

Bethel Island Municipal Improvement District

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MEMO

Date: July 26, 2010

Re: Ordinance 9

Attached is Ordinance 9 "An Ordinance of the Bethel Island Municipal Improvement District regulating activities and construction upon, through or over the District's levee system," enacted July 1989. Also attached are Chapters 9.02, 9.03, 9.10, 9.13, and 9.14 that were adopted in October 2006 and which must remain in effect pursuant to the Sosnowski settlement. The following sections of the 1989 enactment of Ordinance 9 are superseded by the Sosnowski settlement provisions as follows:

Sections 1.1 and 1.2 are superseded by Chapter 9.03.

Section 10 (b) is superseded by Chapter 9.02.010.

Section 10 (c) is superseded by Chapter 9.02.090.

Section 11 (a) is superseded by Chapter 9.14.020.

The following chapters, as required by the Sosnowski settlement agreement, contain new rules and regulations that pertain to the District's levee system which were not previously covered by Ordinance 9.

Chapter 9.02.020 – 9.02.080

Chapter 9.02.100 – 9.02.120

Chapter 9.10

Chapter 9.13

Chapter 9.14.010 and 9.14.030

ORDINANCE NO. 9

(Revised September 15, 1988.)
(Revised July 20, 1989.)

An ordinance of the BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT Regulating Activities and Construction Upon, Through or Over the District's Levee System.

Be it Ordained by the Board of Directors of the BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT as follows:

Section 1.1-- Purpose and Findings

(a) Bethel Island is surrounded by the waters of the San Joaquin-Sacramento River Delta, and is protected from inundation by the levee system operated and maintained by BIMID. The integrity of the levees, and BIMID's ability to inspect, monitor, maintain, repair, and rehabilitate them is essential to the health, safety and welfare of the residents of Bethel Island, and is authorized by section 96 of the BIMID Act.

(b) Proper maintenance and operation of the levee system requires a program of continuous inspection and repair by BIMID and its agents and employees, as well as by the interested and concerned public.

(c) BIMID receives financial assistance for levee rehabilitation and maintenance from the State of California pursuant to Water Code section 12980 et seq. and other laws. Such assistance is an important part of BIMID's budget, without which BIMID would not be able to maintain its levees in their current condition.

(d) Part of the levee rehabilitation carried on by BIMID includes raising the levees to the height (10.2' USGS) recommended by state and federal agencies, at the slopes (3:1 landside; 2:1 waterside) recommended by those agencies.

(e) BIMID also occasionally requires disaster assistance from the federal government, in order to pay for levee repairs.

(f) This Ordinance is intended to safeguard BIMID's ability to protect its levees, and thereby the health and safety of the residents of Bethel Island, and to ensure that development on Bethel Island conforms to state and federal standards for protection of levees and development in flood plains, so that the availability of much-needed state and federal financial assistance is not jeopardized.

Section 1.2-- Finding Regarding Levee Zone and Setback

Levees are raised by adding material to their landward slope. Therefore, as levees are raised, their landward slopes extend further towards the interior of Bethel Island. The distance to which the landward slope of any given part of the levee will extend as a result of being raised to 10.2' USGS depends on its existing height and slope, as well as the elevation of the surface of Bethel Island in the area of that part of the levee. For this reason it is impossible to define a specific, inflexible setback that will adequately protect BIMID's compelling interests in levee maintenance and rehabilitation, without unfairly burdening some landowners. This Ordinance therefore sets forth a setback which will be subject to modification on a case by case basis,

based on the height of the levee existing at the time of a permit application; its slope, and the elevation of the surface of Bethel Island in the area of the part of the levee which is the subject of the application.

Section 2-- Definitions

As used in this Ordinance, the following words and phrases shall have the following definitions:

(a) District-- The BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT.

(b) Landside Point of Intersection-- The point at which the landside slope of the levee intersects the existing land surface of Bethel Island.

(c) Waterside Point of Intersection-- The point at which the waterside slope of the levee intersects the bottom of the waterway outside Bethel Island.

