

MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



9.15

During the oral communication section of the agenda for Tuesday, May 4, 2010, Robert Mabee read his statement into the record.

**ATTACHMENTS FILED WITH
CLERK OF THE BOARD**

**AGENDA NO.
9.15**



COUNTY OF RIVERSIDE

TRANSPORTATION AND LAND MANAGEMENT AGENCY



Juan C. Perez, P.E., T.E.
Director of Transportation

Transportation Department

April 29, 2010

Mr. Robert Mabee
3086 Miguel St.
Riverside, CA 92506

Dear Mr. Mabee,

We met on December 14, 2009 and February 3, 2010 to discuss your various concerns regarding Bautista Canyon Channel and Flood Control's involvement with the channel and levee and the public road right-of-way adjacent to it. As county maintained roads fall under the authority of the Transportation Department, I am limiting this letter to the issues you raised that are related to the road right-of-way, which is actually an easement for public use. I have reviewed copies of numerous letters and documents that you brought to our meeting. I have also reviewed a letter dated April 8, 2010 from Lake Hemet Municipal Water District (LHMWD), at your request, and a letter dated March 17, 2010 from Mr. Livingston of the County's Risk Management Division.

Firstly, you indicated that you want the Transportation Department to enforce the removal of all encroachments within the road right-of-way along the section from Fairview Avenue to the southerly limit of the easement under the authority of Section 1480.5 of the Streets and Highways code which states "*The road commissioner may immediately remove, or by notice may require the removal of, any of the following encroachments: (a) An encroachment which obstructs or prevents the use of a county highway by the public.*" By definition under Section 941 of the Streets and Highways code, of which a copy was provided to you at the meeting, a *county highway* is one that has been accepted into the county maintained road system. Since the road in question has not been accepted into the county maintained road system, and is therefore not a county highway, the Transportation Department has no authority to enforce the removal of encroachments within the right-of-way. This has been explained in more detail in the letter from Mr. Livingston. I should also note that Ordinance 499, our Encroachment Permit Ordinance, also only applies to county highways.

Secondly, you indicated that the 40' wide road easement that Flood Control granted to the County by instrument number 127298, recorded May 12, 1988, is inferior to the prior 15' wide private easements as it does not provide adequate access to the properties. The 40' easement is essentially adjacent to the 15' private easements and follows essentially the same alignment providing access to the properties.

Submitted by Robert Mabee

5-4-10 Item Oral
(date)

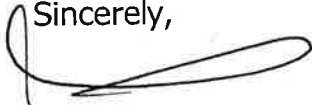
Mr. Robert Mabee
April 29, 2010
Page 2 of 2

Although as stated above the easement is not a county highway subject to the Department's jurisdiction, as a courtesy I conducted a field review of the easement on March 8, 2010. The dirt easement is quite drivable for a good distance southeast of Fairview. Although there is a LHMWD facility that creates a narrowing of the usable area for a few feet, there is sufficient room for a vehicle to go around it. It appears that there is hardly any traffic to speak of using this easement; in the hour or so that I was there I witnessed one other vehicle using a portion of it. As was stated in the letter from LHMWD and in previous documents that you have provided, LHMWD's use and rights to their facilities go back over 100 years and predate the creation of easements for public access. The Transportation Department has not received any complaints from any of the adjacent property owners concerning access to their properties that I am aware of.

Lastly, you indicated that the intersection of the road easement and Fairview Avenue does not comply with the requirements of Riverside County Ordinance 460. Ordinance 460 governs the subdivision of land and does not apply in this situation since the road easement was not created through the subdivision process.

In summary, the road easement in question is not part of the county maintained road system and therefore, the Transportation Department does not have the authority to have obstructions removed or expend gas tax dollars on the operation or maintenance of the road. This concludes our review of this issue.

Sincerely,



Juan C. Perez
Director of Transportation

Cc: Tom Wagoner, LHMWD
Steve Thomas, Riverside County Flood Control District
Ken Teich, County Surveyor
Kent Livingston, Risk Management

AFTER RECORDING RETURN TO:
RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
P. O. BOX 1033, RIVERSIDE, CALIFORNIA

Project 4030
Bautista Creek Channel

RECEIVED FOR RECORD

AUG 9 1965

15
Kiw O. Smith
Contracted

Recorded in Official Records
of Riverside County, California

W.O. Deitch

PLS 8 878

AUG. 9. 1965

[]

91932

EASEMENT DEED

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT hereby grants to RAYMOND DEICHSEL, JR. and LOLA H. DEICHSEL a non-exclusive private easement for ingress and egress over the land in the County of Riverside, State of California, described as:

The northeasterly 15.00 feet of the southwesterly 155.00 feet of that certain 200-foot wide right of way as shown on Record of Survey filed April 14, 1960, in Record of Survey Book 31, pages 52-59, inclusive, records of Riverside County, California, between the easterly right of way line of Fairview Avenue and the south line of Section 22, Township 5 South, Range 1 East, S.B.B. & M; together with an easement 15.00 feet in width northerly of, adjacent to, and parallel with the south line of said Section 22, extending from the easterly line of the above-described easement to the easterly line of Parcel 4030-22 as shown on Record of Survey filed April 14, 1960, in Record of Survey Book 31, pages 52-59, records of Riverside County, California.

This easement is granted pursuant to the contract between the parties, dated April 16, 1961, which provides that District shall grant to Deichsels this easement for ingress and egress to Deichsels landlocked remainder described as the South half of the South half of Section 22, Township 5 South, Range 1 East, S.B.B. & M; Excepting therefrom the Southeast quarter of the Southeast quarter of the Southeast quarter of said Section

AUG. 9. 1965

91932

This easement is subordinate to the rights of the District to construct, maintain and operate Bautista Creek Channel. 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.

Dated August 9, 1965

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By [Signature] Chairman

State of California) : ss. County of Riverside)

On August 9, 1965, before me personally appeared William E. Jones known to me to be the Chairman of the Board of Supervisors of Riverside County Flood Control and Water Conservation District and the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that said District executed the same.

DONALD D. SULLIVAN, County Clerk

By [Signature] Deputy

(EAL)

FREE RECORDING

This instrument is for the benefit of Riverside County Flood Control and Water Conservation District and is subject to be recorded.

CERTIFICATE of ACCEPTANCE
(Government Code Section 27201)

THIS IS TO CERTIFY that the interest in real property conveyed to the County of Riverside, State of California, by the within instrument, is hereby accepted for the purpose of vesting title in the County of Riverside by the undersigned on behalf of the Board of Supervisors pursuant to the authority conveyed by Resolution No. 06-194 of the Board of Supervisors adopted May 13, 1986 and the grantee consents to the recordation thereof by its duly authorized officer.

This certificate of acceptance does not constitute acceptance of any road into the county maintained system pursuant to Section 941 of the Streets & Highways Code.

Dated: 5-11-88

County of Riverside

By Larry D. Smith
Larry D. Smith
Road Commissioner and County Surveyor

THIS INSTRUMENT IS FOR THE BENEFIT OF THE COUNTY OF RIVERSIDE AND ENTITLED TO BE RECORDED WITHOUT FEE (GOV CODE 6103)

FOR RECORDER'S USE

RETURN TO RIVERSIDE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

127298

RECEIVED FOR RECORD AT 2:00 O'CLOCK P.M.

