HEFNER STARK & MAROIS LLP
LAW OFFICES
ESTABLISHED 1896

2150 RIVER PLAZA DRIVE
SUITE 450
SACRAMENTO, CA
95833-4136
TEL: (916) 925-6620
FAX: (916) 925-1127

TIMOTHY D. TARON
EMAIL: TTARON@HSMLAW.COM

November 14, 2006

VIA EMAIL & FIRST CLASS MAIL

Delta Protection Commission
14215 River Road
P. O. Box 530
Walnut Grove, CA 95690

Re: Appeals to the Delta Protection Commission of Yolo County's Approval of the Old Sugar Mill Specific Plan

Dear Commissioners:

On behalf of the proponents of the Old Sugar Mill Specific Plan ("Project"), Clarksburg Investment Partners, LLC ("CIP") and 44 Willow Point, LLC ("WP"), we submit the following comments concerning the jurisdiction of the Delta Protection Commission (the "Commission"). CIP and WP also hereby concur with and join in the letter to the Commission submitted by James G. Moose on behalf of Yolo County dated Nov. 13, 2006 (the "County Letter").

Following the approval of the Project by the Yolo County Board of Supervisors, lawyers for Earthjustice filed an appeal to the Commission on behalf of the Natural Resources Defense Council ("NRDC"), asserting a violation of the Delta Protection Act ("Act"). This appeal was followed by an appeal by attorney James Pachl, on behalf of the Concerned Citizens of Clarksburg and others. As is correctly stated in the County Letter, the Commission lacks jurisdiction over the Project as it is not located within the Primary Zone of the delta (see discussion in County Letter, pp. 3-4).

In 1982, Yolo County designated an urban limit line around the town of Clarksburg, which then contained the sugar mill and surrounding property owned and operated by the American Crystal Sugar Company. The Legislature used this and other county urban limit lines to define the extent of the Commission's jurisdiction with respect to unincorporated areas in the delta. These limitations were added to the definition of the Primary Zone, but were not accurately reflected in the official map. Following the adoption of the Act, Commission staff worked with county representatives to correct errors on the official map to ensure that it accurately reflected the Primary Zone according to the statutory definition (see discussion, infra, and County Letter, p. 8.)

The Legislature Intended to Place the Clarksburg Urban Area in the Secondary Zone

As the County correctly points out, the language of Section 29728 is clear and unambiguous. Appellants offer no explanation for why the area within the "urban limit line" of Clarksburg is not included within the area of the Secondary Zone depicted on the official map, even though the plain language of the statute clearly excludes it from the Primary Zone. Staff's conclusion that the current map "prevails" over the statutory definition of the Primary Zone is not supported by the record of subsequent corrections to the map discussed below, and is flatly contradicted by the first sentence of Section 29728, which clearly places the urban area of Clarksburg in the Secondary Zone. Rather than providing some explanation for this striking anomaly, Appellants simply ignore the first sentence of Section 29728, and insist that the word "precise" allows the erroneous boundary line on the map to supercede the statutory definition of the Primary Zone.[1]

The definition of the Primary Zone in the Act is susceptible to only one meaning When considered in light of the map corrections recommended by the Commission in 1994, the language of Section 29728 establishes that the Project may only properly be located in the Secondary Zone. Clearly the Legislature intended for the Commission to have jurisdiction over agricultural areas outside of the urban limit line or sphere of influence limit maintained by specified local governments such as Yolo County. This fact is made abundantly clear in the legislative and administrative record. When such intent is so plainly stated in the text of a statute, inquiry into legislative intent is not necessary. (*Day v. City of Fontana*, (2001) 25 Cal.4th 268, 272.) Furthermore, notwithstanding the deference that normally accompanies administrative interpretations, an agency's construction of a statute which contradicts express statutory provisions is not valid. (*Sara M. v. Superior Court*, (2005) 36 Cal. 4th 998, 1011.)