(d) Levee-- The entirety of the embankment which surrounds Bethel Island and retains the waters of the San Joaquin-Sacramento River Delta, including, but not limited to, Piper Slough, Taylor Slough, Sand Mound Slough, Dutch, and Big and Little Frank's Tracts. The levee extends from the landside point of intersection to the waterside point of intersection.

(e) Projected Landside Point of Intersection-- The point at which the landside slope of the levee intersects the land surface of Bethel Island, when the landside slope is defined as beginning twenty feet (20') to the landside of a point at 10.2' USGS elevation, and extending perpendicularly to the levee towards the center of Bethel Island at a 3:1 slope.

(f) Projected Waterside Point of Intersection-- The point at which the waterside slope of the levee intersects the bottom of the waterway outside Bethel Island, when the waterside slope is defined as beginning at a point at 10.2' USGS elevation, and extending perpendicularly to the levee away from the center of Bethel Island at a 2:1 slope.

(g) Projected Levee Section-- All the area between and bounded by a line around Bethel Island connecting the projected landside points of intersection and a line connecting the projected waterside points of intersection. Diagrams of the projected levee at intervals of 1000 feet are attached as Exhibit A, and incorporated herein by reference.

(h) Levee Zone-- All that area within and bounded by:

1. a line lying ten feet to the projected waterside of the waterside point of intersection at 0.0' tide; and
2. a line parallel thereto and lying 60 feet to the landside of the uppermost point on the waterside slope of the existing levee. A diagram of the levee zone is attached hereto as Exhibit B and incorporated herein by reference.

(i) Person-- Any person, persons, company, partnership, corporation, governmental body or any agent thereof.

(j) Fishing-- Catching or attempting to catch fish, shellfish, or other aquatic animals by use of a pole, line, net, or other device or implement.

(k) Camp-- To establish or pitch, or attempt to establish or pitch, a camp, tent, or temporary shelter or to reside temporarily or otherwise in any camp, tent or temporary shelter.

(l) Boat-- Any vessel for transport by water regardless of size, use, construction, or method of propulsion.

(m) Livestock-- Any horses, cattle, sheep, goats, pigs, or other useful animal or animals, excepting household pets, of a type kept or raised on a farm or ranch.

(n) Owner-- The legal owner, equitable owner, or any person harboring or having custody and control of livestock.

(o) Firearms-- Any handgun, shotgun or rifle (including but not limited to air rifles).

(p) A point at 10.2' USGS elevation-- The point at which a line extended perpendicular to the levee towards the center of Bethel Island, at a slope of 2:1, from the uppermost point on the waterside slope of the existing levee, reaches an elevation of 10.2 feet, according to USGS data.

Section 3-- Prohibited Acts

The following activities on, over or from the levee or levee zone are prohibited, except as permitted by BIMID for good cause pursuant to section 8 hereof.

- (a) Leaving, placing, maintaining, riding, driving or controlling live stock;
- (b) Fishing;
- (c) Hunting or discharging firearms;
- (d) Camping;
- (e) Launching any boat, except from a launching ramp or other facility regularly maintained for that purpose;
- (f) Driving, parking, or operating any vehicle or equipment of any kind other than official emergency vehicles;
- (g) Driving, operating or parking any "off-highway vehicle" subject to Vehicle Code section 38010;
- (h) Removing rocks or other wave-wash protection;
- (i) Grading, excavating, levelling, filling, widening, raising, cutting, digging, demolition of structures.

Section 4-- Prohibited Construction, Objects, Things or Works, Vegetation, and Vehicles

It shall be a violation of this Ordinance to construct, leave, place, store, maintain, plant or park, any of the following on or over the levee, levee zone, or projected levee section, except as permitted by BIMID for good cause pursuant to section 8 hereof.

- (a) Any building or major structure other than a ramp or walkway;
- (b) Any lumber, pipe, pipeline (including pipes, conduits, lines, or similar devices for the transport of sewage or

similar material), pole, pole line, cable, gate barrier, barricade, conduit, rail, dock, ramp, wharf, landing, building, structure, or other objects, things, or works of any kind, which obstruct or interfere, or may obstruct or interfere, with the ability of BIMID or its agents or employees to conveniently monitor, inspect, maintain or repair the levees;

- (c) Any vegetation which obstructs or interferes, or may obstruct or interfere, with the ability of BIMID or its agents or employees to conveniently monitor, inspect, maintain or repair the levees;
- (d) Any vehicle or other item which obstructs traffic.