MAY 12 1988

Filed in Official Records of Riverside County, California

William L. Smith
Recorder
Fees: _____

EASEMENT

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Grant(s) to the County of Riverside an easement for public road and drainage purposes, including public utility and public services purposes, over, upon, across, and within the real property in the County of Riverside, State of California, described as follows:

Parcel 4030-500 -

Being a portion of Sections 16, 21 and 22, Township 5 South, Range 1 East, San Bernardino Base and Meridian, lying within all or parts of Parcels 4030-16, 4030-17, 4030-17B, 4030-19A, 4030-20, 4030-21A and 4030-22 as shown on Record of Survey, Book 31, Pages 52-59, inclusive, Records of Riverside County, California, described as follows:

A strip of land 40 foot in width measured at right angles, lying Easterly of, parallel and concentric with a line which lies 60 feet Easterly of, parallel and concentric with the centerline of Bautista Creek as shown on said Record of Survey.

The side lines of said 40 foot wide strip of land shall be prolonged or shortened so as to terminate at the Northerly end with the Easterly right of way of Fairview Avenue and terminate at the Southerly end with the Southerly line of Section 22.

Grantor understands that the herein described road shall not become part of the county maintained road system until accepted by subsequent resolution of the Board of Supervisors pursuant to Section 941 of the Street and Highways Code.

157/298

DATED APR 12 1998

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: *Melba Dunlap*
Chairman

State of California)
) ss.
County of Riverside)

On April 12, 1998, before me personally appeared Melba Dunlap known to me to be the Chairman of the Board of Supervisors of Riverside County Flood Control and Water Conservation District and the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that said District executed the same.

GERALD A. MALONEY, County Clerk

By: *Gerald A. Maloney*
Deputy

(SEAL)

By the Certificate of Acceptance printed on the face of the Easement grant and signed by the Riverside County Road Commissioner, the easement was accepted for the purpose of vesting title in the County of Riverside on behalf of the public for public road and utility purposes. At that point, it became a public road regardless of whether it was accepted into the county-maintained system of roads.

"A dedication may be defined as devotion of land to public use (e.g. public streets . . .) by an unequivocal act of the fee owner

The "Certificate of Acceptance" on the Easement instrument reads as follows:

***CERTIFICATE OF ACCEPTANCE
(Government Code Section 27281)**

THIS IS TO CERTIFY that the interest in real property conveyed to the County of Riverside, State of California, by the within instrument, is hereby accepted for the purpose of vesting title in the County of Riverside by the undersigned on behalf of the Board of Supervisors pursuant to the authority conveyed by Resolution No. 86-194 of the Board of Supervisors adopted May 13, 1986 and the grantee consents to the recordation thereof by its duly authorized officer.

This certificate of acceptance does not constitute acceptance of any road into the county maintained system pursuant to Section 941 of the Street & Highways Code."

manifesting an intent that the land shall be accepted and used for the public purpose. [Citation.]" (1 Ogden's Revised California Real Property Law (1974) § 4.10, p. 125.)

"When streets have been offered for dedication and there has been an acceptance of the offer[,] they are public streets subject to public control as to their opening, continued use or closure . . . Brick v. Cazaux, 9 Cal.2d 549 (1937)." (47 Ops.Cal.Atty Gen. 191, 194 (1966).)

MEMORANDUM

RIVERSIDE COUNTY COUNSEL



May 1, 2008

TO: Pamela J. Walls, Assistant County Counsel
FROM: Linda M. Hernandez, Paralegal II
RE: Statute of Limitations on Public Nuisance

Pursuant to your request, I have researched the statute of limitations on a public nuisance as it relates to both public entities and private individuals.

Pursuant to *Govt Code* §26528, the DA may bring a civil action in the name of the people of the State of California if he is directed to do so by the Board of Supervisors. *Govt Code* §26529 authorizes County Counsel to bring civil actions in counties where there is an appointed County Counsel. *Civil Code* §3490 provides that there is no statute of limitations on a public nuisance (i.e. there is no prescriptive right). It has been construed to mean that the statute of limitations is not a defense if the action is brought by a public agency (*Mangini v. Aerojet-General Corp.*, (1991) 230 Cal.App.3d 1125). However, if a private person wants to bring an action on a public nuisance, then the statute of limitations is be found in *CCP* §338(b).

Beck Development Co., Inc. vs. Southern Pacific Transportation Co., 44 Cal.App.4th 1160 (1996) clearly states:

“While there is no statute of limitations in an action brought by a public entity to abate a public nuisance, there is a three-year statute of limitations in a nuisance action brought by a private party.”

CA Civil Code §3479 indicates that “if a nuisance is of such a character (i.e. blocking a road) that it will presumably continue indefinitely, then it is considered permanent and the statute of limitations runs from the time the nuisance is created.”

Chapter 6

OBSTRUCTIONS AND INJURIES TO COUNTY HIGHWAYS

Section

- 1480. Definitions.
- 1480.5. Authority to remove encroachments.
- 1481. Notice to remove encroachment.
- 1482. Service of notice; contents.
- 1483. Penalty for noncompliance; summary removal.
- 1484. Action for abatement of encroachment; penalty.
- 1485. Removal of encroachment at owner's expense; penalty.
- 1486. Gates; approval by board of supervisors; liability for leaving gate open or riding over adjoining ground.
- 1487. Injury to highway by water; penalty; misdemeanor.
- 1488. Water seepage and overflow; repair of injury to highway.
- 1489. Construction of bridge over ditch crossing highway.
- 1490. County bridge over irrigation ditch.
- 1491. Wilful injury to county bridge; misdemeanor; liability for damage.
- 1492. Wilful removal or injury to guide-post; penalty; misdemeanor.
- 1493. Notice to remove obstruction falling on highway; liability for expense of removal; penalty.
- 1494. Cut down tree falling on highway; penalty for failure to remove.
- 1495. Malicious injury to highway trees; penalty.
- 1496. Action for recovery of penalties; disposition.

Cross References

Public nuisance, see Civil Code § 3490 et seq; Code of Civil Procedure § 731 et seq.

Library References

- Highways § 153 et seq.
- WESTLAW Topic No. 200.
- C.J.S. Highways § 217 et seq.

§ 1480. Definitions

As used in this chapter:

(a) The term "highway" includes all or any part of the entire width of right of way of a county highway, whether or not such entire area is actually used for highway purposes.

(b) The term "encroachment" includes any structure or object of any kind or character placed, without the authority of law, either in, under or over any county highway.

(Stats.1935, c. 29, p. 337, § 1480.)

Code Commission Notes

The provisions included in this chapter seem properly to relate to county highways because they were adopted before there was any State highway system and because their enforcement is placed with the county road commissioners. The last proviso of Pol.C. § 2737 is by its terms applicable to all highways and will be codified subsequently with other penal provisions relating to highways generally.

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Ch. 6

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Cross References

County highway, defined, see § 25.

Library References

Word and Phrases (Perm.Ed.)

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Notes of Decisions

- General 1
- Encroachment 2
- Obstruction of highway 3
- Rights of public 4

In general

Person doing road work under lawful permit has right to use road in performance of his contract, and is not trespasser. *Jones v. Hedges* (1932) 12 P.2d 111, 123 C.A. 742.

Authority to do road work relieves negligent contractor of imputation of trespassing, and makes him chargeable with negligence only. *Id.*

Use of public highway for storing merchandise is not use thereof as public easement, but trespass. *Coburn v. Ames* (1877) 52 C. 385, 1 San F.L.J. 99, 28 Am.R. 634.

2. Encroachment

Provision of Streets and Highways Code allowing removal of "encroachment" at owner's expense did not provide express statutory authorization for county to recover public expenditures for abatement of public nuisance resulting from civil disobedience in protest of proposed nuclear power plants which included blocking of access roads. *San Luis Obispo County v. Abalone Alliance* (App. 2 Dist.1986) 223 Cal.Rptr. 846, 178 C.A.3d 848.

3. Obstruction of highway

Since adjoining landowner admitted continuing legal existence of county road, there was no legal right to construct gates across it or in any other way impede public use and such obstruction constituted a public nuisance. *Tucker v. Watkins* (1967) 59 Cal.Rptr. 453, 251 C.A.2d 327.

