

REVOCABLE ENCROACHMENT PERMIT AND AGREEMENT

TO TREAT AND DELIVER POTABLE WATER

NO. 5242

REDWOOD GLEN

November 10, 2009

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- Exhibit “A” – Map
- Exhibit “B” – Site Plan of Facilities
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**REVOCABLE ENCROACHMENT PERMIT AND  
AGREEMENT TO TREAT AND DELIVER POTABLE WATER**

No. 5242

**REDWOOD GLEN**

This Revocable Encroachment Permit and Agreement to Treat and Deliver Potable Water (hereinafter called "Agreement"), dated, for reference purposes only, this 10<sup>th</sup> day of November, 2009, is made by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, hereinafter referred to as "County" and REDWOOD GLEN, a California Religious Corporation, hereinafter referred to as "Redwood Glen".

**Recitals**

A. County owns and operates a water treatment plant at Memorial Park ("Park"), which it uses to treat water diverted from Pescadero Creek to serve Park potable water needs.

B. Redwood Glen owns and operates Redwood Glen, a Bay Area Christian camp and conference center ("Camp") on property adjacent to the Park. Since 1998, County has permitted Redwood Glen to obtain water from County's water treatment plant to supply the Camp with potable water. The location of the Park and the Camp are depicted in Exhibit "A" hereto. A schematic of the location of the relevant facilities is attached as Exhibit "B" hereto.

C. The County's water treatment and diversion facilities and operations continue to have sufficient capability and capacity to serve both the Park and the Camp. The County may expand to serve additional parties as well.

D. Redwood Glen and County both recognize the continuing advantages of consolidated water treatment facilities and operations, including enhanced public safety, reliability, and efficiency. The parties agree that in lieu of independent systems, both parties benefit from an arrangement whereby the County diverts and treats water to potable standards for the Camp, and Redwood Glen pays for this service.

## Agreement

Now, therefore, County and Redwood Glen hereby agree as follows:

### I. NATURE OF AGREEMENT

A. Treatment and Delivery of Potable Water. Redwood Glen has requested the County provide potable water service to Redwood Glen for Redwood Glen's use and consumption, and County agrees to furnish and provide Redwood Glen with an adequate quantity and quality of potable water for Redwood Glen to meet Redwood Glen's normal demand as a camp and conference center and similar purposes. If for reasons outside of the County's control, such as drought, the volume of water available for diversion is reduced to less than the amount necessary to meet both the County's and Redwood Glen's then-existing demands, the parties shall share in the necessary reduction on a pro rata basis. Redwood Glen shall pay for all such service as set forth in Section IV (PAYMENT) below.

B. Special Provisions. This Agreement shall be subject to all of the terms, conditions and restrictions set forth in the Special Provisions attached hereto as Exhibit "C," and by this reference incorporated herein.

C. Cooperation and Further Measures. The parties shall make all reasonable efforts and take such further reasonable measures as may be necessary or appropriate to achieve the benefits conferred on the parties pursuant to this Agreement.

D. Compliance with Laws. The parties shall comply with all applicable laws.

### II. RESPONSIBILITIES

#### A. By County

(1) County hereby issues to Redwood Glen a revocable encroachment permit for a water pipeline on County's property as further described herein.

(2) County has installed a pipeline on and across County's land on an alignment as shown generally on Exhibit "B". County has also installed: (a) a

water meter, and (b) a reduced pressure principle back flow prevention device, both at the point of connection to Redwood Glen's water system on the boundary between County's and Redwood Glen's property (the "Point of Delivery").

(3) That portion of the pipeline passing under and/or through County property is and remains County property at all times, and Redwood Glen hereby agrees to dedicate such pipeline to County in perpetuity, relinquishing all title and claims to or against said pipeline, except as provided in this Agreement.

(4) County agrees to operate, maintain, repair and replace the pipeline located on County's property, the water meter, and the backflow prevention device. This includes, without limitation, reading service of the water meter, testing of the backflow prevention device, and other functions consistent with prudent American Waterworks Association ("AWWA") standards. In addition to the payments Redwood Glen is required to make pursuant to Sections IIA (2) and IV hereof, Redwood Glen shall pay for any needed replacement of the backflow prevention device. County shall pay all other expenses.

