

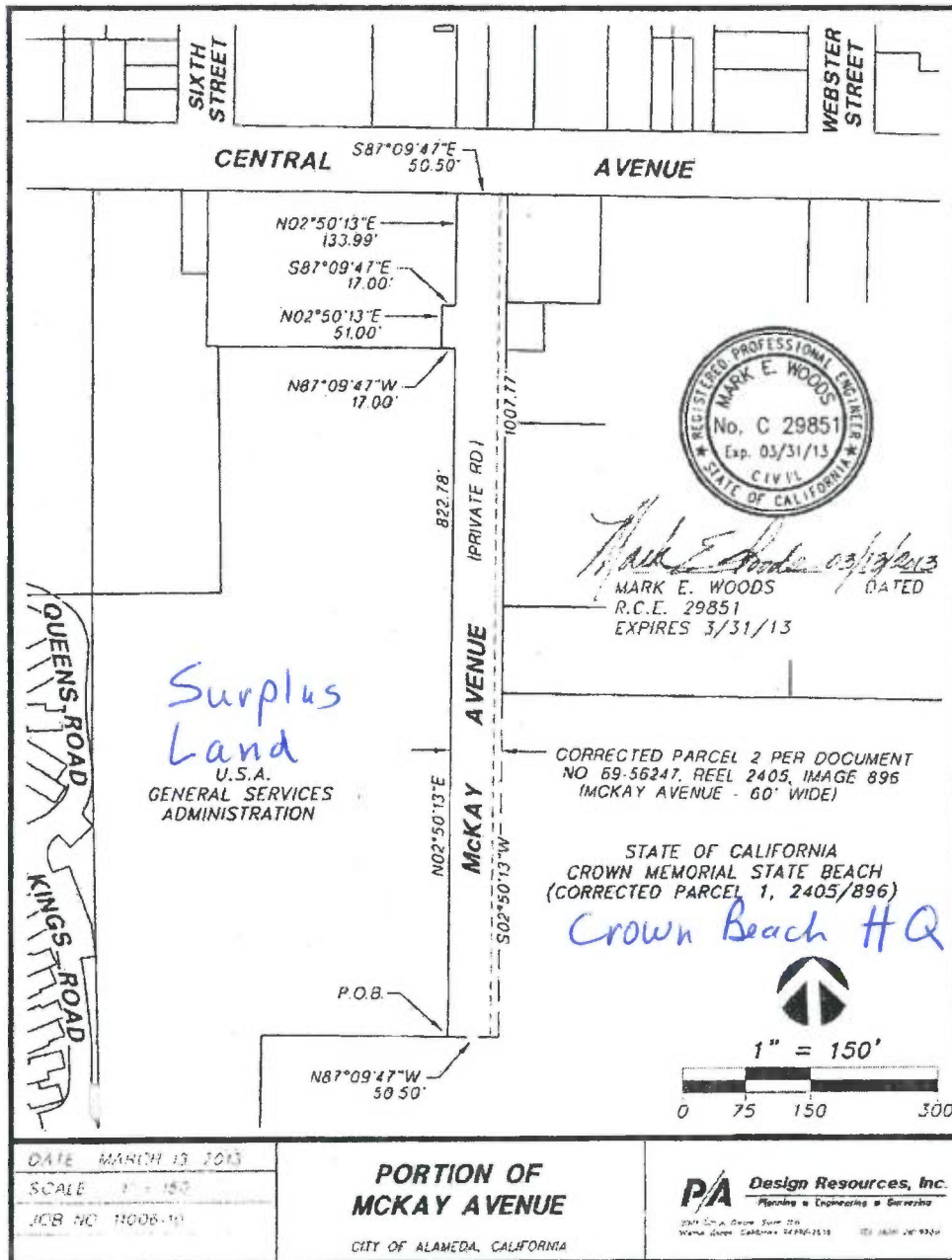
Monday, June 25, 2018

**IRWA Education Conference
Edmonton, AB**

**Avoiding Risk in Part Take Situations –
Drafting Tips for Acquisition Documents**

**Todd A. Amspoker
Price, Postel & Parma LLP
Santa Barbara, CA**

Schedule B
Plans of Property



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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION
19

20 UNITED STATES OF AMERICA,

21 Plaintiff,

22 v.

23 1.41 ACRES OF LAND, more or less,
24 situated in the City of Alameda, Alameda
25 County, State of California, and THE STATE
26 OF CALIFORNIA, acting by and through its
Department of Parks and Recreation, et al.,

27 Defendants.
28

Case No. C 14-1781

DECLARATION OF TAKING

Schedule C
Description of Interests

A. Portion of McKay Avenue: The estate taken in the property described on Schedule A as portion of McKay Avenue is fee simple, together with any appurtenant interests in adjoining property, however:

1. Reserving, for the benefit of the State of California, its successors and assigns the following easements:
 - a. A non-exclusive easement for pedestrian and vehicular ingress and egress over the real property commonly known as "McKay Avenue," as described on Schedule A as portion of McKay Avenue.
 - b. A non-exclusive easement for the operation, repair, maintenance and replacement of the real property and any existing utilities on or under the real property commonly known as "McKay Avenue," as described on Schedule A as portion of McKay Avenue.
 - c. The right to have existing improvements which encroach onto the real property commonly known as "McKay Avenue", as described in Schedule A as portion of McKay Avenue, remain in place for so long as such improvements are maintained in good condition and are safe, as determined by the United States in its reasonable discretion.

2. Reserving for the benefit of each affected utility system operator, an easement for the operation, repair, maintenance and replacement of existing utility facilities, provided that the United States shall have the right to temporarily or permanently relocate such facilities.

3. Subject to the easements of record described as follows:
 - a. Easement for driveway and pedestrian recorded on February 20, 1940, Book 3892, Page 98 of Official Records in favor of Lars Svensgaard, et ux.
 - b. Easement for driveway and pedestrian recorded on May 2, 1940, Book 3906, Page 270 of Official Records in favor of J. Adrian Palmquist.
 - c. Easement for street recorded on January 17, 1961, as Instrument No. AS-6759/Reel 246, Page/ Image 960 of Official Records in favor of Morrison Brothers Improvement Company, a co-partnership consisting of Dean Morrison, general partner; Hunter H. Morrison, general partner; C.G. Morris,

limited partner; and Aura B. Morrison, limited partner.

