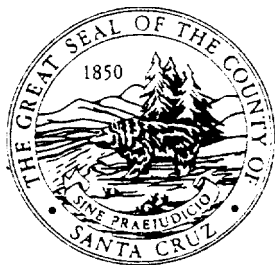


# County of Santa Cruz



## BOARD OF SUPERVISORS

701 OCEAN STREET, SUITE 500, SANTA CRUZ, CA 95060-4069  
 (831) 454-2200 FAX: (831) 454-3262 TDD: (831) 454-2123

JANET K. BEAUTZ  
 FIRST DISTRICT

WALTER J. SYMONS  
 SECOND DISTRICT

MARDI WORMHOUDT  
 THIRD DISTRICT  
 AGENDA: 2/23/99

TONY CAMPOS  
 FOURTH DISTRICT

JEFF ALMQUIST  
 FIFTH DISTRICT

February 4, 1999

BOARD OF SUPERVISORS  
 County of Santa Cruz  
 701 Ocean Street  
 Santa Cruz, CA 95060

**RE:** MCGAFFIGAN MILL ROAD APPLICATION FOR FEMA FUNDS

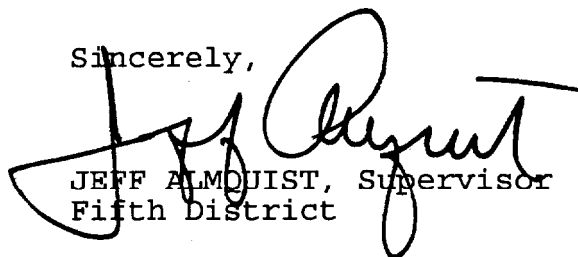
Dear Members of the Board:

Residents living on McGaffigan Mill Road have requested support for an application for Federal Emergency Management Agency (FEMA) funding under Public Assistance Category B (Emergency Protective Measures) to repair or replace the McGaffigan Mill Road Bridge and to repair the portions of McGaffigan Mill Road and/or Scenic Way which are inaccessible to emergency vehicles. The need arises as a direct result of last year's flooding, known as Disaster 1203, which severely damaged the bridge and road which provides the only access to residents of the area.

Discussions have been held between attorneys for the neighborhood group, County Counsel, Public Works, and Planning which have resulted in agreements as to the limits that would apply to the County's involvement and exposure.

I request that the Board direct the Department of Public Works to apply for the Federal Emergency Management Agency (FEMA) funds on behalf of the McGaffigan Mill Road neighbors according to the conditions agreed to by the County and the McGaffigan Mill Road neighbors.

Sincerely,



JEFF ALMQUIST, Supervisor  
 Fifth District

JA:lg

cc: Sara Clarenbach, Attorney at Law; County Administrative Office; Public Works; Planning; County Counsel

124135

AGREEMENT

This Agreement is entered into by and between the following parties: the County of Santa Cruz; and Dan Grant, Larry and Virginia Bordeaux, Thomas and **Mari** Garland, Bruce Cornpiano, Steve Belletto, David and Merrilee Blakely, Ron and Rebecca Perry, Jeffrey and Roxanne Sheets, Janel Pennella, Glenn Kuismin, Gordon and Deborah Tucker, Ray and Sandra Tjader, and Ralph Butterworth. The individual parties to this Agreement will be collectively referred to herein as the "Residents". All parties to this Agreement will be collectively referred to herein as the "Parties" and individually as a "Party".

RECITALS

1.
  - A. Dan Grant is the owner of real property located in the County of Santa Cruz described as APN 087-301-05, commonly known as 200 McGaffigan Mill Road.
  - B. Larry and Virginia Bordeaux are the owners of real property located in the County of Santa Cruz described as APN 087-301-04 and APN 087-081-36, commonly known as 250 McGaffigan Mill Road.
  - C. Thomas and **Mari** Garland are the owners of real property located in the County of Santa Cruz described as APN 087-081-33 and APN 087-301-03, commonly known as 265 McGaffigan Mill Road.
  - D. Bruce Compiano is the owner of real property located in the County of Santa **Cruz** described as APN 087-081-35

and APN 087-301-01, commonly known as 305 McGaffigan Mill Road.

