

FORM APPROVED COUNTY COUNSEL
 BY: *G.P.P.* 8/4/15
 GREGORY P. PRIAMOS
 DATE

**SUBMITTAL TO THE FLOOD CONTROL AND
 WATER CONSERVATION DISTRICT BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

907 B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
 September 1, 2015

SUBJECT: Approve License Agreement for Day Creek Channel, Stage 4, Project No. 1-0-00250
 (Encroachment Permit No. 1-0-00250-3643); District 2 [\$/N/A]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the License Agreement between the District and Jurupa Area Recreation and Park District (JARPD);
2. Authorize the Chairman to execute the Agreement documents on behalf of the District; and
3. Authorize the General Manager-Chief Engineer to terminate the Agreement at his sole discretion.

BACKGROUND:

Summary

This Agreement sets forth the terms and conditions by which District will allow the JARPD to construct, inspect, operate and maintain a pedestrian bridge spanning the District's Day Creek Channel.

Continued on Page 2

P8/171728
 AMR:rip

for *Mark A. Williams*
 WARREN D. WILLIAMS
 General Manager-Chief Engineer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	

SOURCE OF FUNDS:	Budget Adjustment: No
	For Fiscal Year: N/A

C.E.O. RECOMMENDATION:

APPROVE
 BY: *Steven C. Horn*
 Steven C. Horn

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.:

District: 2nd

Agenda Number:

11-6

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT
BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FORM 11: Approve License Agreement for Day Creek Channel, Stage 4, Project No. 1-0-00250
(Encroachment Permit No. 1-0-00250-3643); District 2 [\$N/A]

DATE: September 1, 2015

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

The bridge will not conflict with the Channel's primary function or the District's continuing operation and maintenance of the facilities. The District, in accordance with the terms of the Agreement, will license the dual use of the right of way to the JARPD.

County Counsel has approved the Agreement as to legal form, and the JARPD has executed the Agreement.

Impact on Residents and Businesses

The principal beneficiaries are the future residents of the tract.

SUPPLEMENTAL:

Additional Fiscal Information

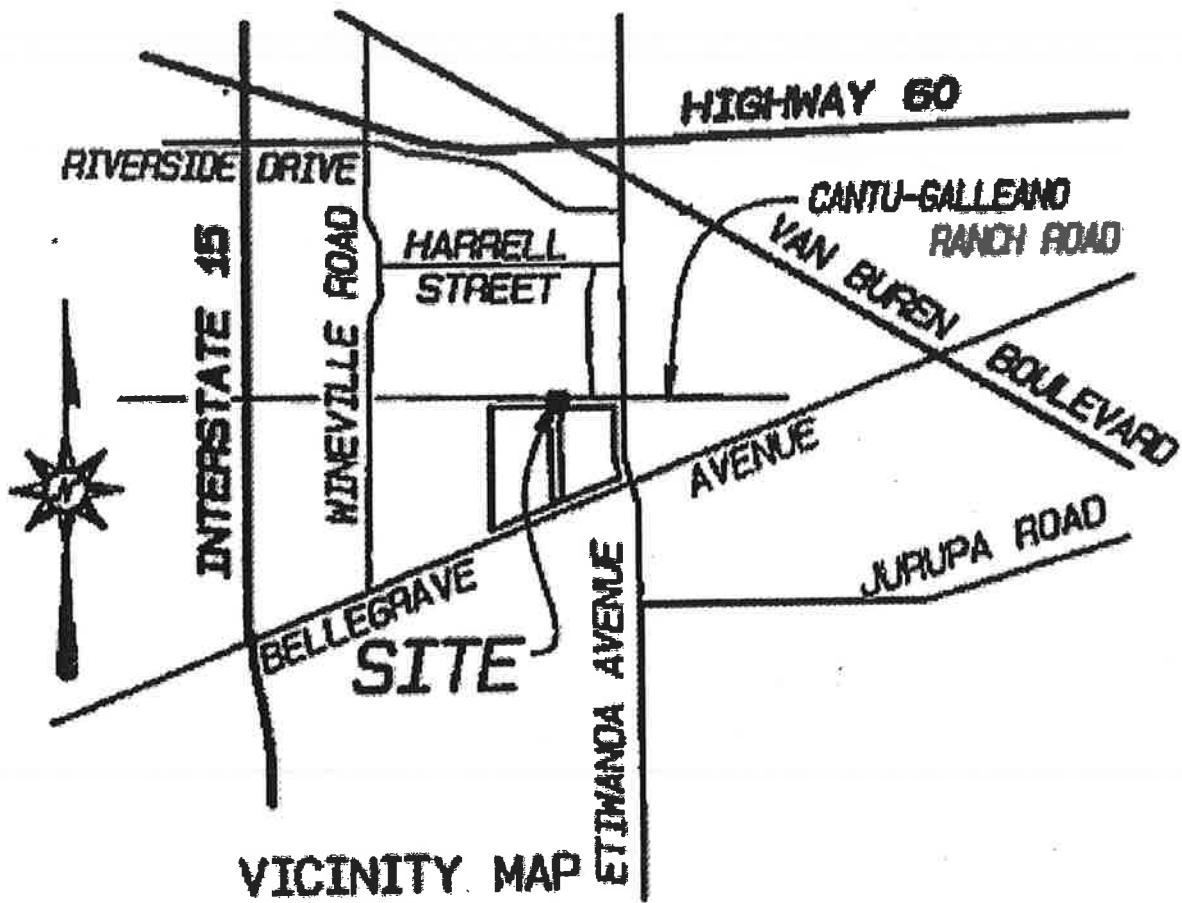
All construction, inspection, operation and maintenance costs associated with the public use components will be borne by the JARPD. The operation and maintenance of the existing flood control facility will continue to be a District responsibility.