In determining whether maintenance of structure or obstruction on public roadway is

inconsistent with public's full enjoyment of right of way, owner of fee is deemed to possess no greater rights than strangers to title. *People v. Henderson* (1948) 194 P.2d 91, 85 C.A.2d 653.

Eaves and rafters of garage, projecting into alley at height between five and six feet above ground, did constitute obstruction in nature of "public nuisance". *Curtis v. Kastner* (1934) 30 P.2d 26, 220 C. 185.

Person obstructing highway unlawfully is trespasser, and, where engaged in unlawful act, may be chargeable with creating nuisance. *Jones v. Hedges* (1932) 12 P.2d 111, 123 C.A. 742.

Temporary obstruction in course of authorized road work is not "nuisance," notwithstanding, through failure to provide protection for public, some one is injured. *Id.*

An obstruction of a public highway is a nuisance, even though it may also be declared a nuisance by a municipal ordinance. *Western States Gas & Electric Co. v. Bayside Lumber Co.* (1920) 187 P. 735, 182 C. 140.

No argument of convenience nor of necessity justifies an unauthorized obstruction with free use by the public of a highway, but such obstruction can be based only on legal right. *City of Sacramento v. Pacific Gas & Electric Co.* (1917) 161 P. 978, 173 C. 787.

An obstruction in a highway is a public nuisance. *Lewiston Turnpike Co. v. Shasta & Weaverville Wagon Road Co.* (1871) 41 C. 562.

4. Rights of public

The primary purpose of a highway is the passing and repassing of the public, which is entitled to the full unobstructed and uninterrupted enjoyment of entire width of layout for that purpose. *Ex parte Bodkin* (1948) 194 P.2d 588, 86 C.A.2d 208.

§ 1480.5. Authority to remove encroachments

The road commissioner may immediately remove, or by notice may require the removal of, any of the following encroachments:

- (a) An encroachment which obstructs or prevents the use of a county highway by the public.

Ch. 6

A private owner of land has no right to join the obstruction of a road unless he can show access thereto over some lawful way, and the federal government has no other or greater rights. *U.S. v. Rindge* (D.C.1913) 208 F. 611.

A private citizen may maintain injunction to prevent the obstruction of a public highway if by reason thereof he sustains a special injury not suffered by the public. *Sherwood v. Ahart* (1917) 169 P. 240, 35 C.A. 84.

An action to abate an obstruction in the public highway is properly brought in the name of the road commissioner. *Hall v. Kauffman* (1895) 39 P. 756, 106 C. 451.

The owner of land which extends only to the margin of a street cannot maintain an action for a nuisance caused by the obstruction of the street, without showing special damage. *Hogan v. Central Pac. R. Co.* (1886) 11 P. 876, 71 C. 83.

To entitle a party to damages for obstructing a highway, he must show that he has suffered special damage, different, not merely in degree, but in kind, from that suffered by the community at large. *Bigley v. Nunan* (1879) 53 C. 403, 3 P.C.L.J. 116.

The owner of the fee of the land over which a public road has been established may, if he suffers special damage from an obstruction of the same beyond that suffered by the public, maintain an action for damages and to abate the nuisance. *Coburn v. Ames* (1877) 52 C. 385, 1 San F.L.J. 99, 28 Am.R. 634.

The facts that parties who seek to restrain a contemplated nuisance caused by obstructing a public road own lands fronting on the road, and have no other means of access to their lands except over and along the road, do not show such special damages, in addition to that sustained by the public, as entitles them to the relief sought. *Aram v. Schallenberger* (1871) 41 C. 449.

4. Tolls

Toll gate erected on public highway may be abated as nuisance. *El Dorado County v. Davison* (1866) 30 C. 520, 1 P.L.M.Pt. 2, 31.

5. Ejectment

Where an electric lighting corporation unlawfully erects and maintains its poles and wires on a public highway in which the public has only an easement, ejectment is a proper remedy in an action by the owner of the adjoining land to prevent such unlawful use of the highway. *Gurnsey v. Northern California Power Co.* (1908) 94 P. 858, 7 C.A. 534.

Assuming it to be necessary where defendant relies on a franchise to justify possession, in an action of ejectment, to show that he is complying with the terms thereof, where defendant alleged that it was granted a franchise to erect poles and string electric wires thereon along the county highway, and erected its lines on the highway to furnish electricity to the towns along the highway, and is now, and has for a long time been, engaged in furnishing electric power and light to persons along such highway, it sufficiently avers a compliance with the franchise. *Id.*

6. Actions, in general

In action to abate structure on public roadway as nuisance, fact that structure is off traveled part of highway or that sufficient areas remain to allow public use of right of way in accustomed manner is no defense. *People v. Henderson* (1948) 194 P.2d 91, 85 C.A.2d 653.

The district attorney may prosecute an action to abate the construction and maintenance of an earth embankment on a public highway. *People v. Power* (1918) 175 P. 803, 38 C.A. 181.

No action lies under these sections for an alleged encroachment on land claimed as a highway, which was erected before the highway was laid out. *Smith v. Talbot* (1888) 18 P. 795, 77 C. 16.

7. Recovery

Under Pol.C. § 2734, as amended in 1883 (repealed. Now, this section), requiring a road overseer to commence action to abate, as a nuisance, a highway obstruction, and authorizing him to recover \$10 for each day the nuisance remains after notice, such penalty, when recovered, belongs to the road district, and not to the overseer personally. *Bailey v. Dale* (1886) 11 P. 804, 71 C. 34.

§ 1485. Removal of encroachment at owner's expense; penalty

If the encroachment is not denied, but is not removed within five days from and after service or posting of the notice, the road commissioner may remove the encroachment at the expense of the owner or occupant of the land, or the person causing, owning or controlling the encroachment. The commissioner may recover from such owner, occupant or person, in an action brought in the name of the county for that purpose, the commissioner's court costs and the expense of removal and also a penalty of ten dollars for each day the

Forms:

- Am Jur Legal Forms 2d, Nuisances §§ 188:1 et seq.
- Am Jur Pl & Pr Forms (Rev ed) Highways, Streets, and Bridges Forms 1 et seq., 221 et seq., 481 et seq., Nuisances Forms 1 et seq.

Proof of Facts:

- Wrongful interference with right of way. 32 Am Jur Proof of Facts 2d 389.
- Machinery as attractive nuisance. 33 Am Jur Proof of Facts 2d 611.

Annotations:

- When statute of limitations begins to run as to cause of action for nuisance based on air pollution. 19 ALR4th 456.
- Liability for damage to land or its occupants from dust, gasses, odors, vibration, or the like, occasioned by defendant's continuous vehicular use of adjoining or nearby public highway. 25 ALR4th 1192.
- Seizure and forfeiture of firearms or ammunition under 18 USCS § 924(d). 57 ALR Fed 234.

§ 3490. [Effect of lapse of time]

No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

Enacted 1872.

Prior Law: Field's Draft NY CC § 1955.

Cross References:

- Nuisance defined: § 3479.
- Public nuisance defined: § 3480.
- Eggs and egg containers as public nuisance: Fd & Ag C § 26701.
- Abatement of noncomplying nursery stock as public nuisance: Fd & Ag C §§ 53561 et seq.
- District attorney may abate public nuisance: Gov C § 26528.

Collateral References:

- Witkin Procedure 2d p 1115.
- Witkin Summary (8th ed) p 5316.
- Cal Digest of Official Reports 3d Series, Nuisances §§ 7, 10, 14.
- 14 Cal Practice, Model Action To Abate Nuisance and For Damages; Proceeding Under Red Light Abatement Law § 240:35.
- 58 Am Jur 2d Nuisances § 106.
- Miller & Starr, Current Law of California Real Estate §§ 21:2, 21:24.