4. Subject to any existing rights of ingress and egress benefitting adjoining property.

Each of the easements described above is subject to the following provisions:

- a. Each easement is non-exclusive. Use of the easement must not unreasonably interfere with use of the property by the United States, its successors and assigns, and other easement holders and their successors, assigns and invitees.
- b. The United States may designate routes of travel, restrict the areas of the property that are available for each purpose and change the configuration and improvements from time to time.
- c. All users must comply with applicable laws rules and regulations.
- d. In the event use of an easement results in damage to improvements, the easement holder shall promptly restore the improvements.

B. Sidewalk Easement. The estate taken in the property described on Schedule A as Sidewalk Easement, is a nonexclusive easement for pedestrian egress and ingress; and to install, remove, replace, maintain, and operate the sewer, electrical and communications lines in, over, across and under the Sidewalk Easement, together with rights of ingress and egress over and across the Sidewalk Easement to the extent necessary to use this easement; however,

Reserving for the benefit of each affected utility system operator, an easement for the operation, repair, maintain and replacement of existing utility facilities, provided that the United States shall have the right to temporarily or permanently relocate such facilities.

Schedule D

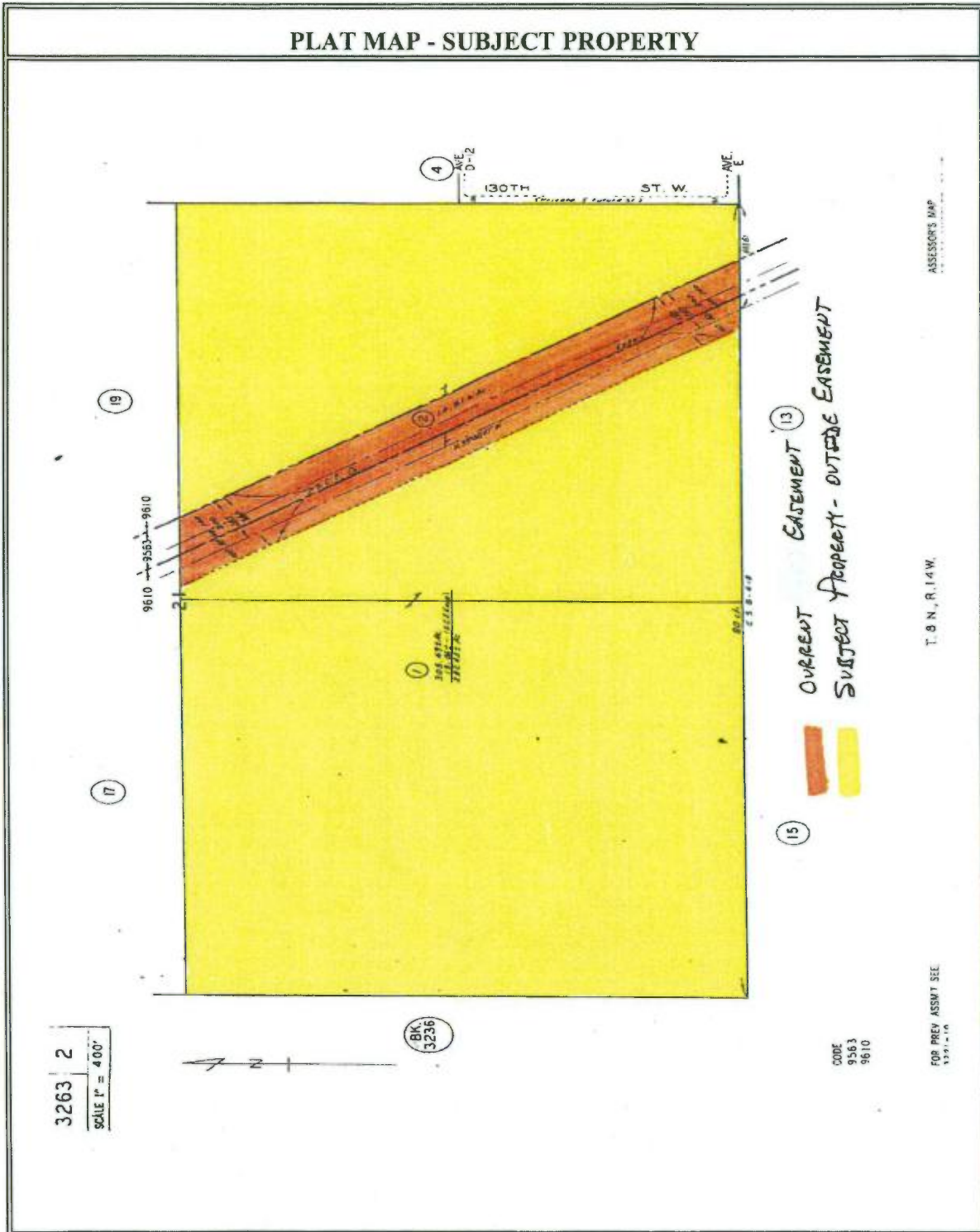
The just compensation for the taking of any and all interests in the subject matter of this action is Ten dollars (\$10.00).

Defendants cite to *United States v. 201.19 Acres*, 478 F.2d 1042, 1046 (9th Cir. 1973), for the contention that a condemnee is entitled to measure just compensation based on the “most injurious use” of the condemned property. The United States argues that decision is inapposite because it did not involve compensation for the cost of a substitute facility, but offers no principled reason that analysis should not apply to a determination of the necessity of a substitute facility. Indeed, as the United States notes in support of its argument on severance damages, discussed below, compensation for the cost of a substitute facility is intended to serve as “an alternative method of compensation that entirely replaces the market value concept.” *United States v. Streets, Alleys and Public Ways in the Village of Stoutsville*, 531 F.2d 882, 884 n.7 (8th Cir. 1976).

Accordingly, this order finds it is appropriate to consider the need for a substitute facility based on the property rights actually condemned, rather than based on an unreliable assumption that the current permissive use will persist in perpetuity. It is true that this could result in a windfall to defendants should the United States or any subsequent owner decline to restrict parking along McKay Avenue, but the converse would result in a windfall for the United States, which easily could have avoided this result by reserving a parking easement for the benefit of defendants.