Therefore, the County letter correctly frames the issue as a failure to amend the official map of the Delta Protection Zones to conform to the first sentence of Section 29728. Rather than providing a more "specific" definition of the Primary Zone, the map referred to by the Attorney General is simply wrong. It omits a portion of the Secondary Zone, namely, the unincorporated urban areas of Sacramento and Yolo Counties, reviewed by Yolo County on April 19, 1994. Appellants fail to advance any plausible means to rectify this omission. The Attorney General attempts to address the problem by drawing an analogy to the map of the Coastal Zone in the California Coastal Act that was the subject of a dispute in *Rossco Holdings, Inc. v. State of California* (1989) 212 Cal.App.3d. 642. As explained in the County's Letter to the Commission, the holding in *Rossco*, and the maps of the Coastal Zones are readily distinguished from the instant case.

The County's conclusion that the map of the Delta Protection Zones was not meant to "define" the Primary and Secondary Zones is further bolstered by a key document contained in the legislative history. We agree that, according to the established rules of statutory construction discussed in the County letter, inquiry into legislative intent is unnecessary given the Legislature's

[1] Earthjustice concedes only that the reference to county urban areas in Section 29728 "suggests" that such areas may be located within the Secondary Zone, in open defiance of the actual wording.

clear choice of words in the first sentence of Section 29728. Nevertheless, the Commission should be aware that the Summary of SB 1866 relied upon by the NRDC, which contains the words "map defined" in reference to the Act (Letter from Earthjustice, p. 7), was subsequently revised to remove this reference. The revised summary, which reflects revisions based upon a meeting with "BIA participants" on March 6, 1992, states that the Act "establishes a 'primary zone' within the core area of the delta" and states that "cities and counties" are to "retain authority over land use decisions on development" (Exhibit A hereto).

This revision provides further evidence that the Legislature never intended for the Act to supercede the land use authority of Yolo County with regard to planning within the urban limit line of Clarksburg. Notably, Senator Johnston dropped his earlier reference to the Primary Zone being "map defined." This reflects a movement away from the requirements of a map and toward greater reliance upon the statutory definition in the first sentence of Section 29728. It is further evidence that the Legislature intended the exclusion of urban areas in that Section to control over a map system that would later prove difficult to administer. As it turned out, the Commission encountered several errors when it set about the task of verifying the accuracy of the map of the Delta Protection Zones, much of which has not become fully apparent until the present appeals.

The Commission Has Previously Acknowledged Errors in the Official Map

Prior to the passage of SB 1866, Senator Johnston addressed the Yolo County Board of Supervisors and explained how the protections in the legislation affected the County's authority over its land use decisions. In his comments to the Yolo County Board of Supervisors, Senator Johnston clarified his intent to exclude county urban areas like Clarksburg from the Primary Zone. As discussed in the County's Letter, Senator Johnston agreed to coordinate with the County to ensure that urban areas were accurately depicted on the map. Senator Johnston stressed that his legislation would not contradict the County's urban designations, but would merely accept those boundaries and protect the "core" areas of the delta that remained.

Finally, in an attachment to a letter to Yolo County dated April 18, 1994, Executive Director Margit Aramuru provided a three-page map detailing those portions of the Delta Protection Zones that spanned Yolo County (Exhibit B hereto). In her letter, Ms. Aramburu acknowledged that "[i]n some areas, the line may have been incorrectly mapped" and requested the County's verification that "the line reflects the definition" of the Primary Zone "as currently mapped" on the attachment. On the second page of the map attached to her letter, Ms. Aramburu showed a hatched boundary around the urban area of Clarksburg, thereby clearly locating it within the Secondary Zone. This letter demonstrates that the "contemporaneous interpretation" of Commission staff actually coincided with the County's understanding of its jurisdiction. Ms. Aramburu not only conceded that the official map was incorrect, but corrected the map by including Clarksburg's urban limit line within the Secondary Zone. When this correspondence is viewed in the context of Senator Johnston's earlier remarks to the Board of Supervisors, it is evident that the Commission tried to correct the map to accurately show the urban area of Clarksburg in the Secondary Zone, consistent with Senator Johnston's prior assurances.

