

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



ITEM: 11.7  
(ID # 22537)

**MEETING DATE:**  
Tuesday, August 01, 2023

**FROM :** FLOOD CONTROL DISTRICT:

**SUBJECT:** FLOOD CONTROL DISTRICT: Approve the Fair Share Agreement for Tract Map No. 36635 Between the Riverside County Flood Control and Water Conservation District and KB HOMES Coastal Inc., CEQA Exempt pursuant to CEQA Guidelines Section 15061(b)(3) ("Common Sense"), District 5. [\$0]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Find that the Fair Share Agreement is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3);
2. Approve the Fair Share Agreement for Tract Map No. 36635 between the Riverside County Flood Control and Water Conservation District ("District") and KB HOMES Coastal Inc. ("Developer");

**Continued on page 2**

**ACTION:Policy**

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

7/19/2023

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**MINUTES OF THE BOARD OF SUPERVISORS**

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

Ayes: Jeffries, Spiegel, Washington, Gutierrez, and Perez  
Nays: None  
Absent: None  
Date: August 1, 2023  
xc: Flood

Kimberly A. Rector  
Clerk of the Board

By:   
Deputy

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD  
OF SUPERVISORS  
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**RECOMMENDED MOTION:** That the Board of Supervisors:

3. Authorize the Chair of the District's Board of Supervisors to execute the Fair Share Agreement documents on behalf of the District;
4. Authorize the General Manager-Chief Engineer, at his sole discretion, to administer the Fair Share Agreement and to terminate the Fair Share Agreement, if necessary, in accordance with the terms and conditions of the Fair Share Agreement; and
5. Direct the Clerk of the Board to return two (2) fully executed Fair Share Agreements to the District.

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS: N/A</b>			<b>Budget Adjustment: No</b>	
			<b>For Fiscal Year: N/A</b>	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

Resolution No. 2005-220, Establishment of Interim Development Criteria Within the Lower San Jacinto River Floodplain, adopted by the Riverside County Board of Supervisors on April 26, 2005 (Agenda Item 15.1), addressed land development proposals for the San Jacinto River project, and required developers to pay their fair share cost of project costs based on the gross acreage of their development proposal within the floodplain.

KB HOME Coastal Inc. ("Developer") owns certain real property proposed as Tract Map No. 36635, and the District has determined that 39.61 acres of Tract Map No. 36635 are within the San Jacinto River project. The Fair Share Agreement ("Agreement") sets forth the terms and conditions by which the Developer will pay its fair share amount of Three Hundred Fifty-Two Thousand Fifty-Three Dollars (\$352,053) for the total acreage fee within the lower San Jacinto River 100-year floodplain.

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

**Environmental Findings**

Pursuant to CEQA, the Agreement was determined to be exempt from CEQA under CEQA Guidelines Section 15061(b)(3). Section 15061(b)(3), or the "common sense exemption", applies to activities where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The Agreement is merely an

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administrative action for the Developer to pay its fair share amount for development costs based on the total acreage within the lower San Jacinto River 100-year floodplain. Based on the terms of the Agreement, the District has determined that there is no possibility that the activity may have a significant effect on the environment.

**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 adoption of the subject Agreement. All costs associated with the Agreement will be borne by the Developer.

**Prev. Agn. Ref.:** 15.1 of 04/26/05

**Additional Fiscal Information**

Execution of the Agreement imposes no additional impacts to residents and businesses.

**ATTACHMENTS:**

1. Vicinity Map
2. Fair Share Agreement

AMR:blm  
P8/251815

  
\_\_\_\_\_  
Jason Farin, Principal Management Analyst 7/25/2023

  
\_\_\_\_\_  
Aaron Gettis, Deputy County Counsel 7/20/2023



FAIR SHARE AGREEMENT

Tract Map No. 36635

This Fair Share Agreement ("Agreement"), dated as of August 1, 2023 is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT") and KB HOME Coastal Inc., a California corporation ("DEVELOPER"). DISTRICT and DEVELOPER are individually referred to herein as "Party" and collectively referred to herein as "Parties". Parties hereto hereby agree as follows:

RECITALS

A. DEVELOPER is the legal owner of record of certain real property proposed as Tract Map No. 36635 which is within the unincorporated Western Riverside County located near the intersection of San Jacinto Avenue and Pico Avenue.

