

TO: BOARD OF DIRECTORS
FROM: MICHAEL LEBRUN *ML*
INTERIM GENERAL MANAGER

AGENDA ITEM
E-2
JANUARY 26, 2011

DATE: JANUARY 21, 2011

**APPROVE LICENSE AGREEMENT WITH SANTA BARBARA COUNTY
FOR SANTA MARIA RIVER ACCESS
FOR THE WATERLINE INTERTIE PROJECT**

ITEM

Review and Approve License Agreement with Santa Barbara County for Santa Maria Access in Support of Waterline Intertie Project [RECOMMEND APPROVE]

BACKGROUND

In support of Waterline Intertie Project (WIP), District staff and District counsel have worked with Santa Barbara County Flood Control and Water Conservation District to draft up a License Agreement to facilitate access to the Santa Maria River.

Once approved by your Board, the Agreement will be forwarded to Santa Barbara County Board of Supervisors for approval.

FISCAL IMPACT

Budgeted staff and consultant time was used to draft this Agreement.

RECOMMENDATION

Staff recommends that the Board approve the Agreement and direct staff to forward it to Santa Barbara County Board of Supervisors for approval.

ATTACHMENTS

- License Agreement

License Agreement

Nipomo Community Services District Waterline Intertie Project

This Agreement is made and entered into on the date last written below, by and between the SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a political subdivision of the State of California (hereinafter called "Licensor"), and the NIPOMO COMMUNITY SERVICES DISTRICT (hereinafter called "Licensee").

WITNESSETH:

That Licensor, in consideration of the faithful performance and observance by Licensee of all of the terms and conditions herein contained, does hereby grant to Licensee a license for the construction, reconstruction, maintenance, removal, and use of a waterline, together with the necessary appurtenances thereto (hereinafter referred to as the "Waterline") across and under a portion of the Property.

1. Definitions. As used in this License, the "Property" shall refer to that portion of the Santa Maria Levee and surrounding property as shown on the map attached hereto as Exhibit "A" and incorporated herein by this reference.

As used in this License, the Waterline shall refer to a waterline that will be installed on and under the Property within the alignment shown in Exhibit "A".

2. Title of Licensor. Licensee hereby acknowledges the title of Licensor in and to the Property and agrees never to assail or to resist said title. Licensee agrees that it has not acquired nor will it hereafter acquire any rights or interest in the Property, nor does Licensee have nor will it obtain any right or claim to the use of the Property beyond those explicitly granted in this License.

3. Term. This License to construct, operate and maintain the Waterline shall continue for an indefinite term, to terminate 180 days after written notice of termination is given to either party by the other pursuant to paragraph 6 hereunder.

4. Primary Use of Property. The Property consists of a levee that is used for flood control purposes. Use of the Property is subject to any limitations which may be imposed by the United States Army Corps of Engineers ("USACE"), which has an interest in the Property. Licensee, their agents and contractors agree to abide by the Code of Federal Regulations (CFR) which governs underground clearance and location of mains and transmission lines. Underground utility facilities may already be in place and it is anticipated that in the future,

additional utility facilities may be constructed or installed on the Property. Licensor reserves all rights to grant others the right to install such additional facilities upon the Property.

Licensee acknowledges that the use of the Property for flood control purposes constitutes the primary use of the Property and that Licensee's use of the Waterline pursuant to this License is secondary and subordinate to said primary uses. Licensee shall not use the rights granted herein in any manner that will materially interfere with or impair said primary use of the Property. All rights granted to Licensee hereunder are subject to all existing and future rights, rights of way, reservations, franchises, and licenses in the Property, regardless of who holds it.

Licensee further acknowledges and agrees that this License is subject to and authorized by Resolution Number 98-266 of the Santa Barbara County Flood Control and Water Conservation District, a copy of which is attached hereto as Exhibit "B" and which is hereby incorporated by this reference as though fully set forth.

5. Limitation of Use. Licensor shall not be held responsible or liable for damage or removal of any of Licensee's facilities when Licensor finds it necessary to accomplish work for the maintenance, repair, construction or alteration of Licensor Property. If this work can be carried out without revocation of this License, Licensor will exercise reasonable care to minimize adverse impacts of such work and to protect Licensee's facilities installed upon the Property.