The Project Proposes the Redevelopment of a Previously Entitled Industrial Site, Which is not "Development" as that Term is Used in the Act

Staff and Appellants urge the Commission to adopt a narrow and restrictive interpretation of the exception for urban infill projects. This exception exempts a wide range of development activities "within, or adjacent to, the unincorporated towns of the Delta," such as "[c]onstruction, [and] reconstruction" of previously developed areas. (Pub. Resources Code § 29723, subd. (b)(9).) In its consideration of the jurisdictional questions posed by these appeals, the Commission should consider this important exception in the context of the principal purpose of the Act: to protect and maintain the environmental quality of the delta. (*Id.* at § 29702.) We submit that the conservation of agricultural and ecological resources is advanced precisely by the type of infill proposed by the Project. By avoiding the conversion of agricultural land, the Yolo County Board of Supervisors found that the Project exemplified smart growth. (See *Findings of Fact and Statement of Overriding Considerations*, October 24, 2006 at pp. 6-10.) As discussed at length in the County's letter, Commission Staff's strained restriction of this exception would establish a policy in conflict with the principal purposes of the Act.

Before 1992, the sugar mill in Clarksburg was one of the largest industrial operations in the entire delta region. During peak operation, the mill employed 300 workers and processed 2,200 tons of sugar beets per day. Today, more than 70 years after their construction, the majestic brick buildings of the mill remain a delta landmark and a rising hub of local agricultural business opportunity. By embarking on an ambitious renovation project, our clients seek to reclaim the mill as the foremost producer of agricultural commodities in the region. With its approval of the Old Sugar Mill redevelopment plan, Yolo County has demonstrated its willingness to support this exciting vision.

As the County points out, staff's unreasonable interpretation of this exception could lead to implementation in conflict with the core purposes of the Act. Before the County approved the Project, the "existing zoning" would have provided for the development of a wide range of highly intense industrial activities requiring nothing more than the issuance of a building permit by the County. According to County Code, the purpose of the Heavy Industrial Zone (M-2) is to "provide areas exclusively for the normal operation of almost all industries, including those which may create some objectionable conditions, subject only to the regulations needed to control congestion and to protect the surrounding area or adjoining premises." (Yolo County Code § 8-2.1801.) In addition to the production of agricultural products like sugar, various industrial activities are allowed in the M-2 Zone. These include canneries, bottling plants, graineries, hatcheries, coffee roasting, trucking terminals, pest extermination and fumigation shops, electroplating shops and the manufacturing of a wide range of products, including farm equipment, cars, trucks, boats, candy, concrete block and brick, dry ice, dyes, furniture, heating equipment, machinery, perfume, pharmaceutical products, ceramics, household appliances, detergent and even tires. (*Id*. at § 8-28102.)

Rather than insisting upon reuse of the mill according to the historical industrial zoning, Appellants make it clear that our clients' proposal to invite new families to Clarksburg is what they find most objectionable. (Letter from James Pachl, pp. 6-8 [discussing alleged conflicts with selected Policies of the Resource Management Plan, all of which relate to proposed residential land uses].) The Commission should question, however, whether the variety of uses in the Project is any more intense that the industrial uses that would otherwise be allowed by right. It should, therefore, become clear to the Commission that these appeals seek only to advance Appellants' parochial objectives at the expense of sound and sensible economic reuse and revitalization that was approved by Yolo County and found to be consistent with state law.

In summary, the Commission should dismiss the appeals that are now before it. Clarksburg is an unincorporated community with an established urban limit line that is subject only to the sovereign land use authority of Yolo County. The failure of the map of the Delta Protection Zones to include this and other unincorporated urban areas does not confer jurisdiction upon the Commission in contradiction of the plain language of the Act in section 29728. Even if the Commission finds that the Project is located in the Primary Zone, the exception for infill development applies to the Project, and requires the Commission to defer to the land use authority of Yolo County.

We appreciate the opportunity to provide this important information to the Commission and look forward to advancing these arguments at the upcoming hearing.

Very truly yours,

HEFNER, STARK & MAROIS, LLP

By
Timothy D. Taron

TDT:seg
Enclosures
cc: Daniel L. Siegel (email only)
Linda Fiack (email and regular mail)
Philip J. Pogledich (email only)
James G. Moose (email only)
Deborah S. Reames (email and regular mail)
James P. Pachl (email and regular mail)
K:\Clarksburg Investment Partners LLC\Old Sugar Mill (6323-0001)\ltr DPC final 11-14.doc

EXHIBIT A

REPLY TO
[] CAPITOL OFFICE
ROOM 2063
STATE CAPITOL
SACRAMENTO CA 95814
(916) 445-2407
FAX (916) 327-4223
[] DISTRICT OFFICE
31 E. CHANNEL STREET
ROOM 440
STOCKTON CA 95202
(209) 948-7930
FAX (209) 948-7993

