



# County of Santa Cruz

## OFFICE OF THE COUNTY COUNSEL

701 OCEAN STREET, SUITE 505, SANTA CRUZ, CA 950604069  
(831) 454-2040 FAX: (831) 454-2115

### Assistants

SAMUEL TORRES, JR., COUNTY COUNSEL

CHIEF ASSISTANTS  
RAHN GARCIA  
DANA McRAE

Deborah Steen	Pamela Fyfe
Harry A. Oberhelman III	Ellen Aldridge
Marie Costa	Kim Baskett
Jane M. Scott	Lee Gulliver
Tamyra Rice	Kathleen Pacheco

## GOVERNMENT TORT CLAIM

### RECOMMENDED ACTION

Agenda January 23, 2001

To: Board of Supervisors  
Re: Claim of Rio Highlands LLC and Castle Companies, No. 001-063

Original document and associated materials are on file at the Clerk to the Board of Supervisors.

In regard to the above-referenced claim, this is to recommend that the Board take the following action:

- X 1. Reject the claim of Rio Highlands LLC and Castle Companies, No. 001-063 and refer to County Counsel.
- 2. Deny the application to file a late claim on behalf of \_\_\_\_\_ and refer to County Counsel.
- 3. Grant the application to file a late claim on behalf of \_\_\_\_\_ and refer to County Counsel.
- 4. Approve the claim of \_\_\_\_\_ in the amount of \_\_\_\_\_ and reject the balance, if any, and refer to County Counsel.
- 5. Reject the claim of \_\_\_\_\_ as insufficiently filed and refer to County Counsel.

cc: Tom Bolich, Director  
Department of Public Works  
Alvin James, Planning Director

RISK MANAGEMENT

By Janet McKinley

COUNTY COUNSEL

By Kim Elizabeth Baskett



NOTICE OF CLAIM

0018

CLAIMANTS: RIO HIGHLANDS LLC and CASTLE COMPANIES

CLAIM NO.: \_\_\_\_\_

TO:

COUNTY OF SANTA CRUZ, COUNTY OF SANTA CRUZ BOARD OF SUPERVISORS, AND EACH INDIVIDUAL SUPERVISOR, JANET K. BEAUTZ, WALT SYMONS, MARDI WORMHOUDT, JEFF ALMQUIST, and TONY CAMPOS:

Please accept this claim for damages on behalf of RIO HIGHLANDS LLC and CASTLE COMPANIES. This claim for damages is based upon allegations of a breach of contract, breach of covenant of good faith and fair dealing, violations of due process and equal protection, and civil conspiracy. The claimants reserve the right to pursue additional legal theories against the recipients of these claims.

The facts supporting these claims include, but are not limited to, the failure of each of the recipients of this claim to act upon the recommendations of COUNTY OF SANTA CRUZ BUILDING & PLANNING DEPARTMENT and PUBLIC WORKS DEPARTMENT, and other representatives of the COUNTY OF SANTA CRUZ who provided inspections and/or recommendations to accept a residential subdivision, thereby allowing the release and/or reduction of the surety bonds and letters of credit provided by the Claimants

which were required by the recipients of this claim in order to assure the completion of this project.

Specifically, there was a Subdivision Agreement attached as Exhibit A and the Claimants, in reliance upon representations made by each of the recipients of this claim contained in Exhibit A have proceeded to perform all of the terms and conditions under this agreement, and have satisfied their obligations herein. The Claimants developed and constructed the Rio Highlands Subdivision under this agreement, and have complied with all applicable requirements. The Claimants allege that this subdivision has been inspected, has been completed, and has been recommended by COUNTY OF SANTA CRUZ representatives for acceptance and surety bond release/reduction. As of August 15, 2000, the Claimants have been advised that their request for the release of the surety bonds and lines of credit was being denied. Despite the fact that the COUNTY OF SANTA CRUZ representatives, including inspectors and representatives of the Building & Planning Department, found that all requirements for the Claimants have been complied with, there remains a failure and refusal on the part of each of the recipients of this claim to comply with their obligations as outlined within Exhibit A, and a failure to satisfy the requirement of good faith and fair dealing in their relationship with the Claimants, in addition to a violation of the Claimants' rights to due process and equal protection under the laws of this state.

As a result of a continuing refusal on behalf of the

SUBDIVISION AGREEMENT  
(Partial Release Tract)

THIS AGREEMENT, by and between RIO HIGHLANDS,  
G.L.C., hereinafter  
referred to as SUBDIVIDER, and the COUNTY OF SANTA CRUZ,  
hereinafter referred to as COUNTY.

