

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



ITEM
11.7
(ID # 10798)

MEETING DATE:

Tuesday, September 10, 2019

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of Property Use Agreement Between the Riverside County Flood Control and Water Conservation District and Mary Ellen Hendler, Overflow Parking, 5-Year Initial Term with Two 5-Year Term Extension Options, RCFC Parcels 6050-28, 6050-29 and 6050-30, APN 505-302-023, CEQA Exempt, District 4. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15301, Existing Facilities Exemption and Section 15061(b)(3), "Common Sense" exemption;
2. Approve the attached Property Use Agreement between the Riverside County Flood Control and Water Conservation District (District) and Mary Ellen Hendler (Permittee), and authorize the Chairwoman of the Board to execute the same on behalf of the District; and
3. Direct the Clerk of the Board to return two (2) executed Property Use Agreements to the District.

ACTION: Policy

A handwritten signature in black ink, appearing to read "J. Uhley".

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

8/28/2019

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Perez and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Perez and Hewitt
Nays: None
Absent: Washington
Date: September 10, 2019
xc: Flood

Kecia R. Harper
Clerk of the Board

By: A handwritten signature in black ink, appearing to read "Kecia R. Harper".
Deputy

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Contract Revenue - The subject Property Use Agreement is a revenue generating instrument.			Budget Adjustment: No	
			For Fiscal Year: 19/20	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The District acquired land in approximately 1965 to construct the Tachevah Creek Detention Dam in Palm Springs (the "Project"). The Project included associated underground storm drains to distribute flood waters. After the Project was constructed, the District had vacant surface area within the Project footprint that it let to adjacent property owners for an annual fee.

The District issued an encroachment permit in June 2000 to the Permittee to accommodate the overflow parking of the Permittee's business located adjacent to and contiguous with the District's parcels located in the city of Palm Springs, south of N. Palm Canyon Drive, west of W. Chino Drive, north of N. Belardo Road, District Parcel Nos. 6050-28 and 6050-30, APN 505-302-023.

This action converts the encroachment permit issued to the Permittee in 2000 to a Property Use Agreement with a 5-year initial term and two 5-year term extension options, for which Permittee is responsible for utilities and site maintenance. Approving the Property Use Agreement also revises the Permittee insurance requirements to be consistent with current Riverside County Risk Management protocols.

CEQA

The Agreement will not, in and of itself, result in a physical change to the environment. The Agreement does not authorize to any extent whatsoever actual physical development. Therefore, the project related activities within the District's right of way are consistent with the criteria for a Class 1 Existing Facilities Categorical Exemption pursuant to Section 15301 of the State CEQA Guidelines. The Class 1 Categorical Exemption applies to projects such as leasing existing public and private structures or topographical features involving negligible or no expansion of use.

Additionally, the project is consistent with State CEQA Guidelines Section 15061(b)(3), the "General Rule" or "Common Sense" exemption, because it can be seen with certainty that

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there is no possibility that the proposed project will have a significant effect on the environment. Therefore, pursuant to CEQA, the project was determined to be categorically exempt from CEQA under State CEQA Guidelines Section 15301, Class 1 – Existing Facilities exemption and Section 15061(b)(3), “Common Sense” exemption.

Impact on Residents and Businesses

The District concludes that there will be no fiscal impact on private residents or private businesses as a result of the Board's approval of the subject Property Use Agreement.

Additional Fiscal Information

Approving this Property Use Agreement increases rent revenue from \$300 monthly to \$500 monthly, paid annually at \$6,000, resulting in a \$2,400 annual increase in rental revenue (a \$12,000 increase during the initial 5-year term).

Contract History and Price Reasonableness

The District issued an encroachment permit to the Permittee in June 2000 that charged the Permittee \$3,600 annually for use of District property. The rent has not been increased since the original encroachment permit was issued in 2000. Approving this Property Use Agreement aligns the rental rate with current market conditions.

