

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BB*  
DATE: MAY 9, 2008

**AGENDA ITEM  
E-6  
MAY 14, 2008**

**PASQUINI PROPERTY RIGHT OF ENTRY AGREEMENT**

**ITEM**

Authorize execution of Right of Entry Agreement for Geo-Physical Work at Pasquini Property on the West Side of Orchard Road South of Southland Street (APN 090-311-001) [RECOMMEND ADOPTION]

**BACKGROUND**

Attached is a draft agreement acceptable to Charles Pasquini that will allow Fugro West to perform the geo-physical work authorized at the April 30, 2008 NCSD Board Meeting.

**RECOMMENDATION**

Staff recommends that your Honorable Board authorize the General Manager to execute the agreement.

**ATTACHMENTS**

- Right of Entry Agreement with Exhibit

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## **RIGHT OF ENTRY AGREEMENT**

This Right of Entry Agreement ("Agreement") is entered into effective this \_\_\_\_\_ day of May 2008 by and between the Nipomo Community Services District ("District") and the Charles A. Pasquini, Jr. Separate Property Trust under Agreement dated May 26, 2005 ("Pasquini") with regard to that certain property located on Orchard Road, APN 090-311-001 ("Property").

### **RECITALS**

Whereas, Pasquini is the owner of the Property; and

Whereas, the District desires to enter the Property for the purpose of conducting certain tests to determine the suitability of the Property for District's future purposes; and

Whereas, Pasquini is willing to allow the District to enter upon the Property without waiving any of his rights to oppose condemnation of the Property.

### **AGREEMENT**

Now therefore, in consideration of the mutual promises contained herein, the parties agree as follows:

1. Pasquini grants to District the right to enter the Property for the purpose of allowing the District, its agents, contractors and employees, to take photographs, make studies, surveys, examinations, tests, soundings, borings, samplings, or to engage in similar activities related to the potential purchase or acquisition of the Property (or any part thereof), by the District.
2. In granting the District this Right of Entry, Pasquini does not waive the right to oppose condemnation of the Property, the right to just compensation for the Property (or any part thereof), or of any remedy authorized by law to secure payment thereof.

3. The District agrees to indemnify and hold harmless Pasquini and, subject to paragraph 6, to repair and pay for any damages to the Property or improvements thereon caused by the District or its agents during the conduct of the activities authorized by this Agreement except those damages arising out of the sole negligence of Pasquini.

4. The District acknowledges that the Property is currently fenced and gates to the Property are locked. William and Susan Castellanos ("Castellanos") currently graze cattle on the Property and the parties agree that it is essential that the gates remain closed other than during those times when persons and equipment are physically moving through the gate. District agrees to coordinate with Castellanos to obtain entry through the locked gate. District agrees to provide not less than forty eight (48) hours telephonic notice (at the telephone numbers designated below) prior to entry onto the Property by District employees and/or agents:

Charles A. Pasquini, Jr. (805) 458-0791 (Cell) or (805) 474-6194 (Home)

William Castellanos (805) 310-2370 (Cell)

5. The right of entry granted by this Agreement is irrevocable during the term provided herein.

6. The District shall pay to Pasquini, at the execution of this Agreement, the sum of \$2,706 representing the loss of grazing feed on the Property. The District also agrees to restore the Property to its original condition and to compensate Pasquini for any damages to the Property, and improvements thereon at the termination date as described in Paragraph 7. In addition, District agrees to pay at the execution of this Agreement Pasquini's attorneys fees in the amount of \$1,200 in connection with the negotiation and preparation of this Agreement.

7. The term of the right of entry shall commence on 15 May 2008 ("Commencement Date"), and terminate on 23 June 2008 ("Termination Date"), without prejudice to the District to seek a court order or the written consent of Pasquini pursuant to Section 1245.010 et seq. of the Code of Civil Procedure, to permit further entry onto the Property.

8. District agrees that it will use reasonable efforts to minimize interference with the use of the Property by Castellanos and will use reasonable efforts to keep all gates closed during the time that District is on the Property. Any damages to the cattle caused by the District activities, as authorized by this Agreement, shall be resolved on the principals of comparative fault.