Revisions as of 3/6/92 mtg on DD of RDA [illegible] — RK 3/6

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CALIFORNIA LEGISLATURE

SENATOR
PATRICK JOHNSTON
FIFTH SENATORIAL DISTRICT
SERVING ALPINE AMADOR CALAVERAS MONO SACRAMENTO SAN JOAQUIN TUOLUMNE AND YOLO COUNTIES

SUMMARY OF PROPOSED DELTA PROTECTION LEGISLATION (Revised)

- ALLOWS LOCAL CITIES AND COUNTIES WITHIN THE 5 COUNTY DELTA REGION TO RETAIN AUTHORITY OVER LAND USE DECISIONS ON DEVELOPMENT WITHIN THEIR SPHERES OF INFLUENCE.

- ESTABLISHES A "PRIMARY ZONE" WITHIN THE CORE DELTA IN WHICH DEVELOPMENT WOULD ONLY BE PERMITTED AFTER THERE ARE SPECIFIC FINDINGS THAT SUCH PROPOSED DEVELOPMENT COMPLIES WITH STANDARDS SET FORTH IN THE RESOURCE MANAGEMENT PLAN.

- ESTABLISHES A 19 MEMBER DELTA PROTECTION COMMISSION CONSISTING OF:
  - 5 REPRESENTATIVES FROM THE BOARD OF SUPERVISORS OF EACH COUNTY
  - 3 CITY REPRESENTATIVES FROM THE DELTA REGION
  - 3 REPRESENTATIVES FROM DELTA RECLAMATION DISTRICTS
  - 8 STATE GOVERNMENT OFFICIALS

- THE RESOURCE MANAGEMENT PLAN:
  - PREPARED AND ADOPTED BY COMMISSION NO LATER THAN JULY 1, 1994
  - GIVES PRIORITY TO 3 DELTA VALUES: AGRICULTURE, WILDLIFE HABITAT AND RECREATION
  - EXEMPTS AGRICULTURE, RECLAMATION DISTRICTS PORTS MARINAS IN PRIMARY ZONES FROM VARIOUS PLAN RESTRICTIONS IF ACTIVITIES ARE CUSTOMARY
  - FUNDED BY PENALTY ASSESSMENTS ON THOSE CONVICTED OF BOATING, FISHING, AND HUNTING VIOLATIONS IN THE DELTA

EXHIBIT B

STATE OF CALIFORNIA PETE WILSON, *Governor*

DELTA PROTECTION COMMISSION
14219 RIVER ROAD
P.O. BOX 530
WALNUT GROVE, CA 95690
PHONE: (916) 776-2290
FAX: (916) 776-2293

Lines OK
LFJ 4-19-94

April 18, 1994

Steve Jenkins
Community Development Department
Yolo County
292 West Beamer Street
Woodland, CA 95695

Dear Steve:

In anticipation of our meeting in June, I am enclosing a copy of the current boundary of the Primary Zone. The boundary was intended to include lands "not within either the urban limit line of sphere if influence line of any local government's general plan or currently existing studies, as of January 1, 1992" (Section 29728, Public Resources Code).

In some areas, the line may have been incorrectly mapped. I would appreciate your review of the line as currently mapped and comments if the line reflects the definition above. If you recommend I work with LAFCO or city staffs, please let me know.

I appreciate your assistance in this matter.