ATTACHMENTS:

1. Property Use Agreement


Jason Farin, Senior Management Analyst

9/4/2019


Gregory V. Priaplos, Director County Counsel

8/29/2019

MARY ELLEN HENDLER, TRUSTEE OF THE
MARY ELLEN HENDLER REVOCABLE
TRUST dated June 25, 2014 (hereinafter referred
to as "Permittee"), and

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

Project: Tahchevah Dam Outlet Storm Drain
Project No. 6-0-00050
RCFC Parcel Nos. 6050-28, 6050-29
and 6050-30
APN 505-302-023

PROPERTY USE AGREEMENT

This Property Use Agreement, hereinafter called ("Agreement"), is entered into on September 10, 2019 by and between the **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**, a body politic, hereinafter referred to as "District", and **MARY ELLEN HENDLER, TRUSTEE OF THE MARY ELLEN HENDLER REVOCABLE TRUST dated June 25, 2014**, hereinafter called "Permittee". District and Permittee may hereinafter collectively be referred to as the "Parties". The effective date of this Agreement shall be the date this Agreement is fully executed by the Parties, as evidenced by the date indicated hereinabove (the "Effective Date").

RECITALS

WHEREAS, District is fee owner of real property located in the city of Palm Springs, County of Riverside, State of California, described as Riverside County Assessor's Parcel Number 505-302-023, having District Parcel Numbers 6050-30, 6050-28, and 6050-29, hereinafter referred to as "District Property"; and

WHEREAS, Mary Ellen Hendler as an individual, hereinafter referred to as "Original Permittee", entered into an Encroachment Permit with District on May 25, 2001, hereinafter referred to as "EP2430", whereby District granted Original Permittee permission to "[p]ark those vehicles that exceed existing private parking capacity on District's right of way"; and

WHEREAS, Original Permittee was the fee owner of real property located in the city of Palm Springs, County of Riverside, State of California, described as Riverside County Assessor's Parcel Number 505-302-008, whose address is 621 N. Palm Canyon Drive, Palm Springs, California, hereinafter referred to as "Permittee Parcel"; and

WHEREAS, Original Permittee transferred all her right, title and interest in and to the Permittee Parcel to Permittee on March 17, 2016, Document Number 2016-0104910; and

WHEREAS, Permittee leases the Permittee Parcel to the business located at 621 N. Palm Canyon Drive, in the city of Palm Springs, County of Riverside, State of California, hereinafter referred to as the "Business"; and

WHEREAS, District Property is used to park vehicles and accommodate the parking needs of the Business in accordance with the terms and conditions of EP2430; and

WHEREAS, District desires to allow Permittee to use a portion of District Property ("Premises"), as more particularly shown in hash marks on Exhibit "A", attached hereto and incorporated herein by reference, in accordance with the terms and conditions set forth herein; and

WHEREAS, the Premises is 184' x 30' in size with a total square footage of 5,520 square feet.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, pursuant to the terms and conditions contained herein this Agreement, the Parties hereto do mutually agree as follows:

AGREEMENT

1. Use of Property. District hereby authorizes Permittee, in accordance with the terms, covenants, conditions and provisions of this Agreement, the non-exclusive use of the Premises, more particularly depicted on Exhibit "A", attached hereto. It is expressly agreed that the Premises shall be used by Permittee solely and exclusively for the purpose of accommodating overflow parking for the Permittee Parcel, located at 621 N. Palm Canyon Drive, City of Palm Springs, County of Riverside, California. In connection therewith, Permittee has the right to do all work necessary to maintain District Property for the Business overflow parking. No structures, asphalt or concrete paving shall be placed or installed on District Property.
2. Term. The Term of this Agreement shall be for a period of five (5) years, commencing on November 18, 2019 (the "Commencement Date").
3. Renewal Option. Provided the Permittee is not in default of this Agreement (after the expiration of any applicable cure and grace period as provided herein), this Agreement shall be automatically extended for two (2) additional terms of five (5) years each (each, an "Additional Term") under the same terms and conditions of this Agreement, unless Permittee terminates it at the end of the then current term by giving District written notice of the intent to terminate at least six (6) months prior to the end of the then current term.
4. Property Use Fee. The annual property use fee of this Agreement shall be Six Thousand Dollars Even (\$6,000.00) which shall be payable on or before November 1st of each year. Said annual property use fee shall be mailed to District at the address referenced below. For the convenience of this Agreement, the annual property use fee set forth herein may be referred to as "Rent". Permittee shall have the option to pay the Rent under this Agreement on a monthly basis. The option to pay the Rent on an annual or monthly basis shall be at the sole discretion of the Permittee.
5. Delinquent Payment. If Permittee fails to pay any Rent payment when due, Permittee shall pay, in addition to the unpaid payments, five percent (5%) of the delinquent payment. If the payment is still unpaid at the end of fifteen (15) days after receipt of notice of non-payment, Permittee shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the Parties to be appropriate to compensate District for loss