Section 5-- Nonconforming Encroachments

(a) Any object, plant, vehicle, or other thing in violation of section 4, above, which was in place prior to the first enactment of this Ordinance on February 19, 1976, is a nonconforming encroachment.

(b) Nonconforming encroachments may not be expanded except as permitted by BIMID pursuant to section 8.

(c) The useful life of nonconforming encroachments may not be extended by any repair, other than routine maintenance, except as permitted by BIMID pursuant to section 8. It is the intention of this provision that non-routine repairs to nonconforming encroachments will usually, but not necessarily, be permitted when necessary to ensure health and safety.

(d) If a nonconforming encroachment is damaged, in whole or in part, or destroyed, by or from any cause (including fire, flood or wind), and the damage sustained is determined by the District to be substantial, then such nonconforming encroachment shall not be repaired or reconstructed, except for temporary emergency shelter for a full-time occupant, if any.

(e) This Ordinance is not intended to, and shall not, render legal or proper any nonconforming encroachment which was not, at the time of its origination, in accordance with law, including the ordinances and regulations of the District.

Section 6-- Acts Prohibited During Flood Stages

Any and all excavation of, on, over, or into the levees, pursuant to this Ordinance or otherwise, is prohibited during the times of threatened flood stages.

Section 7-- Permit Process

(a) Prior to doing any of the acts prohibited by section 3, or commencing the construction prohibited by section 4, the owner must apply for permission for such act or construction on the form provided by the District, and must supply whatever other information is requested by the District in order for such application to be processed.

(b) In the event that the District deems it necessary to hire a consultant or consultants to advise it with respect to whether a project is within the levee zone, or with respect to a project's potential for resulting in environmental impacts, all costs and fees of such consultant(s) shall be paid by the appli-

cant prior to obtaining the permit; however such fees may be waived by the board of directors.

(c) The application shall be considered by the board of directors at a public hearing as soon as possible after it is submitted, but in no event later than the second public hearing thereafter.

(d) The board's consideration may be continued as necessary, but any application not acted upon by the board within six (6) months of its submission shall be deemed approved.

(e) In any case in which a person is unsure as to whether this Ordinance or any of its provisions applies to any act, construction, object, thing, work, vegetation, or vehicle enumerated in section 3 or 4 of this Ordinance, the District shall, within one of a written request to do so, conduct an informal investigation and advise said person in writing as to whether an application under this Ordinance will be required. There shall be no charge for this service.

(f) Notwithstanding subdivision (c) of this section, the District or its designee may issue a permit for any work or construction in the levee zone in cases where the District or its designee determines that such act or construction will not take place on or over the levee or projected levee section.

Section 8-- Permit Approval

(a) No permit may be approved pursuant to this Ordinance except upon a finding that such approval, including any remedial work or other conditions imposed by the District and agreed to by the applicant will not result in any increased threat to the levee, Bethel Island, or its residents, or in an extension of the life of a non-conforming structure subject to the provisions of section 5.

(b) Approval of any permit pursuant to this Ordinance shall be contingent upon the applicant's agreement to:

- (1) Assume all liability resulting from the proposed work;
- (2) Hold the District harmless from additional costs occasioned by such work and necessitated by any further work on the levee by the District; and
- (3) Comply with any other reasonable conditions which the board or committee in its discretion may impose;
- (4) Pay to the District any required fees, expenses, rental, or other compensation therefor.

(c) The board or committee may in its discretion refuse to issue any permit for any reason which it deems to be good cause.

Section 9-- Inspection

The District, by any authorized agent or employee, shall have the right to enter upon any property within the District at all reasonable times and places to determine compliance with this Ordinance.

Section 10-- Interpretation, Constitutionality, Severance

(a) In interpreting and applying the provisions of this Ordinance, the requirements contained herein are declared to be minimum requirements for the purposes set forth.

