

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Supervisor Marion Ashley

SUBMITTAL DATE:
April 14, 2011

SUBJECT: Mabee Easement at Bautista Creek Channel

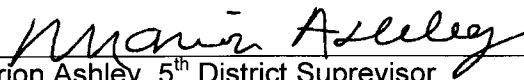
RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve compensation in the amount of \$242,626, based on 1990 certified real estate comparables, to the Mabee's for the loss of easement which directly impacted their access, the ability to subdivide, further develop or sell their property;
2. Approve and direct the Auditor-Controller to make the appropriate budget adjustments

BACKGROUND: The issues surrounding the loss of access to the Mabee property are known by all. However in a final attempt to resolve this issue, you will find in Attachment A, a chronology of what has occurred since 1960. After many meetings with Mr. Mabee, County Counsel, Riverside County Flood Control, and Transportation and Management, I believe that, in a time of rapid expansion and change throughout the County, and the more than 10 year process to alleviate increasing liability for the Bautista Creek Channel, events occurred that resulted in an apparent lack of justice in this case.

The facts are as follows, in 1990, Mr. Mabee filed a lawsuit challenging the Flood Control taking of property/easement. In the judgment dated November 9, 1990, Judge Deissler found that "there was no taking of his property and therefore, no damage issue to be determined by a jury." Subsequent appeal of this decision found that the decision by the trial court was upheld based on the finding that "Riverside County Flood Control and Water Conservation District (the district) developed a plan to secure the Bautista Creek Channel against mounting incidences of unauthorized trespass and vandalism." The plan focused on "the construction of a new road that would provide plaintiffs (Mabee) with an alternate, unobstructed access to their land and allow the Channel to be fenced off."

**REQUIRES
4/5th's VOTE**


Marion Ashley, 5th District Supervisor

BACKGROUND

According to the Appeal Court's finding "The District completed the new road and in May, 1988 dedicated it to the defendants, County of Riverside, for "public road" purposes. It further found that "the plaintiffs' easement was extinguished in May 1988 when the District deeded the new road it had constructed to the County". At issue here is the private road which alleged to provide total access to the Mabee property. The access or lack thereof formed the basis for the second lawsuit.

The second lawsuit filed December 12, 1996, found that a fence installed in 1985 by the District "... precluded direct access from the 15 foot easement to the southern terminus of the private Mabee access easement. It diverted traffic to a location on the Mabee easement northeasterly of the southern terminus to avoid a wash passing through the Mabee easement at its southern terminus and its intersection with the 40 foot easement. The Court further acknowledged Mr. Mabee's claim that he did not have "legal access "because the only means of access to his easement from the public road was to use a twelve foot ramp on Flood District property, with the District's permission." This claim, and the fencing installed in 1985 predates the Appeal Court finding of a public road providing total access to the Mabee property. Although the lack of access confirmed and the appeal found to have merit by the Court, it was barred due to the statute of limitations.

Within 30 days of the finding of the second lawsuit, Mr. Mabee lost his home and the 10 acre parcel connected to it. There are copies of the 27 ads he placed in an attempt to sell his property or any portion thereof in an attempt to retain his home. He has continued to fight for the past 10 years on the issue before us, as he no longer has any legal remedies available to him. It is a matter of record that no easement was ever recorded nor was any settlement ever provided for the loss of easement. While we may hear, anecdotally, that there were ongoing negotiations, all attempts to locate any written settlement offers, counteroffers or rejections have been unsuccessful.

There also has been discussion that any settlement offer at this point in time would be construed as a "gift of public funds" as clarified by County Counsel. The California Constitution (Cal. Const. Art. XVI, sec. 6) states "The term 'gift' includes all appropriations of public money for which there is no authority or enforceable claim even if there is a moral or equitable obligation." However, my position, which is also contained in the same California Constitution holds that "The settlement of a good faith dispute between the state and a private party is an appropriate use of public funds and not a gift because the relinquishment of a colorable legal claim in return for settlement funds is good consideration and establishes a valid public purpose." The fact that this settlement of a good faith dispute has taken 24 years does not alleviate our responsibility and obligation to provide it.