6. Revocation. The parties acknowledge that no money or other payment was made by Licensee to Licensor in return for the License granted hereunder. In the event, in the sole discretion of Licensor, the primary uses of the Property by Licensor or Licensor's permittees reasonably require some permanent use of a portion or portions of the Property which, by nature thereof, precludes Licensee's use thereof, Licensor may, upon a minimum of 180 days prior notice, revoke this License for any area Licensor deems necessary for such permanent primary use. Licensor shall supply Licensee with a map or drawing identifying the area(s) as to which this License is so revoked.

7. Indemnification. Licensee shall indemnify, save, protect, defend, and hold harmless Licensor, its Boards, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorney fees, arising out of or connected with Licensee's operations and performance, the presence of the Waterline, or use of the Waterline or Property. It is the intent of this paragraph that Licensee shall so indemnify, save, protect, defend and hold harmless Licensor to the fullest extent permitted by law. Licensee shall notify Licensor immediately in the event of any claim, accident or injury arising out of or in connection with this License Agreement.

8. Insurance Requirements.

(a) Workers' Compensation. Licensee warrants that it has Workers' Compensation and/or will require its agents and contractors that provide waterline work to have Workers'

Compensation Insurance for all injuries arising out of or occurring in the course and scope of their employment.

(b) General and Automobile Liability. The Licensee shall maintain and/or shall require its construction contractors to maintain general and automobile liability coverage for the period covered by this agreement in the amount of at least \$5,000,000 per occurrence combined single limit coverage. Such coverage shall include, but shall not be limited to, protection against claims arising from the activities contemplated under this License. The Licensor, its officers, agents, and employees shall be named as additional insured. The Licensee shall furnish the Licensor with a Certificate of Insurance and endorsements effecting coverage by the contract.

9. Approval and Inspection of Work. Licensee shall not perform any construction, reconstruction, remodeling, removal, or other work upon the Property without first obtaining approval in writing from Licensor and USACE. In seeking these approvals, Licensee shall furnish Licensor a complete description and plans of the work proposed to be performed. In performing work approved by Licensor and USACE, Licensee shall comply with all terms, conditions, and requirements imposed by Licensor and not deviate in any material manner from the description and plans approved by Licensor without first obtaining additional approval in writing. Upon completion of the initial waterline construction work, Licensee shall do no further construction work on the Property without first obtaining approval in writing from Licensor and USACE. As used in this section, the term "further work" would include upgrades to the waterline and projects requiring open cutting.

Licensee shall not be required to obtain Licensor's prior written approval for the performance of routine maintenance or emergency repairs. As used in this section, the term "routine maintenance" refers to work that does not alter the original condition of improvements previously approved in writing by Licensor, which work is required to prevent deterioration of said improvements. As used in this section, the term "emergency repairs" refers to repairs that do not alter the original condition of improvements previously approved in writing by Licensor, which repairs are promptly necessary to protect the safety of the public and others. Licensee shall consult Licensor at least 7 days before Licensee performs any major maintenance operations. Work shall be done in such a manner that Licensor shall at all times be able to use and gain access to its facilities.

All work performed by Licensee under this section shall be subject to inspection by Licensor.

10. Assignment. No rights of Licensee hereunder shall be transferred or assigned unless to successor public agency and unless the written consent of Licensor is first secured. With that exception, this License and each and all of the covenants herein contained shall inure to the benefit of and be binding upon the successor and assigns of the respective parties hereto.

11. Abandonment by Licensee. If Licensee shall, for a period of at least 120 consecutive days, fail to use or maintain the Waterline or any portion thereof in a manner consistent with this

agreement, then all rights of Licensee in and to portions not used or maintained may be temporarily terminated by Licensor until properly maintained per this agreement.

12. Restricted Use. The rights granted hereunder are for the construction, operation, maintenance, and repair of a Waterline. No type of motor-driven vehicle shall be permitted on the Property, except those of Licensee, Licensor, or Licensor's permittees being used for construction, maintenance, repair, patrol, or public safety purposes. Licensee shall install such barricades as are necessary to prevent unauthorized access by motor-driven vehicles.

13. Damage to Property. It is understood and agreed by and between the parties hereto that the Property is subject to sliding, erosion, subsidence, and flooding, and that Licensor is under no obligation to maintain the Property or repair any damage resulting from slide erosion, subsidence, or flooding unless in the sole discretion of Licensor such damage affects the integrity of the flood control facilities. It is also agreed and understood that the Licensee is responsible for maintaining the Waterline and related facilities at all times, including after maintenance or other activities by Licensor which may affect Licensee's Waterline facilities. In the event of any lesser damage, Licensee shall perform such maintenance or repair as Licensee may deem necessary for proper and safe operation of the Waterline.