B. A portion of Tract Map No. 36635 is located within the area of the lower San Jacinto River 100-year floodplain ("Eligible Portions"), as shown in concept cross-hatched in red on Exhibit "A", attached hereto and made part thereof.

C. On or about April 15, 2005, the County of Riverside's Board of Supervisors adopted Resolution No. 2005-220 Establishment of Interim Development Criteria within the lower San Jacinto River floodplain (Board Agenda Item No. 15.1) addressing land development proposals for the San Jacinto River project.

D. Pursuant to Resolution 2005-220, DEVELOPER is conditioned to execute this Agreement to pay its "fair share" of project costs based on the total acreage of its Tract Map No. 36635 within the San Jacinto River project.

E. DEVELOPER total acreage for Tract Map No. 36635 is calculated at 78.79 acres, with 58.89 acres within the lower San Jacinto River 100-year floodplain.

AUG 01 2023 11.7

F. DISTRICT has identified 39.61 acres as the San Jacinto River Project's Eligible Portions.

G. DISTRICT has conditioned Tract Map No. 36635 to pay a "fair share" charge of Eight Thousand Eight Hundred and Eighty-Eight Dollars (\$8,888) per acre or the fee in effect at the time of issuance of building permit.

H. DISTRICT has calculated that the fair share acre fee is Three Hundred Fifty-Two Thousand Fifty-Three Dollars (\$352,053), hereinafter called "FAIR SHARE AMOUNT".

I. DEVELOPER agrees to pay FAIR SHARE AMOUNT prior to the issuance of building permits.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, Parties hereto mutually agree that the above recitals are true and correct and incorporated into the terms of this Agreement and as follows:

#### SECTION I

DEVELOPER shall:

1. Prior to the issuance of building permits, pay DISTRICT FAIR SHARE AMOUNT, including any amendments thereto, in accordance with Resolution 2005-220 and the conditions of approval for Tract Map No. 36635.

2. Pay, if suit is brought upon this Agreement, all costs and reasonable expenses and fees, including reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all such costs, expenses and fees shall be computed as costs and included in any judgment rendered. This provision shall remain in effect following the termination of the Agreement.

SECTION II

DISTRICT shall:

1. Determine the Fair Share amount in accordance with Resolution 2005-220 and Tract Map No. 36635's condition of approval and provide written notification of the FAIR SHARE AMOUNT to DEVELOPER.

SECTION III

It is further mutually agreed:

1. Term and Termination. The term of this Agreement shall be from the date the last Party signs the Agreement to the date of payment in full by DEVELOPER of its respective obligations under this Agreement. This Agreement shall remain in effect during the term unless earlier terminated under the following procedures:

- a. Notice and Opportunity to Cure. If any Party to this Agreement believes that any of the other Parties has failed to perform any obligation of that Party in accordance with the terms of this Agreement ("Default"), Party alleging the Default shall provide written notice ("Default Notice") to the other Party, setting forth the nature of the alleged Default. Unless otherwise provided by a specific term of this Agreement, Party claimed to be in Default shall have: (i) with respect to a Default involving the payment of money, ten (10) days after its receipt of the Default Notice to completely cure such Default, and (ii) with respect to any other type of Default, thirty (30) days from the receipt of the Default Notice to completely cure such Default or, if such Default cannot reasonably be cured within such thirty (30) day period, to commence the cure of such Default

within the thirty (30) day period and diligently prosecute the cure to completion thereafter. If Party claimed to be in Default does not cure such Default within the time periods and procedures as set forth herein, Party alleging Default may then pursue any applicable legal and equitable remedies.

2. DEVELOPER shall indemnify and hold harmless DISTRICT and the County of Riverside (including each of their Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) ("Indemnitees") from any liability whatsoever, based or asserted upon any services of DEVELOPER, its officers, employees, subcontractors, agents or representatives, arising out of or in any way relating to this Agreement, including, but not limited to, property damage, bodily injury or death, or any other element of any kind or nature whatsoever arising from the performance of DEVELOPER, its officers, employees, subcontractors, agents or representatives from this Agreement. DEVELOPER shall defend, at its sole expense, all costs and fees, including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions. All indemnification provisions of this Agreement shall remain in effect following the termination of the Agreement.