(5) County agrees to divert, treat, and deliver to Redwood Glen at the Point of Delivery, potable water complying with all water quality and other applicable standards. County shall be responsible for treatment, testing, and other measures to ensure satisfaction of the foregoing standards provided, however, that the water quality will be tested by County only to the Point of Delivery.

(6) Redwood Glen acknowledges that the County cannot guarantee the availability or amount of water provided. County shall only transport and treat water to Redwood Glen to the extent County is reasonably able to do so with its facilities at the Park. If consumption at the Camp increases such that the water service connection requires replacement with a larger water service connection, this Permit shall be subject to renegotiation.

B. By Redwood Glen

(1) Redwood Glen shall be responsible for securing all necessary governmental permit(s) and approval(s) ("Governmental Approvals") at Redwood Glen's sole cost, excepting those pertaining to water quality. The County shall fully cooperate with Redwood Glen in obtaining Governmental Approvals, and shall act as lead agency for purposes of any necessary compliance with the California Environmental Quality Act (CEQA). Redwood Glen shall pay the costs of such compliance, if any.

(2) Redwood Glen hereby agrees that the County may, in the future, make water service connections to the pipeline described in Section IIA hereof to provide water service to County's facilities, both existing and future, provided that such connection(s) do not adversely affect the quantity or quality of water to be provided to Redwood Glen pursuant to this Agreement. County shall take those measures necessary to ensure continued provision of adequate quantity and quality of potable water to Redwood Glen consistent with the terms of this Agreement, at County's sole cost. This may include, by way of example only, replacement of the pipeline with one of sufficient size to provide adequate quantity of water to Redwood Glen.

(3) Redwood Glen shall not cause the presence or accumulation of any offensive or refuse matter, or any substance constituting an unnecessary, unreasonable or unlawful fire hazard, or any other nuisance or hazardous condition, on County property, as reasonably determined by County.

III. SOURCE OF WATER

a. Redwood Glen's Water Rights. Redwood Glen has a license for appropriative water rights granted by the State Water Resources Control Board, License No. 11116, granting Redwood Glen the right to divert water on a year-round basis from the same point of diversion currently used by the County. County shall provide the service of diverting water pursuant to Redwood Glen's water rights.

IV. PAYMENT

A. Charges. As consideration for this Agreement, Redwood Glen shall pay County as follows:

(1) Meter Charge. Redwood Glen shall pay a monthly meter charge of \$9.00. This charge includes the expenses of meter reading, maintenance, repair and/or replacement of the meter. This charge shall apply upon initiation of potable water service pursuant to this Agreement, and for so long as such service is being provided.

(2) Unit Charge. In addition to the meter charge, Redwood Glen shall pay for the potable water at the base rate of \$3.00 per Unit (one Unit equals 100 cubic feet or 748 gallons) for the first 2,941 Units, or 2,200,000 gallons, delivered in each calendar year. If Redwood Glen's consumption of potable water exceeds 2,941 Units in a given calendar year, a surcharge of 16% of base rate (e.g., \$0.48 for a base rate of \$3.00) shall be added for each Unit of additional water delivered during the remainder of that calendar year. The rate shall be reset to the base rate upon commencement of each subsequent calendar year.

B. Base Rate Changes. The base rate per unit is subject to annual review and amendment by County based on any actual increases or decreases in County's cost of chemicals, labor or electricity directly used to provide service pursuant to this Agreement, while maintaining a markup over cost not to exceed \$0.10 per Unit. The surcharge for quantities of potable water in excess of the first 2,941 Units or for the use of water from the County's water rights shall not exceed 16% over the newly established base rate. County shall provide to Redwood Glen thirty days' advance notice of any proposed increases.

C. Exemption for Water Quality Violations. Redwood Glen shall not be obligated to pay for water that does not meet water quality regulations and other standards for potability, nor for water necessary to flush and refill any contaminated water lines or storage facilities, when such contamination is the result of County's delivering substandard water. This provision does not apply where the water has been contaminated by a cause arising in the water delivery facilities on Redwood Glen's property downstream of the water meter, which at



all times shall be the responsibility of Redwood Glen to correct at Redwood Glen's sole cost.