0021

WITNESSETH:

WHEREAS, in connection with the development of that  
certain subdivision known as Tract 1343. RIO HIGHLANDS  
SUBDIVIDER has previously filed with the  
Santa Cruz County Planning Director a tentative map of said  
subdivision, which said tentative map was duly approved; and

WHEREAS, SUBDIVIDER has submitted, for approval and  
acceptance, a final map of said subdivision: and

WHEREAS, certain work and improvements required by  
Chapter 14.01 of the Santa Cruz County Code have not been  
completed, to wit:

Work and improvements required as conditions for  
approval of the tentative subdivision map for this  
subdivision, including, but not limited to, site  
grading, driveway access, drainage, erosion control,  
including the prevention of sedimentation or damage to  
off-site property, street construction, sewer  
construction, and landscaping, all to be built or  
completed in accordance with improvement plans on file  
with, and approved by the Director of Public Works of  
the County of Santa Cruz, the Santa Cruz County Code  
and the Subdivision Map Act.,

WHEREAS, SUBDIVIDER hereby proposes to enter into an  
agreement with COUNTY, by the terms of which agreement SUBDIVIDER  
agrees to have the work and improvements set forth above  
completed on or before two years from the date of execution of  
this agreement, pursuant to Sections 14.01.510, et seq. of the  
Santa Cruz County Code.

NOW, THEREFORE; in consideration of the premises and  
the mutual promises and covenants of the parties hereto, it-is  
agreed as follows:

1. CONSTRUCTION OF IMPROVEMENTS: SUBDIVIDER shall do  
all necessary work and construct the improvements described  
hereinabove, and complete such work and improvements in  
accordance with the provisions of the conditions of the tentative  
man approval, which are incorporated herein by reference. All  
the improvements described above shall be completed on or before  
two years from the date of the execution of this agreement  
pursuant to Sections 14.01.101, et seq. of the Santa Cruz County  
Code, unless a written extension has been granted by the County.

All required off-site improvements shall be  
substantially complete to the satisfaction of the County  
Engineer, prior to the granting of occupancy for any new unit.

9

**EXHIBIT "A"**

~~concurrently with on-site work, unless otherwise expressly specified by the conditions of the tentative map.~~

All materials used shall comply with the County's specifications. SUBDIVIDER hereby guarantees that the above mentioned work and improvements shall in all respects meet specifications prescribed by the Director of Public Works of the County of Santa **Cruz**. SUBDIVIDER guarantees and warrants all work and **materials**, and further agrees to replace defective work and materials and maintain all of said work and improvements to the satisfaction of COUNTY in accordance with Chapter 14.01 of the Santa **Cruz** County Code. SUBDIVIDER further agrees **that** all survey work shall comply with the requirements prescribed by the COUNTY **SURVEYOR**.

0022

2. **E R O S I O N** : SUBDIVIDER will take all necessary actions during the course of construction to prevent erosion damage to adjacent properties during inclement weather. It is understood and agreed that in the event of failure on the part of SUBDIVIDER to prevent erosion, COUNTY **may** do the work on an emergency basis and back-charge the SUBDIVIDER for the actual expenses incurred, or, if necessary, proceed against the Faithful Performance Security to cover COUNTY'S expenses.

3. **SECURITY**. At the time of execution of this agreement, SUBDIVIDER shall furnish to COUNTY the following security in the form of cash deposits, or instrument of credit satisfactory to the County:

- A. Faithful Performance Security in the amount of \$1,518,000 to assure that all work specified in this agreement will be completed: except for that amount retained to provide the Guarantee, Warranty **and Maintenance** of Work Security, the Faithful Performance Security shall be released upon completion of the work and acceptance of the work to be performed hereunder, in whole or in part: provided that a partial release shall not be in an amount less than 25% of the total security amount and that no more than 50% of the total security amount shall be released prior to final completion and acceptance of the work hereunder. Since partial releases are to be made, a schedule of construction shall be made a part of this agreement. The schedule shall specify the portions of the work to be completed and target completion dates for those portions of work, as well as the amounts of **partial release** to be made for each portion of work. Failure on the part of SUBDIVIDER to meet a target date shall result in forfeiture of the corresponding **partial release**. Any partial release thus forfeited may be regained at the next target date if all portions of work due prior to and on that next target date are completed by that next target date. Any extension or modification of the schedule must be granted in writing by the County.