United States v. 1.41 Acres of Land (N.D. Cal., Aug. 14, 2015, No. C 14-01781 WHA) 2015 WL 4881212, at *3

PLAT MAP - SUBJECT PROPERTY



Power Line Easement Case:

Existing (1971 easement)

Owner reserves the following uses (but not longitudinally along) said right of way strip: all utilities including, but not limited to, underground water pipelines; rights of free access, without limitation, within said right of way strip; farming, grazing, and/or pasture fences; and road access across said right of way strip, provided, however, that the exercise of such rights do not interfere with or endanger the exercise of any of the rights herein granted to [Utility].

Proposed easement

[Utility] has the right to prohibit the building or placing on the Transmission Line Right of Way any building or structure other than roads, underground water pipelines, and farming fences that may be approved in advance by [Utility] in writing, placed perpendicular at 90 degrees across and not longitudinally along the Transmission Line Right of Way. [There is no statement included that Utility must act reasonably in approving crossings.]



EXHIBIT



- ① Construction access along property existing dirt access road through gate at Somis Road to construction area easements.
- ② Construction site access to both ends of working area through the southern portion of property perimeter along existing dirt access road.
- ③ Maintenance site access. Access along property existing dirt access road through gate at Somis Road to area easements.

Calleguas Municipal Water District

TERMS OF EASEMENTS

Salinity Management Pipeline, Phase 2D (Project 508)

The easements to be acquired are defined as follows:

A. A **Permanent Easement** in gross to survey, install, construct, reconstruct, enlarge, lay, alter, operate, patrol, remove, replace, and maintain a water or wastewater conduit, consisting of one or more underground water or wastewater pipelines and related facilities. These related facilities may include but are not limited to markers, air valves, manholes, valves, meters, surge control devices, test stations, buried communication devices, buried electrical conduits and devices, pull boxes, and all related incidents, fixtures, and appurtenances. The markers, test stations, pull boxes, blow off valves, air release valves, manholes, other related facilities, and turnouts may be located above ground or partially above ground. This easement shall be in, over, on, through, within, under, and across the Easement Area of certain real property as described in the accompanying Exhibits A and B.

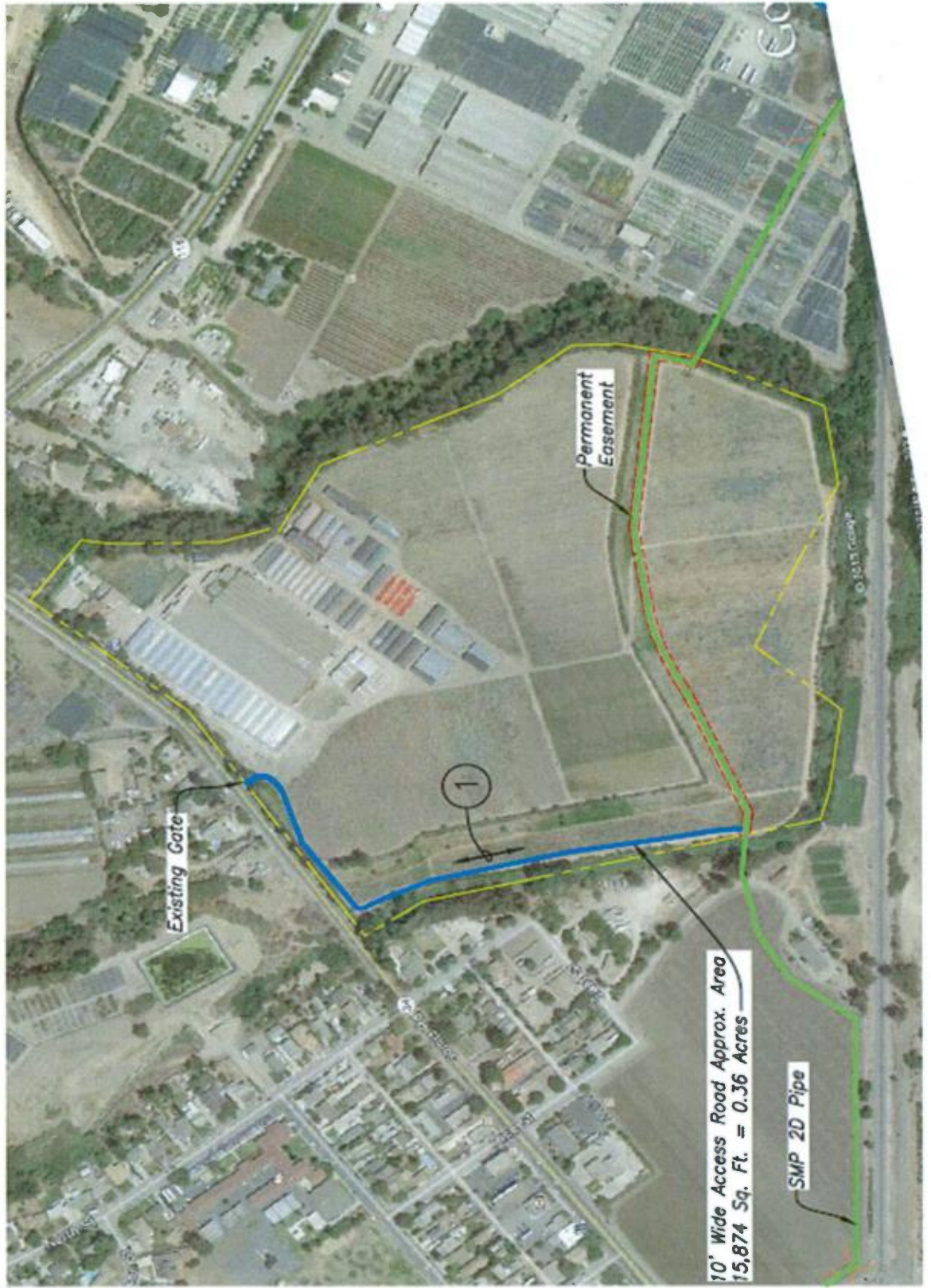
The Permanent Easement described herein shall be SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. The facilities and improvements installed in the Easement Area collectively are referred to herein as "District Facilities." Plans for District Facilities as they exist from time to time shall be maintained at the District's principal offices.