#### IV. POTABLE WATER SERVICE INTERRUPTIONS

A. Redwood Glen acknowledges that interruptions or decreases in the availability of potable water may occur from time to time for reasons beyond the County's control, and that said interruptions may last up to several days in duration. County shall exercise reasonable efforts to reduce the number and duration of any interruptions to a minimum and County will make all reasonable efforts to maintain an acceptable level of potable water for delivery to Permittee.

B. Water service interruptions due to failure or breakage of the pipeline installed pursuant to Section II.A of this Agreement shall be County's responsibility to correct. County shall effect such correction within 48 hours, unless County demonstrates by substantial evidence that correction within 48 hours is impracticable and more time is required. In those instances where County cannot or does not effect such correction within a reasonable amount of time, Redwood Glen shall be entitled to effect such correction and/or repair, providing that all insurance provisions as required in this Agreement are in effect. Redwood Glen shall provide notice to County of its correction activities, in advance. This authorization extends exclusively to that portion of the pipeline as described in Section II.A and delineated in "Exhibit B," and does not extend to failure or breakage of any other pipeline or equipment of County.

(1) Upon written consent of County, Redwood Glen shall be reimbursed by County for labor charges, exclusive of any portion of salary or wages attributable to any and all benefits, of Redwood Glen's own employees arising from the execution of any corrections pursuant to this Section V, based on time and materials. The County shall also reimburse Redwood Glen for any costs involved in the rental of equipment necessary or appropriate to effect such corrections. Where the County makes needed equipment readily available to Redwood Glen in a timely manner, Redwood Glen shall use such equipment in lieu of incurring rental Costs.

(2) County assumes no liability for damages arising to Redwood Glen's equipment on Redwood Glen's property, including but not limited to pumps, valves, tanks or other equipment, from a loss of water supply, or reduction in flow and/or pressure, or introduction of foreign matter due to a failure or breakage of the pipeline(s) serving Permittee, where the damage to Redwood Glen's equipment on Redwood Glen's property is caused by a failure of equipment or materials beyond the control of County, or by any act of God or natural disaster.

(3) For the purposes of this Section V, Redwood Glen shall be considered to have made official notification to County of loss or interruption of water service, by telephone notification to the Memorial Park Supervisor, or the Memorial Park Water Treatment Plant Operator. County shall at all times keep Redwood Glen apprised of the appropriate telephone and facsimile numbers to use for this purpose.

C. In the event of drought or other measures taken by the County and/or State Water Resources Board to adjust water supplies, the County shall represent the interests of Redwood Glen to ensure continued adequate water supply for both Redwood Glen and the County.

V. TERM, TERMINATION AND REVOCATION, AND RIGHTS ON DEFAULT

A. Term. The term of this Agreement shall commence upon full execution hereof and shall continue for a period of ten (10) years unless and until terminated consistent with the terms and conditions of this Part V, or upon consolidation of local water systems.

B. Termination and Revocation.

(1) By County

(i) If Redwood Glen fails to perform, keep, or observe any material obligation under this Agreement, including the payment of money, then unless Redwood Glen promptly rectifies or commences to rectify the default or breach within a reasonable time, County may, at County's option and after thirty (30) days' advance written notice to Redwood Glen, either (a) perform such obligation, in which event the reasonable cost thereof becomes immediately due and payable

to County as an additional charge; or (b) If performance of such obligation is not reasonably feasible, terminate this Agreement in a manner consistent with this subsection V.B. The written notice County provides to Redwood Glen pursuant to this subsection B (1)(i) shall clearly identify the default or breach, shall request correction thereof, and shall inform Redwood Glen of County's rights pursuant to subsection B (1)(i) if Redwood Glen does not correct or commence correction of the default or breach within 30 days. If the nature of Redwood Glen's default or breach is such that more than thirty (30) days are reasonably required for cure thereof, then Redwood Glen shall not be in default or breach if Redwood Glen commences such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion.

(ii) County shall have the right to terminate or revoke this Agreement if County is not able to perform its obligations under this Agreement for reasons wholly outside County's control, provided that County has taken all reasonable measures to avoid such termination or revocation and the County provides one (1) year's advance written notice to Redwood Glen of such termination or revocation and the basis thereof.

(2) By Redwood Glen

(ii) Redwood Glen shall have the right to terminate this Agreement upon provision of one (1) year's advance written notice to County.