Proof of Facts:

- 1 Am Jur Proof of Facts, Advertisements, Proof No. 3 (proof of billboard as nuisance).
- 2 Am Jur Proof of Facts, Baseball, Proof No. 1 (proof of conduct of night baseball game as nuisance).

NOTES OF DECISIONS

- | | | | |
|--|---|---|--|
| <ul style="list-style-type: none"> 1. In General 2. Statute of Limitations 3. Prescription 4. Laches | <ul style="list-style-type: none"> 1. In General | <p>The maintenance of a public nuisance cannot be</p> | <p>legalized by lapse of time. <i>People v Gold Run Ditch & Min. Co.</i> (1884) 66 C 138, 4 P 1152; <i>Nerio v Maestretti</i> (1908) 154 C 580, 98 P 860.</p> <p>Neither prescriptive rights, laches, nor the statute of limitations is a defense against the maintenance of a public nuisance. <i>Turlock v Bristow</i> (1930) 103 CA 750, 284 P 962.</p> |
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Calif Civil Code- streets and highways-Obstructions and injuries to county highways

Chapter 6

Section 1480- Definitions- Page 516

A- The term highway includes all or part of the entire width of right of way of a county highway, whether or not such entire area is actually used for highway purpose.

B- The term "encroachment" includes any structure or object of any kind or character placed, without the authority of law, either in, under or over any county highway.

Notes of Decision- Page 517

4- Rights of public- the primary purpose of a highway is the passing and repassing of the public, which is entitled to the full unobstructed and uninterrupted enjoyment of entire width of layout for that purpose. Ex Parte Bodkin (1948) 194 P.2d- 588, 86.C.A.2d-208

Section 1480.5- Authority to Remove encroachments- Page 517

The Road Commissioner may immediately remove, or by notice may require the removal of, any of the following encroachments.

A- an encroachment which obstructs or prevents the use of a county highway by the public.

Actions in General- Page 521

In action to abate structure on public roadway as nuisance, fact that structure is off traveled part of highway or that sufficient areas remain to allow public use of right of way in accustomed manner is no defense. People V. Henderson (1948) 194 P.2d 91, 85 C. A. 2d 653

The District Attorney may prosecute an action to abate the construction and maintenance of an earth embankment on a public highway. People v. Power (1918) 175 P. 803, 38 C.A. 181

Section 3490- Effect of Lapse of Time- Page 622

No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

AN ORDINANCE OF THE COUNTY OF RIVERSIDE,
AMENDING ORDINANCE NO. 499 RELATING TO
ENCROACHMENTS IN COUNTY HIGHWAYS.

The Board of Supervisors of the County of Riverside, State of California, do ordain as follows:

Section 1. GENERAL. Subject to the control of the Board of Supervisors, there is hereby delegated to the County Road Commissioner the administration of the use of County highways for excavations and encroachments, the maintenance, planting and removal of trees, and the issuance, modification and revocation of permits for such uses.

Section 2. ENCROACHMENTS AND EXCAVATIONS. No person, including firm, corporation, public district, public agency or political subdivision, shall make any excavation in, or construct, install or maintain any improvement, structure or encroachment in, on, over or under, any County highway or the right of way thereof without first obtaining from the County Road Commissioner a permit therefor, or maintain the same without such permit or in violation of the terms or conditions thereof. Such a permit shall be issued by the County Road Commissioner only upon written application therefor, and payment of the required fee or fees. Such permit shall be issued only if the applicant is a public utility holding a current franchise from the County of Riverside, or a public district or public utility or public service agency having lawful authority to use the right of way or highway for the purpose specified, or the owner of an easement for such purpose within the highway right of way, or if the Road Commissioner is satisfied that the use proposed is in the public interest and that there will be no substantial injury to the highway or impairment of its use as the result thereof, and that the use is reasonably necessary for the performance of the functions of the applicant. Every such permit shall be revocable and the uses and installations thereunder shall be subordinate to any prior right of the County to use the right of way for public road purposes. Every such permit shall be conditional upon the right of the County to require the permittee to relocate or remove the structure or encroachment at the permittee's expense for the benefit of the County or to relocate the structure or encroachment at the permittee's expense, where in the opinion of the County Road Commissioner such action is reasonable necessary to avoid a crossing conflict, for the benefit of any public district, public agency or political subdivision, or of any other person or agency having a right to use the County highway for the purpose proposed; but the acceptance of a permit shall not be deemed a waiver by the permittee of any contractual or statutory right against any party for reimbursement of the expense of such removal or relocation. Every such permit shall be subject to such conditions as the County Road Commissioner determines are necessary to assure the safety of the traveling public and the restoration of the surface of the highway and the foundations thereof, and of the portions outside the traveled roadway. The County Road Commissioner may require such surety bond or deposit of money as in his judgement may be necessary to secure performance of the conditions of the permit and the replacement or restoration of the surface and the subsurface of the highway and the right of way, and any survey

EACH DOCUMENT TO WHICH THIS CERTIFICATE IS
ATTACHED IS CERTIFIED TO BE A FULL TRUE AND
CORRECT COPY OF THE ORIGINAL ON FILE AND OF
RECORD IN MY OFFICE

Dated: 9-9-96

GERALD A. MALONEY
Clerk of the Board of Supervisors
County of Riverside, California
By: *[Signature]*

monuments or other improvements that may have been disturbed. The County Road Commissioner may, where convenient to road work he has programmed, or for other reasons of County convenience, arrange to do the work of replacement to pavement or restoration of the roadway at the expense of the permittee. If any permittee shall fail to refill any excavation or to restore the County highway or right of way to its condition prior to the excavation, the County Road Commissioner shall have the right to perform said work and collect in the name of the County the cost thereof.

Section 3. EXCEPTIONS. An excavation or encroachment may be made without first obtaining a permit for repair or replacement of a facility previously installed only when necessary for the immediate protection or preservation of life or property, and provided that such a permit be obtained on the first business day thereafter, and further provided that said excavation is made in such manner as to give full protection to the users of such highway and the County of Riverside.

No permit shall be required for the loading or unloading of agricultural produce or produce containers. All such operations shall where possible be conducted off of the paved or traveled part of any county highway. If any part of the loading or unloading occurs on the paved or traveled portion of such highway, appropriate visible warnings shall be posted for the protection of traffic approaching from each direction, and if such operation leaves less than one traffic lane available for travel in either direction, a flagman shall be used at the sole risk of the operator. Use of warnings and flagmen shall be in accordance with published standards of the State Department of Transportation. Overnight storage of containers, agricultural products or unlicensed vehicles on the shoulder of any county highway or within eight feet of the traveled portion of such highway is prohibited. Bulk manure not in containers may be temporarily stored or stockpiled within the right of way of a county highway only when intended to be used on the abutting agricultural lands as follows:

1. On any portion of the right of way obviously not graded, improved or used for vehicle travel, sidewalk or drainage purposes.
2. On any unpaved graded shoulder of a paved highway, not closer than 4 feet from the pavement nor in such location as will impede or impair highway drainage.
3. On the graded shoulder of a highway less than 4 feet from the pavement only if there is no other location available and only if warning lights and signs to protect the traveling public are placed and maintained during any overnight storage at such place.

Section 4. TREE REMOVAL. No person, firm, corporation, public district, public agency or political subdivision shall remove or severely trim any tree planted in the right of way of any County highway without first obtaining a permit from the County Road Commissioner to do so. Such permit shall be issued without fee, if the County Road Commissioner is satisfied that such removal or trimming is in the public interest or is necessary for the improvement of the right of way or the construction of improvements on adjacent land. He may impose such conditions as he deems reasonable or necessary, including requirements for the work to be done only by a qualified tree surgeon or tree trimmer actually engaged in that business, and for bond, insurance or other security to protect person and property from injury or damage. The provisions limiting trimming of trees shall not apply to any public utility maintaining overhead

power of communication lines pursuant to franchise, where necessary to prevent interference of a tree with such installation. A permit for removal of a tree may be conditioned upon its relocation or replacement by one or more other trees of a kind or type to be specified in the permit.