- E. Steve Belletto is the owner of real property located in the County of Santa Cruz described as APN 087-081-12, commonly known as 325 McGaffigan Mill Road.
- F. David and Merrilee Blakely are the owners of real property located in the County of Santa Cruz described as APN 087-071-05, commonly known as 344 McGaffigan Mill Road.
- G. Ron and Rebecca Perry are the owners of real property located in the County of Santa Cruz described as APN 087-073-03, commonly known as 345 McGaffigan Mill Road.
- H. Jeffrey and Roxanne Sheets are the owners of real property located in the County of Santa Cruz described as APN 087-071-06, commonly known as 360 McGaffigan Mill Road.
- I. Janel Pennella is the owner of real property located in the County of Santa Cruz described as APN 087-073-05, commonly known as 415 McGaffigan Mill Road.
- J. Glenn Kuismin is the owner of real property located in the County of Santa Cruz described as APN 087-073-06, commonly known as 435 McGaffigan Mill Road.
- K. Gordon and Deborah Tucker are the owners of real property located in the County of Santa Cruz described as APN 087-068-39, commonly known as 430 Scenic Way.
- L. Ray and Sandra Tjader are owners of real property

located in the County of Santa Cruz described as APN 087-291-35, commonly known as 420 Scenic Way.

M. Ralph Butterworth is the owner of real property located in the County of Santa Cruz described as APN 087-073-08 and APN 087-073-09. commonly known as 454 Scenic Way.

2. Access to the Residents' properties was over McGaffigan Mill Road, including a private bridge which is part of McGaffigan Mill Road. McGaffigan Mill Road is a private road from the bridge to its terminus.

3. During the 1998 El Niño storms the structural integrity of the bridge and other portions of McGaffigan Mill Road were severely damaged.

4. The Residents' properties are each located in the subdivision accessed by the McGaffigan Mill Road bridge, a privately owned structure, spanning the San Lorenzo River.

5. Emergency vehicle access to the Residents' properties has been cut off as the result of the storms of El Nino '98.

6. Emergency access to the residents' properties has been lost and access to two parcels is further threatened by road failures.

7. The Residents each desire to receive emergency public assistance to relieve the imminent hazard to their properties caused by the lack of emergency access across the San Lorenzo River through a program set up by Congress to respond to emergencies created by natural disasters known as the Public Assistance Program, administered by the Federal Emergency

Management Agency (FEMA) and the State Office of Emergency Services (OES).

8. Because of "extenuating circumstances", the residents did not make a timely application for assistance from OES and FEMA for emergency access **assistance**. The clear extenuating circumstances justifying the filing of a claim at this time are that the Chief of the Boulder Creek Fire Department, Sam Robustelli, made numerous telephone calls to the FEMA and OES **Rancho Cordova** office concerning the McGaffigan Mill Road bridge, among others, at the time of Disaster 1203. He was seeking emergency assistance to enable firefighting vehicle access. FEMA and OES personnel told the Chief that the only remedy available was for the owners of homes served by McGaffigan Mill Road to file individual claims for assistance. The Residents using McGaffigan Mill Road were all told the same thing. No one was told of any alternative remedies, chiefly an application by the County of Santa Cruz serving as the eligible applicant for Fema Public Assistance Category B (Emergency Protective Measures) Funds. The Category B application only came to light in the late fall, 1998.

9. The emergency assistance desired by the Residents is generally described in the following scope of repairs: any and all reports, evaluation, study, investigation, design, permits, and construction necessary to replace or repair the McGaffigan Mill Road bridge (as indicated) and to repair portions of McGaffigan Mill Road and Scenic Way which were so damaged in the

El Niño storm of February, 1998 that emergency access has been impeded.

10. In order to qualify for the Public Assistance Program, the Residents must convince FEMA and OES of the existence of "extenuating circumstances" and secure a public entity to act as "sponsor."

11. The Residents have requested the County to serve as the sponsor for the Project.

12. The County agrees to sponsor the Project subject to the terms of this Agreement.

#### **GENERAL AGREEMENT**

1. The Residents understand and agree that the Project, if **approved** by OES and FEMA, will only provide emergency access as determined by OES and FEMA.

2. The Residents further understand and agree that the Project will not restore their private properties to a condition similar to the condition they were in prior to the damage-causing events which began in February, 1998.

3. The Residents further understand and agree that the Project is designed as an emergency measure in response to a natural disaster. Any work the Residents desire which is beyond the scope of the Project is the responsibility of the Residents.

#### 4. Permits

The County agrees to assist the Residents in obtaining the necessary permit(s) from the County of Santa Cruz Planning Department and from any other relevant agencies or departments.

The Residents each agree to execute the necessary permit(s). Unless otherwise agreed, the Residents understand and agree that they shall be responsible for obtaining and paying for any and all regulatory approvals or studies associated with the Project, including any permits required by the Department of Fish and Game.

5. Right of Entry

The Residents each agree to allow access to all points of their properties reasonably necessary to complete the Project.

6. Project Construction

The County and Residents will work together in the design and preparation of engineering to share brainstorming, input, and decision-making with the goal in mind to obtain a professional product and to keep the cost down. If it is more cost-effective for the Residents to hire a design professional, and for the County to then approve the work of that design professional, the parties will cooperate in that regard. Overall, the County will obtain design of the project and engineering preparation and will then put the project out to bid to licensed contractors.