9. The District acknowledges that it has been advised by Pasquini that the State of California has a Right of Way Contract affecting a portion of the Property. A copy of the Right of Way Contract is attached hereto as Exhibit "A." District agrees to give any notices required as a result of its activities on the Property and to hold Pasquini harmless for any liability under the Right of Way Contract that results from District's activities pursuant to this Agreement.

10. The District agrees to provide to Pasquini, without cost, copies of all photographs, studies, surveys, and reports relating to examinations, tests, soundings, borings, or samplings which are made or taken by District and/or its consultants in connection with the entry onto the Property.

11. The parties hereby represent that the person(s) executing this Agreement are expressly authorized to do so for and on behalf of the parties.

12. Any notice to be given (other than the notice of entry onto the Property as provided for in Paragraph 4 of this Agreement), shall be given in writing at the address specified below and shall be deemed given upon personal delivery, or three days after it has been sent by prepaid certified mail, return receipt requested:

If to District:

Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444

With copy to:

Shipsey & Seitz  
Attn: Jon S. Seitz  
P. O. Box 953  
San Luis Obispo CA 93406

If to Pasquini:

Charles A. Pasquini, Jr.  
2381 Brant Street  
Arroyo Grande CA 93420

With copy to

Andre, Morris & Buttery  
Attn: Michael J. Morris  
P.O. Box 730  
San Luis Obispo, CA 93406

13. This Agreement contains all the understandings and agreements of whatsoever kind and nature existing between the parties hereto with respect to the Property. This Agreement may not be amended, altered or modified except by a written instrument signed by each of the parties.

In witness whereof the parties have executed this Agreement effective on the date set forth above.

Nipomo Community Services District

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

\_\_\_\_\_  
Name and Title

Charles A. Pasquini, Jr. Separate Property Trust  
under Agreement dated May 26, 2005

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

Charles A. Pasquini, Jr., Trustee

San Luis Obispo County, California  
\_\_\_\_\_, 1996  
Charles Pasquini, Jr.  
Grantor(s)

Project: Coastal Branch Phase II  
Parcel No. 90-311-001  
COA: 695

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES

**RIGHT-OF-WAY CONTRACT**

Document No. COA-695 in the form of an Exclusive Easement Deed covering that certain property in the County of San Luis Obispo has been executed and delivered to Mae Toft-Sharp, Right of Way Agent for Hamner, Jewell and Associates, on behalf of the State of California.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. Parties have set forth the whole of their agreement in this Contract and in the Easement Deed. The performance of this agreement constitutes the entire consideration for said document and shall relieve the State of all further obligation or claims on this account.
2. The State shall:
  - A. Pay the sum of \$25,630 plus interest as stated in Paragraph 5 below for the property rights described in said document to the following title company: Fidelity National Title Insurance Company for the account of the Grantor(s), conditioned upon the easement described in Document No. COA-695 vesting in the State of California free and clear of all liens, leases (except the lease to Luis Castellanos), encumbrances, easements (recorded and/or unrecorded), assessments, and taxes, except:
    - (1) Taxes for the fiscal year in which this escrow closes, a portion of which may be collectible against the Grantor(s) as provided by Section 4986 of the Revenue and Taxation Code.
    - (2) Covenants, conditions, restrictions and reservations of record, if any, which would not detrimentally interfere with State's proposed use of said property.
    - (3) Easements or rights of way for public utilities, if any.