Section 5. APPLICATION. Each application for a permit under this ordinance shall be in writing in the name of the person or agency owning the encroachment and controlling the excavation and shall be signed by such person or agency or by his or its agent authorized in writing. The application shall be submitted on a form supplied by the County Road Commissioner and shall contain or be accompanied by such information as he may require. Each permit shall be in writing, signed by the County Road Commissioner or his representative, on a form to be furnished by him.

Section 6. FEES. The permit fees and inspection fees required by this ordinance shall be paid at or after the time application is filed, but in any event before the permit is issued. Said fees for permits, which shall not be refundable, and for inspections shall be as follows:

- a. For tree planting, trimming, or removal, a permit fee of \$20.00 and an inspection fee of \$15.00.
- b. For installation of an encroachment in a County highway or right-of-way with or without excavation, a permit fee of \$20.00 and an inspection fee of \$80.00 plus \$.10 per linear foot.
- c. For residential driveways, a permit fee of \$20.00 and an inspection fee of \$35.00 per driveway.
- d. For commercial driveways a permit fee of \$20.00 and an inspection fee of \$45.00 per driveway.
- e. For voluntary clubs and gutters for residential use, a permit fee of \$20.00 and an inspection fee as specified in subsection b of this section for inspections. Any driveways or sidewalks require separate permits and payment of fees as required by subsections c and g of this section.
- f. For concrete curbs and gutters for a single commercial development, a permit fee of \$20.00 and inspection fees at the same rate as specified in subsection b of this section for inspections. Any driveways or sidewalks require separate permits and payment of fees as required by subsections d and g of this section.
- g. For concrete sidewalks, a permit fee of \$20.00 and an inspection fee as specified in subsection b of this section for inspections.
- h. For a miscellaneous permit or, a permit involving a temporary encroachment not involving an excavation, a permit involving photographing or filming, a permit fee of \$20.00 and an inspection fee of \$40.00 per day.

any applicant a blanket permit for a series of excavations or encroachment of the same type or types. This provision shall be broadly applied, to reduce administrative costs of both County and applicant.

Section 9. PENALTIES. Any person who does any act for which a permit is required by this ordinance, without first obtaining such permit, or who, having obtained such a permit, violates any term or condition thereof and thereby jeopardizes or injures person or property, is guilty of a misdemeanor and shall be punishable by a fine of not more than \$500.00, or by imprisonment in the County jail for not more than 6 months, or by both such fine and imprisonment. Nothing herein shall be deemed to deprive any person of any civil right or remedy he may have against a violator of this ordinance, nor to deprive the County of Riverside of any cause of action which it may have against such violator, regardless of any prosecution or conviction under this section.

Any person who violates the provisions of the second paragraph of Section 3 of this ordinance is guilty of a misdemeanor and shall be punishable as provided in this section.

ADOPTED: 11-9-64 (Eff.: 12-9-64)
AMENDED: 499.1 - 499.5
 499.6 (Eff.: 3-31-83)
 499.7 (Eff.: 3-25-88)
 499.8 (Eff.: 9-12-91)

ENCROACHMENT PERMITS

What is an encroachment permit?

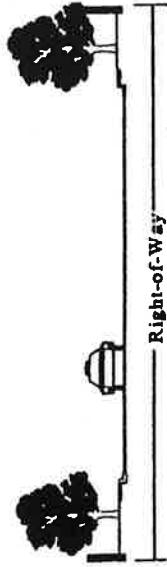
An encroachment permit is written permission, to excavate or otherwise encroach within Riverside County's public road right-of-way. A permit may be granted to a public utility, contractor or an individual. Permits are issued by the Transportation Department.

When are they needed?

In addition to excavations, permits must be obtained for tree planting and removal, driveway installations, placement of any structures, construction of street improvements and drainage facilities, or generally for any type of work conducted within the road right-of-way.

What is the road right-of-way?

The road right-of-way is the full width of the land owned or controlled by the County upon which the traveled way is constructed and usually extends considerably beyond the edge of pavement, or traveled way, to the boundaries of the adjacent private properties.



What is the purpose?

Permits provide necessary regulation of the encroachment process so as to safeguard the public interest in the roadway facility and to ensure continuing safety and convenience for the traveling public.

What is the authority?

Permits are required pursuant to County Ordinance No. 499 which delegates authority to the Director of Transportation to administer the use of highways for such encroachments. The Ordinance also establishes penalties for working without a

permit and for violation of any terms of the permit.

What is the process?

An application describing the proposed work must be completed. In many cases, four sets of construction plans must be submitted along with the application. Financial security is usually required to assure compliance with the terms of the permit. Application forms are available from the referenced offices. Most permits are issued within fourteen working days.

What are the fees?

Currently there is a permit fee of \$20.00. In addition to the permit fee, there is an inspection fee based upon the following schedule:

Tree planting, trimming or removal.....	\$15.00
Encroachment with / without excavation.....	\$80.00 + .10 lin. ft.
Residential driveway approach.....	\$35.00
Commercial driveway approach.....	\$45.00
Voluntary curb & gutter.....	\$80.00 + .10 lin. ft.
Curb & gutter - commercial development.....	\$80.00 + .10 lin. ft.
Sidewalk.....	\$80.00 + .10 lin. ft.
Misc. Or temporary encroachment - no excavation.....	\$40.00 per day
Pavement reconstruction excluding overlays.....	\$.07 sq. ft.
Bridges and drainage structures.....	4% est. construction cost
Pedestrian benches.....	\$15.00 per bench per year
Utility service connections involving cuts.....	\$80.00 + .10 lin. ft.
Blanket Permit.....	\$210.00

- ▶ The fee for an Extension of time is \$10.00.
- ▶ Permit and inspection fees are increased by 100% whenever encroachments occur without first obtaining a permit.

SPECIFICATIONS and CONTRACT DOCUMENTS 000000

for the CONSTRUCTION of

BAUTISTA CREEK

CHANNEL

MODIFICATION OF SIDE DRAINAGE

PROJECT NO. 4-0-030

in

RIVERSIDE COUNTY, CALIFORNIA

(e)

**Riverside County Flood Control
and Water Conservation District**

The above agencies shall also be advised of any major change in the construction schedule that could restrict pedestrian or vehicular traffic.

6.4 Public Convenience and Access - The Contractor shall provide continuous access to all private property. Additional provisions shall be made as necessary to protect the public and accommodate traffic with a minimum of inconvenience.

Several residents and grove operators currently use the project right of way as access to Fairview Avenue. The Contractor shall notify each resident in writing 3 days in advance of construction across affected private roadway entrances. Such notice shall contain the expected day and period of time (not to exceed 24 hours) that the roadway entrance is to be out of service. A copy of each letter shall be submitted to the Engineer.

A minimum 12-foot wide travel lane shall remain open to traffic at all times throughout the length of the project.

Partial closures of the traveled way implemented by the Contractor shall be related to actual work being performed at the time. Partial closures shall not be maintained if work is not being performed. If the existing partial closure is not essential to the type of work being performed at the time, the traveled way shall immediately be restored to a safe condition for public use.

6.5 Riverside County Road Department Encroachment Permit - The Contractor shall comply with all of the requirements of the encroachment permit issued to the District by the County Road Department. The permit is on file in the District office, 1995 Market Street, and is available for review upon request.

