

JOHN A. FANTHAM  
DIRECTOR OF PUBLIC WORKS

# County of Santa Cruz

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## DEPARTMENT OF PUBLIC WORKS

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AGENDA: JUNE 15, 1999

June 7, 1999

### SANTA CRUZ COUNTY BOARD OF SUPERVISORS

701 Ocean Street  
Santa Cruz, California 95060

SUBJECT: EMERGENCY WATERSHED PROTECTION PROGRAM  
LOCAL MATCH POLICY

Members of the Board:

At its regular January 26, 1999, meeting your Board directed the Department of Public Works to return on August 17, 1999, with recommendations for an Emergency Watershed Protection Program (EWP) local share policy. At that meeting your Board further directed Public Works to present a preliminary report on those recommendations around the time of Budget Hearings. Today's letter to your Board presents Public Works' final recommendations on a local share policy. If your Board adopts these recommendations, there will be no need for Public Works to return on this subject on August 17.

The Natural Resources Conservation Service (NRCS), a division of the U.S. Department of Agriculture (USDA), as the program administrator, will pay 75 percent of the construction costs plus 6 percent to 8 percent of the costs of in-kind services, such as design and inspection, provided by the local sponsor, up to a maximum limit. In the past the State Office of Emergency Services (OES) has agreed to provide reimbursement of up to 100 percent of the local share in the cases where the project involves a declared emergency, but it should be noted that the OES bases its reimbursement on the costs identified and approved by the NRCS. Certain design costs, permit costs, costs of improvements not within the approved scope of the NRCS project which are required by Fish and Game, the local coastal authority, the Corps of Engineers, or some other reviewing agency have, in the County's experience, ended up not being covered by the NRCS or, in turn, by the OES. The NRCS has specifically excluded reimbursement for the local sponsor's overhead costs.

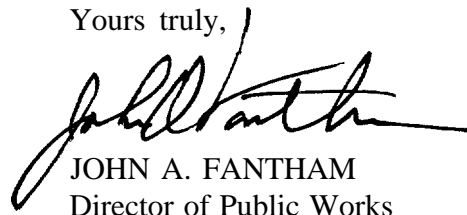
Currently Santa Cruz County, as local sponsor for five EWP projects, has committed a total of approximately \$1.7 million, including total local cost shares estimated to be \$300,000.00. Four of the projects have undertaken the major portion of the construction or are nearing completion. On all but one of the current EWP projects where the County is acting as the local sponsor (that one stemming from a lawsuit), agreements between the County and private property owners who benefit from the EWP call for the property owners to provide a portion of the local cost share not reimbursed by OES. Through a combination of County-approved limitations on the property owners' contractual financial obligations and unanticipated unreimbursable expenditures, staff estimates that the County will be left with approximately \$90,000 in unreimbursed costs, when all payments have been received for the current projects, including total contributions from the property owners on all the projects of \$42,500.

In order to avoid further net costs to the County when it acts as local sponsor for EWP projects, any future agreements between the County and property owners who are the beneficiaries of those projects must obligate the property owners to cover all eventual unreimbursed costs. Since the total eventual costs of EWP projects are rarely known even after the projects have gone to bid, the agreements should be at-cost contracts and contain none of the fixed dollar amounts or other ceilings that have crept into these agreements in the past. Attached is a copy of a proposed standard at-cost agreement for your approval. The County would then decline to participate as a local sponsor of EWP projects in cases where the benefitting property owners are unwilling or unable to comply with County policy on financing such projects.

It is therefore recommended that the Board of Supervisors take the following action:

1. Adopt an EWP local share policy which requires the beneficiaries of EWP projects to provide for the total local share and associated costs not reimbursed by NRCS, OES, or others.
2. Approve the standard at-cost agreement regarding provision of the EWP local share.

Yours truly,

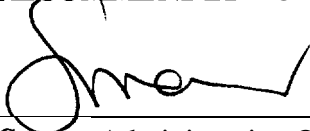


JOHN A. FANTHAM  
Director of Public Works

GG:mg

Attachment

RECOMMENDED FOR APPROVAL:



County Administrative Officer

copy to: Public Works

PREPM

## AGREEMENT

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This Agreement is entered into by and between the following parties: the County of Santa Cruz; \_\_\_\_\_

The individual parties to this Agreement will be collectively referred to herein as the "Owners". All parties to this Agreement will be collectively referred to herein as the "Parties" and individually as a "Party".

## RECITALS

(Property owner name ) \_\_\_\_\_ is/are the owner/s of real property located in the County of Santa Cruz described as APN \_\_\_\_\_, commonly known as {address} \_\_\_\_\_. (Separate recital for each property owner)

The Owners' properties are each located adjacent to \_\_\_\_\_ Creek/River.

The Owners' properties are each subject to flooding, erosion, and damage by the rapid rising of \_\_\_\_\_ Creek/River and the diversion of \_\_\_\_\_ Creek/River caused by debris falling into \_\_\_\_\_ Creek/River during periods of heavy rainfall.