resulting from payment delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

6. Indemnification. Permittee shall:

- a. Indemnify and hold harmless District, its directors, officers, Board of Supervisors, elected and appointed officials, agents, employees, representatives, independent contractors and subcontractors (collectively, "Indemnified Parties") from any liability whatsoever, based or asserted upon any act or omission of Permittee or their officers, employees, subcontractors, tenants, subtenants, guests, invitees, agents or representatives (collectively, the "Invitees") arising from, related to, or in any manner connected with Permittee's or their Invitees' use, and responsibilities in connection therewith, of District Property, or the condition thereof, including, but not limited to, property damage, bodily injury or death or any other element of any kind or nature whatsoever arising from, related to, or in any manner connected with Permittee's or their Invitees' use of District Property. Permittee shall defend, at their sole expense, all costs and fees including, but not limited to, attorneys' fees, cost of investigation, defense and settlements or awards, Indemnified Parties in any claim or legal action based upon such alleged acts or omissions.
- b. With respect to any action or claim subject to indemnification herein by Permittee, Permittee shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle or compromise any such action or claim without the prior consent of District; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Permittee's indemnification to Indemnified Parties as set forth herein. Permittee's obligation hereunder shall be satisfied when Permittee has provided to Indemnified Parties the appropriate form of dismissal relieving Indemnified Parties from any liability for the action or claim involved. The specified insurance limits required in this Agreement shall in no way limit or circumscribe Permittee's obligations to indemnify and hold harmless Indemnified Parties herein from third party claims.
- c. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve Permittee from indemnifying the Indemnified Parties to the fullest extent allowed by law.
- d. This indemnification provision shall survive termination or expiration of this Agreement until such a time as the statute of limitations shall run for any claims that may arise out of this Agreement.

7. Insurance. As a condition to this Agreement, without limiting or diminishing Permittee's obligation to indemnify or hold Indemnified Parties harmless, Permittee shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement. As respects to the insurance section, District herein refers to the Riverside County Flood Control and Water Conservation District, the County of Riverside, its agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

- a. Workers' Compensation. If Permittee has employees as defined by the State of California, Permittee shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of District and the County of Riverside.
- b. Commercial General Liability. Commercial General Liability insurance coverage including, but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Permittee's performance of its obligations hereunder. Policy shall name the District as Additional Insureds. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.
- c. Vehicle Liability. Permittee shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the District as Additional Insureds.
- d. General Insurance Provisions - All lines.
 - i. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an AM BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
 - ii. The Permittee's insurance carrier(s) must declare its insurance deductibles or self-insured retentions. If such deductibles or self-insured retentions exceed \$500,000 per occurrence such deductibles and/or retentions shall have the prior written consent of the County Risk Manager before the commencement of use and operations under this Agreement. Upon notification of deductibles or self-insured retentions unacceptable to District, and at the election of the County Risk Manager, Permittee's carriers shall either: 1) reduce or eliminate such deductibles or self-insured retentions as respects this Agreement with District, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
 - iii. Permittee shall cause Permittee's insurance carrier(s) to furnish District with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to District prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If Permittee's insurance carrier(s) do(es) not

meet the minimum notice requirement found herein, Permittee shall cause Permittee's insurance carrier(s) to furnish a thirty (30) day Notice of Cancellation Endorsement.

