

STORM WATER DRAINAGE PERMIT

This Storm Water Drainage Permit Agreement ("Permit Agreement") is made effective as of _____, 2007, by and between the County of San Mateo (hereinafter "County"), and Daniel M. Cook and Nancy M. Cook (hereinafter jointly and severally "Permittees"). This Permit Agreement is entered into with reference to the following facts:

RECITALS

- A. County is the owner of certain real property in the unincorporated area of San Mateo County, generally known as Edgewood County Park (the "Park Property"), which property is maintained by County for Parks, Recreation, Scenic and Open Space purposes. The Park Property is further described as APN 057-460-140, and is identified as "Lands of San Mateo County" in **Exhibit A** attached hereto and incorporated herein by this reference.
- B. Permittees, as Trustees of the Cook Family 2001 Trust, dated June 19, 2001, are the owners of residential real property (the "Permittee Property") located southeast of the Park Property, which Permittee Property is described as APN: 068-110-210, commonly known as 529 Rocky Way, Woodside, California, and identified as "Lands of Cook" in **Exhibit A**.
- C. The Park Property and the Permittee Property are separated by property (the "Adjoining Landowner's Property") described as APN: 068-110-140, and identified as "Lands of McCoy" on attached Exhibit A.
- D. Currently storm waters drain from the Permittee Property to the Adjoining Landowner's Property, to the Park Property. Permittees desire to better control and manage such drainage.
- E. County is willing to grant to Permittees permission to construct and maintain certain improvements on Park Property and thereby discharge storm water through a drain that will begin at Permittees' Property, extend through Adjoining Landowner's Property and terminate via a dissipator at the outfall located on Park Property (the "Storm Drainage System"), as shown in **Exhibit B** attached hereto and incorporated herein by this reference.
- F. County and Permittees, hereinafter Parties, desire to set forth the terms and conditions upon which County grants Permittees permission to construct and maintain those portions of the Storm Drain System located on the Park Property and to impose the maintenance responsibilities upon Permittees, their successors and assigns, and upon successor owners of the Permittee Property.

NOW, THEREFORE, County and Permittees agree as follows:

1. **Permit.** County hereby grants permission to Permittees to construct, maintain, and repair, on the Park Property, certain improvements associated with the Storm Drainage System (the "Improvements") and to discharge storm water runoff from the Permittee Property onto the outfall on Park Property (the "Permit"). The Improvements and their locations shall be as described below in Section 5, and located as shown in part on **Exhibits B and B-1**, attached hereto. This Permit is for the exclusive use of Permittees.

2. Permit Conditions. Permittees shall have the right to construct, maintain and repair the Improvements on Park Property; provided however, Permittees shall provide notice in writing to County immediately after completion of said Improvements, and prior to making any repairs to said Improvements on Park Property. In maintaining and repairing the Storm Drainage System, including the Improvements, and in so using and accessing the Park Property, Permittees agree that they shall not interfere with, impair or disrupt the existing or future use, enjoyment, occupancy and/or operation of the Park Property or any portion of the Park Property, or any other easements thereon. Permittees' contractors may have such access and use of the Park Property as is consistent with Permittees' rights and obligations hereunder. Any rights granted to Permittees regarding the Adjoining Landowner's Property are the subject of separate arrangements or instruments.

3. Term. The permission to use and access the Park Property granted herein is an accommodation and shall commence on the later of August 1, 2007, or the date on which this Permit is executed and delivered to County and following authorization and approval by County and receipt of any and all fees and other approvals required (the "Commencement Date") and expire upon Permittees default hereunder or the later of, August 1, 2057, or fifty years after the Commencement Date if that date is later than August 1, 2007. It shall also expire on sixty (60) days' prior written notice from County revoking this Permit. Such revocation shall not be unreasonably made and shall take into consideration: (i) the public benefit provided by the Permit, (ii) and the cost and expense and feasibility of arranging for alternate methods to accommodate the right granted by this Permit/ Upon abandonment of the Storm Drainage System, Permittees shall, unless otherwise instructed by County, within thirty 30 days of such abandonment, at Permittees' sole cost and expense clear the Park Property of all personal property, fixtures, improvements and environmental or health hazards.