C. Rights upon Default. Redwood Glen shall have the following remedies upon County's breach of this Agreement:

- (1) The rights granted to County pursuant to Section V.B above; and
- (2) Any other remedies now or later allowed by law or in equity.

## VI. PERSONAL PROPERTY TAXES AND ASSESSMENTS.

Redwood Glen shall not construct, place or cause to be constructed or placed upon County's land any structure, tank, or other equipment, other than the pipeline described herein which at all times remains property of County, necessary to the

delivery of water to the Redwood Glen, and therefore shall be immune from property taxes and assessments relative to improvements on County's land made for the purposes of this Agreement. This Section shall not relieve Redwood Glen from any property tax obligation and/or assessment which may arise out of any improvements made upon Redwood Glen's property necessary to receive, store and distribute water delivered by County, which may be determined by the County Tax Assessor to apply.

VII. HOLD HARMLESS, INDEMNIFICATION AND INSURANCE.

A. Hold Harmless and Indemnification by Redwood Glen. Redwood Glen shall at all times defend, indemnify, protect, and hold harmless, County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for or on account of injuries to or death of any person, or damage to property of any kind whatsoever and to whomsoever belonging, except to the extent any of the foregoing results from any negligent or wrongful act or omission of the County, its officers, agents, employees, or servants, which claims, suits or actions arise from, or are caused by, conduct pursuant to this Agreement, including:

(1) Redwood Glen's construction, operation, maintenance, or placement of the facilities or encroachment on County owned land;

(2) The acts or omissions of Redwood Glen, its officers, agents, employees, servants, or invitees or permittees;

(3) The failure of Redwood Glen, its officers, agents, employees, servants, or invitees to observe or abide by any of the terms, covenants, and conditions of this Agreement or any applicable federal, state, county, or municipal permit, approval, law, rule, or regulation;

(4) The treatment, supply or transport of water by Redwood Glen for use by Redwood Glen or any of its invitees or permittees.

(5) All claims for labor or materials arising from Redwood Glen's construction, repair, maintenance, alteration, or installation of structures, improvements, equipment, or facilities on County owned land; and

(6) The duty to relieve, indemnify, protect, and hold harmless, as set forth hereinabove, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

B. Hold Harmless And Indemnification By County. County shall at all times defend, indemnify, protect, and hold harmless, Redwood Glen, and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for or on account of injuries to or death of any person, or damage to property of any kind whatsoever and to whomsoever belonging, except to the extent any of the foregoing results from any negligent or wrongful act or omission of Redwood Glen, its officers, agents, employees, or servants, which claims, suits or actions arise from, or are caused by, conduct pursuant to this Agreement, including:

(1) The acts or omissions of County, its officers, agents, employees, servants, or invitees or permittees;

(2) The failure of County, its officers, agents, employees, servants, or invitees to observe or abide by any of the terms, covenants, and conditions of this Agreement or any applicable federal, state, county, or municipal permit, approval, law, rule, or regulation;

(3) The treatment, supply or transport of water by County for use by County or any of its invitees or permittees;

(4) All claims for labor or materials arising from Redwood Glen's repair or maintenance of structures, improvements, equipment, or facilities on County owned land pursuant to Section 5B above; and

(5) The duty to relieve, indemnify, protect, and hold harmless, as set forth hereinabove, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

C. General Liability and Property Damage Insurance. Redwood Glen, at its cost, shall maintain combined general liability and property damage insurance with liability limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) insuring against all liability of Redwood Glen and its authorized representatives arising out of and in connection with Redwood Glen's construction of facilities, and use or

occupancy of the encroachment on County owned land, pursuant to this Agreement.

(1) All general liability and property damage insurance shall insure performance by Redwood Glen of the Hold Harmless and Indemnification provision of this Agreement.

D. Workers' Compensation and Employer's Liability Insurance. During the entire term of this Agreement, or any extension thereof, Redwood Glen shall have in effect Workers' Compensation and Employer's Liability Insurance providing full statutory coverage for all its employees. In executing this Agreement, Redwood Glen makes the following certification:

*I am aware of the provisions of Section 3700 of the California Labor Code which require every employer: (1) to be insured against liability for Workers' Compensation, or (2) to undertake self-insurance in accordance with the provisions of the Code. I will comply with such provisions.*

A valid Workers' Compensation Certificate shall be deposited with the County within ten (10) days after the full execution of his Agreement.