6.6 Optional Disposal Site - The Contractor shall note that an optional disposal site is available adjacent to the training levee at Station 208+00, as shown on the drawings. Rock, concrete and other inorganic material only may be disposed of at this location as directed by the Engineer. Organic materials, asphalt, and rubbish shall not be disposed of at this location. Materials in excess of 2 feet in any dimension shall not be disposed of at this optional site. All rock and concrete materials shall be buried a minimum 2 feet below finished grade. Compaction of material placed in the disposal site will not be required other than by wheel rolling with loaders or other heavy equipment. The finished area shall be left neatly graded, shall be free of sumps and shall have sufficient slope for proper drainage.

6.7 Construction of Oiled Roadway Surface - The Contractor's attention is directed to "Instructions to Bidders", Page IV of these Specifications and note that the District expressly reserves the right to eliminate certain items from the work.



FROM: Chief Engineer SUBMITTAL DATE: September 20, 1988
SUBJECT: Bautista Creek Channel
 Modification of Side Drainage
 Project No. 4-0-030
RECOMMENDED MOTION:

The Board approve the low bid submitted by the firm of McLaughlin Construction, Inc., for \$157,458.38, for the construction of the above referenced project, and authorize the Chairman to execute the contract on behalf of the District.

JUSTIFICATION:

The bid documents have been reviewed and approved for award by County Counsel.

FINANCIAL:

This project is funded in the District's Zone 4 budget.

Kenneth L. Edwards
KENNETH L. EDWARDS
Chief Engineer

*ROAD EASEMENT RECORDED MAY-12-1988 - PERMIT
REQUIRED FROM ROAD DEPT - NO EXCEPTIONS - ORDINANCE 499-8*

EACH DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS CERTIFIED TO BE A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

Dated: *June 19, 1996*
GERALD A. MALONEY
Clerk of the Board of Supervisors
County of Riverside, California

By: *Frederic L. Stuchlik*, Deputy

MINUTES OF THE FLOOD CONTROL & WATER CONSERVATION DISTRICT BOARD

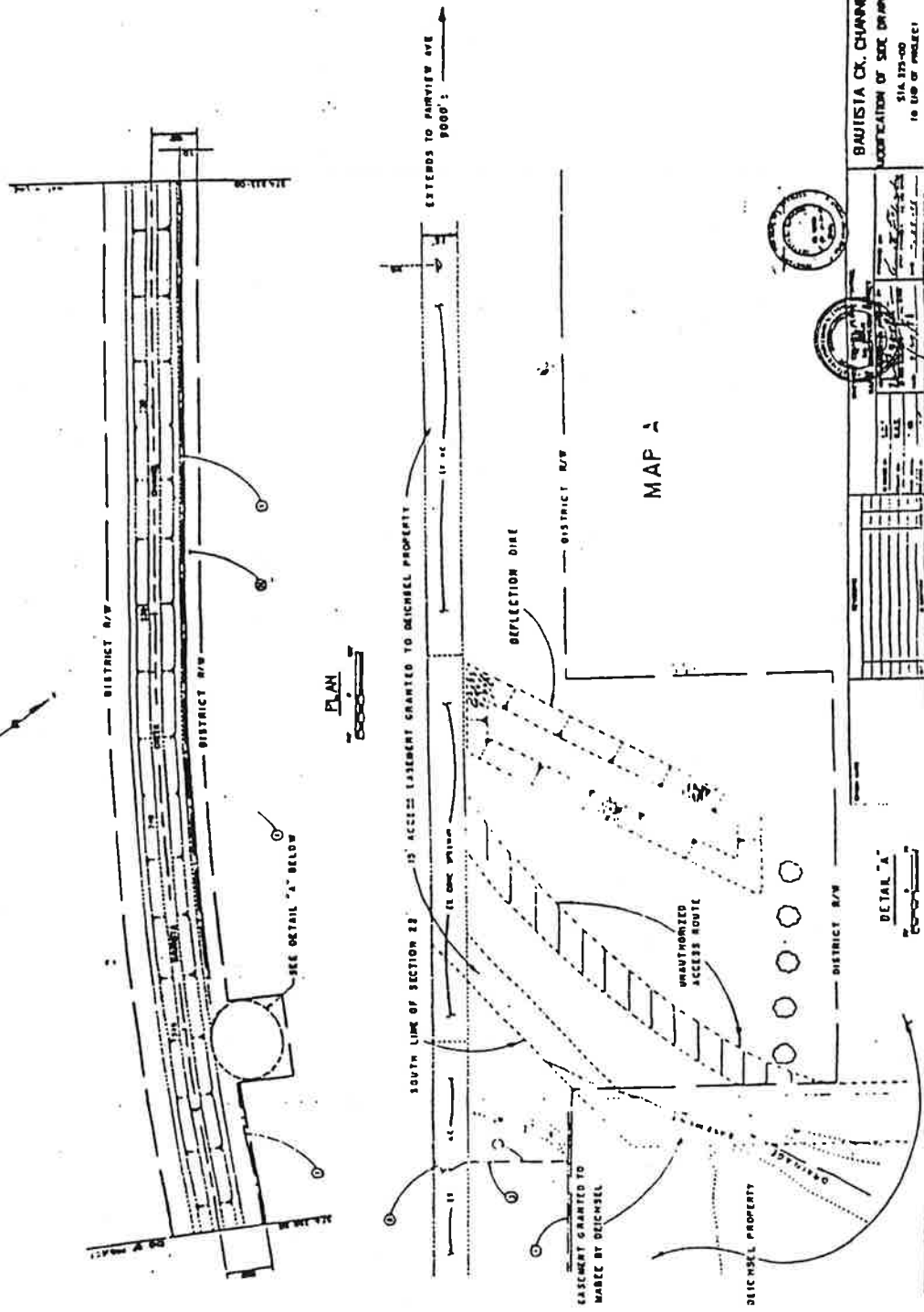
On motion of Supervisor Dunlap, seconded by Supervisor Cenicerros and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Abraham, Cenicerros, Larson, Younglove, and Dunlap
Noes: None
Absent: None
Date: September 20, 1988
xc: Flood, Adv., Co. Co

Gerald A. Maloney
Clerk of the Board
By: *Gerald A. Maloney*
Deputy

Prev. Agn. ref. Depts. Comments 3rd Dist. AGENDA NO.