(b) The provisions of this Ordinance, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatement and continuations and not as new enactments.

(c) The provisions of this ordinance are severable. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The board hereby declares that it would have passed this Ordinance and every section, subsection, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

(d) This Ordinance shall upon effect supercede and replace the provisions of the other ordinances and laws, of the District in conflict herewith.

Section 11-- Enforcement, Public Nuisance, Costs, and Penalties

(a) All violations of this Ordinance are declared to be a public nuisance, and may be summarily abated by the District pursuant to Government Code sections 38770 through 38790, or otherwise remedied pursuant to Civil Code sections 3490 through 3495.

(b) In any action to enforce this Ordinance, in which the District is the prevailing party, it shall recover its costs, which shall become a lien upon the property where the violation occurred.

(c) Any owner or other person committing any act enumerated in section 3 or undertaking any construction enumerated in section 4 without or in excess of a permit, shall stop such work and carry out any corrective work ordered by the District or its representative immediately upon written notification by the District or any representative thereof that he or she is violating this Ordinance.

(d) When the District summarily abates a violation of this Ordinance more than seventy-two (72) hours after notice to the owner by mail, by publication (in accordance with Government Code section 6061, or pursuant to section 11(c) of this Ordinance, such summary abatement shall be at the cost and expense of the owner, and shall be a lien upon the land upon which the violation existed.

(e) Pursuant to Section 96 of Chapter 22 of Statutes of 1960, any violation of this Ordinance constitutes an infraction. As such, violations of this Ordinance are punishable by: (1) a fine not exceeding one hundred dollars (\$100.00) for a first violation; (2) a fine not exceeding two hundred dollars (\$200.00) for a second violation within one year; and a fine not exceeding five hundred dollars (\$500.00) for each additional violation within the same year. Each day for which a violation persists is a separate violation.

(f) The remedies and penalties provided by this Ordinance are cumulative to each other and to the remedies and penalties available under law."


Section 12-- Amendment and Adoption

(a) The board may from time to time establish general standards and guidelines for its implementation, which shall be conditions to the issuance of any permit. The board may from time to time in its discretion adopt a standard application form or forms for use in administration of the permit procedure provided herein. This Ordinance, any general standards and guidelines, and any standard permit application forms adopted by the board shall be available to the public at the District offices.

