R.S. RECORD OF SURVEY
- S.C.R. STANISLAUS COUNTY RECORDS

NOTES:

1. REVERSION TO ACREAGE PREPARED IN ACCORDANCE WITH SECTIONS 36461.1 THROUGH 36461.5 OF THE SURVEYOR'S MAP ACT.
2. ACTION PURSUED BY ORDER OF THE BOARD OF SUPERVISORS (08-08-13-04).
3. FINISHES OF THE BOUNDARY ARE IN ACCORDANCE WITH SECTIONS 36461.1(4) AND 36461.1(5)(C).
4. A D.M. BOND IS NOT REQUIRED (08-08-13-04).

COUNTY SURVEYOR'S STATEMENT:
 THIS REVERSION TO ACREAGE MAP HAS BEEN PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEYOR'S MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF THE STANISLAUS COUNTY BOARD OF SUPERVISORS, THIS ____ DAY OF _____, 2012.

PRELIMINARY FOR EXAMINATION ONLY



WAYNE G. SUTTON L.S. 3863
 COUNTY SURVEYOR

BOARD OF SUPERVISORS' STATEMENT:

THIS IS TO STATE THAT THIS MAP IS DULY ACKNOWLEDGED, SAVED AS REQUIRED BY LAW, HAVING BEEN PRESENTED TO THE BOARD OF SUPERVISORS, STANISLAUS COUNTY, STATE OF CALIFORNIA, WHICH BOARD IS THE GOVERNING BODY HAVING CONTROL OF THE ROADS, HIGHWAYS, STREETS, PARKWAYS, ALLEYS, WAYS, COMMONS, PLACES, ETC., IN THE TERRITORY SHOWN ON THIS MAP, AND IT IS ORDERED THAT THIS MAP BE APPROVED.

DATED THIS ____ DAY OF _____, 2012.

BY: _____
 CHAIRMAN OF THE BOARD OF SUPERVISORS

PRINT NAME

CHRISTINE FERRARO TALLAM, CLERK OF THE BOARD OF SUPERVISORS

BY: _____, DEPUTY

(PRINT NAME)

COUNTY RECORDER'S STATEMENT:

FILED THIS ____ DAY OF _____, 2012, AT ____ IN BOOK ____ OF MAPS, AT PAGE ____ STANISLAUS COUNTY RECORDS AT THE REQUEST OF STANISLAUS COUNTY BOARD OF SUPERVISORS

REC: # _____ DIST. No. _____

LEE LINDENBACH COUNTY RECORDER BY: _____ ASSISTANT/DEPUTY RECORDER (PRINT NAME)

BASIS OF BEARINGS:
 THE BEARING NORTH 01°15'00" WEST FOR THE WEST LINE OF PARCELS 1, 2 AND 4 AS SHOWN ON MAP FILED IN BOOK 36 OF PARCEL MAPS, AT PAGE 156, STANISLAUS COUNTY RECORDS WAS USED AS THE BASIS OF ALL BEARINGS SHOWN ON THIS MAP.

- REFERENCES:**
- (P1) - RECORD FOR CHART USED RECORDED DECEMBER 11, 2003 AS DOCUMENT NO. 2003-03000AL S.C.R.
 - (P2) - RECORD FOR MAP FILED FOR RECORD IN BOOK 36 OF PARCEL MAPS, AT PAGE 156, S.C.R.
 - (P3) - RECORD FOR MAP FILED FOR RECORD IN BOOK 36 OF MAPS, AT PAGE 6, S.C.R.
 - (P4) - RECORD FOR MAP FILED FOR RECORD IN BOOK 17 OF SURVEYS, AT PAGE 70, S.C.R.
 - (P5) - RECORD FOR MAP FILED FOR RECORD IN BOOK 79 OF PARCEL MAPS, AT PAGE 55, S.C.R.
 - (P6) - RECORD FOR MAP FILED AS COUNTY SURVEY 1204, S.C.R.
 - (P7) - RECORD FOR MAP FILED FOR RECORD IN BOOK 30 OF PARCEL MAPS, AT PAGE 04, S.C.R.
 - (P8) - RECORD FOR MAP FILED FOR RECORD IN BOOK 33 OF PARCEL MAPS, AT PAGE 04, S.C.R.
 - (P9) - RECORD FOR MAP FILED FOR RECORD IN BOOK 43 OF MAPS, AT PAGE 04, S.C.R.

REVERSION TO ACREAGE MAP

BOOK 4 REVERSION TO ACREAGE OF ALL OF THE T2E, 2ND LADY'S SUBDIVISION AS SHOWN ON THE MAP FILED FOR RECORD IN BOOK 43 OF MAPS AT PAGE 04, STANISLAUS COUNTY RECORDS BEING IN A PORTION OF THE SOUTHEAST QUARTER OF SECTION 19 TOGETHER WITH A PORTION OF THE NORTH HALF OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 9 EAST, M.D.M., STANISLAUS COUNTY, CALIFORNIA

SCALE: 1" = 100' DATE: _____ DRAWN BY: E. JOHNSON CHECKED BY: J. FERRARO

STANISLAUS COUNTY DEPARTMENT OF PUBLIC WORKS