

San Gorgonio Pass Water Agency

DATE: February 28, 2022
TO: Board of Directors
FROM: Lance Eckhart, General Manager
BY: Lance Eckhart, General Manager
SUBJECT: RIGHT OF ENTRY & TEMPORARY CONSTRUCTION EASEMENT

RECOMMENDATION

Staff recommends the Board of Directors authorize entering into a Right of Entry and Temporary Construction Easement Agreement with the Riverside County Flood Control and Water Conservation District.

PREVIOUS CONSIDERATION

- Board of Directors – Various Dates: The Board has been briefed about the effects of the July/August 2020 Apple Fire and its potential impacts

BACKGROUND

The Riverside County Flood Control and Water Conservation District (District) is planning an emergency repair on the Noble Creek Channel project just south of Brookside Avenue in Beaumont, CA. The recent rain events of December 2021 caused large amounts of debris to wash down from the burn scar area which caused severe erosion and head-cutting within the channel and if unmitigated, would threaten Brookside Bridge. The District has been actively fighting the erosion during the winter and is now in a position to start a major restoration that will both widen and armor the existing channel to improve conveyance and increase protection for the community including the San Gorgonio Pass Water Agency (SGPWA) ponds located on the east side of the channel.

ANALYSIS

The subject right of entry request for the SGPWA parcel on the west side of the channel (see attached figure) would be used for: ingress and egress for the construction of the channel restoration, staging area for channel excavation and rock storage/installation, all grading as necessary to facilitate the work, and regrading to restore the parcel to the original condition following completion of activities. Also included in this scope is the installation of a fence along the street front to connect Noble Creek and Mtn View Channel which will reduce unwanted trespassing on property owned by both SGPWA and the District.

FISCAL IMPACT

None

ACTION

Enter into a Right of Entry and Temporary Construction Easement Agreement with the Riverside County Flood Control and Water Conservation District.

ATTACHMENTS

1. Right of Entry figure
2. Entry and Temporary Construction Easement Agreement

Noble Creek - SGPWA Right of Entry

Installed
Fence



Install fence along street front to connect Noble Creek and Mtn. View Channel.

Temporary ROE needed for Construction.
Typical Activity : Ingress and egress, construction of channel restoration, staging area for channel excavation and rock storage/installation, all grading as necessary to facilitate the above-described work, and regrading to restore the parcel to the original condition following completion of activities.

SAN GORGONIO PASS WATER AGENCY, a public body, corporate and politic,
 (herein referred to as "Grantor")
 and

RIVERSIDE COUNTY FLOOD CONTROL
 AND WATER CONSERVATION DISTRICT,
 a body corporate and politic,
 (herein referred to as "DISTRICT")

Project: Noble Creek Channel Restoration
 Project No. 5-0-00020
 APN 404-010-016

RIGHT OF ENTRY AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This Right of Entry and Temporary Construction Easement Agreement ("Agreement") is hereby made by and between SAN GORGONIO PASS WATER AGENCY, a public body, corporate and politic ("Grantor"), and RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a body corporate and politic ("DISTRICT"). Grantor and DISTRICT are sometimes collectively referred to as "Parties".

RECITALS

- A. Grantor is the owner of certain real property located in the city of Beaumont, County of Riverside, State of California, with Assessor's Parcel Number 404-010-016 ("Property") and has the right to grant to DISTRICT permission to enter upon and use the Property.
- B. DISTRICT desires to obtain Grantor's permission, and Grantor desires to accommodate DISTRICT's request to enter upon and use the Property on a temporary basis for all purposes necessary to facilitate and accomplish the staging, construction, and maintenance of emergency measures to protect the public from increased flood and debris risk following the damages caused by the recent storms.
- C. DISTRICT understands that this right to use the Property is non-exclusive, and Grantor may still use the property for any purposes deemed necessary by Grantor. If Grantor has need to use the Property in such manner or time as would conflict with the rights granted to DISTRICT, Grantor and DISTRICT intend to coordinate as needed to minimize delays or disruption.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor and DISTRICT do hereby agree as follows:

- 1. The non-exclusive right is hereby granted to DISTRICT to enter upon and use the Property for all purposes necessary to facilitate and accomplish the staging, temporary storage of debris, and construction of the channel restoration to assist with flood protection as deemed necessary to protect the public. Activities may include, but are not limited to, those listed in the table below. Grantor shall grant no rights to third parties that are inconsistent with the reasonable exercise by DISTRICT of its rights under this Agreement.

The activities of DISTRICT are as follow:

EXHIBIT	AREA REQUIRED	ACTIVITY/WORK
A	<ul style="list-style-type: none"> • Full APN 404-010-016 (3.62 Acres) 	Ingress and egress, install fence along street front to connect Noble Creek and Mtn View Channel, construction of channel restoration, staging area for channel excavation and rock storage/installation, all grading as necessary to facilitate the work, and regrading to restore the parcel to the original condition following completion of activities.