- iv. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless District receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. *Permittee shall not commence entry onto District Property until District has been furnished original Certificate(s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance. District reserves the right to require complete certified copies of all policies of Permittee's contractors and subcontractors, at any time.*
 - v. It is understood and agreed to by the Parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and District's and the County of Riverside's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
 - vi. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of the Agreement, District reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by Permittee 2 has become inadequate.
 - vii. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to Permittee.
 - viii. Permittee agrees to notify District of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.
8. Notices. All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be both in writing and by e-mail and shall be delivered or mailed to the respective party as follows:

To District:
 Riverside County Flood Control and Water Conservation District
 1995 Market Street
 Riverside, California 92501
 Attention: Rick Beauchamp - Real Estate Services
 Email: rbeauchamp@rivco.org

calamity, act of God or any cause or conditions beyond the control of District, save and except damages resulting from District's active negligence or willful misconduct.

- ii. Immediately remove, upon written request by District's General Manager-Chief Engineer, any improvements and/or equipment on the Property not previously approved by District, or cease use of the Premises where Permittee has installed any such improvements and/or equipment, or Permittee has used or allowed use of the Premises in a manner which, in the sole opinion of District's General Manager-Chief Engineer, would be detrimental to the operation of District facilities.
- iii. Not permit to be placed against District Property or any part thereof, any design professionals', mechanics', material man's, contractors' or subcontractors' liens with the regard to Permittee's actions upon District Property. Permittee agrees to hold District harmless for any loss or expense, including reasonable attorneys' fees, arising from any such liens which might be filed against District Property.

b. District shall:

- i. Assume no responsibility, obligation or liability whatsoever for Permittee's use of the Property as granted herein, unless done so expressly in writing approved by both Parties as an amendment or addendum to this Agreement.

- 11. Compliance with Laws. Permittee shall, in all activities undertaken pursuant to this Agreement, comply and cause their Invitees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, Permittee, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for any activities Permittee desires to conduct or have conducted pursuant to this Agreement.
- 12. Inspection. District and its representatives, employees, agents or independent contractors may enter and inspect the Premises or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify Permittee's compliance with the terms and conditions of this Agreement.
- 13. Not Real Property Interest. It is expressly understood that the license granted herein is not exclusive and does not in any way whatsoever grant or convey any permanent easement, lease, fee or other real property interest in the District Property to Permittee.
- 14. Subordination. This Agreement is subordinate to all prior and future rights of District in District Property and the use of District Property for the purposes in which it was acquired.
- 15. Protection and Restoration of Property. Permittee shall protect the Premises, including all improvements and the natural resources thereon, at all times at Permittee's sole cost and expense, and Permittee shall strictly adhere to the following restrictions:
 - a. Permittee may not place or dump garbage, trash or refuse anywhere upon or within District Property; and