14. Pollution. Licensee, at its sole expense, shall comply with all applicable laws, regulations, rules and others with respect to the use of the Property, regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and furnish satisfactory evidence of such compliance upon request of Licensor.

No hazardous materials shall be handled by Licensee at any time upon the Property. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the Property caused by Licensee's employees, contractors and agents, Licensee, at its expense, shall be obligated to clean all the Property affected thereby, whether owned or controlled by Licensor or any third person, to the satisfaction of Licensor (insofar as the Property owned or controlled by Licensor is concerned) and any governmental body having jurisdiction therefor.

To the extent permitted by law, Licensee shall indemnify, hold harmless, and defend Licensor and such holders of user rights against all liability, cost, and expense (including, without limitation, any fines, penalties, judgments, litigation costs, and attorney fees) incurred by Licensor and such other users as a result of Licensee's breach of this section or as a result of any such discharge, leakage, spillage, emission or pollution.

15. Signs. Licensee shall maintain existing signs and install appropriate informational and warning signs. Licensee shall also post any other signs required by law, recognizing that Licensor utilizes pesticides, herbicides and other dangerous chemicals for the purpose of maintaining the Levee as a flood control improvement.

16. Waterline Maintenance. Licensee shall maintain, at its expense, all Waterline improvements. It is acknowledged that all impacts of the construction and operation of the Waterline cannot be foreseen at the present time. Licensor may require changes to the Waterline improvements, and Licensee agrees to make such changes to the Waterline improvements or operations to Licensor's satisfaction.

17. Drainage. Licensee agrees to maintain, at its expense, drainage facilities necessary for Waterline installation and operation.

18. Fencing. Licensee agrees to maintain, at its expense, all fencing and barricades for Property and facilities installed by Licensee. Licensee shall not be responsible for the maintenance of residential fencing installed by parties other than Licensee.

19. Vandalism. Licensee shall, at its own expense, promptly repair all damage to Waterline improvements and to the Property.

20. Encroachment Permits. Licensor shall have the sole right to grant encroachment permits or rights of entry within the Property. Notification of encroachment permits granted and approved by Licensor will be forwarded to Licensee. Licensor shall consult Licensee on safety requirements for future utilities and if Licensee has not responded within 15 working days, then it is presumed Licensee is in concurrence. Licensee shall obtain permits from all other agencies as required for construction of the Waterline improvements, including but not limited to USACE.

21. Modification. This License shall be subject to modification or amendment only by the written, mutual consent of both parties.

22. Entire Agreement. It is understood that this document contains the entire agreement between the parties hereto and all prior understandings or agreements, oral or written, of whatsoever nature regarding the rights hereby granted are superseded by this License and are hereby abrogated and nullified.

23. Construction. The parties have negotiated the terms of this Agreement. They have consulted their respective attorneys as needed. The terms of this License reflect this negotiation and the intentions of both parties. These terms shall be interpreted with regard to each party equally.

24. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this License shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

25. Dispute Resolution. Any dispute, disagreement or termination of this License shall first be addressed and resolved at the lowest possible staff level between the appropriate

representatives of the Licensor and Licensee. If it cannot be resolved at this level, it is to be elevated to the County Administrator (Licensor) and the District General Manager (Licensee). If it cannot be resolved at this level, it may be appealed by the Licensee to the Santa Barbara Flood Control and Water Conservation District Board.

26. Approvals and Acknowledgements. This License is conditioned on the approval of the Waterline construction plans by the USACE. Licensee shall abide by and acknowledge all applicable CFR Standards and all other structural and separation standards as determined by the USACE.

27. Good Faith and Fair Dealing. Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review or determination of either party hereto, such terms are not intended to and shall never be construed to permit such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable. Licensor and Licensee shall each act in good faith in performing their respective obligations as set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereby have executed this License, in duplicate, the day and year last written below.