E. Miscellaneous Insurance Provisions. Redwood Glen shall pay the premiums for maintaining the insurance required herein. All the insurance required under this Agreement shall:

(1) Be issued by admitted insurance companies authorized to do business in the State of California, with a financial rating of at least an AV status as rated in the most recent edition of Best's Insurance Reports; and

(2) Be issued as a primary policy; and

(3) Contain an endorsement requiring thirty (30) days' notice from the insurance company to both parties before cancellation or change in the coverage, scope, or amount of any policy; and

(4) Name County as an "additional insured" by endorsement on each policy; and

(5) Contain cross liability endorsements on each policy.

F. Certificate of Insurance. A Certificate of Insurance along with an Endorsement to Redwood Glen's insurance policy evidencing coverage as required under this Section shall be deposited with County within ten (10) days after the

execution of this Agreement by County.

(1) In the event Redwood Glen fails to deliver the Certificate of Insurance and the Endorsement verifying insurance coverage as required, after notice to Redwood Glen and a ten-day cure period, County shall have the option to terminate this Agreement immediately.

VIII. NEGATION OF PARTNERSHIP.

County shall not become or be deemed a partner or joint venturer with Redwood Glen by reason of the provisions of this Agreement.

IX. SEVERABILITY.

Any provision(s) of this Agreement, which shall prove to be invalid, void, illegal or unenforceable shall in no way affect, impair or invalidate any other provisions hereof and such other provisions shall remain in full force and effect.

X. CUMULATIVE REMEDIES.

No remedy or election hereunder shall be deemed exclusive, but shall, whenever possible, be cumulative with all other remedies at law or in equity.

XI. CHOICE OF LAW.

This Agreement shall be construed, interpreted and governed in accordance with the laws of the State of California. The parties may agree to use an alternative dispute resolution process. If such process is agreed to, the parties shall split the cost and each party shall be responsible for their own attorneys' fees.

XII. AUTHORIZED REPRESENTATIVE OF THE COUNTY OF SAN MATEO.

The County Manager, or his designee, shall be the authorized agent of the County of San Mateo for purposes of giving any notices or exercising any rights, options, privileges, or obligations of the County of San Mateo under this Agreement. This Agreement shall not be valid or have legal effect unless executed by the President of the Board of Supervisors of the County of San Mateo pursuant to a Resolution adopted in accordance with the California Government Code.

XII. NOTICE.

Except as specifically provided in Part V, all notices or demands are deemed to have been given or made when delivered in person, delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the

respective parties or fax as follows:

County:

County of San Mateo  
Director of Parks  
Department of Parks  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063  
Phone: (650) 363-4020  
Fax: (650) 599-1721

Redwood Glen:

Redwood Glen  
Attn: Executive Director  
100 Wright Drive  
Loma Mar, CA 94021  
Phone: (650) 879-0320  
Fax: (650) 879-1615

The address to which any notice or demand may be given to either party may be changed at anytime by written notice to the other party.

XIV. ASSIGNMENT BY REDWOOD GLEN.

Redwood Glen shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Redwood Glen's interest in this Agreement or in the encroachment on County owned land without County's prior written consent. Any assignment or encumbrance without County's consent shall be voidable and, at County's election, shall constitute a default. No consent to any assignment or encumbrance shall constitute a further waiver of provisions of this Section.

XV. SUCCESSORS IN INTEREST.

This Agreement shall be binding on, and inure to the benefit of, each party's successors in interest, including their heirs, legatees, assignees, and legal representatives.

XVI. ENTIRE AGREEMENT AND BINDING EFFECT.

This Agreement and any attached exhibits, as signed by the parties hereto, constitute the entire agreement between County and Redwood Glen; no prior written promises, and no prior, contemporaneous or subsequent, oral promises or representations shall be binding. This Agreement shall not be amended or changed except by written instrument signed by the parties hereto. Section captions herein are for convenience only and neither limit nor amplify the provisions of this instrument. The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of said County and Redwood Glen.

XVII. CONSTRUCTION OF AGREEMENT.

This Agreement is the product of negotiation and preparation by and among each party



and its attorney. Therefore, the parties acknowledge that this Agreement shall not be deemed prepared or drafted by one party or the other and should be construed accordingly.