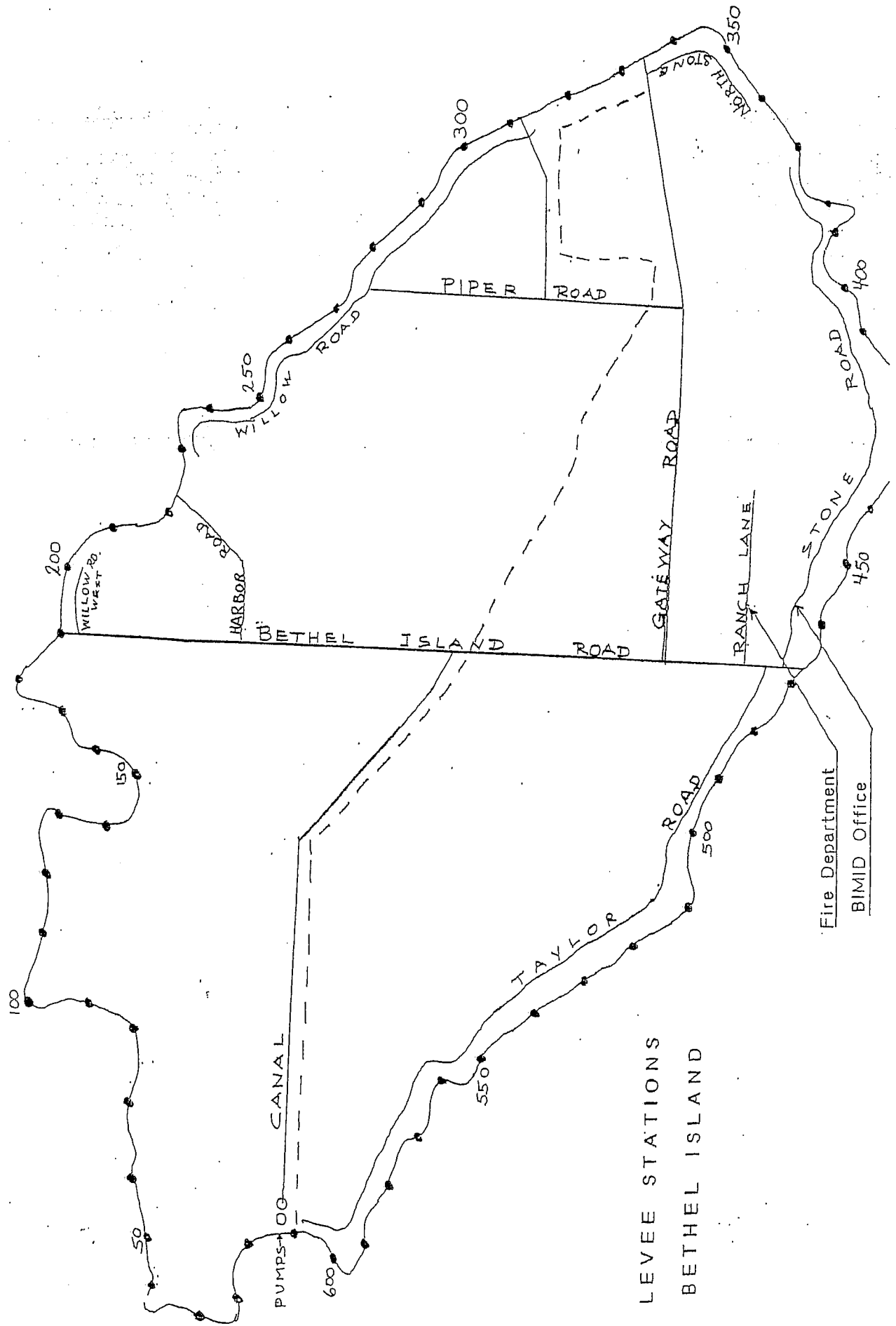
(b) This Ordinance and any amendments to it, and any general standards and guidelines for its implementation, shall be posted for one week in three public places in the district and shall take effect upon expiration of fifteen days of such posting. A subsequent finding of the board, entered in its minutes, that posting has been made is conclusive evidence that the posting has been properly made.

PASSED AND ADOPTED by the Board of Directors of the BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT on July 20, 1989, by the following vote:

Ayes: Directors Davis, Holmes, McNamara, Philippart,
Sipes
Noes: Directors
Absent: Directors