Notwithstanding any other provisions of this agreement, it is understood and agreed that the County is only acting as an agent for the Residents for the portion of the Project on their properties and the County does not by this Agreement assume any liability or responsibility to the Residents for the Project or for any improvements constructed on their properties. The County shall provide in the contract with the construction contractor

for the Residents to be third party beneficiaries with regard to the portion of the Project on their properties, and the Residents shall be limited to their remedies against the contractor as third party beneficiaries of the contract with regard to any claims related to the Project.

It is further understood and agreed that the design plans for the Project shall be submitted to the Residents for their review and approval in writing. The Residents may, at their option and own expense, consult with professionals of their choosing to assist them in preparing and/or reviewing the design plans. The approval of the design plans by the Residents shall constitute a waiver of any claims against the County of Santa Cruz, and their employees and agents relating to the design plans.

7. Project Costs

The Parties understand and agree that should FEMA agree to fund the project, FEMA will pay up to seventy-five (75) percent of the eligible costs of the Project. The remaining twenty-five (25) percent of the costs of the Project must come from local sources (the "Local Share"), including the Residents. The County agrees to apply to the Office of Emergency Services (the "OES") for payment of the maximum allowable reimbursement of the Local Share.

The Parties understand and agree that certain costs of the Project are not covered by FEMA or OES including, but not limited to, the County's administration costs and overhead, the County's



costs related to Project design and analysis, and any repairs associated with the Project located on property not owned by the Residents. The Parties understand and agree that all costs not covered by FEMA or OES shall be borne by the Resident property owners. Residents shall collectively pay the County a deposit of Ten Thousand Dollars (\$10,000.00) within five (5) days of the complete execution of this Agreement, and an additional Ten Thousand Dollars (\$10,000.00) within thirty (30) days thereafter. The remaining portion of the Residents' share of the Project costs shall be paid to the County on the schedule attached as Exhibit A.

The Parties shall jointly negotiate and agree on the precise mechanics of how these payments will be made.. Options may include all cash or a combination of cash and securities acceptable to the County. Additional issues to be determined include: into what fund or County department or institution monies will be deposited. The Parties agree to meet and confer timely in good faith to resolve these details.

8. Release

The Residents understand and agree that the County of Santa Cruz was not in any way responsible for the events which resulted in or may result in damage to their properties. The Residents further understand and agree that the County of Santa Cruz is not liable for damages resulting from the design or construction of the Project.

Except as otherwise expressly provided in this Agreement,

the Residents understand and agree that they each hereby fully and finally release the County of Santa Cruz from all unknown and unanticipated injuries, losses, or damages, arising out of the damage to their properties and the design and construction of the Project, as well as from those now known or disclosed, and the Residents waive with respect to the flooding and erosion damage to their properties and the design and construction of the Project, all rights or benefits which they now have, or in the future may have, under the terms of Section 1542 of the Civil Code of the State of California, which section reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

9. Contingencies/Refund of Deposit

Should this Project fail through no fault of either Party, for example, if FEMA denies funding of the application, if the Project price estimates come in in amounts far exceeding the Residents' ability to pay their share, or if the Project becomes unfeasible for some other unknown or unanticipated reason, the Residents may cancel this Agreement with ten (10) days notice to the County. In that case, the Residents shall be entitled to a refund of any unused portion of their deposit, based on a proration of the reasonable cost to date of termination of the

Agreement.

The Residents understand, acknowledge and agree that should cancellation become necessary, there will be a certain incremental level of expenditure which is nonrefundable due to the County's expenditure of staff time and cost in preparation of the Project.

Should cancellation **and** refund become necessary, the Parties will work together in good faith to calculate a reasonable refund to the Residents of their deposited funds.

10. Warranty of Authority

The Parties represent and warrant that they have the sole right and exclusive authority to execute this Agreement, and that they have not sold, assigned, transferred, **conveyed**, or otherwise disposed of any claims or demand against any other Party relating to any matter covered by this Agreement.

11. Asreement Jointly Drafted

The drafting and negotiation of this Agreement has been participated in by each Party or their counsel and for all purposes this Agreement shall be deemed to have been drafted jointly by the Parties.

12. Asreement Binds and Inures

This Agreement shall bind and inure to the benefit of each Party and each Party's agents, representatives, officers, directors, predecessors, successors, heirs and assigns.

13. Notarization and Recordation

The Residents hereby agree to allow this Agreement to be

entered into the official records of the Recorder's Office of the County of Santa Cruz and, therefore, agree to provide notarized signatures to this Agreement.

14. Written Modification Only

Each Party understands and agrees that this Agreement shall not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by each Party.