- b. Permittee may not commit or create, or suffer to be committed or created, any waste, hazardous condition and/or nuisance to occur upon District Property; and
 - c. Permittee may not cut, prune or remove any native trees or brush upon District Property without first obtaining written permission from District; and
 - d. Permittee may not disturb, move or remove any rocks or boulders upon District Property, except for the elimination of safety hazards, without first obtaining written permission from District; and
 - e. Permittee must exercise due diligence in the protection of District Property against damage or destruction by fire, vandalism or other cause; and
 - f. Upon the termination or revocation of this Agreement, but before its relinquishment to District, Permittee shall, at its own cost and expense, remove any debris generated by its use and District Property shall be left in a neat condition. Permittee agrees not to damage District Property in the process of performing the permitted activities.
16. Public Safety. Permittee shall, or cause its contractors or subcontractors to, take any and all other necessary and reasonable steps to protect the public from harm due to the work performed on District Property under this Agreement.
17. Waiver. Any waiver by District of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term thereof. Failure on the part of District to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof or estopping District from enforcement hereof.
18. Choice of Law/Jurisdiction/Severability. This Agreement is to be governed by and construed in accordance with the laws of the State of California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be declared severable and shall be given full force and effect to the extent possible. Any legal action, in law or in equity related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in the County of Riverside, California, and the Parties waive any provisions of law providing for a change of venue to another location. Prior to the filing of any legal action, the Parties shall be obligated to attend a mediation session with a neutral mediator or try to resolve the dispute.
19. Third Party Beneficiary. This Agreement is made for the benefit of the Parties to this Agreement and their respective successors and assigns, and except as provided in Section 22, no other persons or entity may have or acquire any right by virtue of this Agreement.
20. Modification. The Agreement shall not be changed, modified or amended except upon the written consent of the Parties hereto.
21. Joint and Several Liability. If Permittee consists of more than one person or entity, the obligations imposed upon each shall be joint and several, and the act of or notice from, or notice or refund to, or the signature of, any one or more of them shall be binding on all of them with respect to the Agreement.

22. Entire Agreement. This Agreement comprises the entire integrated understanding between District and Permittee concerning the use and occupation of District Property and supersedes all prior negotiations, representations or agreements. Each party has relied on its own examination of District Property, advice from its own attorneys, and the warranties, representations, and covenants of this Agreement itself. The Agreement does not limit any other rights or remedies available to District. Permittee shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

23. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Permittee and District.

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[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

MARY ELLEN HENDLER

By: *Mary Ellen Hendler*
MARY ELLEN HENDLER, TRUSTEE OF
THE MARY ELLEN HENDLER
REVOCABLE TRUST dated June 25, 2014

RECOMMENDED FOR APPROVAL

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

By: *Jason E. Uhley*
JASON E. UHLEY
General Manager-Chief Engineer

By: *Karen S. Spiegel*
KAREN SPIEGEL, Chairwoman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:
GREGORY P. PRIAMOS
County Counsel

ATTEST:
KECIA HARPER
Clerk of the Board

By: *Thomas OH*
THOMAS OH
Deputy County Counsel

By: *Karen Harper, deputy*

Date: 8/29/19

Date: 9/10/19

Project: Tachevah Dam Outlet Storm Drain
Project No. 6-0-00050
RCFC Parcel Nos. 6050-28, 6050-29
and 6050-30
APN 505-302-023