Provisions for partial release may be made at the written request of SUBDIVIDER. SUBDIVIDER shall submit documentation to the County in **order to** verify that the work required to gain a partial release has been completed. 0023

- B. Labor and Material Security in the amount of \$ 759,000, which said security, by its terms, shall secure payment to materialmen and laborers furnishing materials and/or labor in connection with the above-described work or improvement; the Labor & Material Security shall be released 90 days after the completion of all the work and provided that no liens have been filed against the project.
- C. Inspection Security in the amount of \$ 5000 - (CASH)
- D. Tax Security \$30,000 -
- E. Monumentation Security in the amount of \$11,625 -

At the time the COUNTY Board of Supervisors accepts the improvements and coincident with the release of the Faithful Performance Security, a sufficient amount of said security shall be retained to provide:

- F. Guarantee, Warranty and Maintenance of Work Security in the amount of \$ \_\_\_\_\_, which said security, by its terms, shall guarantee and warrant all work for a minimum period of twelve months following the completion and acceptance thereof by the Board against any defective work or labor done, or defective materials furnished and to maintain such work to the satisfaction of the County for said period, all as provided in Section 14.01511(b) (3) of the Santa Cruz County Code and Section 66499.3(c) of the Government Code. The Guarantee Warranty & Maintenance Security shall be released twelve months after the completion of the work and provided that the workmanship is approved.

Securities held by COUNTY on behalf of other agencies shall be included in the categories above. Work of improvements required under this agreement requires the holding of securities by COUNTY on behalf of the following agencies or companies in the following amounts:

- a. Water Purveyor SOQUEL CREEK WATER DISTRICT  
Name of Agency  
\_\_\_\_ Security held by County: \$ \_\_\_\_\_  
 Security is held by agency.

Prior to filing the final map, SUBDIVIDER agrees to deposit with the County of Santa Cruz a \$10,000.00 deposit to apply toward the costs required to acquire the drainage easement, including attorney time, appraisal, and engineering services. County Counsel fees shall be billed at \$125.00 per hour or at the rate applicable at the time this provision is put into force. Upon receipt of the security County Counsel shall retain an appraiser and initiate negotiations with the property owners and, if necessary-, shall initiate and diligently pursue eminent domain proceedings. Both parties acknowledge that the Santa Cruz County Board of Supervisors after authorizing staff to initiate eminent domain proceedings may, at its sole discretion, based on substantial legal justification and for good cause, determine not to proceed or to abandon the eminent domain proceedings.

0024

The County shall consider initiation of a condemnation action pursuant to Civil Code Section 1001, Code of Civil Procedure Section 1245.325, Government Code Section 66462.5, and Santa Cruz County Code Chapter 14.01.

If the costs of acquisition are less than \$10,000.00 then the balance of the cash deposit thereon shall be refunded to SUBDIVIDER. If the County requires additional funds to pursue eminent domain proceedings, SUBDIVIDER shall submit within 30 days of a request by the County such additional funds.

4. FAILURE TO COMPLETE IMPROVEMENTS: In the event SUBDIVIDER has not completed the specified work and improvements within the period of time allowed by this agreement, SUBDIVIDER shall not proceed further with such work and improvements unless and until approval to do so is obtained from the COUNTY. Under normal circumstances, if it is not found to be contrary to the public interest, the COUNTY will allow renewals of this agreement, provided that all applicable requirements are met by SUBDIVIDER. The COUNTY reserves the right, upon each renewal, to increase the security amounts to reflect fluctuations in material and labor prices. It is understood that in the event the SUBDIVIDER fails to complete the work and improvements within the specified period of time that the COUNTY may proceed against the Faithful Performance Security, to obtain completion of such work and improvements, or may initiate proceedings to revert the subdivided property to acreage pursuant to the provisions of Sections 14.01.344 et. seq. of the Santa Cruz County Code.

5. INDEPENDENT CONTRACTOR: SUBDIVIDER agrees that, in making the above-mentioned improvements, SUBDIVIDER is an independent contractor and not an employee of COUNTY, and all persons hired to furnish labor and/or materials in connection with proposed improvements are not employees of COUNTY.

6. INDEMNIFICATION: SUBDIVIDER agrees to defend and hold the COUNTY, its officers, employees, and agents harmless from any losses or damages occasioned by injuries to persons and/or property arising out of or in any way connected with the above-mentioned work or improvement.