LICENSEE:

NIPOMO COMMUNITY SERVICES DISTRICT

Dated: _____

By _____

Name:

Title:

LICENSOR:

SANTA BARBARA FLOOD CONTROL AND
WATER CONSERVATION DISTRICT

Dated: _____

By _____

Chair, Board of Directors

ATTEST:

Michael F. Brown
Clerk of the Board

By _____

Deputy

APPROVED AS TO FORM:
Dennis Marshall
County Counsel

APPROVED AS TO ACCOUNTING FORM:
Robert W. Geis, CPA
Auditor-Controller

By _____
Deputy County Counsel

By _____
Deputy

APPROVED AS TO FORM:
Ray Aromatorio, ARM, AIC
Risk Program Administrator

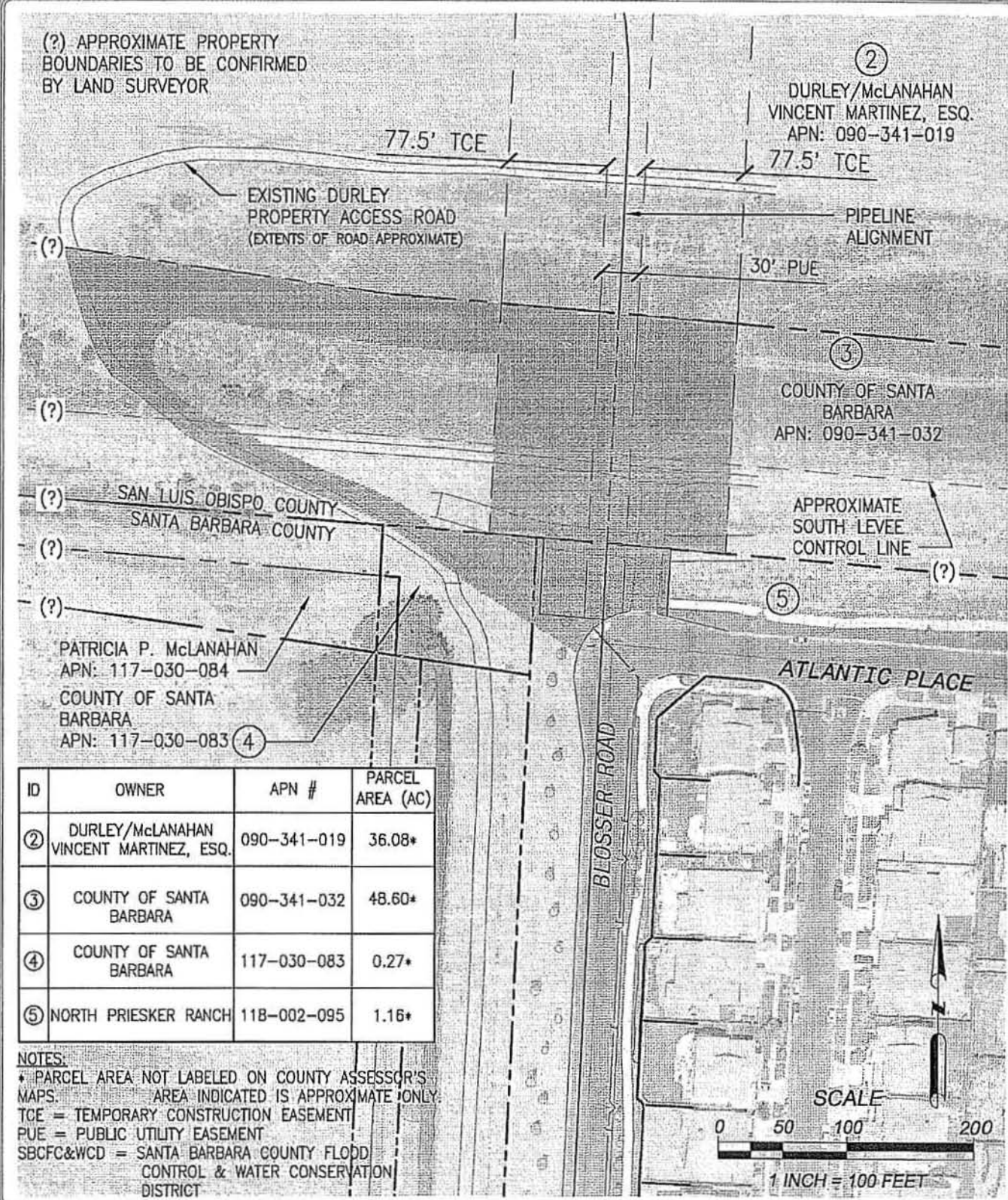
APPROVED AS TO FORM:
Scott D. McGolpin
Public Works Director