3. With respect to any action or claim subject to indemnification herein by DEVELOPER, DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and may adjust, settle, compromise any such action or claim only with the prior consent of DISTRICT, and the County of Riverside. Any such adjustment, settlement or compromise shall not in any manner whatsoever limit or circumscribe DEVELOPER's indemnification to Indemnitees as set forth herein.

4. DEVELOPER's obligation hereunder shall be satisfied when DEVELOPER has provided to DISTRICT, the County of Riverside and the appropriate form of dismissal relieving DISTRICT, and the County of Riverside from any liability for the action or claim involved.

5. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with California Civil Code Section 2782. Such interpretation shall not relieve DEVELOPER from indemnifying the Indemnitees to the fullest extent allowed by law.

6. DEVELOPER for itself, its successors and assigns hereby releases DISTRICT and the County of Riverside (including each of their Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) from any and all claims, demands, actions, or suits of any kind arising out of any liability, known or unknown, present or future, including but not limited to any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, for damage caused by the discharge of drainage within or from Tract Map No. 36635. Nothing contained herein shall constitute a release by DISTRICT or County of Riverside (including their Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) of DEVELOPER from any and all claims, demands, actions or suits of any kind arising out of any liability, known or unknown, present or future, for the negligent maintenance of Tract Map No. 36635 by DEVELOPER.



7. Any waiver by any Party hereto 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 hereof. Failure on the part of any Party hereto 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 such Party from enforcement hereof.

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

To DISTRICT: RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
1995 Market Street  
Riverside, CA 92501  
Attn: Contract Services Section

To DEVELOPER: KB HOMES COASTAL, INC.  
36310 Inland Valley Drive  
Wildomar, CA 92595  
Attn: Myron Fikse

9. This Agreement is to be 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 will nevertheless continue in full force and effect without being impaired or invalidated in any way.

10. Any action at law or in equity brought by any of Parties hereto for the purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and Parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other County.

11. This Agreement is the result of negotiations between Parties hereto, and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no importance or significance. Any

uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

12. The rights and obligations of DEVELOPER shall inure to and be binding upon all heirs, successors and assignees.

13. No Party shall assign this Agreement without the written consent of all other Parties. Any attempt to delegate or assign any interest herein without written consent of all other Parties shall be deemed void and of no effect. In the event DEVELOPER sells Tract Map No. 36635, DEVELOPER shall notify DISTRICT and CITY of any such transfer or assignment in writing no later than thirty (30) calendar days from the date of the sale. DEVELOPER expressly understands and agrees that it shall remain liable with respect to any and all of the obligations and duties in this Agreement until DISTRICT and DEVELOPER and the new owner(s) of Tract Map No. 36635 fully execute an assignment and assumption agreement that transfers all DEVELOPER's rights, duties or obligations hereunder to the new owner(s) of Tract Map No. 36635.

14. The individual(s) executing this Agreement on behalf of DEVELOPER certify that they have the authority within their respective company(ies) to enter into and execute this Agreement and have been authorized to do so by all boards of directors, legal counsel, and/or any other board, committee or other entity within their respective company(ies) which have the authority to authorize or deny entering into this Agreement.

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

16. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, Parties hereto have executed this Agreement on

8/1/23

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By

*J. Uhley*  
JASON E. UHLEY  
General Manager-Chief Engineer

By

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

APPROVED AS TO FORM:

ATTEST:

MINH C. TRAN  
County Counsel

KIMBERLY RECTOR  
Clerk of the Board

By

*Caroline Monroy*  
CAROLINE K. MONROY  
Deputy County Counsel

By

*BMIA Smith*  
Deputy

(SEAL)

[Signed in Counterpart]

Fair Share Agreement  
Tract Map No. 36635  
AMR:blm  
07/05/23

**KB HOME COASTAL INC.,**  
a California corporation

By 

\_\_\_\_\_  
**SCOTT HANSEN**  
Vice President

(ATTACH NOTARY WITH CAPACITY  
STATEMENT)

[Signed in Counterpart]

Fair Share Agreement  
Tract Map No. 36635  
AMR:blm  
07/05/23



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

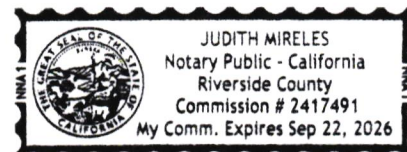
County of Riverside }

On July 6, 2023 before me, Judith Mireles, Notary Public, personally appeared Scott Hansen, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Judith Mireles, Notary Public