**Balance of Page Intentionally Blank**

IN WITNESS WHEREOF, County and Redwood Glen have executed this Agreement as of the date and year first below written.

REDWOOD GLEN  
a California Religious Corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

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

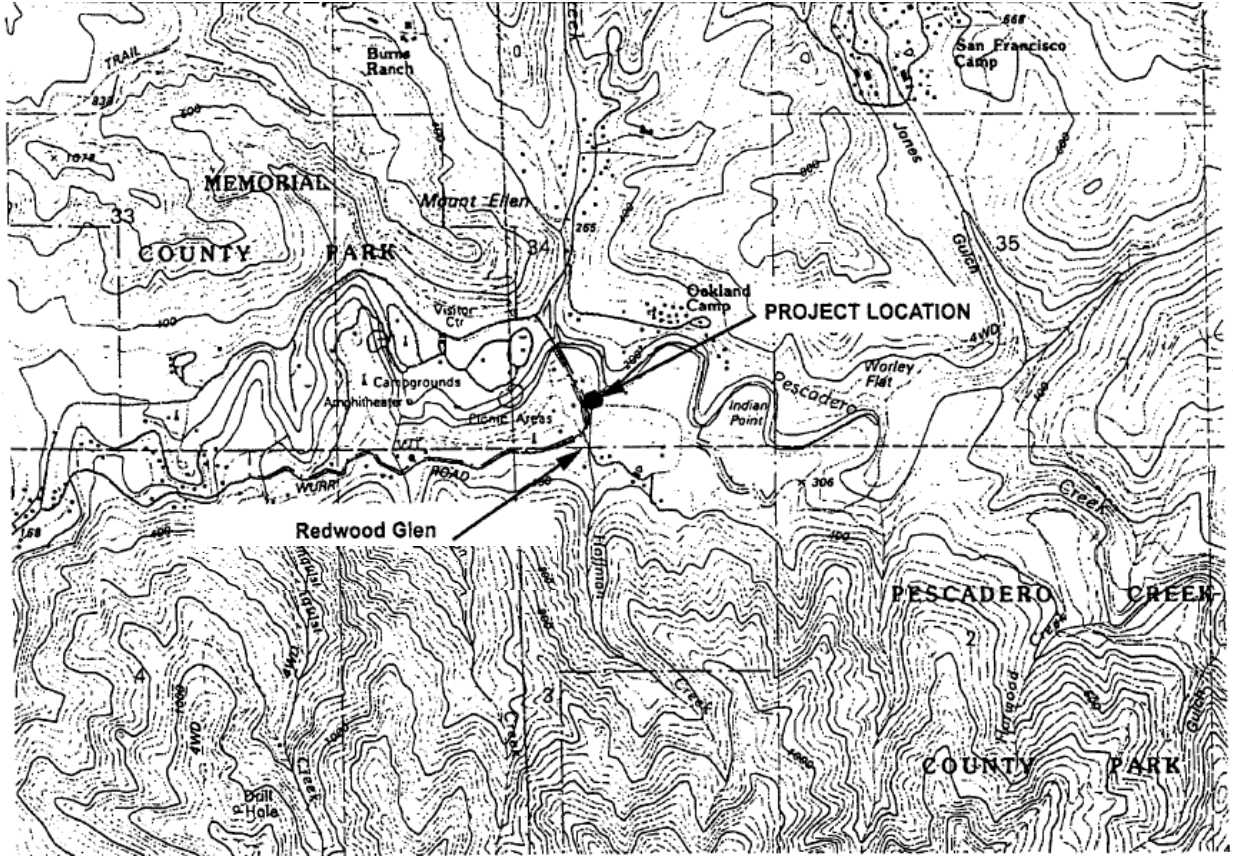
By: \_\_\_\_\_  
Mark Church, President  
Board of Supervisors