2. District shall have the right of ingress and egress for personnel, vehicles, and construction equipment to, from, and along the Easement Area at any time, without prior notice, including the right to use lanes, drives, rights-of-way, and roadways within the property owner's larger parcels (APN 161-0-040-040 and 161-0-010-190) which now exist or which hereinafter may be constructed, as shall be convenient and necessary for the purpose of exercising the rights herein set forth; provided, however, that nothing herein shall prevent or limit Grantor's rights to close such roadways, lanes, or rights-of-way, and to provide District with comparable alternative access to the Easement Area, as deemed reasonable by the District.

3. As the amount of earth or other fill over its facilities can affect the structural integrity of the District's underground facilities, District shall have the right to maintain the height of earth or other fill over District's underground facilities. Grantor(s) shall not temporarily or permanently modify, or allow others to in any way modify, the ground surface elevation in the Easement Area from the elevation established upon completion of construction of the District's facilities without the District's written consent, which consent shall not be withheld unreasonably. Grantor(s) shall not conduct, or permit others to conduct, grading operations, ripping, stockpiling, or use, or permit others to use, explosives within or proximate to the Easement Area to the extent that District facilities may be damaged.

4. This easement(s) is subject to all existing fencing, canals, irrigation ditches, laterals, pipelines, roads, electrical transmission facilities, and communication lines existing on the date this easement is granted, and all future uses which do not directly or indirectly interfere with or endanger District's exercise of the rights described herein, including the right to use the Easement Area for agricultural purposes excepting vegetation which endangers the integrity of District Facilities; provided, however, that District shall have the right to clear and keep clear from the Easement Area all explosives,



Calleguas Municipal Water District

TERMS OF EASEMENTS

Salinity Management Pipeline, Phase 2D (Project 508)

The easements to be acquired are defined as follows:

A. A **Permanent Easement** in gross to survey, install, construct, reconstruct, enlarge, lay, alter, operate, patrol, remove, replace, and maintain a water or wastewater conduit, consisting of one or more underground water or wastewater pipelines and related facilities. These related facilities may include but are not limited to markers, air valves, manholes, valves, meters, surge control devices, test stations, buried communication devices, buried electrical conduits and devices, pull boxes, and all related incidents, fixtures, and appurtenances. The markers, test stations, pull boxes, blow off valves, air release valves, manholes, other related facilities, and turnouts may be located above ground or partially above ground. This easement shall be in, over, on, through, within, under, and across the Easement Area of certain real property as described in the accompanying Exhibits A and B.

The Permanent Easement described herein shall be SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. The facilities and improvements installed in the Easement Area collectively are referred to herein as "District Facilities." Plans for District Facilities as they exist from time to time shall be maintained at the District's principal offices.

2. District shall have the right of ingress and egress for personnel, vehicles, and construction equipment to, from, and along the Easement Area at any time, without prior notice, along the existing roadway depicted in the accompanying Exhibit F, as shall be convenient and necessary to exercise the rights set forth herein. Nothing herein shall prevent or limit Grantor's rights to close such roadway, and to provide District with comparable alternative access to the Easement Area, as reasonably deemed acceptable by the District.

3. As the amount of earth or other fill over its facilities can affect the structural integrity of the District's underground facilities, District shall have the right to maintain the height of earth or other fill over District's underground facilities. Grantor(s) shall not temporarily or permanently modify, or allow others to in any way modify, the ground surface elevation in the Easement Area from the elevation established upon completion of construction of the District's facilities without the District's written consent, which consent shall not be withheld unreasonably. Grantor(s) shall not conduct, or permit others to conduct, grading operations, ripping, stockpiling, or use, or permit others to use, explosives within or proximate to the Easement Area to the extent that District facilities may be damaged.

4. This easement(s) is subject to all existing fencing, canals, irrigation ditches, laterals, pipelines, roads, electrical transmission facilities, and communication lines existing on the date this easement is granted, and all future uses which do not directly or indirectly interfere with or endanger District's exercise of the rights described herein, including the right to use the Easement Area for agricultural purposes excepting vegetation which endangers the integrity of District Facilities; provided, however, that District shall have the right to clear and keep clear from the Easement Area all explosives, buildings, structures, walls, and other facilities of a permanent nature, and any earth cover or stockpile of material placed without the District's written consent, which interfere with District's use of the Easement

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OUR FILE NUMBER:
22312-00001

February 19, 2016

VIA U.S. MAIL ONLY

John Peterson
Stacy W. Thomsen
Peterson Law Group

19800 MacArthur Boulevard
Irvine, CA 92612

Re: Calleguas Municipal Water District v. Nes, et al.
Ventura Superior Court Case No. 16-2014-00133699-CU-EL-VIA

Dear John and Stacy,

This follows up on our December 11, 2015 letter to you.

As you know, the access easement as condemned in this proceeding states as follows:

District shall have the right of ingress and egress for personnel, vehicles, and construction equipment to, from, and along the Easement Area at any time, without prior notice, including the right to use lanes, drives, rights-of-way, and roadways within the property owner's larger parcels (APN 161-0-040-040 and 161-0-010-190) which now exist or which hereinafter may be constructed, as shall be convenient and necessary for the purpose of exercising the rights herein set forth; provided, however, that nothing herein shall prevent or limit Grantor's rights to close such roadways, lanes, or rights-of-way, and to provide District with comparable alternative access to the Easement Area, as deemed reasonable by the District.

[REDACTED]
[REDACTED]
[REDACTED]
February 19, 2016

Page 2

Based on our discussions with your client at the property several months ago, the District modified its plans so that its main access to the property would be through the side gate, to the west of the main gate for the property. As you know, this access point has worked well for all parties. The District has no interest in having its access be routed between your client's buildings on the property, and obviously your client has no interest in such a route either. It would seem reasonable to us that the parties confirm the current access so that no questions about this will remain in the future. Therefore, the District proposes that the access easement language quoted above be eliminated, and replaced with the following:

District shall have the right of ingress and egress for personnel, vehicles, and construction equipment to, from, and along the Easement Area at any time, without prior notice, along the existing roadway depicted in the accompanying Exhibit F. Nothing herein shall prevent or limit Grantor's rights to close such roadway, and to provide District with comparable alternative access to the Easement Area, as reasonably determined by the District.

Please note that the proposed Exhibit F is enclosed with this letter.