Chronology of Mr. Mabee's Claim

- 5/12/1960 Riverside County Flood Control District initiated action in Superior Court to condemn a portion of Parcel 1 for Bautista Creek Channel. Superior Court Case No. 72010 as recorded in Book 2694, page 316
- 10/7/1964 The Mabees purchased the property on October 7, 1964. Grant Deed was recorded on the same date with instrument no. 121565. The Mabee property is almost one half mile removed from the right of way and therefore needs additional right of way to reach his property.
- 8/9/1965 Riverside County Flood Control grants a non-exclusive private easement for ingress and egress over the 15 foot most immediately adjacent to the Bautista Creek Channel to Raymond and Lola Deichsel; instrument #91932. County Counsel later opines that the Mabees are legitimate successors to this easement right. Significantly, this easement deed states in part: "if at any time a public highway or street shall be extended to the described lands in Section 22 lying easterly of Bautista Creek Channel, this easement shall cease and determine. If at any time this easement shall be intersected by a public highway or public street, the portion of this easement lying north and northwesterly of such intersection shall cease and determine".
- 1985 Barbed wire fence installed. Located on the easterly boundary of the 15 foot easement, away from the Bautista Creek Channel, the fence precluded direct access from the 15 foot easement to the southern terminus of the private Mabee access easement. This fence had openings for access of easement; however it restrictive.
- 5/12/1988 Flood Control District built a 40 foot road adjacent to the 15 foot easement and dedicated it to the county of Riverside in May 1988, which thereafter accepted this dedication and extinguished the Mabee's easement.
- 1987-1988 Mabee's wrote several letters to grand juries and made complaints about the fence blocking their easement.
- 11/27/1989 Riverside County Flood Control and Water Conservation District granted to the county of Riverside an easement for public road and drainage purposes a strip of land 40 feet in width, concentric with the centerline of Bautista Creek within section 18, 21 and 22 of Township 5 south, Range 1 east of San Bernardino Base and Meridian. **Access road within this easement was not constructed to County Road and Improvement Standards pursuant to Ordinance 461 and not accepted into the County Maintained Road System.**
- 1989 Barbed wire fence was replaced without openings across Bautista Channel improvements (construction of the 40 foot road). After the construction of this fence, the Mabees could not reach the southwest terminus of their

Chronology of Mr. Mabee's Claim

easement where it intersected with the 40 foot public road. The only access to this easement was to follow a diversion created by Flood Control District across its property to a point on his easement northerly of its southern terminus. Claimed that since they have to pass over Flood Control District property there is no legal access to their easement.

- 11/27/1990 Mr. Mabee took the case to superior court and there was a finding that: no "taking" of Mr. Mabee's property/easement by County of Riverside and Flood Control and Water Conservation District. No damage issue to be determined by the jury.
- 12/13/1990 Lake Hemet Municipal Water District still remains the owner of the easement and never relinquished any of its rights.
- 10/25/1991 Appeal from first case in November of 1990, confirmed all of the findings in the first case. Denied a motion for a new trial because case was not filed in a timely manner, also the newly discovered evidence could have been discovered by anyone and therefore was not contingent in the case.
- 1992 Mabees want to divide their land and can't do so because there is not adequate road access as defined by law
- 1993 It was acknowledged that Mr. Mabee would lack access to his property per a described easement that intersects a 40 foot road dedicated to and accepted by the Riverside County Transportation Department. **Although practical and physical access was never impaired the construction MAY HAVE IMPEDED YOUR 'LEGAL' ACCESS TO THE DEDICATED ROAD.**
- 10/3/1995 Easement Deed given to Mr. and Mrs. Mabee: joint tenants a non-exclusive easement for ingress and egress over the real property in the County of Riverside, State of California as described as Parcel 4030-500A; Easement has never been recorded.
- 1/10/1997 Court finds that the Mabee's property was obstructed, stating "**the barbed wire fence was originally installed in 1985. It was located on the easterly boundary of the 15 foot easement, away from the Bautista Creek Channel. That fence precluded direct access from the 15 foot easement to the southern terminus of the private Mabee access easement (000327, page 2, #5).**" The court's determination was that the statute of limitations is application to the alleged damages to plaintiff's easement.
- 12/28/2010 Letter from Riverside County Flood Control verifying that, after a thorough search of records, the easement deed was never recorded.