- (4) Items #1, 2, 3, 4, 5, 6, 7, and 8 of that Preliminary Title Report No. 100737 issued by Fidelity National Title Insurance Company on April 5, 1995, and any other items as may be approved in writing by the State in advance of close of escrow.
- B. Pay all expenses incidental to and necessarily incurred for the conveyance of the easement to the State, including but not limited to recording fees, title insurance charges, reconveyance fees, trustee's fees, forwarding fees, transfer taxes and escrow fees, if any.
3. Said title company may expend any or all monies payable under this agreement to discharge any obligations which are monetary liens upon the property, including but not limited to those arising from judgments, assessments, delinquent taxes for other than the fiscal year referred to in Paragraph 2A(1), or debts secured by deeds of trust or mortgages.
4. Title to said easement shall pass immediately upon close of escrow. The issuance of any escrow instructions shall be the sole responsibility of the State.
5. Grantor(s) hereby grants to the State or its agents and contractors, the permission to enter upon the subject lands prior to the close of escrow for the purposes of preparation for and construction of the State's facilities, subject to all applicable terms and conditions contained in this Contract and the associated Easement Deed. The Temporary Construction Easement shall commence two (2) weeks after written Notice of Commencement of construction is provided by the State to Grantor(s) and terminate at midnight one year after commencement. Compensation as set forth in Clause 2A herein, shall accrue simple annual interest at the State's Pooled Money Investment Account Rate (as computed by the State Controller) from August 18, 1995 until a warrant is issued by the State Controller to the escrow account. The State shall have the right to extend the Temporary Construction Easement, if necessary to complete construction, restoration, and revegetation activities, on a month-to-month basis. In such event, State shall compensate Grantor an additional \$73 per acre per month during the extension period. In any event, the Temporary Construction Easement shall terminate on or before June 30, 1998.
6. Grantor(s) warrant(s) that there are no oral or written leases on all or any portion of the property exceeding a period of one month other than with Luis Castellanos, and the Grantor(s) further agree(s) to hold the State harmless and reimburse the State for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of the Grantor(s) for a period exceeding one month, except as may be otherwise provided herein.
7. The State agrees to indemnify and hold harmless the Grantor and its agents, and to repair or pay for any damage caused by reason of the negligence of State and its

agents during the conduct of activities authorized by this Contract, except those arising out of the negligence of Grantor.

8. The Permanent Pipeline Easement and the Temporary Construction Easement as described in Document COA-695 constitute the Easement Area.

The State agrees to allow and maintain transverse access across the Easement Area during construction so that Grantor and his lessee can continue normal agricultural operations on the property on the portions outside of the Easement Area.

The State shall construct and maintain temporary fencing during construction operations to prevent cattle from causing damage to the project and to safeguard the livestock from injury from the project.

The State, upon completion of construction, shall restore the Easement Area to substantially the condition that existed prior to construction. The State shall not remove any excess soil from Grantor's property. If there is excess soil, it shall be placed by the State in the area at the southwestern portion of the Easement Area. All topsoil excavated by the State shall be stockpiled and replaced in the area from which it was removed upon completion of construction.

The State shall at all times maintain pedestrian and vehicular access through the construction zone to private property and public right-of-way and easements. The State shall coordinate and obtain approval from Grantor for any interruption of access.

The State shall provide not less than 48 hours prior notice to Grantor and his lessee prior to entry to commence construction.

9. Any private roadway, driveway, or utility crossing to be constructed within the State's Easement Area requires notification to the State in advance of installation of such improvements. Plans must be submitted to the State for review and comment prior to Grantor constructing the improvement. On a one time basis, no fee shall be charged for review of said plans and reasonable modifications thereto. The State shall only have the right to prohibit the improvement if it jeopardizes the structural integrity or proper operation of the State's waterline, and the State shall notify Grantor of such prohibition within 60 days after Grantor's plan submittal. Failure by the State to provide notice of prohibition within said period shall be deemed to be a determination that no such jeopardy exists. The State agrees that Grantor's plans and construction in accordance with the 1995 San Luis Obispo County Standard Specifications and Drawings attached as Exhibit "A" to this Contract will be approved.
10. This Contract represents Grantor(s) settlement proposal and is expressly subject to and contingent upon the State's acceptance and approval. Deposit into escrow of a fully executed copy of the Contract constitutes acceptance and approval by State.



11. The State and Grantor agree that this Contract shall run with the land and shall bind and benefit all successors-in-interest to Grantor. The term Grantor shall include Grantor's successors-in-interest and assigns.

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN SHALL BE RECOGNIZED.

IN WITNESS WHEREOF, the parties have executed this contract.

GRANTOR(S):

\_\_\_\_\_  
Charles Pasquini, Jr.

GRANTEE: STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

SUBMITTED FOR CONSIDERATION:

\_\_\_\_\_  
Mae Toft-Sharp, Right of Way Agent, Hamner, Jewell & Associates

RECOMMENDED FOR APPROVAL:

APPROVED:

\_\_\_\_\_  
Jim Schindler, Senior Land Agent, DWR

\_\_\_\_\_  
Veronica Hicks, Chief, Real Estate Branch, DWR

\_\_\_\_\_  
Title

Date: \_\_\_\_\_