The Owners' properties are each either currently damaged or are threatened by damage and each are subject to future damage due to (specific storm event or other cause) \_\_\_\_\_

The Owners each desire to receive emergency assistance to relieve the imminent hazard to their properties caused by the flooding in and erosion along \_\_\_\_\_ Creek/River through a program set up by Congress to respond to emergencies created by natural disasters known as the Emergency Watershed Protection ("EWP") program, administered by the United States Department of Agriculture Natural Resources Conservation Service (the "NRCS").

The emergency assistance desired by the Owners is generally outlined in a Damage Survey Report for (NRCS name of project) \_\_\_\_\_ prepared by the NRCS (the "Project"), a copy of which is attached hereto as Exhibit A.

In order to qualify the project through the EWP program, the Owners must secure a political subdivision of the State of California to sponsor the emergency work.

The Owners have requested the County serve as the sponsor of the Project.

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

## GENERAL AGREEMENT

1. The Owners understand and agree that the Project will only provide emergency streambank protection measures to those parts of \_\_\_\_\_ Creek/River adjacent to their properties.

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2. The Owners 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 \_\_\_\_\_

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3. The Owners further understand and agree that other projects could be designed without the assistance of the EWP or the County which would provide greater protection to their properties from flooding and erosion than the Project, and, with this knowledge, the Owners freely choose to enter into this Agreement.

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

5. Permits

The County agrees to facilitate obtaining the necessary emergency permit from the County of Santa Cruz Planning Department; all costs involve with obtaining any such permits will be the responsibility of the Owners. The Owners each agree to execute the emergency permit, a copy of which is attached to this Agreement as Exhibit B. The Owners understand and agree that they shall be responsible for obtaining and paying for any and all additional regulatory approvals or studies associated with the Project; including any permits required by the Department of Fish and Game.

6. Right of Entry

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

7. Project Construction

The County will put the Project out to bid to licensed contractors in accordance with contract procedures for public projects. Notwithstanding any other provisions of this agreement, it is understood and agreed that the County is only acting as an agent for the Owners for the portion of the Project on their properties and the County does not by this Agreement assume any liability or responsibility to the Owners for the Project or for any improvements constructed on their properties. The County shall provide in the contract with the construction contractor for the Owners to be third party beneficiaries with regard to the portion of the project on their properties, and the Owners shall be limited to their remedies against the contractor as third party beneficiaries of the contract with regard to any claim related to the Project.

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

8. Project Costs

The parties understand and agree that the NRCS will pay up to seventy-five (75) percent of the 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 Owners. The County agrees to apply to the Office of Emergency Services (the "OES") for payment of whatever portion

of the Local Share may be eligible.

The Parties understand and agree that certain costs of the Project are not covered by the NRCS, including, but not limited to, the County's administration costs and overhead, the County's costs related to Project design and analysis, regulatory agency compliance, and any repairs needed associated with the Project located on property not owned by the Owners. The Parties understand and agree that all costs not covered by the NRCS and the OES shall be borne by the Owners. Each of the Owners shall pay the County a deposit of \$\_\_\_\_\_ within five (5) days of this Agreement being fully executed. The Owners shall pay the County the remainder of the known portion of the Local Share after bids are received for the Project construction contract and before such contract is awarded.

The Parties understand and agree that certain costs of the Project are not known at the time of award of the Project construction contract. The Parties understand and agree that all such costs of the Project that arise during the construction of the Project and before its acceptance as complete shall be borne by the Owners. The Parties understand and agree that the Owners will be billed by the County for any and all such costs on an at-cost basis.

The parties understand and agree that should the Owners, collectively or individually, by action or inaction, cause an increase in the cost of the Project, such increased cost shall be borne solely by those Owners, collectively or individually.

#### 9. Release

The Owners understand and agree that the County of Santa Cruz is not in any way responsible for the high water levels, scouring, debris accumulation, flooding, erosion, or other events which resulted in or may result in damage to their properties. The Owners 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 Owners 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 flooding and erosion of \_\_\_\_\_ Creek/River and the design and construction of the Project, as well as from those now known or disclosed, and the Owners waive with respect to the flooding and erosion of \_\_\_\_\_ Creek/River 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.

#### 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 other claims or demand against any other Party relating to any matter covered by this Agreement.

#### 11. Agreement 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. Agreement 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, and assigns.

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13. Notarization and Recordation

The Owners 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.

1.5. Integration

This Agreement supersedes any other prior writings and prior or contemporaneous oral agreements or understandings between the Parties that relate to or arise out of the flooding and erosion of \_\_\_\_\_ Creek/River, the design and construction of the Project and this Agreement. 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 flooding and erosion of \_\_\_\_\_ Creek/River 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 bodies of the government entity parties.

18. Headings

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

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Owner)

STATE OF CALIFORNIA  
COUNTY OF SANTA CRUZ

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On \_\_\_\_\_, 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 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