4. Permit Fees. In consideration of the grant of this Permit, Permittees shall pay to County, annually, in advance, on or before January 10th of each calendar year, and for a period of 10 years thereafter, a fee for the permission herein granted, in the amount of \$500.00 (the "Permit Fee"). For the duration of each subsequent ten (10) year period that the Permit is in effect, the annual Permit Fee shall increase by \$100 at the beginning of such period. In the event this Permit Agreement commences on a day other than January 1st of any year, the Permit Fee shall be pro rated based on 365 days, and shall be due and paid on the commencement date. Upon any termination of this Permit Agreement, the Permit Fee shall be appropriately prorated, and subject to any County rights to an off set or withholding, any excess amounts paid shall be returned to Permittees. Failure to make a timely payment of the Permit Fee is a breach of the Permit conditions contained herein.

5. Installation of Improvements. Permittees agree to install, upgrade and construct, at Permittees' sole expense, the Improvements, in compliance with all applicable ordinances and regulations, and according to the plans and specifications, that include, but shall not be limited to, the following: (a) the Outfall Rock Dissipater Study prepared by Luzuriaga Taylor Inc. and dated August 30, 2003; (b) that certain Streambed Alteration Agreement between the Department of Fish and Game and Dan Cook, dated July 30, 2004 and renewed December 27, 2005; and (c) the Revegetation Plan, dated in Case #PLN2003-00589, and submitted by Dan Cook to the County of San Mateo, Parks Department on July 18, 2005.

(a) Exercise of Due Care. Permittees shall use and shall cause their contractors and agents to use due care at all times to avoid any damage or harm to the Park Property or surrounding

property and to native vegetation and natural attributes of the area surrounding the Park Property. Under no circumstances shall Permittees or their contractors or Agents damage, harm or take any rare, threatened or endangered species on or about the Park Property. Any repairs to the Improvements on Park Property shall be made by hand or with light equipment only. Permittees shall not discharge, or cause to be discharged, any hazardous materials or substances onto the Park Property, and Permittees agree that if the Storm Drainage System is the cause of any hazardous materials or substances coming onto Park Property, then County may take corrective measures as it deems reasonably necessary, including the termination or revocation of the Permit herein granted. Permittees shall be required during the term of this permit to procure and maintain proof of adequate insurance with limit not less than one million dollars (\$1,000,000) per occurrence to reimburse County for any costs incurred by County in connection with such corrective measures implemented by the County in connection with hazardous material removal..

(b) Erosion Control. If the Improvements on Park Property cause significant, unplanned erosion of any kind at the point of outfall on Park Property, said Improvements shall be re-designed and reinstalled by Permittees as necessary, after approval by San Mateo County Planning Department and all parties having authority over such Improvements, s, no later than six (6) months after delivery of notice in writing to Permittees by County. County may require that Permittees, successors, assigns, or any future owner of the Permittee Property, take such corrective measures as County may deem reasonably necessary to mitigate or prevent damage to the Park Property.

(c) Completion of Construction. Once construction of the Improvements is started, Permittees shall with reasonable diligence prosecute to completion the construction of all Improvements within one-hundred eighty (180) days of the work commencement, subject to delays from force majeure; however, in no event shall construction take place other than between April 15, 2007 and October 15, 2007, unless otherwise extended by County and relevant permitting authorities. Permittees agrees to indemnify and save harmless the County from all claims for labor or material in connection with said construction and from the cost of defending against such claims.

6. **Maintenance.** During the term of the Permit granted herein, Permittees shall maintain and keep the Park Property in a neat and clean condition, it being understood that Permittees intend to use the Park Property as the site for a dissipator at the outfall of the Storm Drainage System. During the term of this Permit, Permittees shall not cause or allow any interference with (and shall be subject to and subordinate to) any reservations, grants, easements, agreements or licenses of any kind whatsoever as the same appears on record in the official records of the County as of the effective date of this Permit Agreement, including rights-of-way for sewers, pipe lines, conduits, telephone, communication heat or power lines as shall have been established of record in the official County records as of the date of this Permit Agreement or as may from time to time be reasonably determined by County. Permittees understand and acknowledge that, pursuant to an easement agreement dated September 16, 1980, Midpeninsula Regional Open Space District may have certain rights superior to any permission granted hereunder.

7. **Liens and Assessments.** Permittees shall neither cause nor allow any mechanics or materialmen's liens to be filed against the Park Property. Should any such liens be filed, Permittees

shall cause the same to be paid, discharged, released and/or satisfied within thirty (30) business days of the filing of same; and Permittees shall promptly pay when due all taxes, assessments, excises, levies, fees, or other government impositions associated with the Park Property and caused by Permittees' use or activities pursuant to this Permit Agreement. Permittees recognize that this Permit may create a possessory or other interest that may result in the assessment of property taxes or assessments against the Park Property. Permittees agree to pay any such property taxes or assessments, including any possessory interest property tax, levied against the Park Property as a result of Permittees' interest in or use of the Property or any property interest acquired by Permittees by virtue of this Permit.