ATTACHMENT:

1. Vicinity Map
2. License Agreement

P8/171728

AMR:rlp



VICINITY MAP
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LICENSE AGREEMENT
Day Creek Channel, Stage 4
Project No. 1-0-00250
Encroachment Permit No. 1-0-00250-3643

The Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT", and the Jurupa Area Recreation and Park District, hereinafter called "PARK DISTRICT", hereby agree as follows:

RECITALS

A. DISTRICT operates and maintains Day Creek Channel, Stage 4 (Project No. 1-0-00250), hereinafter called "CHANNEL", principally located in the city of Jurupa Valley; and

B. CHANNEL is located within DISTRICT'S existing right of way identified as District Parcel Number 1250-1A, hereinafter called "CHANNEL RIGHT OF WAY" as shown in concept cross-hatched in blue on Exhibit "A" attached hereto and made a part hereof. CHANNEL RIGHT OF WAY constitutes a reach of CHANNEL; and

C. CHANNEL is an essential and integral part of DISTRICT'S regional system of stormwater management infrastructure that provides critical flood control and drainage to the area; however, the flood control function of CHANNEL is sporadic in nature. Therefore, construction and operation of BRIDGE may be accommodated within CHANNEL RIGHT OF WAY to the extent that such uses do not unreasonably interfere with CHANNEL'S principal function or DISTRICT'S ability to operate and maintain CHANNEL; and

D. PARK DISTRICT desires to construct, or cause to be constructed, operate and maintain a certain pedestrian bridge and ancillary structures spanning CHANNEL RIGHT OF WAY, hereinafter called "BRIDGE" as shown in concept outlined in green on Exhibit "B" attached hereto and made a part hereof; and

1 E. PARK DISTRICT will act as the sole Lead Agency pursuant to the
2 California Environmental Quality Act (CEQA). As such, PARK DISTRICT will have the
3 corresponding responsibility to fulfill the obligations of a CEQA Lead Agency with respect to
4 BRIDGE; and

5
6 F. Subject to the provisions of this License Agreement, DISTRICT is willing
7 to (i) allow PARK DISTRICT to cause the construction of BRIDGE within CHANNEL RIGHT
8 OF WAY and (ii) allow PARK DISTRICT to operate and maintain said BRIDGE for public
9 convenience; and

10 G. In accordance with the provisions of this License Agreement, PARK
11 DISTRICT is willing to (i) prepare, or cause to be prepared, plans and specifications for
12 BRIDGE and submit to DISTRICT for its review and approval, cause the (ii) construction,
13 inspection, operation and maintenance BRIDGE at no cost to DISTRICT, and (iii) indemnify and
14 hold DISTRICT harmless from any claims arising from public's use of BRIDGE or PARK'S
15 DISTRICT responsibilities in connection therewith or the condition thereof; and

16
17 H. It is in the public interest to proceed with this Agreement.