In this eminent domain case, your client has a legal obligation to mitigate his damages. See *Albers v. County of Los Angeles* (1965) 62 Cal.2d 250, 272 (“[T]he general rule is that an owner whose property is being taken or damaged by a public entity is under a duty to take all reasonable steps available to minimize his loss.”)

In the event your client is not willing to formalize the substitution of the access rights proposed in this letter, this letter will constitute evidence of your client's failure to satisfy his duty to mitigate his damages.

I look forward to hearing from you in response to this letter.

Very truly yours,

Todd A. Amspoker
for PRICE, POSTEL & PARMA LLP

TAA:sk
Enclosure

cc: [REDACTED]

**PUBLIC ACCESS, CONSTRUCTION, DRAINAGE, PATROL
AND MAINTENANCE EASEMENT**

Mount Umunhum Limited Partnership

(Mt. Umunhum Road)

A Public Access, Construction, Drainage, Patrol and Maintenance Easement on the following terms:

RECITALS

A. **Mount Umunhum Limited Partnership** ("Owner") is the owner of certain real property situated in the County of Santa Clara, State of California, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference, Assessor's Parcel Numbers 562-04-014, 562-08-011 and 562-08-012 ("the Owner's Parcels").

B. The Midpeninsula Regional Open Space District ("District") is the owner of certain real property situated in Santa Clara County, which is immediately adjacent to the Owner's Parcels and is commonly known as the Sierra Azul Open Space Preserve, as it currently exists or may be expanded in the future, as generally depicted in Exhibit B attached hereto and incorporated herein by this reference (the "District Preserve").

C. District desires to acquire a perpetual, non-exclusive easement in, over, along, and through a portion of Owner's Parcels for District purposes including general public access, drainage, operation, patrol, maintenance, repair, replacement and emergency access, as more particularly described in this document ("Roadway Easement").

D. District also desires to acquire from Owner a perpetual, non-exclusive easement in, over, along, and through a portion of Owner's Parcels for District purposes including storm water drainage, maintenance, repair and replacement of drainage structures ("Drainage Easement").

TERMS OF EASEMENT

1. Public Access, Drainage, Construction, Patrol and Maintenance Easement.

(a) Roadway Easement Scope and Description. A perpetual, non-exclusive easement over a roadway commonly known as Mt. Umunhum Road ("Roadway Easement") as set forth in this Section 1 as appurtenant to the District Preserve as it currently exists or may be expanded in the future for general public access (vehicular driving, hiking, bicycling and equestrian use), drainage, operation, patrol, maintenance, repair, replacement, emergency access, and other related uses in, on, over, along, and through a portion of Owner's Parcels. A legal description and plat map of the Roadway Easement is included in Exhibit C attached hereto and incorporated by this reference.

(b) Drainage Easement Scope and Description. A perpetual, non-exclusive easement in, over, across and through that certain real property described in Exhibit D attached hereto and made a part hereof, for drainage of storm water and construction, operation and maintenance of drainage facilities, including but not limited to culverts, water energy disbursement features and drainage pipelines (“Drainage Easement”). The Roadway Easement and the Drainage Easement will collectively hereinafter be referred to as “the Easements.”

(c) Term. The term of the Easements shall be perpetual as long as the District Preserve is used for public open space and park purposes in accordance with Public Resources Code section 5500 et seq.

(d) Construction. District shall perform and be financially responsible for all construction and upgrade work to Mt. Umunhum Road within the Easements. Such construction and upgrade work shall include, but not be limited to road resurfacing, slope stability, drainage improvements, and safety improvements (“Roadway and Drainage Improvements”).

During construction of the Roadway and Drainage Improvements, Owners shall provide District and/or its contractor with reasonable access to the portions of Owner’s parcels immediately adjacent to the Easements, as are reasonably necessary to allow construction of the Roadway and Drainage Improvements, without further consideration paid. Any damage occurring to Owner’s Parcels as a result of such entry shall be repaired by District and/or its contractor.

For future construction, repair or maintenance of Mt. Umunhum Road within the Easements, Owner shall provide District and/or its contractor with reasonable access to the portions of Owner’s Parcels immediately adjacent to the Easements, as are reasonably necessary to allow the District to repair and maintain the Roadway and Drainage Improvements within the Easements, without further consideration paid.

(e) Installation/Relocation of Fences and Gates. District shall have the right to install new gates within the Roadway Easement, and to remove or relocate any gates existing in the Roadway Easement as of December 9, 2015, with the caveat that District shall take into consideration, and make reasonable efforts to accommodate, any access or security concerns raised by Owner. To assist Owner in addressing access and security issues on Owner’s property, District will construct a gate and associated fencing for Owner’s exclusive use in the location specified in Exhibit E, attached hereto and incorporated by this reference (“Owner’s Gate and Fencing”). Owner’s Gate and Fencing shall consist of 8’ no climb security fencing and gates for the entire 750 ± foot length to protect McQueen Ridge. In association with such work, District shall install 4-inch conduit to relocate the Owner’s existing camera equipment outside of the Easements. See paragraph (j)(1) below. District shall consult with Owner in good faith regarding the design of Owner’s Gate and Fencing. Owner will be solely responsible for maintaining Owner’s Gate and Fencing after its installation. District may replace or upgrade the existing yellow gate (“Gate SA13”) in either its existing location or in an alternate location. The vehicle gate installed by District at Gate SA13 shall be similar to the existing gate at SA08. District shall consult with Owner in good faith regarding the design and location of any replacement or upgrade Gate SA13, but the design and location of Gate SA13 is subject to final approval of District. Owner shall not install any other gate within the Easements. All fencing

and gates along the motor pool fencing installed by District will be constructed of 8' high panels as specified in Exhibit F. The double gate will also have structural framing to match the 8' high panels. District shall also install 6' high no-climb security fencing at the property line of the Dopplar as determined by the District's existing Record of Survey as specified in Exhibit G. All of the work described in this paragraph shall be completed by the District prior to the opening of the summit of Mount Umunhum to the public.

(f) Road Repair and Maintenance. District shall be responsible for repairing and maintaining Mt. Umunhum Road, including the Roadway and Drainage Improvements, within the Easements along with all other District installed improvements within the Easements, such as gates, fencing, slope, drainage and safety improvements, excepting Owner's Gate and Fencing. Any damage occurring to Mt. Umunhum Road caused by Owner or Owner's contractors, agents or invitees' use of said road, however, shall be repaired by Owner.