Dated: \_\_\_\_\_

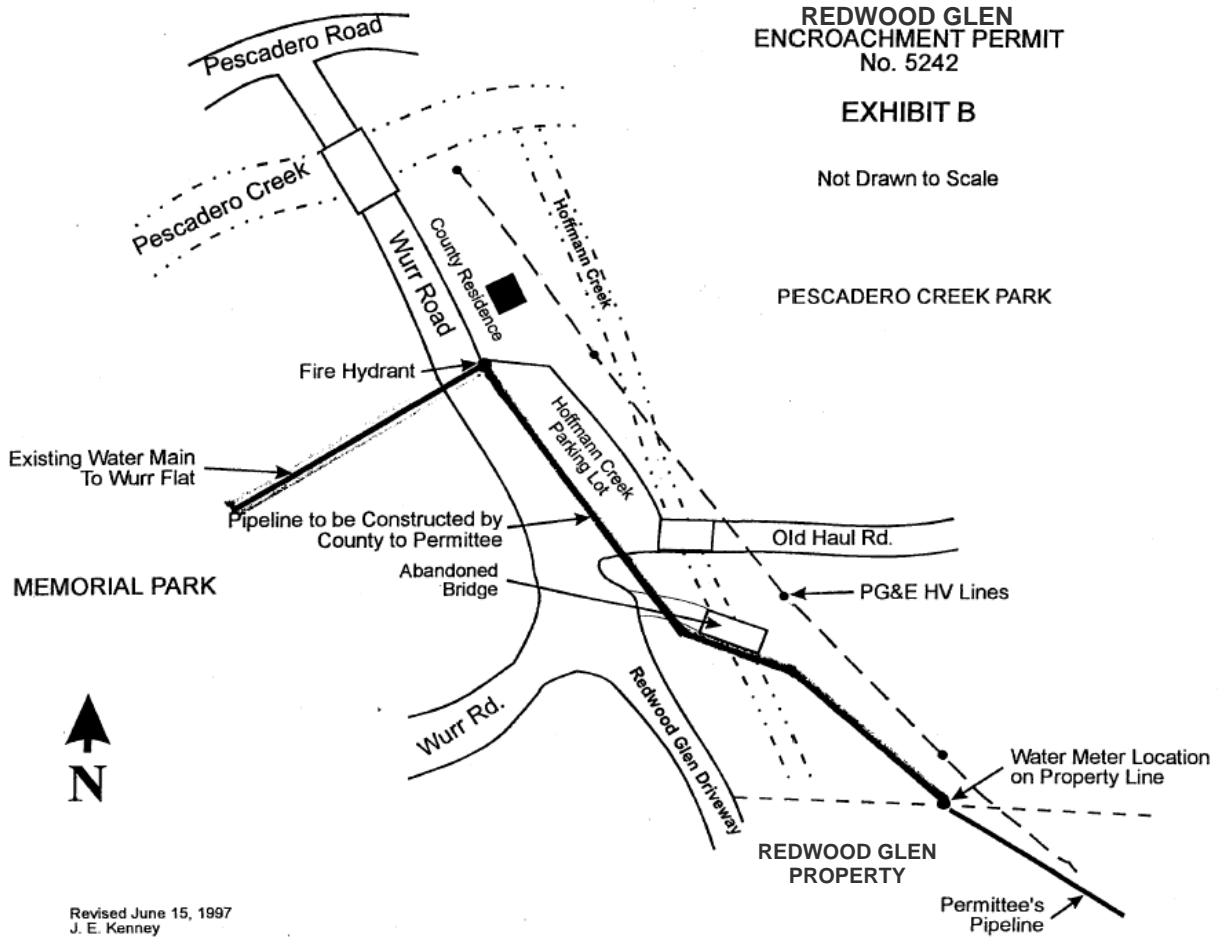
ATTEST:

\_\_\_\_\_  
Clerk of the Board

EXHIBIT "A  
MAP



# EXHIBIT "B" SITE PLAN OF FACILITIES



**EXHIBIT "C"**  
**SPECIAL PROVISIONS**

1. ACCEPTANCE OF SPECIAL PROVISIONS. It is understood and agreed by Redwood Glen that performance of any work under this Agreement, whether by Redwood Glen or by County on behalf of Redwood Glen, shall constitute an acceptance of these Special Provisions.
2. NO PRECEDENT ESTABLISHED. This Agreement is granted with the understanding that the action is not to be considered as establishing any precedent on the question of the expediency of permitting any certain kind of encroachment to be erected within the County property. It is understood that this is a non-exclusive Agreement.
3. NON-DISCRIMINATION. Redwood Glen, Redwood Glen's contractor, etc., for himself, his personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements, on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Redwood Glen shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.