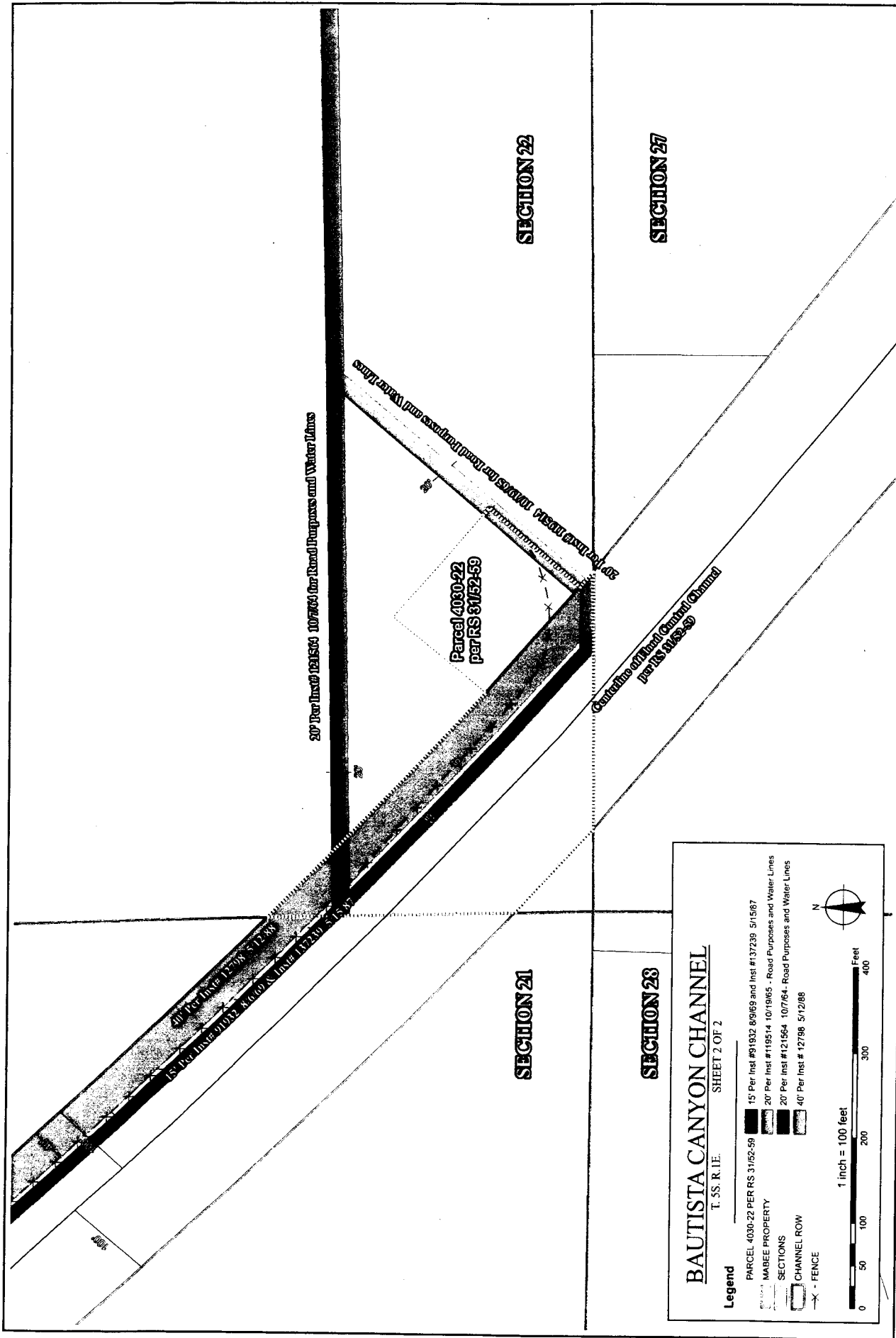
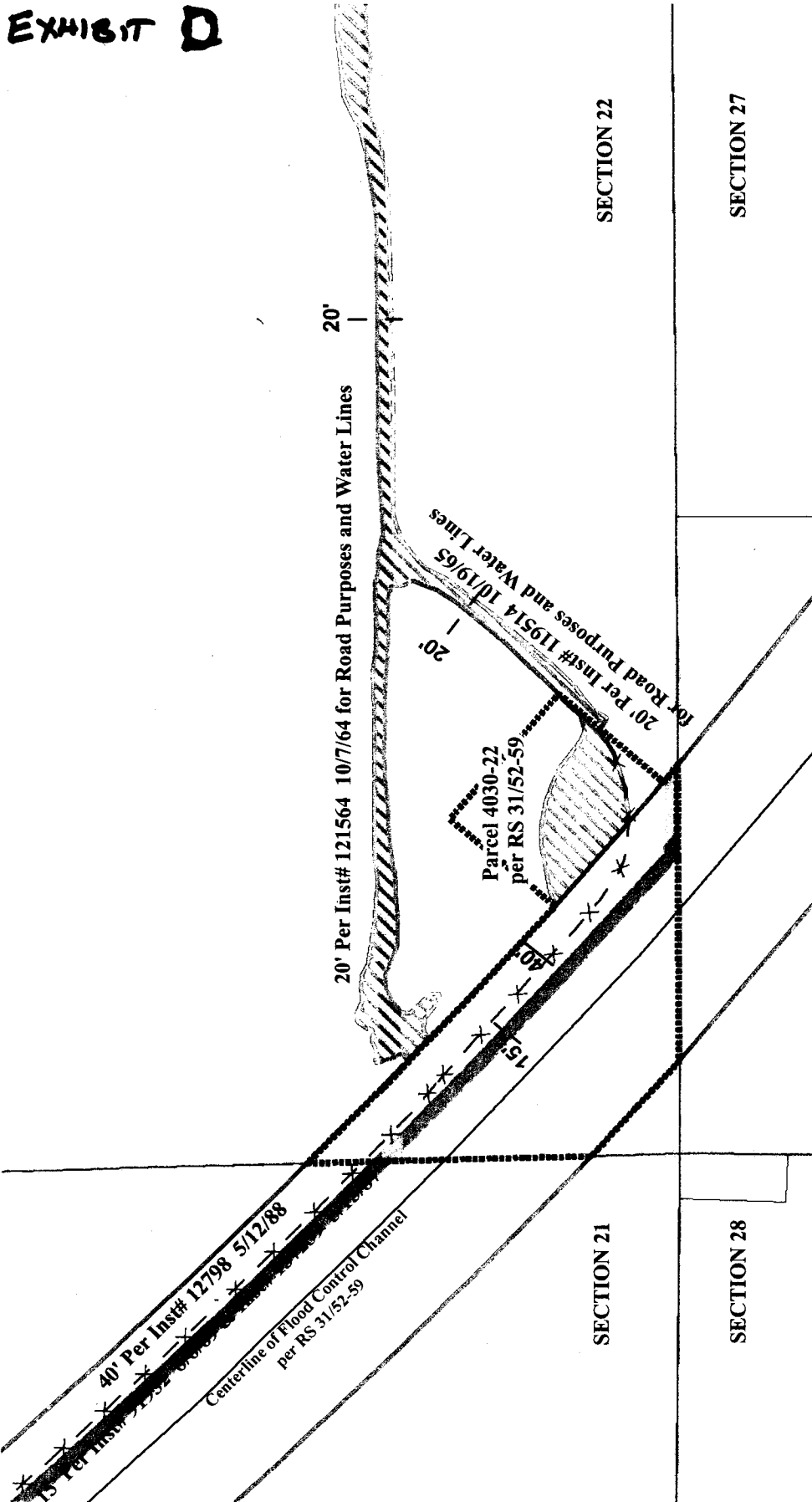


EXHIBIT D



BAUTISTA CANYON CHANNEL

T. 5S. R. 1E.

Legend



PARCEL 4030-22 PER RS 31/52-59

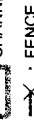


TRAVELED WAY

SECTIONS



CHANNEL ROW



FENCE