8. Compliance with Laws and Regulations. Permittees shall at all times comply with: (a) all applicable Federal, State, County and City laws, ordinances, rules, regulations, certifications and licenses; (b) all terms, conditions and best management practices described in the San Mateo Countywide Stormwater Pollution Prevention Program ("STOPP"); and (c) all terms and conditions associated with agreements relating to storm water connections in the city of Woodside, for the drainage of stormwater from the Permittee Property.

9. Indemnification. During the term of this Permit, Permittees shall indemnify, protect, hold harmless, and defend County (with counsel reasonably acceptable to County) from and against all claims (including third party claims for injury or death to persons or damages to or loss of property), costs, damages (including consequential damages), fines, judgments, penalties, losses, expenses and reasonable attorneys' fees, associated with, caused by, occurring on, or associated with the Storm Drainage System or the condition of the Park Property. County shall use ordinary and reasonable care regarding its activities adjacent to the Storm Drainage System. County shall notify Permittees, in writing, of any claim for which County seeks indemnification.

10. Default; Remedies.

(a) Default. Failure or delay by Permittees to perform any material term or provision of this Agreement constitutes a default under this Agreement. County shall give written notice of default to Permittees specifying the default complained of by County. Except as required to protect against further damages, County shall not institute proceedings against the party in default until thirty (30) days after giving such notice; provided that, in the event more than thirty (30) days are required in order to reasonably cure any non-monetary default, Permittees shall have a reasonable time to cure such default provided they have commenced to cure within said thirty (30) day period and diligently prosecute cure to completion. Any failure or delay in asserting any rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive County of their right to institute or maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

(b) Remedies. In the event Permittees have failed to cure any default within the cure periods provided herein, County may perform such obligations and shall be entitled to reimbursement for its reasonable costs and expenses in such performance, with interest thereon at the highest rate permitted by law.

11. Insurance. During the term of this Permit, Permittees shall procure and maintain homeowner's or general liability insurance covering the Storm Drainage System and its occupation of a portion of

the Park Property, with limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage liability. Upon County's request, Permittees and County shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the County of San Mateo is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Permittees for risks comparable to those associated with this Permit, then Permittees shall, at County's reasonable request, increase the amounts or coverage carried by Permittees to conform to such general commercial practice. Proof of such insurance shall be furnished to County within thirty (30) days of written request. Such policy will provide that cancellation will not occur without at least fifteen (15) days prior written notice to County.

12. Cooperation. The parties shall work cooperatively to execute all documents necessary to carry out the terms of this Permit.

13. Acceptance of Property Conditions. Permittees are aware of the condition of the Park Property, and Permittees accept the Park Property in its current condition without reservation or limitation, including all easements thereon.

14. Successors and Assigns. This Permit is not assignable or transferable without the written consent of the County, which consent shall not be unreasonably withheld. Upon such consent, this permit shall be binding upon and inure to the benefit of the permittees hereto, their successors, assigns and upon successor owners of the Permittee Property.

15. Counterparts. This Permit may be executed in duplicate, each of which shall be considered an original.

16. Time of Essence. County and Permittees acknowledge and agree that time is of the essence with respect to performance of their respective obligations under each and every term of this Permit.

17. Headings. The headings in this Permit are for convenience only and shall be given no effect in the construction or interpretation of this Permit

18. Notices. Permittees shall promptly (and in all events within three (3) business days of a planned transaction) notify County of any change in the ownership or occupancy of the Cook Property. Any notice to County shall be addressed as follows: San Mateo County, Department of Parks, 455 County Center, Redwood City, CA. 94063-1665, Attention: Director of Parks. Any notice to Permittees shall be addressed as follows: Permittees, 529 Rocky Way, Woodside, California, 94062. Either party may, by written notice to the other, change the address to which notices shall be sent thereafter.

19. Disclosure. Permittees shall disclose this Permit in advance of any conveyance of the Permittee Property.

20. Construction. The validity, interpretation and performance of this Permit shall be governed by and construed in accordance with the Laws of the State of California applicable to Permits made in and to be performed in California.

21. No Waiver. The failure of either Party to insist upon strict adherence to any term of this Permit on any occasion shall not be deemed a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Permit. Any waiver must be in a writing signed by the Party granting the waiver.

22. No Intent to Create Third Party Beneficiaries. The Parties intend that the rights and obligations under this Permit shall benefit and burden only the Parties hereto, for themselves, their successors and assigns, and the real property referenced herein, and do not intend to create any rights in, or right of action to or for the use or benefit of any third party.