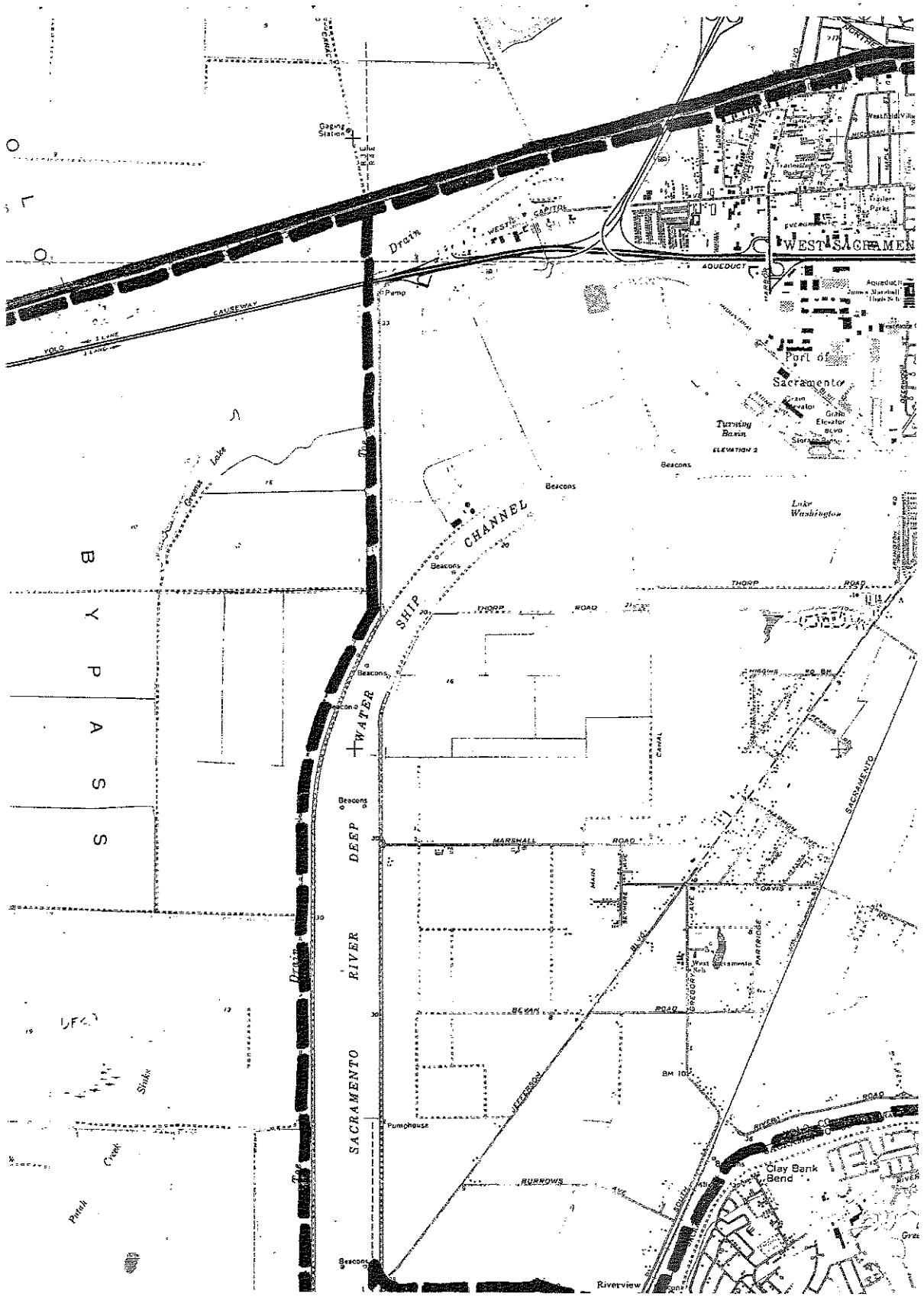
Sincerely,

Margit Aramburu

Margit Aramburu
Executive Director

Enclosure

RECEIVED
APR 19 1994
Ans'd .....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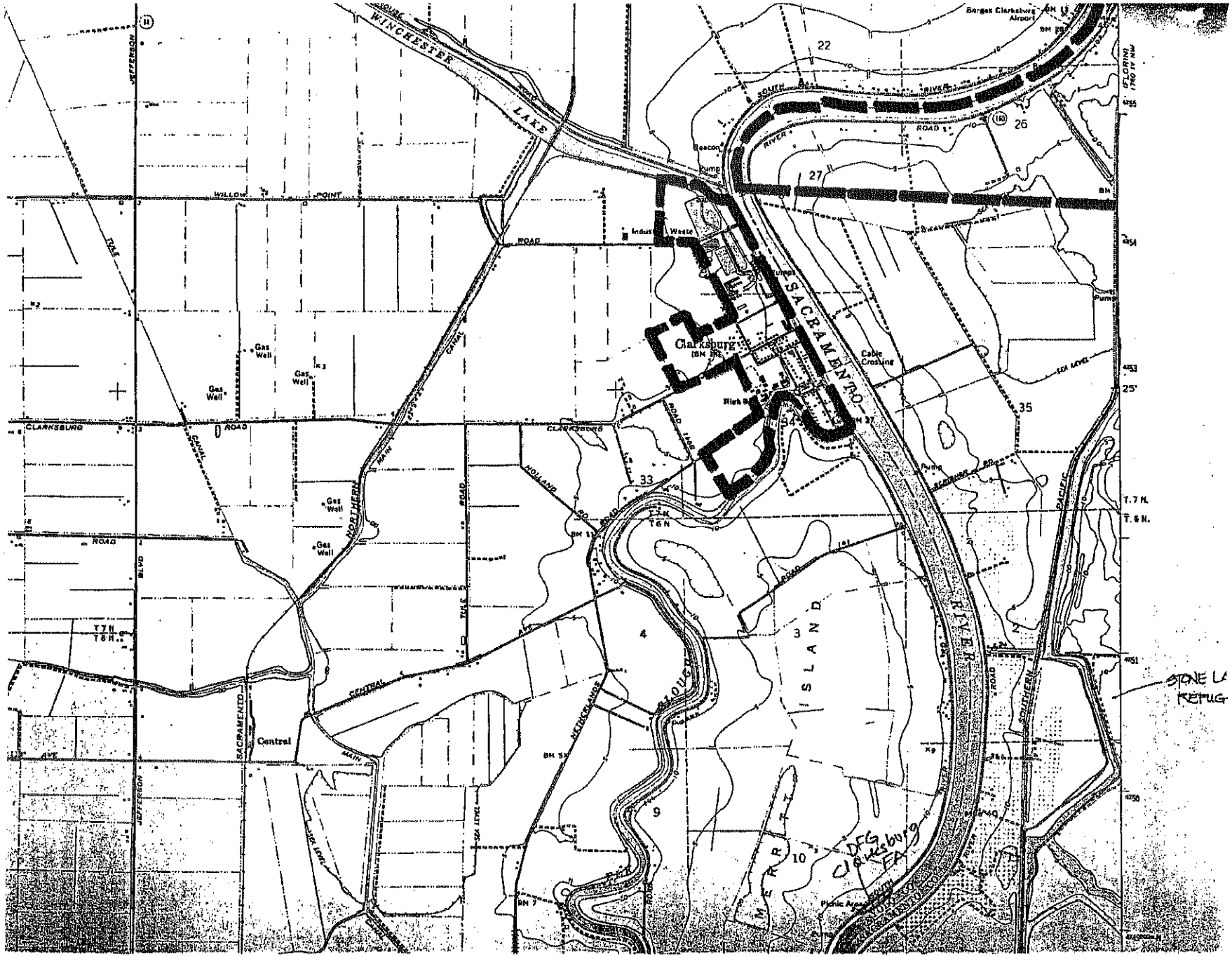
WEST SACRAMEN
Port of Sacramento
Turning Basin
ELEVATION 2
Beacons
Lake Washington
SHIP CHANNEL
THORP ROAD
BYPASS
WATER
DEEP
RIVER
SACRAMENTO
MARSHALL ROAD
ORVIS
BEVAN ROAD
BM 10
Pumphouse
RURROWS
Clay Bank Bend
Riverview
Stake
Creek