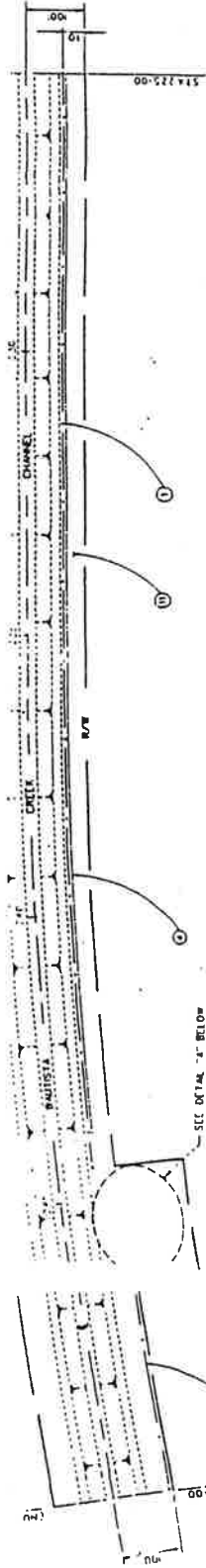
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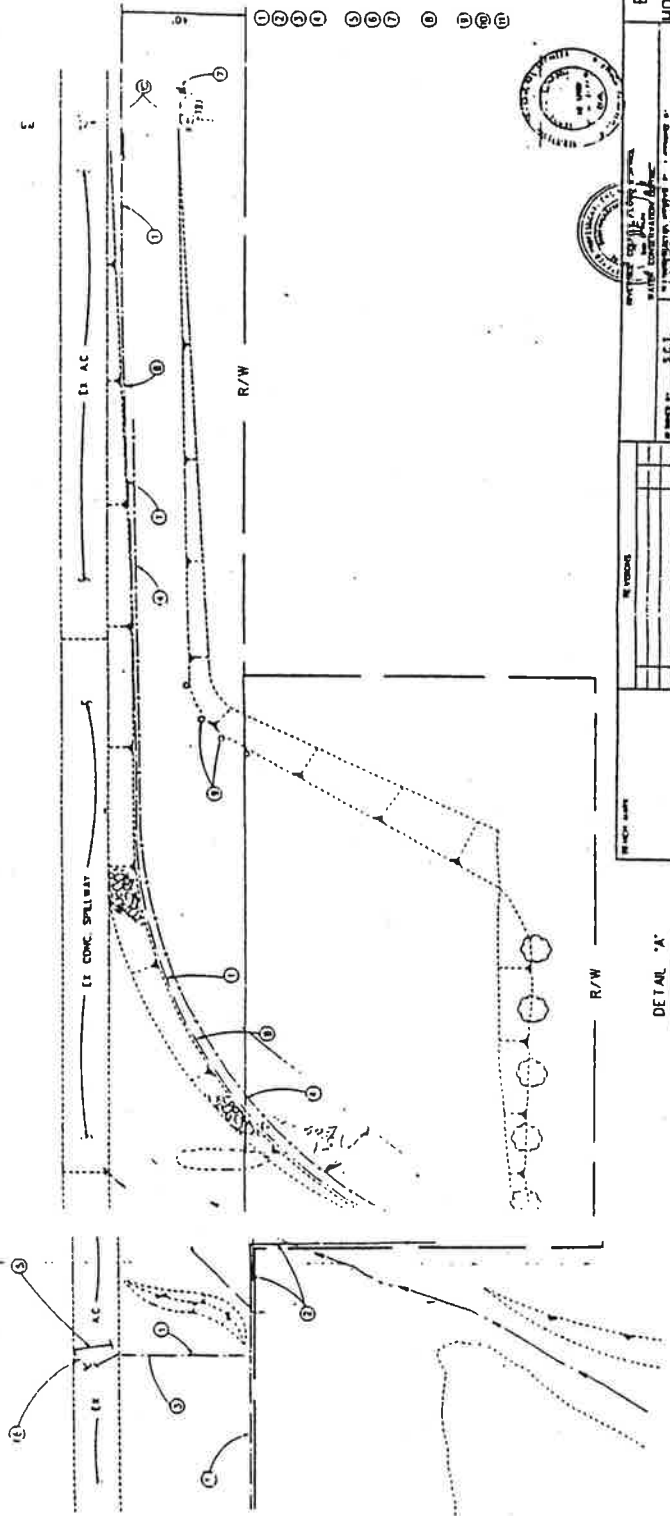
CERTIFIED END DRAWINGS BEFORE ALTERATION
 OF STATION NO 244725

July-29-1988

WORK IN PUBLIC
ROAD BY FLOOD CONTROL
AND CONTRACTOR AFTER
JULY-29-1988-ROAD
RECORDED-MAY-12-1988
PERMITS REQUIRED



PLAN



DETAIL "A"

NOTES:

1. INSTALL 6" CHAIN LINK FENCE PER STD. DWG. HD01
2. INSTALL CABLE BARRIER PER DETAIL ON SHIT. 7.
3. REMOVE EX. CABLE BARRIER.
4. REMOVE & SALVAGE EX. BARBED WIRE FENCE & ALL POSTS
5. REMOVE & SALVAGE EX. PIPE SPRING GATE
6. INSTALL 14" DOUBLE (CONVE. GATE PER STD. HD01
7. INSTALL TYPE "T" OBJECT MARKER PER CALTRANS STD. 301-A.
8. SET FENCE POSTS AT 7' OFFSET FROM TOP OF SLOPE.
9. PROTECT EX. CURB MARKERS IN PLACE
10. PROTECT EX. WB & APPROXIMATE MARKERS IN PLACE.
11. CONVEY DEDICATED HIGHWAY TURN OFF FROM STA. 225+40 TO STA. 247+50 PER DETAIL ON SHIT. 8.

PROJECT NO. 4-0-030
 DRAWING NO. 4-507
 SHEET NO. 5 OF 15

BAUTISTA CK. CHANNEL
 MODIFICATION OF SIDE DRAINAGE

STA. 225+00 TO END OF PROJECT

DATE: 7/29/88

SCALE: 1" = 40'

BY: [Signature]

CHECKED BY: [Signature]

APPROVED BY: [Signature]

CERTIFIED ENG DRAWINGS AFTER
ALTERATION OF STATION NO 244425

JULY 29-1988

To be recorded with County Recorder within 10 days after completion. No recording fee.

15987

When recorded, return to:

Notice of Completion
Civil Code § 3093 - Public Works

RECEIVED FOR RECORD
M.W. Past 12:00 clock P.M.

JAN 18 1989
Recorded in Official Records
of Riverside County, California
William E. Stoney
RECORDER
Fee \$

(For Recorder's use)

Notice is hereby given by the undersigned owner, a public entity of the State of California, that a public work of improvement has been completed, as follows:

Project title or description of work: Bautista Creek Channel, Modification of Side Drainage, #4-0-030

Date of completion: Date as set forth below

Nature of owner: District, Public

Interest or estate of owner: Fee Title

Address of owner: County Administrative Center, Riverside, California

Name of contractor: McLaughlin, Construction, Inc.

Street address or legal description of site: Parcels 4030-16, -17, -17B, -19A, -20 and -22 of R/S 31/52-59 recorded April 1960.

Dated: January 17, 1989

Owner: Riverside County Flood Control and Water Conservation District
(Name of public entity).

By: [Signature]
Title Chairman, Board of Supervisors

STATE OF CALIFORNIA) ss
COUNTY OF RIVERSIDE)

I am the Chairman of the governing board of the Riverside County Flood Control and Water Conservation District the public entity which executed the foregoing notice and on whose behalf I make this verification: I have read said notice, know its contents, and the same is true. I certify under penalty of perjury that the foregoing is true and correct.

Executed at Riverside, California on January 17, 1989 (Date)

[Signature]

EACH DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS CERTIFIED TO BE A FULL TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE

County Counsel Form 1 (Rev. 5-71)

1/30/89
GERALD A. MALONEY
Clerk of the Board of Supervisors
County of Riverside, California

XE: F. Lopez & Aud.

By: [Signature] Deputy

2-21-89



COUNTY OF RIVERSIDE
TRANSPORTATION AND
LAND MANAGEMENT AGENCY
Transportation Department



David E. Barnhart
Director of Transportation

July 22, 1996


Mr. Mabee:
337 Leafwood Court
Riverside, California 92506

Dear Mr. Mabee:

I am in receipt of your letter dated July 16, 1996 requesting information under the Freedom of Information Act about the issuance of an encroachment permit to the Riverside County Flood Control District to do work within the dedicated road right of way along Bautista Creek, subsequent to May 12, 1988.

We have searched our records and have been unable to determine whether or not an encroachment permit was issued for the Flood Control District to work within the dedicated road right of way.

Very truly yours,


Fran Victor,
Permit Engineer

FV:py

cc: J. Vickers, Co. Counsel
D. Barnhart, Director of Transportation

96 SEP 10 AM 8:22

RECEIVED RIVERSIDE COUNTY
CLERK / BOARD OF SUPERVISORS



DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT CORPS OF ENGINEERS

P.O. BOX 532711

LOS ANGELES, CALIFORNIA 90053-2325

May 27, 2008

REPLY TO
ATTENTION OF

Mr. Steve Stump
Operations and Maintenance
Riverside County Flood Control and
Water Conservation District
1995 Market Street
Riverside, CA 92501

Dear Mr. Stump:

On May 13, 2008, in response to a citizen concern, two engineers from the U.S. Army Corps of Engineers, Los Angeles District, Hydrology and Hydraulics Branch, conducted a field investigation of Bautista Creek Channel in Hemet, Riverside County, California. The purpose for the field investigation was to evaluate whether "drainage levee" modifications within the Riverside County Flood Control and Water Conservation District (RCFCWCD) right-of-way in the Bautista Creek Channel have compromised the project's original design performance. The Field Investigation Report is enclosed.