23. Severability and Savings Provision. If any one or more of the provisions contained in this Permit shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Permit, but this Permit shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

IN WITNESS WHEREOF, County and Permittees have executed this Storm Water Drainage Permit Agreement effective as of the date indicated above.

COUNTY:

PERMITTEES:

COUNTY OF SAN MATEO,
a political subdivision of the State of
California

By: _____
President, Board of Supervisors

By:  _____
Daniel M. Cook

By:  _____
Nancy M. Cook

Resolution No. _____

ATTEST:

Clerk of the Board

Exhibit A

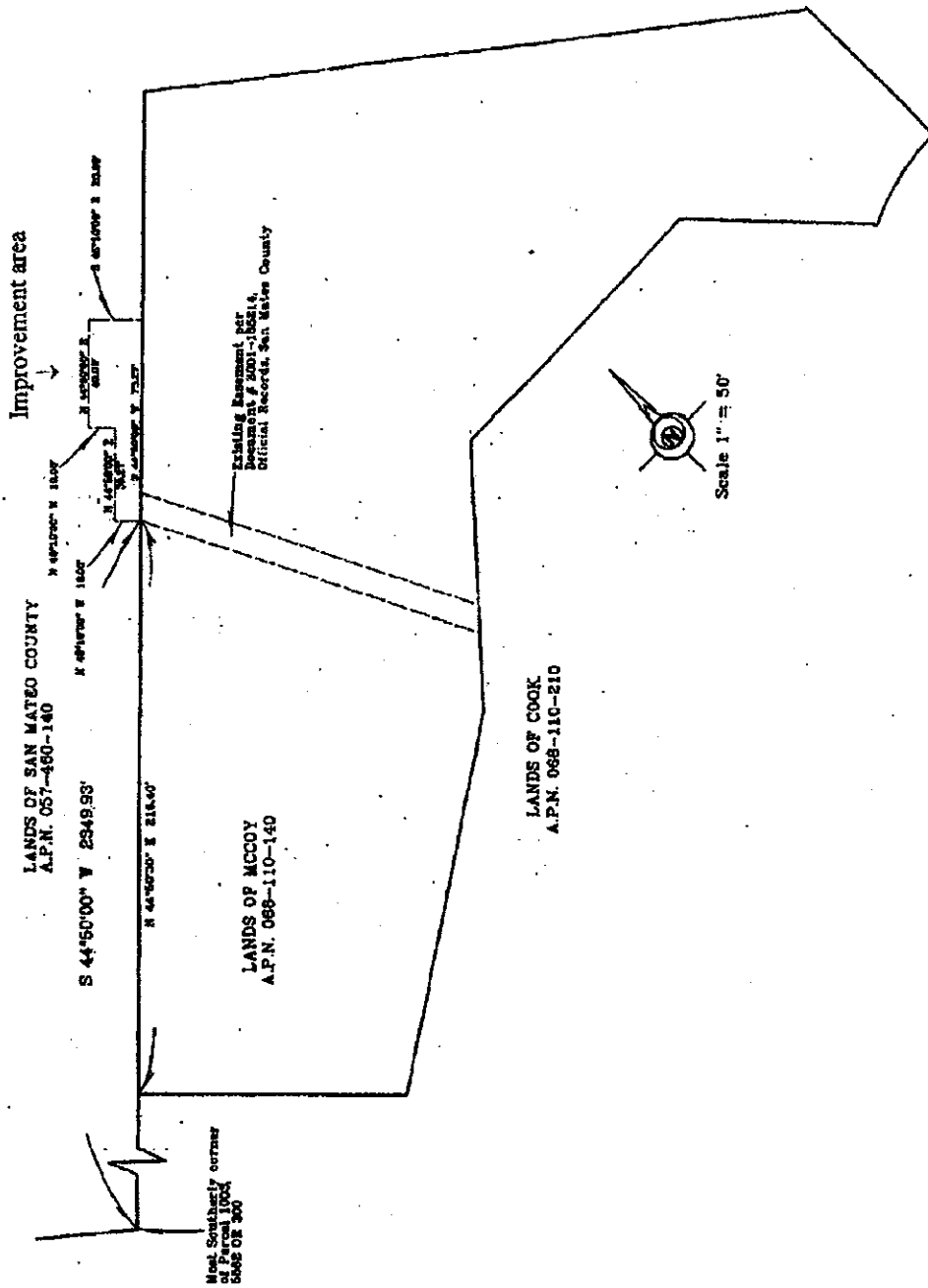
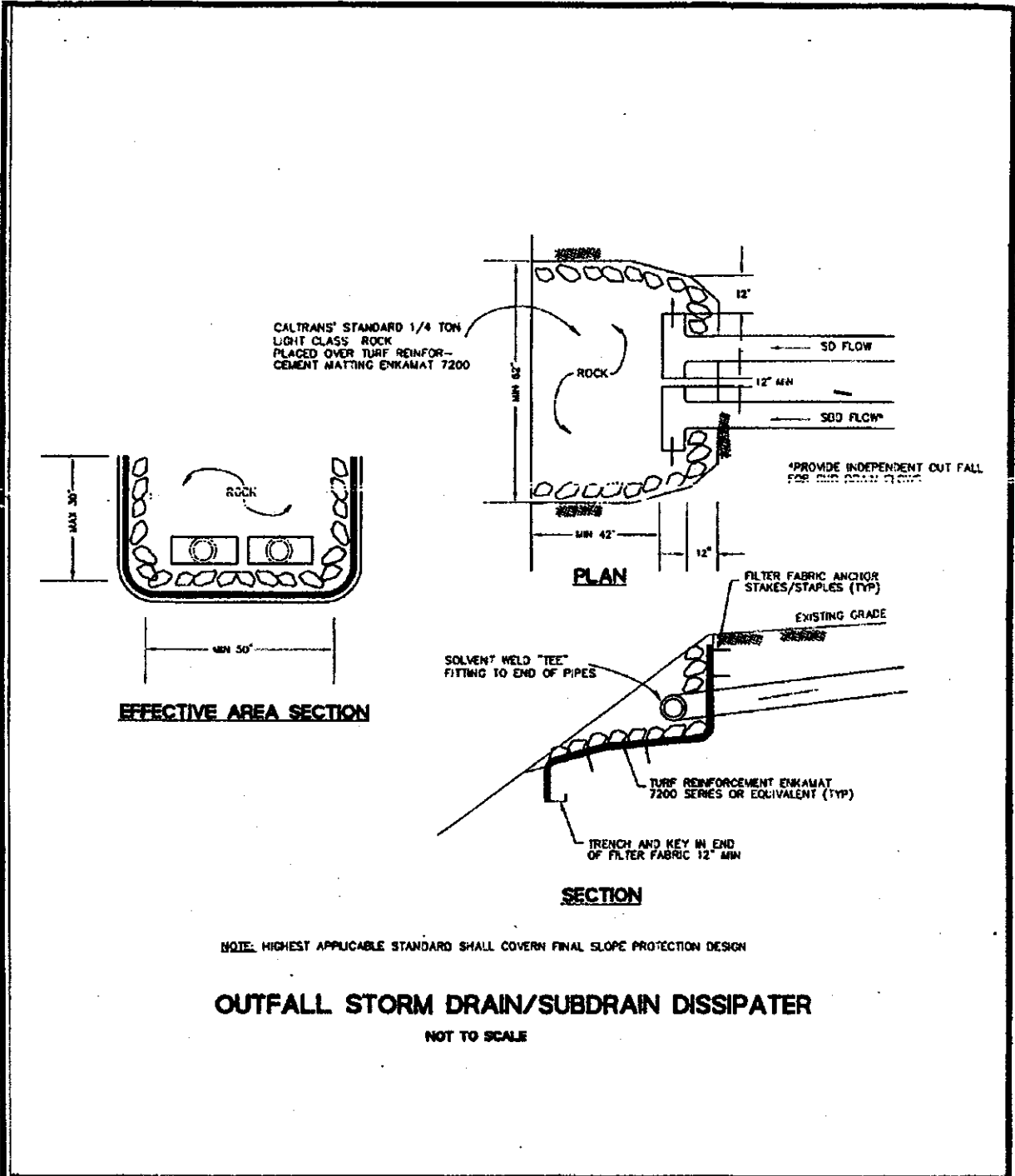


Exhibit B-1



NOTE: HIGHEST APPLICABLE STANDARD SHALL COVER FINAL SLOPE PROTECTION DESIGN

OUTFALL STORM DRAIN/SUBDRAIN DISSIPATER

NOT TO SCALE

529 ROCKY WAY • WOODSIDE • SAN MATEO COUNTY • CALIFORNIA		OWNER: DAN COOK	
 <p>Civil Engineers Land Surveyors 1860 El Camino Real, Suite 509 Burlingame, CA Tel: 650.652.9590 Fax 650.652.9596</p>	DWG	SCALE	SHEET
	00-1401 EX 01	N.T.S	1 OF 1
DRAWN	DATE	JOB	
J. PEREZ	08/30/03	00-1401	