(g) Operation of Gates. Gate SA13 shall remain open during public use hours established for the public's access to Mt. Umunhum; otherwise, Gate SA13 shall be closed. Owner and/or its tenants or invitees shall have keys allowing Gate SA13 to be opened for access during non-public hours, but Gate SA13 shall be opened during such hours only to allow vehicular passage and shall otherwise be closed and locked. Owner shall have exclusive use of Owner's Gate and Fencing, and District shall not be provided with any keys thereto.

(h) Posting Signs. District shall post a sign at Gate SA13 and at any other driveway intersections within the Roadway Easement, notifying the public that entry onto Owner's private lands off the Easements is strictly forbidden. District will consult with Owner regarding the design and contents of such sign(s), but final approval of the design, content and placement of the sign(s) is subject to the District's approval.

(i) Non-Exclusive Use. The Easements shall be non-exclusive. Any use by Owner of the area within the Roadway Easement (subject to requirements regarding use of Gate SA13 set forth in subsection (g) above and regarding prohibited uses in subsection (j) below) shall not unreasonably interfere with the Easements or their intended purposes.

(j) Non-Permitted Uses.

(1) Owner shall have no right to install or maintain any video, lighting or audio surveillance equipment within the Easements except one light needed at Gate SA13, of a design and installation reasonably agreed by District. District shall reimburse Owner up to \$20,000 to relocate or replace any such equipment now installed within the Roadway Easement. To obtain such reimbursement, Owner shall provide District with itemized written proof of Owner's actual expenses incurred to make such relocation. Owner shall be permitted to retain its existing equipment/cameras and improvements in its current location until such time as determined by District in its sole discretion but in no event past the opening of the summit of Mount Umunhum to the public.

(2) Other than as provided herein, Owner shall not have the right to install any gates, signage or fencing within the Easements without the District's written consent.

(3) The general public shall not be permitted to park any motor vehicles within the Easements (unless under an emergency situation).

2. Requirements of Law. District shall comply with all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes, and executive orders (collectively, "Laws") of all governmental authorities now existing or hereafter created affecting the Easements granted herein, or uses thereof,

3. As-Is Conveyance. District agrees and acknowledges that Owner has made no representations or warranties as to the condition of the area contained in the Easements or its suitability for District's purposes. Neither Owner nor anyone acting for or on behalf of Owner has made any representation, statement, warranty or promise to District concerning the physical aspects or condition of the Easements including, without limitation, conditions of the soil, land use restrictions, existence or non-existence of "Hazardous Materials" or suitability for the purpose for which District plans on using the Easements. District specifically acknowledges that it is acquiring the Easements in their "As-Is" physical condition and "As-Is" state of repair of the Easements. For purposes of this document, "Hazardous Materials" includes, without limitation, any flammable materials, explosive, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended (42 U.S.C. Section 9601, *et seq.*), the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Sections 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. Sections 9601, *et seq.*), and in the regulations promulgated pursuant thereto, or any other similar federal, state or local government law, ordinance, rule or regulation. However, Owner shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or third party claim or demand, relating to potential or actual Hazardous Materials contamination on, in, or under the Easements, including all costs of remediation and clean up, except when such contamination was caused solely by District.

4. Liability and Indemnification.

(a) District will indemnify, defend and hold harmless Owner, and its heirs, successors and assigns, from and against any and all third party claims, demands, damages, actions and causes of action (hereinafter, "Claims"), asserted by any and all third parties, persons or entities including, without limitation those asserted by employees, agents, invitees of District (including members of the general public using Mt. Umunhum Road within the Roadway Easement) or guests of District and its contractors, subcontractors and/or consultants, including without limitation Claims for personal injuries, wrongful death, mental or emotional distress, loss of consortium, damage to real, personal and/or intangible property, and financial, monetary or pecuniary loss or expenses of any kind or character whatsoever, that are or may be caused or contributed to by the construction, reconstruction, maintenance, or use of the Easements by District's contractors, guests or invitees. Excluded from this indemnification are any harms arising from any conduct, physical hazards or dangerous conditions created or actively contributed to by Owner or its business customers, agents, guests or other of its invitees.

(b) Owner will protect, indemnify, defend, and hold District, its officers, directors, employees, volunteers, or agents, harmless from and against any and all loss, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and all costs, disbursements and expense of legal counsel) imposed upon or incurred by or asserted against District caused by or arising from Owner's use of the Roadway Easement.

5. Notice. All notices, demands, consents, requests, approvals, disapprovals, designations or other communications (all of the foregoing hereinafter referred to as "notice") that any Party hereto gives to any other Party shall be in writing and shall be deemed to have been properly given if (a) served personally, or (b) mailed, when deposited with the United States Postal Service within the boundaries of the continental United States for registered or certified delivery, return receipt requested, with postage prepaid, or (c) sent by overnight courier, postage prepaid, in each case addressed to the applicable recipient as follows:

If to Owner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

With a copy to:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

If to District:

Midpeninsula Regional Open Space District
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6. Miscellaneous

(a) Dispute Resolution. The Parties, on behalf of themselves and their respective officers, directors, employees, agents, successors and assigns, agree that if they cannot resolve any dispute or claim between themselves, before resorting to judicial remedy, they will in good faith attempt to resolve any such dispute or claim through non-binding mediation. Mediation shall be initiated by presentation of a statement of dispute, with reasons therefore, to the other party in writing, with a request for mediation. Within 14 days of receipt of the request,

the party receiving the request shall respond to the request and propose a list of experienced and appropriately qualified mediators from which to choose, and a proposed schedule for conducting the mediation promptly to attempt to address the concerns raised.

(b) Captions. The captions of this document are inserted only as a matter of convenience and for reference. They do not define, limit or describe the scope or intent of this document and they shall not affect the interpretation hereof.

(c) Exhibits. Each of the Exhibits referenced in this document is attached hereto and incorporated herein.

(d) Amendment. This document may be amended only by an instrument in writing executed by the Parties hereto or their successors and assigns.

(e) Written Consent Required. Whenever a Party is requested to consent or to approve of any matter with respect to which its consent or approval is required by this document, such consent or approval shall be given in writing.