2. Notices: The Parties agree to the following minimum noticing requirements with respect to use of the Property.

DISTRICT shall provide written or oral notice to Grantor at least forty-eight (48) hours prior to the initial mobilization onto the Property. During periods of active use of the site by DISTRICT, Grantor agrees to notify DISTRICT at least 48 hours prior to any planned activities by Grantor on the site, to allow coordination of the activities and to minimize delays and/or interference with each other.

Notices shall be sent to:

SAN GORGONIO PASS WATER AGENCY
 Lance Eckhart, General Manager/Chief Hydrogeologist
 Ken Falls, Field Operations Manager
 1210 Beaumont Avenue
 Beaumont, CA 92223
 951.845.2577
leckhart@sgpwa.com
kfalls@sgpwa.com

RIVERSIDE COUNTY FLOOD CONTROL
 AND WATER CONSERVATION DISTRICT
 Imad Guirguis, Chief of Operation and Maintenance Division
 1995 Market Street
 Riverside, CA 92501
 951.955.4683
imguirgu@rivco.org

3. Term: The rights granted herein may be exercised by DISTRICT for a period of twenty-four (24) months ("Term") commencing upon the completion of said forty-eight (48) hour notice period for the initial mobilization onto the Property. In no event shall the initial Term exceed twenty-four (24) months from the date set forth below. Extensions of this term beyond 24-months may be granted in 12-month increments upon written approval by both Parties.

4. It is understood that DISTRICT may enter upon Grantor's Property where appropriate or designated for the purpose of attaining access for staging, construction, and maintenance to and from the Temporary Construction Easement Area ("TCE Area"). This access may necessitate temporary removal or relocation of existing fencing, addition of gates, grading of access, or similar measures. DISTRICT agrees to ensure that the site is secured during use to a similar level as exists prior to DISTRICT's use of the Property.
5. Condition upon Expiration: At the termination of the period of use of Grantor's land by DISTRICT but before its relinquishment to Grantor, debris generated by DISTRICT's use will be removed, fencing or other property will be restored, and the surface will be graded to restore the Property, as near as feasible, to the original and neat condition. If DISTRICT desires to continue to maintain flood control structures on the Property following the term of this Agreement, DISTRICT understands that additional agreements or easements will need to be acquired from Grantor.
6. The DISTRICT shall indemnify and hold harmless Grantor and its directors, officers, and employees from and against all liabilities, including, without limitation, all claims, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses and defense costs, including, but not limited to, reasonable attorneys' fees, that arise from any activities performed by DISTRICT within any portion of Grantor's land (collectively, "Claims").

Grantor shall indemnify and hold harmless DISTRICT and its Board of Supervisors, directors, officers, and employees from and against all liabilities, including, without limitation, all claims, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses, and defense costs, including, but not limited to, reasonable attorneys' fees, that arise from any activities performed by Grantor within any portion of the Property (collectively, "Claims").
7. Grantor hereby warrants that they are the owners of the Property described above and that they have the right to grant DISTRICT permission to enter upon and use the Property. Grantor further agrees to indemnify DISTRICT and its respective directors, Board of Supervisors, elected and appointed officials, employees, agents, representatives, successors and assigns from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses, including, without limitation, attorneys' fees, whatsoever arising from or caused in whole or in part, directly or indirectly, by any breach of Grantor's representations, warranties, or covenants provided in this Agreement and by the use of the Property by Grantor.
8. This Agreement is the result of negotiations between the Parties hereto. Each party acknowledges that in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel and has read and understood all the terms and provisions of this Agreement. This Agreement is intended by the Parties as a final expression of their understanding with respect to the matters herein and is a complete and exclusive statement of the terms and conditions thereof. This Agreement shall not be changed, modified, or amended except upon the written consent of the Parties hereto.
9. This Agreement supersedes any and all other prior agreements or understanding, oral or written, in connection therewith.

10. Grantor and their assigns and successors in interest shall be bound by all the terms and conditions contained in this Agreement. Shall Grantor sell the land, Grantor shall no longer be bound by all terms and conditions in this Agreement. The new Grantor shall be bound by all terms and conditions in this Agreement.
11. This Agreement shall be governed by the laws of the State of California. Any action at law or in equity brought by either of the Parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the Parties hereto hereby waive all provisions of law providing for a change of venue of such proceedings to any other county.

[Signature provisions on next page]

This Agreement may be signed in counterpart or duplicate copies and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes. No obligation other than those set forth herein will be required.

Date: _____
(date to be filled in by General Manager-Chief Engineer)

MAILING ADDRESS OF DISTRICT:

1995 Market Street
Riverside, CA 92501

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT,
a body corporate and politic**

By: _____
JASON E. UHLEY
General Manager-Chief Engineer

APPROVED AS TO FORM:
GREGORY P. PRIAMOS
County Counsel

By: _____
WESLEY W. STANFIELD
Deputy County Counsel

MAILING ADDRESS OF GRANTOR:

1210 Beaumont Avenue
Beaumont, CA 92223

GRANTOR:
SAN GORGONIO PASS WATER AGENCY,
a public body, corporate and politic

By: _____

Date: _____

Project: Noble Creek Channel Restoration
Project No. 5-0-00020
APN 404-010-016
02/24/2022
MH:rlp

EXHIBIT "A"

Noble Creek - SGPWA Right of Entry