By _____

By _____

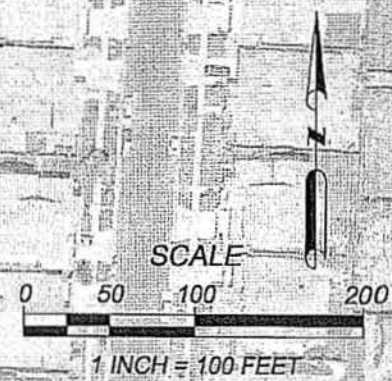
EXHIBIT A

ALIGNMENT EXHIBIT



ID	OWNER	APN #	PARCEL AREA (AC)
②	DURLEY/McLANAHAN VINCENT MARTINEZ, ESQ.	090-341-019	36.08*
③	COUNTY OF SANTA BARBARA	090-341-032	48.60*
④	COUNTY OF SANTA BARBARA	117-030-083	0.27*
⑤	NORTH PRIESKER RANCH	118-002-095	1.16*

NOTES:
 * PARCEL AREA NOT LABELED ON COUNTY ASSESSOR'S MAPS. AREA INDICATED IS APPROXIMATE ONLY.
 TCE = TEMPORARY CONSTRUCTION EASEMENT
 PUE = PUBLIC UTILITY EASEMENT
 SBCFC&WCD = SANTA BARBARA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT



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WATERLINE INTERTIE PROJECT PIPELINE ALIGNMENT

EXHIBIT
 A

BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA
CLERK OF THE BOARD OF SUPERVISORS

MINUTE ORDER

July 7, 1998, in the a. m.

Present: Supervisors Naomi Schwartz, Jeanne Graffy, Gall Marshall,
Timothy J. Staffel, and Thomas Urbanske

Michael F. Brown, Clerk (Florillo)

Supervisor Marshall in the Chair

RE: Flood Control & Water Conservation District Hearing - To consider establishing a policy regarding secondary use of County and Flood Control District owned rights-of-way, All Districts, as follows:
(98-20,715) (FROM JUNE 23, 1998; EST. TIME: 20 MIN.)

- a) Adopt the resolution establishing a policy entitled "A Policy for Secondary Uses of Flood Control and Water Conservation Facilities for Bikeway and Recreation Purposes; and
- b) Direct staff with regard to the recommendations included in the "Supplemental Report of County Counsel" concerning the proposed Santa Maria River Levee Bikeway.

COUNTY ADMINISTRATOR'S RECOMMENDATION: POLICY

Graffy/Marshall

a) Adopted.

The preamble of Exhibit A, "A Policy for Secondary Uses of Flood Control and Water Conservation Facilities for Bikeway and Recreation Purposes," was amended as follows: *"In order to maximize the public benefit and public convenience, it is the policy of the Santa Barbara County Flood Control District that the secondary use of Flood Control property for recreational and trail purposes shall be encouraged. To this end, the District may license or permit the use of a right-of-way for development and use for bicycle, hiking and riding trails, and other park and recreation purposes, under the following criteria and conditions..."*

RESOLUTION NO. 98-266

b) Approved recommendations included in the "Supplemental Report of County Counsel" dated June 24, 1998.

EXHIBIT B page 1 of 5

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SANTA BARBARA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT**

IN THE MATTER OF ADOPTING THE)
POLICY ENTITLED "A POLICY FOR)
SECONDARY USES OF FLOOD CONTROL) RESOLUTION NO. 98-266
& WATER CONSERVATION FACILITIES)
FOR BIKEWAY AND RECREATIONAL)
PURPOSES")

WHEREAS, the Santa Barbara County Flood Control & Water Conservation District (District) owns and/or operates flood control facilities on certain real properties throughout the County of Santa Barbara, and

WHEREAS, continued uninhibited operation of these facilities is in the interest of the citizens of Santa Barbara County, and

WHEREAS, the District operates and maintains these facilities on District owned, County owned, or easement rights-of-way, and

WHEREAS, the District desires to institute a uniform policy controlling permitted secondary uses on all County and District property used primarily for flood control purposes, and

WHEREAS, various other entities have an increased interest to make use of these properties and/or rights-of-way for recreation or other uses, and

WHEREAS, the District may be agreeable to such other uses on these properties provided that the primary use of the properties as flood control facilities is not affected.

NOW, THEREFORE be it resolved that Board of Directors of the Santa Barbara County Flood Control & Water Conservation District hereby adopt a policy entitled "A Policy for Secondary Uses of Flood Control & Water Conservation Facilities For Bikeway and Recreation Purposes" for secondary uses of properties originally constructed primarily for flood control purposes, which policy is attached here to as Exhibit A and is incorporated here in by this reference.