(f) Further Assurances. The Parties shall execute such further documents and instruments as may reasonably be required from time to time by the other Party to effectuate and carry out the provisions hereof and to take such further actions as may reasonably be required to give the terms hereof full force and effect for the benefit of the Parties.

(g) Attorney's Fees. In the event that either Party shall institute any action or proceeding against any other Party hereto to enforce, interpret or seek damages for breach of any of the terms, provisions or conditions of this document, then the prevailing Party in any such action or proceeding shall be entitled to recover from the other Party the reasonable attorney's fees and costs incurred by the prevailing Party in the prosecution or defense of any such action or proceeding.

(h) Terms Run with the Land. The Easements, terms, covenants and conditions herein contained shall run with the land and be binding upon and inure to the benefit of the successors and assigns of the Parties hereto pursuant to California Civil Code Section 1468.

(i) Severability. If any provision of this document shall to any extent be invalid or unenforceable, the remainder of this document (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this document, unless specifically conditioned upon such invalid or unenforceable provision shall be valid and unenforceable to the fullest extent permitted by law.

(j) Governing Law. This document shall be construed and governed in accordance with the laws of the State of California.

**FEE ACQUISITION OF 40' WIDE STRIP, WITH ACCOMPANYING
RESERVATION/GRANT OF 20' ACCESS EASEMENT**

[REDACTED]

Fee simple title to that certain property more particularly described in Exhibit A attached hereto and made a part hereof.

Reserving and granting to [REDACTED] ("Owner") a perpetual, non-exclusive easement ("Easement") over a roadway commonly known as Mt. Umunhum Road ("Easement") as appurtenant to Assessor's Parcel Numbers 562-04-013, 562-04-014, 562-08-011 and 562-08-012 ("Owner's Parcels") for vehicular and pedestrian access (including contractors, tenants and invitees). A legal description and plat map of the Easement is included in Exhibit B attached hereto and incorporated by this reference. The Easement will be subject to the following terms:

1. Terms of Easement.

(a) Term. The term of the Easements shall be perpetual.

(b) Installation/Relocation of Gates. District shall have the right to install new gates within the Easement, and to remove or relocate any gates existing in the Easement.

(c) Road Repair and Maintenance. District shall be responsible for repairing and maintaining Mt. Umunhum Road within the Easement. Any damage occurring to Mt. Umunhum Road caused by Owner or Owner's contractors, agents or invitees' use of said road, however, shall be repaired by Owner.

(d) Non-Permitted Uses.

(1) Owner shall not have the right to install or maintain any video, lighting or audio surveillance equipment within the Easement.

(2) Owner shall not have the right to install any gates, signage or fencing within the Easement.

2. Requirements of Law. Owner shall comply with all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes, and executive orders (collectively, "Laws") of all governmental authorities now existing or hereafter created affecting the Easement granted herein, or uses thereof.

3. As-Is Conveyance. District makes no representations or warranties as to the condition of the area contained in the Easement. Neither District nor anyone acting for or on behalf of District has made any representation, statement, warranty or promise to Owner concerning the physical aspects or condition of the Easement including, without limitation, conditions of the soil, land use restrictions, existence or non-existence of "Hazardous Materials"

or suitability for the purpose for which Owner plans on using the Easement. For purposes of this Easement, "Hazardous Materials" includes, without limitation, any flammable materials, explosive, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended (42 U.S.C. Section 9601, *et seq.*), the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Sections 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. Sections 9601, *et seq.*), and in the regulations promulgated pursuant thereto, or any other similar federal, state or local government law, ordinance, rule or regulation. However, District shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or third party claim or demand, relating to potential or actual Hazardous Materials contamination on, in, or under the Easement, including all costs of remediation and clean up, except when such contamination was caused solely by Owner.

4. Liability and Indemnification.

(a) Owner will indemnify, defend and hold harmless District, and its successors and assigns, from and against any and all third party claims, demands, damages, actions and causes of action (hereinafter, "Claims"), asserted by any and all third parties, persons or entities including, without limitation those asserted by employees, agents, invitees of Owner or guests of Owner and its contractors, subcontractors and/or consultants, including without limitation claims for personal injuries, wrongful death, mental or emotional distress, loss of consortium, damage to real, personal and/or intangible property, and financial, monetary or pecuniary loss or expenses of any kind or character whatsoever, that are or may be caused or contributed to by the construction, reconstruction, maintenance, or use of the Easement by Owner's contractors, guests or invitees. Excluded from this indemnification are any harms arising from any conduct, physical hazards or dangerous conditions created or actively contributed to by District.

(b) Owner agrees to protect, indemnify, defend, and hold District, its officers, directors, employees, volunteers, or agents, harmless from and against any and all loss, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and all costs, disbursements and expense of legal counsel) imposed upon or incurred by or asserted against District caused by or arising from Owner's use of the Easement.

5. Notice. All notices, demands, consents, requests, approvals, disapprovals, designations or other communications (all of the foregoing hereinafter referred to as "notice") that any Party hereto gives to any other Party shall be in writing and shall be deemed to have been properly given if (a) served personally, or (b) mailed, when deposited with the United States Postal Service within the boundaries of the continental United States for registered or certified delivery, return receipt requested, with postage prepaid, or (c) sent by overnight courier, postage prepaid, in each case addressed to the applicable recipient as follows:

If to District: Midpeninsula Regional Open Space District
[Redacted]
[Redacted]
Attn: Real Property Manager

Telephone: (650) 691-1200
Facsimile: (650) 691-0485

If to Owner:

Mount Linnham Limited Partnership
Attn: Scott McQueen/Randee McQueen
2633 S. Bascom Avenue
Campbell, CA 95008-5635
Telephone: (408) 377-2000
Facsimile: (408) 559-7684

With a copy to:

Logan & Powell, LLP
Attn: Kirsten Powell
15466 Los Gatos Boulevard, Suite 109
Los Gatos, CA 95032
Telephone: (408) 402-9540
Facsimile: (408) 402-8441

6. Miscellaneous

(a) Dispute Resolution. The Parties, on behalf of themselves and their respective officers, directors, employees, agents, successors and assigns, agree that if they cannot resolve any dispute or claim between themselves, before resorting to judicial remedy, they will in good faith attempt to resolve any such dispute or claim through non-binding mediation. Mediation shall be initiated by presentation of a statement of dispute, with reasons therefore, to the other party in writing, with a request for mediation. Within 14 days of receipt of the request, the party receiving the request shall respond to the request and propose a list of experienced and appropriately qualified mediators from which to choose, and a proposed schedule for conducting the mediation promptly to attempt to address the concerns raised.