18 NOW, THEREFORE, the parties hereto mutually agree as follows:

19
20 SECTION I

21 PARK DISTRICT shall:

22 1. Pursuant to CEQA, assume Lead Agency role and responsibility for
23 preparation, circulation and adoption of all necessary and appropriate CEQA documents
24 pertaining to construction, operation and maintenance of BRIDGE.

25 2. Prepare or cause to be prepared, plans and specifications for BRIDGE,
26 hereinafter together called "IMPROVEMENT PLANS", and submit to DISTRICT for review
27 and approval.
28

1 3. Pay all costs associated with preparation of IMPROVEMENT PLANS and
2 DISTRICT'S review and approval thereof.

3 4. Pay all costs associated with DISTRICT'S preparation and administration
4 of this License Agreement.

5 5. Obtain an encroachment permit from DISTRICT, pursuant to its rules and
6 regulations and comply with all provisions set forth therein, prior to commencing construction of
7 BRIDGE or any other improvements within CHANNEL RIGHT OF WAY.

8 6. Furnish DISTRICT with copies of all permits, approvals or agreements as
9 may be required by any federal, state or local resource and/or regulatory agencies for the
10 construction, operation and maintenance of BRIDGE. Such documents, hereinafter called
11 "REGULATORY PERMITS", include but are not limited to those issued by the U.S. Fish and
12 Wildlife Service, U.S. Army Corps of Engineers, California Regional Water Quality Control
13 Board, California Department of Fish and Wildlife, the State Water Resources Control Board
14 and Western Riverside County Regional Conservation Authority.

15 7. Assume sole responsibility for compliance with the requirements of all
16 REGULATORY PERMITS, including any amendments thereto, pertaining to the construction,
17 operation and maintenance of BRIDGE.

18 8. Ensure that REGULATORY PERMITS, including any subsequent renewal
19 or amendments thereto, will not (i) impede DISTRICT'S ability to perform all necessary
20 operation and maintenance activities for CHANNEL as determined by DISTRICT, or (ii) include
21 any stipulations that would result in additional mitigation obligations being placed upon
22 DISTRICT for maintenance operations within CHANNEL'S right of way.

23 9. Cause BRIDGE to be constructed, in accordance with IMPROVEMENT
24 PLANS approved by DISTRICT, and pay all costs associated therewith.
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1 10. Not permit any change to, or modification of, DISTRICT permitted
2 IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT.

3 11. Assume sole responsibility for the design, construction, operation and
4 maintenance of BRIDGE, including all necessary modifications, repairs, corrections or
5 temporary removal as deemed necessary by DISTRICT for the continuing function,
6 reconstruction, repair or operation and maintenance of CHANNEL.

7 12. Within CHANNEL RIGHT OF WAY, (i) assume sole responsibility for the
8 operation and maintenance of all PARK DISTRICT constructed improvements, including but not
9 limited to, performing all necessary repairs and the routine removal of trash and debris
10 associated with public use of BRIDGE and CHANNEL RIGHT OF WAY, and (ii) assume all
11 liability associated with the public use of BRIDGE and CHANNEL RIGHT OF WAY including
12 claims of third persons for injury or death or damage to property. Said obligation shall not
13 include any inverse condemnation liability of DISTRICT by reason of the location of
14 CHANNEL or BRIDGE improvements thereto unless such liability is the result of PARK
15 DISTRICT'S operations or use of the property by the public pursuant to PARK DISTRICT'S
16 actual or tacit consent.

17 13. Ensure the safety of the public who may utilize BRIDGE by conducting
18 periodic safety inspections and promptly making repairs that are necessary to safeguard the
19 public and its use thereof.

20 14. Promptly repair any damage to CHANNEL resulting from PARK
21 DISTRICT'S use of CHANNEL RIGHT OF WAY under the license granted herein unless such
22 damage is caused by flooding, or is the result of DISTRICT'S customary operation, maintenance
23 or improvements to its facilities located therein.