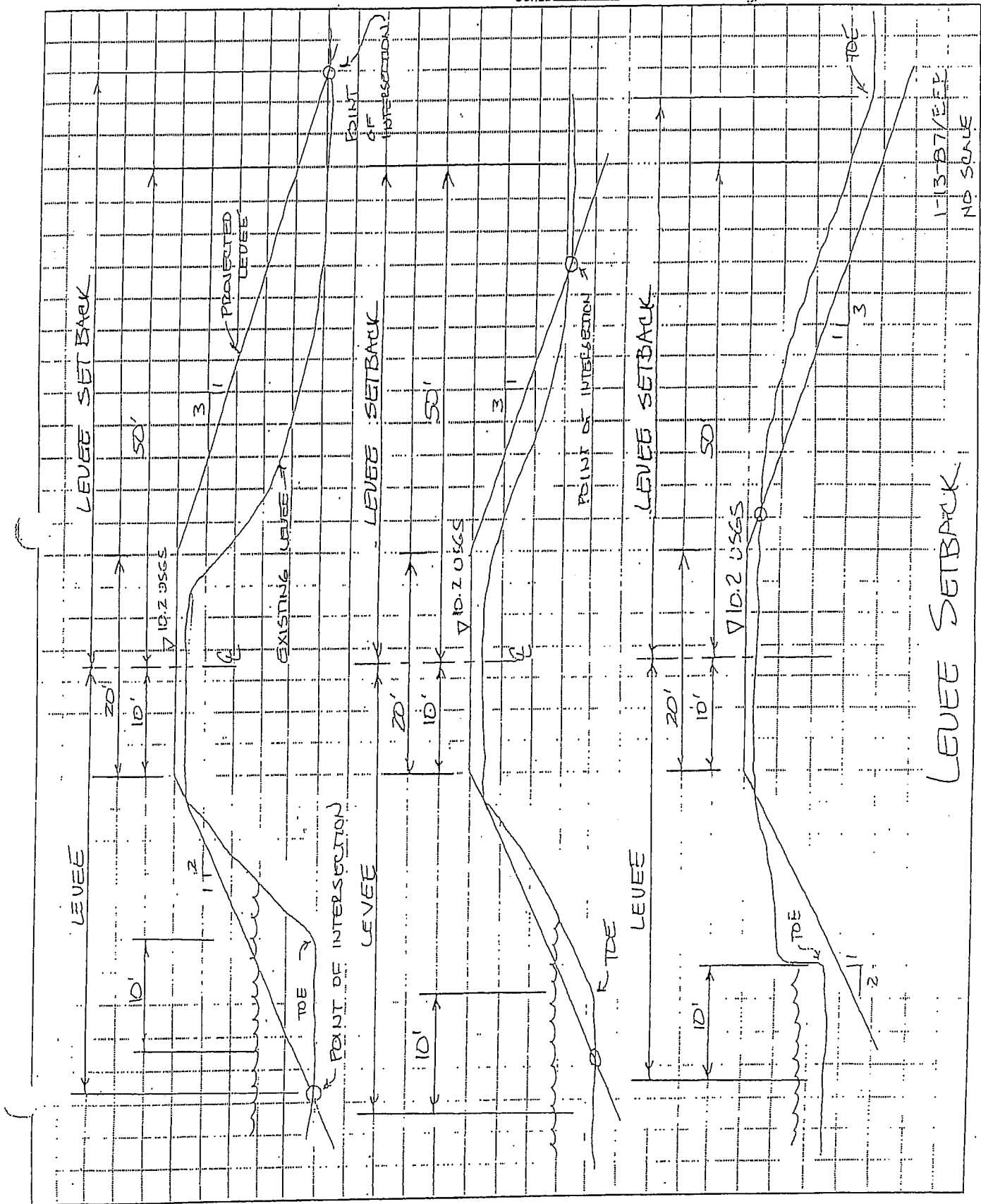

Howard Holmes President, Board
of Directors

ATTEST: 
Christine Thresh, Secretary



LEVEE STATIONS
BETHEL ISLAND

Fire Department
BIMID Office



1-13-87/EEP
NO SCALE

2-2-87 REVISED

LEVEE SETBACK

B R I M I N

CHAPTER 9.02. INTERPRETATION & SEVERABILITY.

Section 9.02.010. Interpretation as Restatements.

The provisions of this Ordinance, insofar as they are substantially the same as existing ordinances or regulations of the DISTRICT relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments.

Section 9.02.020. Designation of Chapters and Sections.

The designations or names given to the various chapters, sections and subsections within this Ordinance are declared to be mere abbreviations and/or summaries of some of the primary subjects contained therein, are not intended to be full and complete summaries of the contents contained therein, and shall not be used when interpreting the meaning of any such chapter, section and/or subsection.

Section 9.02.030. Use of the Words "shall" and "may."

(A) Except as provided in subsection (B) of this section, as used in this Ordinance, the term "shall" indicates a mandatory direction, while the term "may" indicates a permissive, but not mandatory, grant of authority.

(B) The use of the word "shall" in a provision of this Ordinance is not intended to impose upon the DISTRICT, its officers, employees or agents, a mandatory duty of care toward a PERSON or property so as to provide a basis of civil liability for damages.

Section 9.02.040. No Provision to Impose Greater Liability than Statute.

No provision of this Ordinance shall be interpreted to impose upon the DISTRICT, its officers, employees or agents, any greater liability than that required by statute of the State of California.

Section 9.02.050. Use of Tenses.

As used in this Ordinance, the present tense includes the past and future tenses, and the future tense includes the present tense, unless the context clearly indicates a contrary intent.