7. FILING OF FINAL SUBDIVISION MAP: COUNTY, for and in consideration of the execution of this agreement and

fulfillment by SUBDIVIDER of the terms set forth herein, agrees to accept for filing the final map of Tract No. 1343

0025

8. BINDING ON SUCCESSORS AND ASSIGNS: This agreement shall be binding upon the successors and assigns of each of the parties.- SUBDIVIDER shall inform potential buyers of parcels of land created by the underlying subdivision of the obligations on successors and assigns created by this paragraph. SUBDIVIDER shall provide copies of this executed agreement to those potential buyers. SUBDIVIDER is advised that the sale of all or part of the lands of the underlying subdivision does not automatically transfer from the SUBDIVIDER of the land the security obligations of this agreement. Those security obligations attach to SUBDIVIDER until all obligations of SUBDIVIDER under this agreement are fulfilled or transferred by substitution of a replacement agreement and replacement securities acceptable to the County.

9. AGREEMENT TO CONSTRUCT OFF-SITE DRAINAGE IMPROVEMENTS FOR IN-LIEU DRAINAGE FEES: SUBDIVIDER agrees that: (a) All on-site drainage facilities including, but not limited to, detention areas, catch basins, swales, pipes, manholes, and energy dissipators will be constructed. at SUBDIVIDER's expense according to the conditions of the tentative map. Future maintenance of the on-site drainage facilities will be the responsibility of SUBDIVIDER or SUBDIVIDER's successors or assigns, typically the homeowners and a homeowners association. The on-site facilities will not be County maintained. (b) The construction of the storm drain and culvert crossing on Rio del Mar Boulevard near Meadowlark Lane will be at SUBDIVIDER's expense. Upon inspection and acceptance by the County, Zone 6 of the Santa Cruz County Flood Control and Water Conservation District (hereinafter ZONE 6) will maintain said storm drain and culvert crossing on Rio del Mar Boulevard. (c) All off-site drainage improvements on Sumner Avenue which are to be constructed by SUBDIVIDER shall be constructed during the initial first phase of development. Should the cost of the off-site work on Sumner Avenue exceed the amount of ZONE 6 fees for Phase I, SUBDIVIDER will be granted a fee credit which can be applied to ZONE 6 fees for Phases II and III. Any fee credit will be calculated using actual construction costs and actual drainage fees. Design costs are not eligible for a fee credit. No interest will accrue on the fee credit amount. If for any reason Phases II and III are not built within three years after the start of construction for Phase I, the fee credit will be void.

Should the cost of the off-site work exceed the total aggregate drainage fees, SUBDIVIDER shall be responsible for the additional cost. Phase I shall be understood to include the construction of all infrastructure on-site and off-site and the development of 17 of the subdivision parcels. Phases II and III shall be understood to include the development of the remaining 34 subdivision parcels.




IN WITNESS WHEREOF, this agreement has been duly  
executed by the parties hereto on \_\_\_\_\_ I 19\_\_.

COUNTY OF SANTA CRUZ

0026

By: \_\_\_\_\_  
Director of Public-Works

By:   
Subdivider  
MANAGING MEMBER RIO HIGHLANDS L.L.C.

Address:

2291 VIA DE MERCADOS

CORCORAN CA. 94520

Phone: (510) 687-6700

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant Chief County Counsel

SUBAGMLD.DOC/RHR

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

0027

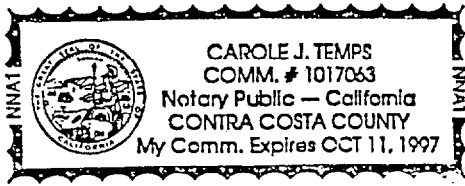
State of California

County of Contra Costa

On August 14, 1997 before me, Carole J. Temps, a notary Public

personally appeared Thomas A. Baldacci

personally known to me - OR - CI 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.



WITNESS my hand and official seal.

Carole J. Temps  
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Subdivision Agreement Rio Highlands

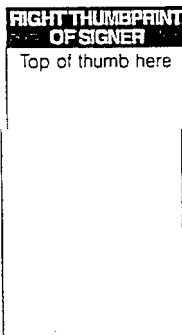
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

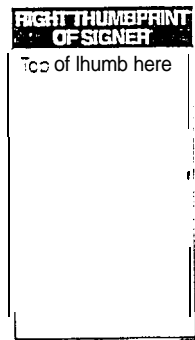
- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_