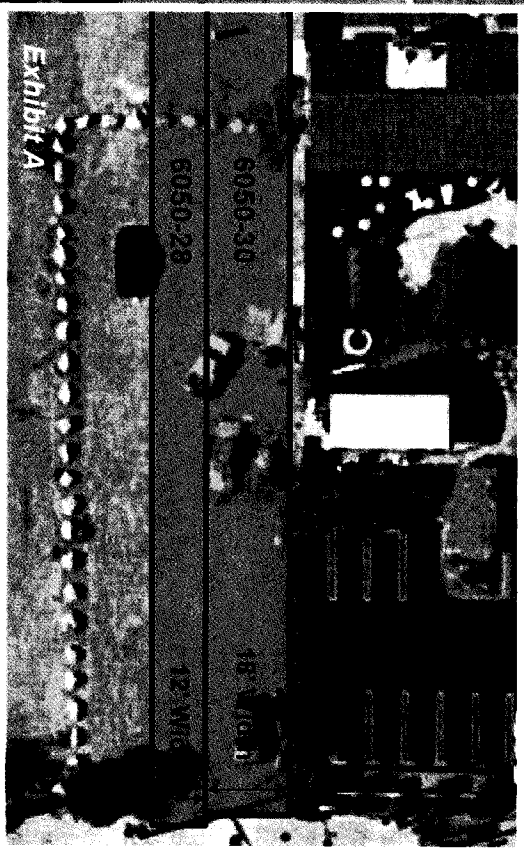
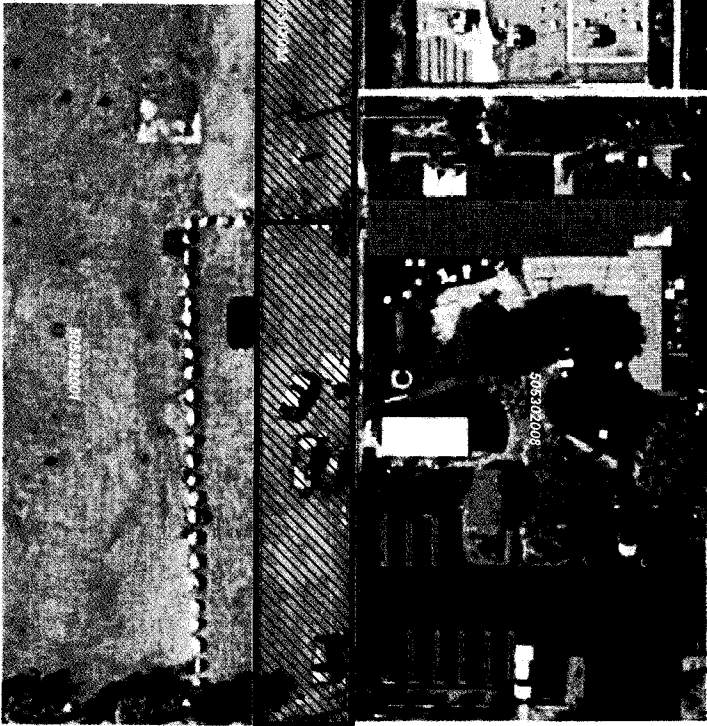
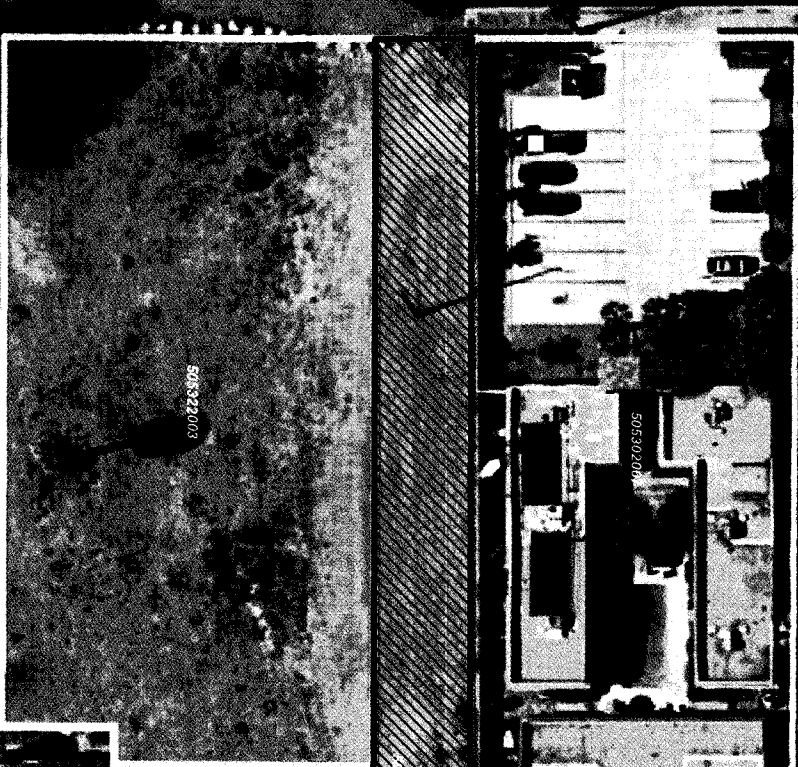
RB:rlp
08/07/19



N BELARDO RD

Scale: 1:600
One Inch equals 50 Feet

Tahchevah Creek Storm Drain
APN# 505302008
Property: 621 N. Palm Canyon Drive - Palm Springs



N PALM CANYON DR