Based on the field investigation, we concluded that one of the modifications within the RCFCWCD right-of-way may compromise the project's original design performance. In addition, two of the modified "drainage levees" need maintenance.

We therefore recommend: 1) For the "drainage levee" at channel station 244+25, either a) the excess fill be removed and the original "drainage levee" be exposed; or b) the existing concrete spillway be extended upstream 50 ft and the low spots in the fill be raised to prevent sheet flow from undermining the sideslope paving and cause channel failure and, 2) For the "drainage levees" at channel stations 196+50 and 208+00, the vegetation on the levees be removed and the stone revetment be inspected to ensure that the size and thickness match the as-built construction plans.

If you have any questions or concerns about this matter please contact either Mr. Van Crisostomo or Mr. Rick Andre of my staff at (213) 452-3558 or (213) 452-3564 respectively.

Sincerely,

Robert E. Koplin, PE
Chief, Engineering Division

Enclosure

MEMORANDUM FOR RECORD

SUBJECT: Field Investigation, Bautista Creek Channel, Right Bank, From the Fairview Avenue Bridge to Station 246+25, Hemet, California

1. References:

- a. Email from LTC Anthony G. Reed, Subject: Mr. Mabee's Two Concerns, dated 19 April 2008
- b. *General Design for Bautista Creek Channel, Design Memorandum No. 2, San Jacinto River and Bautista Creek Improvements*, U.S. Army Corps of Engineers, Los Angeles District, dated September 1959
- c. *Bautista Creek Channel, As-built Construction Plans*, File No. 172, U.S. Army Corps of Engineers, Los Angeles District, dated October 1961
- d. Letter from the Corps to Riverside County Flood Control District, Subject: Approval of Bautista Creek Channel Levee Modification (EE88-23), dated 14 December 1987.

2. On 13 May 2008, Messrs. Van Crisostomo and Rick Andre of the Hydrology and Hydraulics Section inspected the subject site pursuant to a request by LTC Anthony G. Reed, Deputy District Commander, Los Angeles District, U.S. Army Corps of Engineers (Ref. 1a). The purpose for the field investigation was to evaluate whether "drainage levee" modifications within the Riverside County Flood Control and Water Conservation District (RCFCWCD) right-of-way in the Bautista Creek Channel have compromised the project's original design performance.

3. Mr. Crisostomo and Mr. Andre were met at the project site by Mr. Robert Mabee, a local resident, who acted as their escort for the site visit. The inspection focused on a 1.7 mile reach of the right bank of the channel from the Fairview Avenue Bridge to approximately station 244+25. Mr. Mabee claimed that RCFCWCD altered several "drainage levees" and changed the drainage pattern of the sheet flow entering the channel.

4. This reach of the Bautista Creek Channel is an incised, trapezoidal concrete-lined channel. The basewidth is 25 ft and the sideslopes are 2:25 to 1. The channel depth is between 11.5 to 12 ft. The design flow rate for this reach is 16,500 cfs. The flow is supercritical with a velocity of 45 ft/s. The concrete channel itself is well-maintained. Along the right bank (looking downstream) of the channel are three "drainage levees" that direct sheet flow towards the channel.

Enclosure

CESPL-ED-HH

SUBJECT: Field Investigation, Bautista Creek Channel, Right Bank, From the Fairview Avenue Bridge to Station 246+25, Hemet, California

5. The Design Memorandum (Ref. 1b) and as-built constructions plans (Ref. 1c) were checked to determine if the "drainage levees" are original project features and to confirm their intended function. According to the Design Memorandum, "Side-drainage investigations indicated that large side flows would reach the channel along the right (northeast) bank. Because the top of the channel would be at or near ground level, these flows would be discharged over the top of the channel banks for nearly the entire length of the channel. Therefore, the maintenance roadway along the right bank would be paved to prevent undermining of the side-slope paving. Low cross dikes may be required at intervals to divert the flow into the channel; the specific locations of these dikes would be determined before contract plans and specifications are complete."

Furthermore, the as-built construction plans confirm that the "drainage levees" were constructed as part of the Bautista Creek Channel project. In addition, concrete spillways were constructed at the end of these "drainage levees" to prevent the undermining of the concrete sideslope when sheet flow from the surrounding drainage areas flows into the channel (Attachment 1).

6. Per Reference 1d, the Corps approved a permit for the RCFCWCD to modify these "drainage levees". Except for the "drainage levee" at station 244+25, the proposed modifications were followed, i.e. the "drainage levees" were truncated approximately 20 ft to widen the maintenance road and then the existing concrete spillway extended to the end of the truncated "drainage levee" (Attachment 2). At station 244+25 the "drainage levee" was not truncated as indicated in the approved permit plans. Instead, it was buried with miscellaneous fill (it is unknown who placed the fill). This fill alters the sheet flow drainage pattern and causes the flow to enter the channel over parts of the right bank not protected by a concrete spillway. This could potentially undermine the sideslope paving and cause channel failure. Originally, the side inflow from the surrounding drainage area was wide and shallow, confined at the downstream end by the "drainage levee" and the upstream end by high ground (Attachment 3). Now, because of the fill, the sheet flow is now concentrated, and the fill may not be high enough to direct all the sheet flow towards the channel. There are low spots along the fill that would likely be overtopped during high flow events and may cause sheet flow to go over parts of the right bank not protected by a concrete spillway

7. In addition to concerns about the construction of the "drainage levee" at station 244+25, Messrs. Andre and Crisostomo observed that the "drainage levees" at station 196+50 and 208+00 are overgrown with vegetation. Also, the stone revetment for these "drainage levees" is thin at some locations.

8. Based on the field investigations, we concluded that one of the modifications within the RCFCWCD right-of-way may compromise the project's original design performance. In addition, two of the modified "drainage levees" need maintenance.

CESPL-ED-HH

SUBJECT: Field Investigation, Bautista Creek Channel, Right Bank, From the Fairview Avenue Bridge to Station 246+25, Hemet, California

9. For the "drainage levees" at station 196+50 and 208+00, we recommend that the vegetation on the "drainage levees" be removed. We also recommend that Geotech Branch inspect the stone revetment to determine if the size and thickness match the as-built construction plans.
10. For the "drainage levee" at station 244+25, we recommend that either 1) the excess fill be removed and the original "drainage levee" be exposed; or 2) that the existing concrete spillway be extended upstream 50 ft and the low spots in the fill be raised to prevent sheet flow from undermining the sideslope paving and cause channel failure.

Encl



Rick Andre
Hydraulic Engineer



Van Crisostomo, PE
Hydraulic Engineer

**Riverside County Board of Supervisors
Request to Speak**

Submit request to Clerk of Board (right of podium),
Speakers are entitled to three (3) minutes, subject
Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: Robert MABEE

Address: 3086 Mibuel St
(only if follow-up mail response requested)

City: Riverside **Zip:** 92506

Phone #: 788-4858

Date: 5-4-2010 **Agenda #** _____

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

_____ **Support** _____ **Oppose** _____ **Neutral**
ORAL COMMUNICATION

Note: If you are here for an agenda item that is filed
for "Appeal", please state separately your position on
the appeal below:

_____ **Support** _____ **Oppose** _____ **Neutral**

I give my 3 minutes to: _____