(SEAL)

# EXHIBIT A

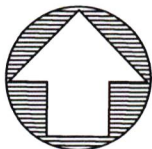
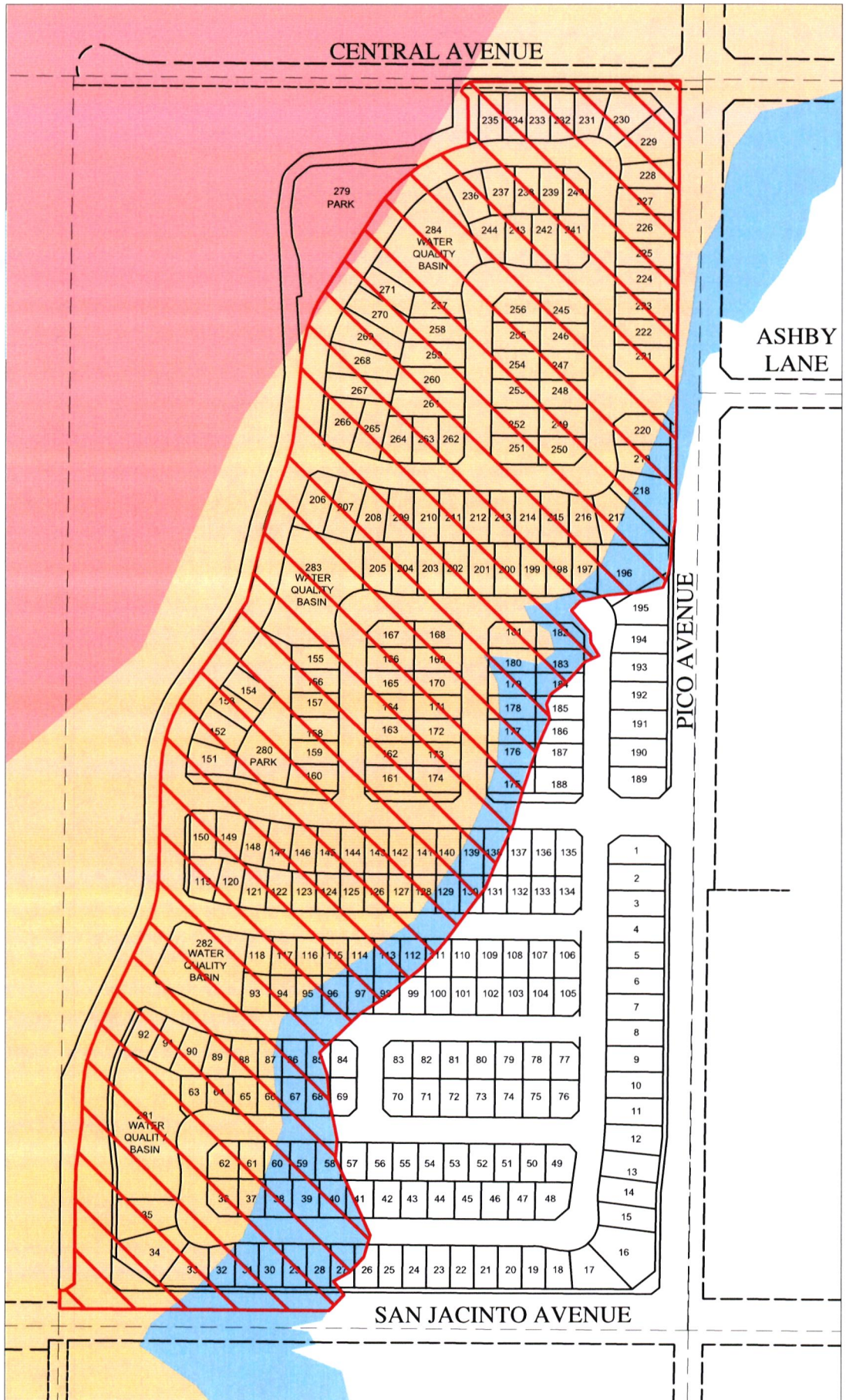
## FEMA FLOOD ZONES

FLOODWAY 

AE 

X 

## DEVELOPMENT WITHIN FEMA FLOOD ZONES



SCALE: 1"=300'