PASSED AND ADOPTED by the Board of Directors of Santa Barbara County Flood Control and Water Conservation District, State of California, this seventh day of July, 1998, by the following vote:

EXHIBIT B page 2 of 5

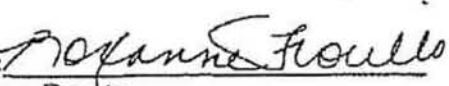
RESOLUTION IN THE MATTER OF ADOPTING THE
POLICY ENTITLED "A POLICY FOR SECONDARY USES
OF FLOOD CONTROL AND WATER CONSERVATION
FACILITIES FOR BIKEWAY AND RECREATION PURPOSES"
PAGE: 2

AYES: Supervisors Schwartz, Graffy, Marshall, Staffel, Urbanske.
NOES: None.
ABSTAIN: None.
ABSENT: None.



Chair, Board of Director
Santa Barbara County Flood Control and
Water Conservation District

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

BY: 
Deputy

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

BY: 
Deputy

APPROVED AS TO INSURANCE:
CHARLES MITCHELL
RISK MANAGER

BY: 

EXHIBIT B page 3 of 5

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SLO/Nipomo/Waterline/County of SB/License Agreement 7-29-10

EXHIBIT A

"A POLICY FOR SECONDARY USES OF FLOOD CONTROL AND WATER CONSERVATION FACILITIES FOR BIKEWAY AND RECREATION PURPOSES" BY THE BOARD OF DIRECTORS OF THE SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

In order to maximize the public benefit and public convenience, it is the policy of the Santa Barbara County Flood Control District that the secondary use of Flood Control property for recreational and trail purposes shall be encouraged. To this end, the District may license or permit the use of a right-of-way for development and use for bicycle, hiking and riding trails, and other park and recreation purposes, under the following criteria and conditions:

1. A public agency empowered to engage in and finance the proposed park and/or recreation use shall enter into a formal written agreement with the District regarding such use. The District reserves the right to deny such use at its sole discretion. The public agency shall pay all District costs for developing such agreement.
2. The public agency's use shall not conflict with the District's use of its rights-of-way, which is primarily for flood control purposes. All other uses shall be subordinate to flood control purposes. The public agency shall compensate the District for any increased costs and/or decreases in revenues associated with any granted secondary uses.
3. Joint use of District fee property and /or right-of-way are limited to those uses and locations that are compatible with District operation and maintenance activities.
4. The cost of any improvements and associated maintenance necessary to accommodate the public agency's use shall be borne by that agency. Such improvements and maintenance activities shall be designed and carried out in accordance with District standards subject to District approval. Such maintenance activities shall include any litter and graffiti abatement.
5. The public agency shall establish rules and regulations for public use of the District's rights-of-way. Such rules and regulations shall be subject to District's approval.
6. Where the District's interest in its right-of-way is less than fee ownership, the public agency shall secure written permission from the fee owner for its intended use.

Exhibit A, Page 1

EXHIBIT B page 4 of 5

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SLO/Nipomo/Waterline/County of SB/License Agreement 7-29-10

7. The public agency shall secure all other required permits for the intended use from any other agencies having jurisdiction. Any and all conditions of such permits which may affect the District's property shall be approved by the District.
8. Any changes to District facilities necessary to accommodate the public agency's use shall be made, and any damage to District facilities arising from the public agency's use shall be repaired forthwith, at the public agency's sole expense.
9. The District shall not be liable for any damage to improvements made by the public agency which arise from the District's use of its rights-of-way for flood control purposes, including changes which the District may make to its facilities.
10. The District shall not be liable for any injury or damage to persons or property arising out of the use of its rights-of-way for park and recreation purposes.
11. The public agency shall defend, indemnify and hold harmless the District against any and all claims or lawsuits arising out of or connected with the use of the District's rights-of-way for park, recreation, or other uses. Such indemnification language in the agreement shall be in a form acceptable to County Counsel and Risk Management.
12. All proposed uses are subject to approval by the District and must be compatible with the use and maintenance needs of the District.
13. Recreational facilities planned along a flood control facility either constructed by, or in cooperation with a federal agency, must receive approval from the federal agency in addition to the District. Federal requirements may specify whether a license or permit will be issued.
14. Only approved uses will be granted a license or permit for the use. The District reserves the right to suspend or revoke a license or permit if, in the District's sole opinion, the permitted activities become incompatible with District activities or if the interests of the District should so require.

Exhibit A, Page 2

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