Patch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SOUTH RIVER ROAD
Bergen Clarksburg Airport
Beacon
Pump
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Clarksburg
SACRAMENTO RIVER
Cable Crossing
Gas Well
WILLOW POINT ROAD
CLARKSBURG ROAD
NORTHERN MAIN CANAL
HOLLAND ROAD
ISLAND
Central
SACRAMENTO
CENTRAL
SOUTHERN PACIFIC
JEFFERSON BLVD
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DFG Clarksburg FA
STONE LA
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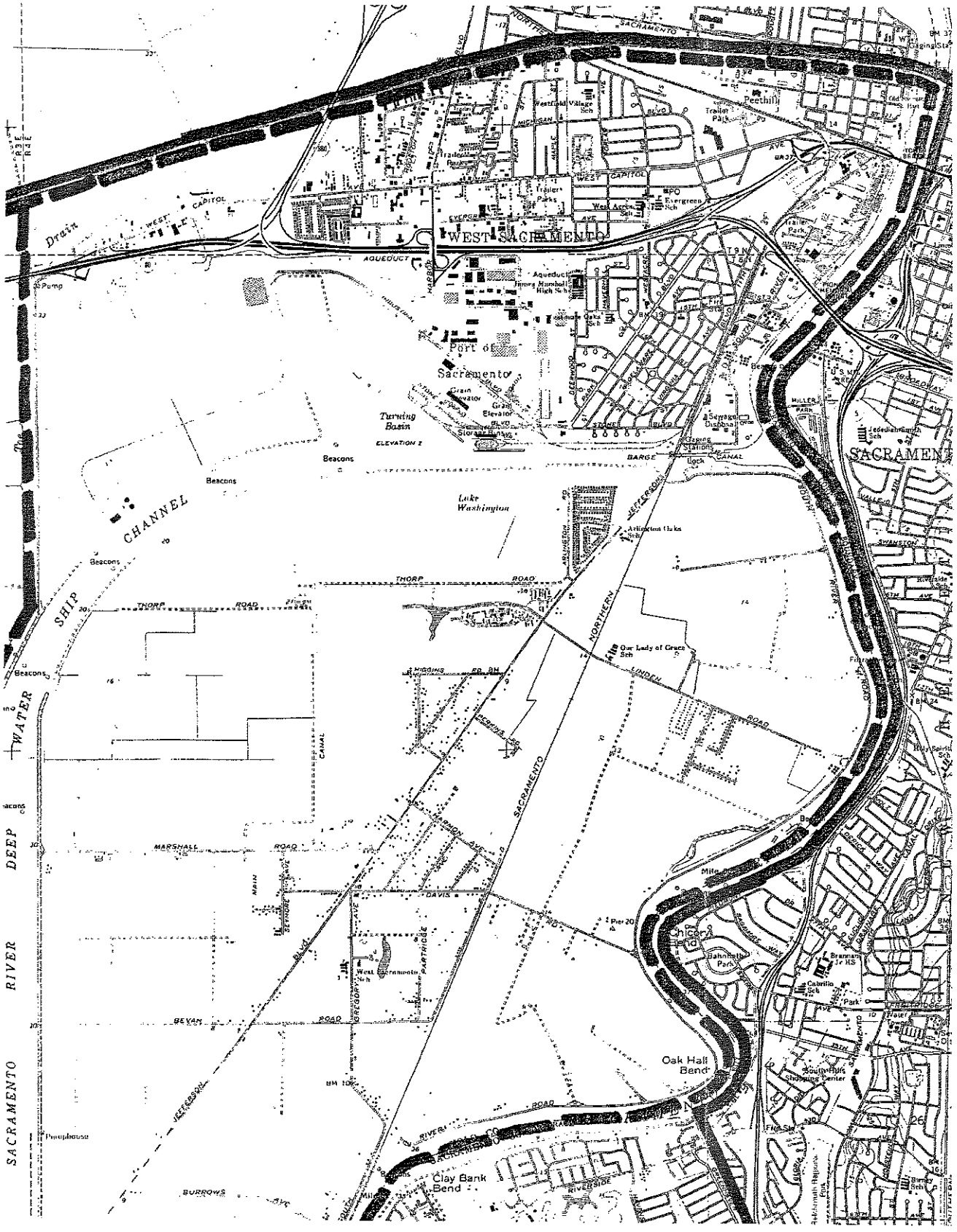
WEST SACRAMENTO
Port of Sacramento
Turning Basin
Lake Washington
SHIP CHANNEL
The DEEP WATER
SACRAMENTO RIVER
Beacons
Pump
Drain
AQUEDUCT
CAPITOL
THORP ROAD
MARSHALL ROAD
BEVAN ROAD
DAVIS
LINDEN ROAD
NORTHERN
JEFFERSON
SACRAMENTO
Our Lady of Grace Sch
Pier 20
Oak Hall Bend
Clay Bank Bend
Pumphouse
BURROWS
Trailer Park
Evergreen Sch
West Acres Sch
Aqueduct Sch
Sewage Disposal Plant
Lock
BARGE CANAL
Arlington Oaks Sch
Cabrillo Sch
Bahnmann Park
Bahnmann Jr HS
Southfills Shopping Center
Peethill
SACRAMENTO