1 15. Waive any claim against DISTRICT for damages to BRIDGE resulting
2 from DISTRICT'S customary operation and maintenance activities performed within CHANNEL
3 RIGHT OF WAY, including any natural calamity, act of God, or any cause or conditions beyond
4 the control of DISTRICT, save and except damages resulting from DISTRICT'S active
5 negligence or willful misconduct.
6

7 16. Immediately remove, upon written request by DISTRICT'S General
8 Manager-Chief Engineer, any improvements and/or equipment not previously approved by
9 DISTRICT or cease use where PARK DISTRICT has installed any such improvements and/or
10 equipment or PARK DISTRICT has used or allowed use of BRIDGE in a manner which, in the
11 sole opinion of DISTRICT'S General Manager-Chief Engineer, would be detrimental to the
12 operation of CHANNEL.
13

14 17. Indemnify and hold harmless DISTRICT (including its directors, officers,
15 Board of Supervisors, elected and appointed officials, agents, employees, representatives,
16 independent contractors, and subcontractors) from any liability whatsoever, based or asserted
17 upon any act or omission of PARK DISTRICT (including its officers, agents, employees,
18 subcontractors, independent contractors, guests and invitees), arising from, related to or in any
19 manner connected with PARK DISTRICT'S use and responsibilities in connection therewith of
20 CHANNEL RIGHT OF WAY or the condition thereof, including but not limited to property
21 damage, bodily injury, or death or any other element of any kind or nature whatsoever. PARK
22 DISTRICT shall defend, at its sole expense, all costs and fees including but not limited to,
23 attorneys' fees, cost of investigation, defense and settlements or awards, DISTRICT (including
24 its directors, officers, Board of Supervisors, elected and appointed officials, agents, employees,
25 representatives, independent contractors, and subcontractors) in any claim or legal action based
26 upon such alleged acts or omissions.
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SECTION II

DISTRICT shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA.

2. Review, comment and approve, as appropriate, IMPROVEMENT PLANS prior to the start of BRIDGE construction.

3. Review, comment and approve, as appropriate on all REGULATORY PERMITS, including any subsequent renewal or amendments thereto, prior to final execution or acceptance by PARK DISTRICT.

4. Upon DISTRICT approval of IMPROVEMENT PLANS and REGULATORY PERMITS, issue an encroachment permit to PARK DISTRICT for the construction, operation and maintenance of BRIDGE in accordance with DISTRICT approved IMPROVEMENT PLANS and subject to the provisions set forth in DISTRICT'S encroachment permit.

5. Grant PARK DISTRICT a license to operate and maintain BRIDGE within CHANNEL RIGHT OF WAY, provided that PARK DISTRICT'S activities do not, in any way whatsoever, impair CHANNEL'S primary flood control purpose and function or otherwise interfere with DISTRICT'S ability to operate, maintain, repair or reconstruct CHANNEL or any of its appurtenant works. Said license may be revoked by DISTRICT in the event that said uses unduly compromise CHANNEL'S primary flood control purpose and function or interfere with DISTRICT'S ability to operate and maintain CHANNEL.

6. Provide PARK DISTRICT with written notice of (i) any non-compatible use or condition that is not in conformity with the provisions of this License Agreement, or (ii) any condition which, in the sole opinion of DISTRICT'S General Manager-Chief Engineer,

1 could adversely affect the primary flood control function of CHANNEL or DISTRICT'S ability
2 to operate and maintain CHANNEL, and grant PARK DISTRICT ten (10) days from and after
3 such notice to correct any such nonconforming use or condition.
4

5 7. Assume no responsibility, obligation, or liability whatsoever, for (i) the
6 design, construction, inspection, operation and maintenance of BRIDGE, or (ii) PARK
7 DISTRICT'S public's use of CHANNEL RIGHT OF WAY as granted herein, unless done so
8 expressly in writing approved by both parties as an amendment or addendum to this Agreement.
9