(b) Captions. The captions of this Easement are inserted only as a matter of convenience and for reference. They do not define, limit or describe the scope or intent of this Easement and they shall not affect the interpretation hereof.

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(d) Amendment. This Easement may be amended only by an instrument in writing executed by the Parties hereto or their successors and assigns.

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(f) Further Assurances. The Parties shall execute such further documents and instruments as may reasonably be required from time to time by the other Party to effectuate and carry out the provisions hereof and to take such further actions as may reasonably be required to give the terms hereof full force and effect for the benefit of the Parties.

(g) Attorney's Fees. In the event that either Party shall institute any action or proceeding against any other Party hereto to enforce, interpret or seek damages for breach of any of the terms, provisions or conditions of this Easement, then the prevailing Party in any such action or proceeding shall be entitled to recover from the other Party the reasonable attorney's fees and costs incurred by the prevailing Party in the prosecution or defense of any such action or proceeding.

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(j) Governing Law. This Easement shall be construed and governed in accordance with the laws of the State of California.

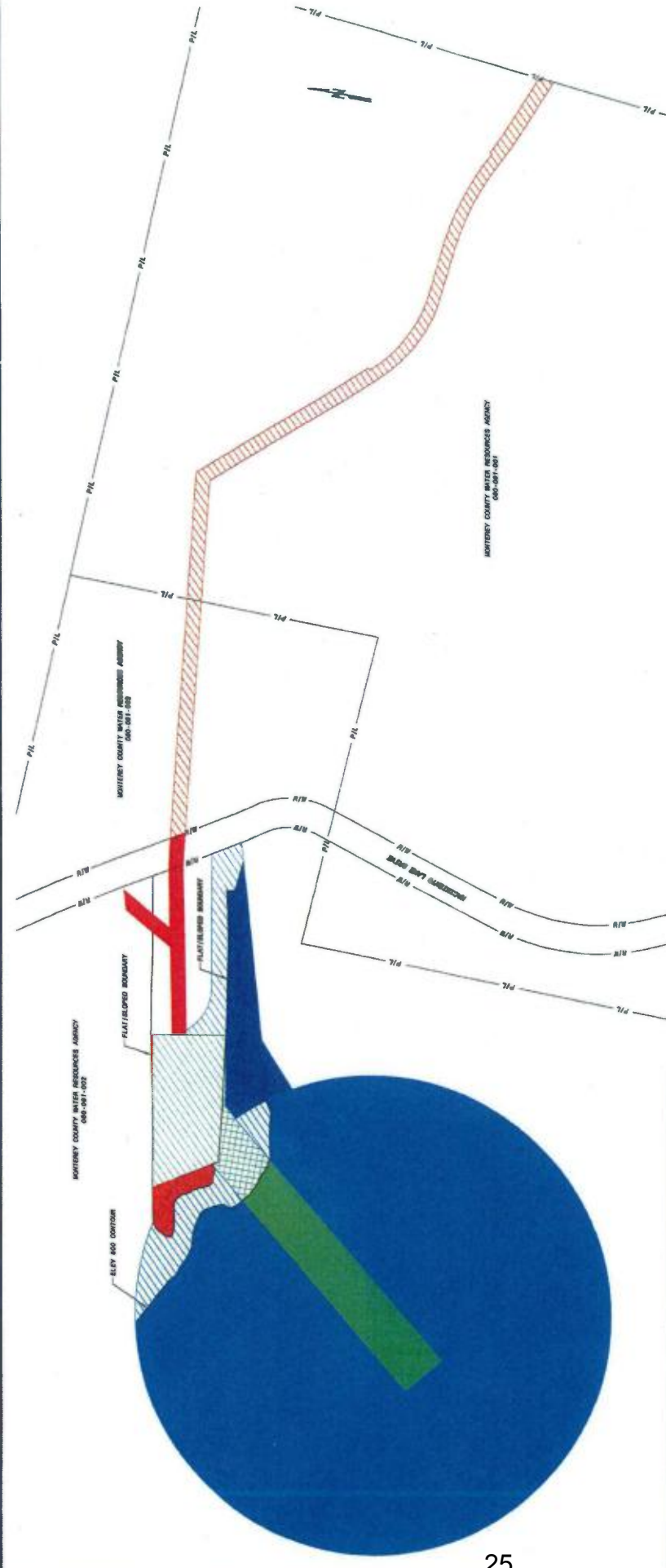


EXHIBIT A

NACIMIENTO WATER PROJECT AREA CALCULATIONS FOR FEE AND EASEMENT ACQUISITIONS ACROSS MONTEREY COUNTY WATER RESOURCES AGENCY PROPERTY

AREA (SF)	AREA (AC)	SYMBOL	DESCRIPTION
686,222 SF	15.75 AC	[Blue solid]	RESERVOIR EASEMENT - BELOW ELEV 800
31,372 SF	0.72 AC	[Blue diagonal lines]	RESERVOIR EASEMENT - ABOVE ELEV 800
53,373 SF	1.20 AC	[Green solid]	FEE PARCEL - SLOPED AREA BELOW ELEV 800
12,845 SF	0.29 AC	[Green diagonal lines]	FEE PARCEL - SLOPED AREA ABOVE ELEV 800
41,742 SF	0.96 AC	[Blue diagonal lines]	FEE PARCEL - FLAT AREA ABOVE ELEV 800
33,802 SF	0.78 AC	[Blue solid]	ACCESS EASEMENT - SLOPED
17,158 SF	0.39 AC	[Blue diagonal lines]	ACCESS EASEMENT - FLAT
16,136 SF	0.37 AC	[Blue solid]	PIPE EASEMENT - FLAT
64,237 SF	1.26 AC	[Red diagonal lines]	PIPE EASEMENT - SLOPED
8,588 SF	0.20 AC	[Red solid]	REMAINDER - NET FLAT AREA



DECEMBER 4, 2008