Section 9.02.060. Use of Gender.

As used in this Ordinance, a reference to either the masculine, feminine or neuter gender shall include the other genders.

Section 9.02.070. Territorial Limits.

This Ordinance shall only apply within the territorial limits of the DISTRICT, as such territorial limits may exist at any given time.

Section 9.02.080. Conflict among Provisions within Ordinance.

If there is any conflict between the provisions of one or more sections of this Ordinance, the stricter provision shall control. The DISTRICT shall determine which provision is stricter.

Section 9.02.090. Severability.

If any section, subsection, paragraph, sentence, clause or phrase within this Ordinance is for any reason held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The BOARD hereby declares that it would have enacted

this Ordinance and every section, subsection, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases be unconstitutional or invalid.

Section 9.02.100. Request for Determination of Applicability of Ordinance.

In any case in which a PERSON is unsure as to whether this Ordinance, or any of its provisions applies to any act, construction, object, thing, work, vegetation, or vehicle, the DISTRICT shall, within thirty (30) days after a written request to do so is received, conduct an informal investigation and advise said PERSON in writing as to: (a) whether this Ordinance, or any of its provisions, applies; and (b) whether an application for a DISTRICT APPROVAL under this Ordinance shall be required for any proposed act or construction to be undertaken by the PERSON. There shall be no charge for such service.

Section 9.02.110. Ordinance to Constitute Regulation.

The provisions of this Ordinance shall constitute a regulation of the DISTRICT governing the supplying of storm water and reclamation service.

Section 9.02.120. Amendments Adopted October 30, 2006; Grandfather Clauses.

(A) The BOARD OF DIRECTORS finds that it would be unfair, in certain instances, to retroactively apply any provision within this Ordinance that was adopted on October 30, 2006 and which contains either new requirements for a DISTRICT APPROVAL, or increased restrictions on PROJECTS.

(B) Based upon the finding in subsection (A) of this Section:

- (a) To the extent that the amendments to this Ordinance adopted on October 30, 2006 require a DISTRICT APPROVAL for any act that did not previously require a DISTRICT APPROVAL, all such acts which occurred prior to October 30, 2006 shall be deemed to be valid, provided: (i) all permits that were required from another governmental agency were obtained prior to the act taking place; (ii) such act was not prohibited under federal law, state law or COUNTY ordinances; and (iii) such act does not create a danger to public health and/or safety.
- (b) All incomplete PROJECTS for which a DISTRICT APPROVAL was obtained prior to October 30, 2006 may proceed to completion under the version of this Ordinance that was in effect at the time such DISTRICT APPROVAL was granted, regardless of the fact that the amendments to this Ordinance adopted on October 30, 2006 may impose standards that are more strict than had previously existed. This subsection shall only apply to the extent of the PROJECT as described in the application for the DISTRICT APPROVAL that was obtained prior to October 30, 2006.

(C) The amendments to this Ordinance adopted on October 30, 2006 are declared by the BOARD OF DIRECTORS to be for the purpose of protecting public health and safety.

CHAPTER 9.03. GENERAL FINDINGS.

Section 9.03.010. General Findings Regarding Levees.

The BOARD OF DIRECTORS finds and declares as follows:

- (a) The ISLAND is surrounded by the waters of the San Joaquin-Sacramento River Delta, and is protected from inundation by the LEVEE operated and maintained by the DISTRICT. The integrity of the LEVEE, and the DISTRICT's ability to inspect, monitor, maintain, repair, and rehabilitate it, is essential to the health, safety and welfare of the residents of the ISLAND, and is authorized by section 96 of the BIMID ACT.
- (b) Proper maintenance and operation of the LEVEE requires a program of continuous inspection and repair by the DISTRICT and its agents, employees and contractors, as well as by the interested and concerned public.
- (c) The DISTRICT receives financial assistance for LEVEE rehabilitation and maintenance from the State of California pursuant to Water Code section 12980 et seq. and other laws. Such assistance is an important part of the DISTRICT's budget, without which the DISTRICT would not be able to maintain its LEVEE in its current condition.
- (d) Part of the LEVEE rehabilitation carried on by the DISTRICT includes raising the levee to, and thereafter maintaining it at, an elevation of 10.2' NGVD, and changing the sides of the LEVEE to a SLOPE OF 2:1 on the water side and a SLOPE OF 3:1 on the landside (those slopes being recommended by some governmental agencies).
- (e) The DISTRICT also occasionally requires disaster assistance from the federal government, in order to pay for LEVEE repairs.
- (f) This Ordinance is intended to safeguard the DISTRICT's ability to protect the LEVEE, and thereby the health and safety of the residents of the ISLAND, and to ensure that development on the ISLAND conforms to state and federal standards for protection of levees and development in flood plains, so that the availability of much-needed state and federal financial assistance is not jeopardized.