10 SECTION III

11 It is further mutually agreed:

12 1. DISTRICT reserves the right to terminate this License Agreement and any
13 encroachment permit issued thereto, if for any reason whatsoever, DISTRICT determines that
14 PARK DISTRICT'S or public's use of BRIDGE is not compatible with CHANNEL'S primary
15 flood control purpose or function.
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17 2. BRIDGE shall, at all times, remain sole ownership and exclusive
18 responsibility of PARK DISTRICT. Nothing herein shall be construed as creating any obligation
19 or responsibility on the part of DISTRICT to operate, maintain or warranty BRIDGE.
20

21 3. Except as otherwise provided herein, all construction work associated with
22 BRIDGE shall be inspected by PARK DISTRICT and shall not be deemed complete until
23 approved and accepted as complete by PARK DISTRICT.
24

25 4. DISTRICT personnel may observe and inspect all work being done on
26 BRIDGE. It is further mutually agreed by the parties hereto that any quality control comments
27 shall be provided to PARK DISTRICT personnel who, as BRIDGE construction contract
28 administrator, shall be solely responsible for all official communications with its construction
contractor(s).

1 5. Any waiver by DISTRICT or by PARK DISTRICT of any breach of any
2 one or more of the terms of this License Agreement shall not be construed to be a waiver of any
3 subsequent or other breach of the same or of any other term hereof. Failure on the part of
4 DISTRICT or PARK DISTRICT to require exact, full and complete compliance with any terms
5 of this License Agreement shall not be construed as in any manner changing the terms hereof, or
6 stopping DISTRICT or PARK DISTRICT from enforcement hereof.

8 6. If any provision in this License Agreement is held by a court of competent
9 jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless
10 continue in full force without being impaired or invalidated in any way.

11 7. This License Agreement is to be construed in accordance with the laws of
12 the State of California.

13 8. Any and all notices sent or required to be sent to the parties of this License
14 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

16 RIVERSIDE COUNTY FLOOD CONTROL	JURUPA AREA RECREATION AND
17 AND WATER CONSERVATION DISTRICT	PARK DISTRICT
18 1995 Market Street	4810 Pedley Road
Riverside, CA 92501	Jurupa Valley, CA 92509
Attn: Operations and Maintenance Division	Attn: Dan Rodriguez
	General Manager

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20 9. Any action at law or in equity brought by any of the parties hereto for the
21 purpose of enforcing a right or rights provided for by this License Agreement, shall be tried in a
22 court of competent jurisdiction in the County of Riverside, State of California, and the parties
23 hereto waive all provisions of law providing for a change of venue in such proceedings to any
24 other county.

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26 10. This License Agreement is the result of negotiations between the parties
27 hereto and the advice and assistance of their respective counsel. The fact that this License
28 Agreement was prepared as a matter of convenience by DISTRICT shall have no import or

1 significance. Any uncertainty or ambiguity in this License Agreement shall not be construed
2 against DISTRICT because DISTRICT prepared this License Agreement in its final form.

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4 11. This License Agreement is intended by the parties hereto as a final
5 expression of their understanding with respect to the subject matter hereof and as a complete and
6 exclusive statement of the terms and conditions thereof and supersedes any and all prior and
7 contemporaneous agreements and understandings, oral or written, in connection therewith. This
8 License Agreement may be changed or modified only upon the written consent of the parties
9 hereto.

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IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

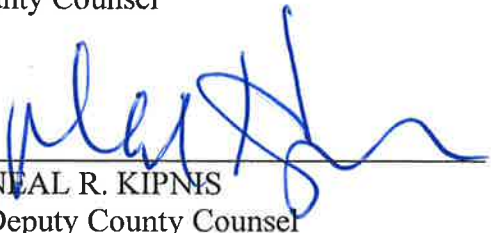
By _____
MARION ASHLEY, Chairman
Board of Supervisors, Riverside County Flood
Control and Water Conservation District

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By 
NEAL R. KIPNIS
Deputy County Counsel

By _____
Deputy

(SEAL)

Day Creek Channel, Stage 4
Project No. 1-0-00250 (EP No. 3643)
License Agreement w/Jurupa Area Recreation and Park District

AMR:rlp
07/27/15

**JURUPA AREA RECREATION
AND PARK DISTRICT**

By: *Dan Rodriguez*
DAN RODRIGUEZ
General Manager

ATTEST:

By: *Janita Voss*

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Day Creek Channel, Stage 4
Project No. 1-0-00250 (EP No. 3643)
License Agreement w/Jurupa Area Recreation and Park District

AMR:rlp
07/27/15

Exhibit A

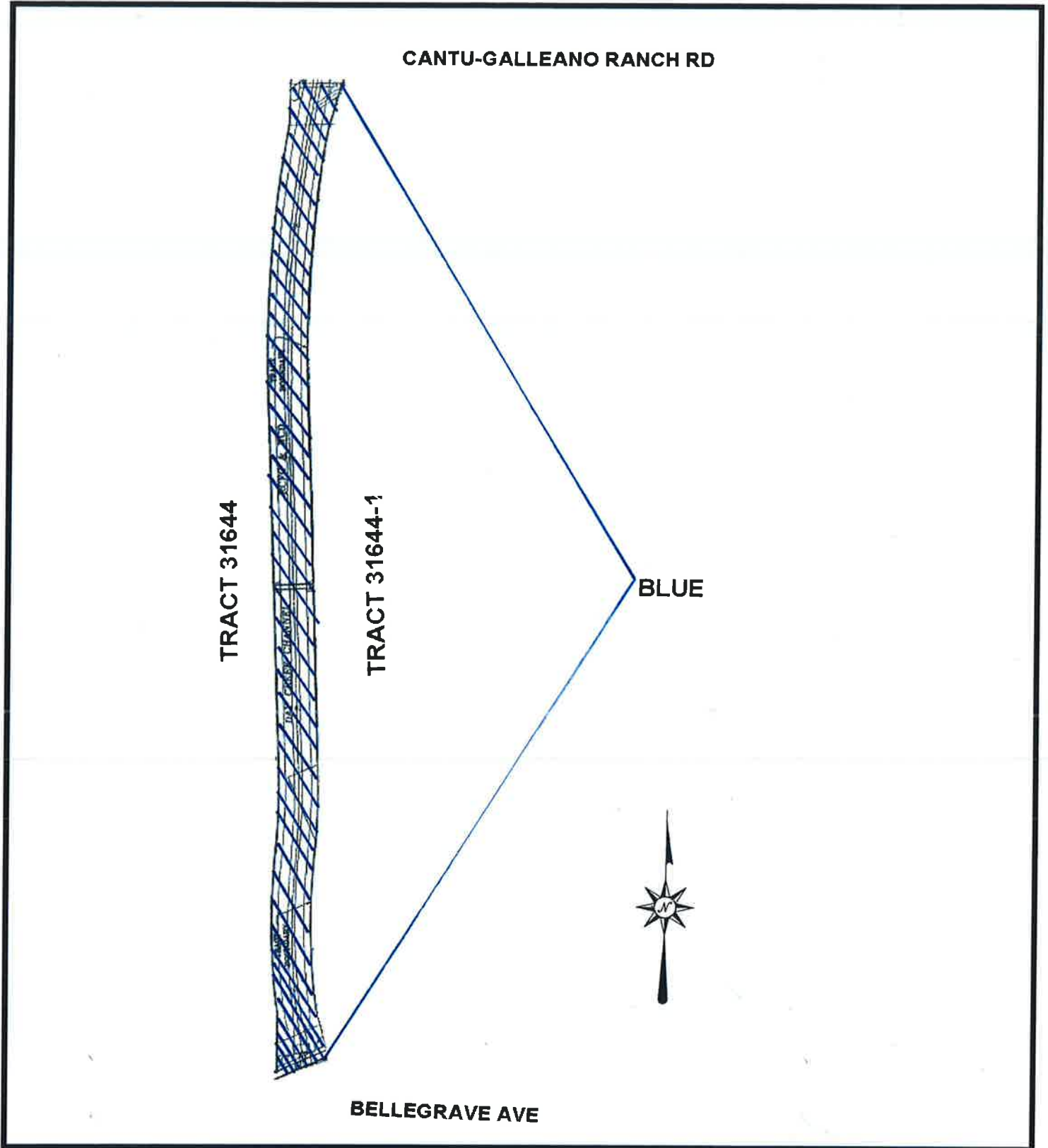


Exhibit B