15. Intesration

This Agreement supersedes any other prior writings and prior or contemporaneous oral agreements or understandings between the Parties that relate to the project to provide emergency access. This Agreement fully integrates the Parties' agreement and understanding with respect to all matters covered by it. Each Party agrees that they have not relied on any fact or statement or representation other than as specifically recited herein. To the extent there were any prior relations between the Parties respecting the project to provide emergency access and/or the design and construction of the Project, these relations, implied agreements or understandings are null and void and all the Parties' rights and duties are found exclusively in this Agreement.

16. California Law and Partial Invalidity

Any dispute concerning this Agreement shall be governed by California law. Should any provision of this Agreement be held invalid or illegal, such invalidity or illegality shall not

invalidate the whole of this Agreement, but, the Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

17. Effective Date of Agreement

This Agreement shall be effective when fully executed by all the Parties and is conditioned upon approval by the governing body of the County of Santa Cruz.

18. Headings

The paragraph headings used in this Agreement do not add or impart meaning and are inserted solely for convenience.

DATED: \_\_\_\_\_, 1999

\_\_\_\_\_

STATE OF CALIFORNIA  
COUNTY OF SANTA CRUZ

On \_\_\_\_\_, 1999, before me, \_\_\_\_\_  
Notary Public,  personally known to me - OR -  proved to me on  
the basis of satisfactory evidence to be the person whose name is  
subscribed to the within instrument and acknowledged to me that  
he executed the same in his authorized capacity, and that by his  
signature on the instrument, the person, or the entity upon  
behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

DATED: \_\_\_\_\_, 1999

\_\_\_\_\_

STATE OF CALIFORNIA  
COUNTY OF SANTA CRUZ

On \_\_\_\_\_, 1999, before me, \_\_\_\_\_  
Notary Public,  personally known to me - OR -  proved to me on  
the basis of satisfactory evidence to be the person whose name is  
subscribed to the within instrument and acknowledged to me that  
she executed the same in her authorized capacity, and that by her  
signature on the instrument, the person, or the entity upon  
behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

DATED: \_\_\_\_\_, 1999 \_\_\_\_\_

STATE OF CALIFORNIA  
COUNTY OF SANTA CRUZ

On \_\_\_\_\_, 1999, before me, \_\_\_\_\_  
Notary Public,  personally known to me - OR -  proved to me on  
the basis of satisfactory evidence to be the person whose name is  
subscribed to the within instrument and acknowledged to me that  
he executed the same in his authorized capacity, and that by his  
signature on the instrument, the person, or the entity upon  
behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

DATED: \_\_\_\_\_, 1999 \_\_\_\_\_

STATE OF CALIFORNIA  
COUNTY OF SANTA CRUZ

On \_\_\_\_\_, 1999, before me, \_\_\_\_\_,  
Notary Public,  personally known to me - OR -  proved to me on  
the basis of satisfactory evidence to be the person whose name is  
subscribed to the within instrument and acknowledged to me that  
she executed the same in her authorized capacity, and that by her  
signature on the instrument, the person, or the entity upon  
behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

DATED: \_\_\_\_\_, 1999 \_\_\_\_\_

STATE OF CALIFORNIA  
COUNTY OF SANTA CRUZ

On \_\_\_\_\_, 1999, before me, \_\_\_\_\_  
Notary Public,  personally known to me - OR -  proved to me on  
the basis of satisfactory evidence to be the person whose name is  
subscribed to the within instrument and acknowledged to me that

he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

DATED: \_\_\_\_\_, 1999 \_\_\_\_\_

STATE OF CALIFORNIA  
COUNTY OF SANTA CRUZ

On \_\_\_\_\_, 1999, before me, \_\_\_\_\_  
Notary Public,  personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

DATED: \_\_\_\_\_, 1999 \_\_\_\_\_

STATE OF CALIFORNIA  
COUNTY OF SANTA CRUZ

On \_\_\_\_\_, 1999, before me, \_\_\_\_\_,  
Notary Public,  personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC



DATED: \_\_\_\_\_, 1999

\_\_\_\_\_  
Chair  
Santa Cruz County  
Board of Supervisors

DATED: 2/16, 1999

Approved as to form:

  
\_\_\_\_\_  
Office of the County Counsel

## EXHIBIT A

The property owners shall provide the **County** adequate securities to enable the County to award this contract.

The schedule of additional payments by the Residents shall be determined on a “milestone trigger” basis. The additional payments shall be made in proration to the total cost of the Project, as determined by the percentage of the Project completed at the close of each milestone. The identified milestones are as follows:

1. Completion of the design phase.
2. Ninety Percent (90%) completion of the construction.
3. One Hundred Percent (100%) completion of the construction.

The Residents shall make each milestone payment within seven (7) days of **the** date of notification by the County of completion of said milestone.