Section 9.03.020. Findings Regarding Levee Setbacks.

The BOARD OF DIRECTORS finds and declares as follows:

- (a) Setbacks from the LEVEE were first established in 1952 by Contra Costa County Ordinance 84-34.1006, which defined the setback as 50 feet from the centerline of the LEVEE.
- (b) The LEVEE is raised by adding material, including adding material to the landward slope. Therefore, as a LEVEE is raised, its landward slope extends farther towards the interior of the ISLAND. With regard to any given part of the LEVEE, the distance to which the landward slope will extend, as a result of the LEVEE being raised to an elevation of 10.2' NGVD, depends on the LEVEE's existing height, slope and composition, as well as the elevation of the surface of the ISLAND in the area of that part of the LEVEE.
- (c) It is impossible to define a specific, inflexible setback, applicable to all segments of the LEVEE, that would adequately protect the DISTRICT's compelling interests in LEVEE maintenance and rehabilitation, without: (i) unfairly burdening some

landowners; or (ii) compromising the health and safety of the residents on the ISLAND.

- (d) The following special circumstances exist between BIMID LEVEE STATION 22+00 and 190+00: (1) the area in the vicinity of the landside of the LEVEE contains elevations that are some of the lowest of the ISLAND; (2) the slopes of the water side of the LEVEE are some of the steepest on the ISLAND; (3) in some locations water currents near the LEVEE are stronger than near other segments of the LEVEE; (4) the LEVEE is more susceptible to erosion than other segments of the LEVEE; (5) the water near the LEVEE is some of the deepest around the ISLAND; and (6) the peat soil, which is the foundation material for the LEVEE, is deeper than most other parts of the ISLAND.

CHAPTER 9.10. DISTRICT LEVEE RAMPS.

Section 9.10.010. Levee Ramps to be Available in Emergencies.

The BOARD OF DIRECTORS hereby declares that it is the policy of the DISTRICT that LEVEE RAMPS shall be available to the public in times of an emergency, including as evacuation routes in the event of a flood.

CHAPTER 9.13. POINT OF SALE REQUIREMENTS.

Section 9.13.010. Findings Regarding Need for Point of Sale Disclosure.

The BOARD OF DIRECTORS hereby finds that:

- (a) the transferors of real property on the ISLAND have not been adequately disclosing, to potential transferees, the existence of the DISTRICT and how the operations of the DISTRICT can affect the use, enjoyment and desirability of such property.
- (b) there have been instances where new OWNERS of real property on the ISLAND have not had knowledge of the DISTRICT's existence and/or of the DISTRICT's operations, which has resulted in such new owners excluding DISTRICT employees and contractors from entering the real property to perform their duties, such as inspecting the LEVEE and cleaning DITCHes, which has, in turn, resulted in: (i) increased costs to the DISTRICT; and (ii) in some cases, the delayed ability or inability of the DISTRICT to supply storm water and reclamation services to some residents on the ISLAND.
- (c) there have been instances where new OWNERS of real property on the ISLAND have not had knowledge of the DISTRICT's existence and/or of the DISTRICT's Ordinances and regulations, which has resulted in such new OWNERS causing damage to the LEVEE and to the DITCHes on the ISLAND.
- (d) requiring a point of sale disclosure to potential buyers of real property within the DISTRICT will inform such potential buyers of the DISTRICT's existence and its operations, including operations that require DISTRICT employees, contractors and agents to enter such real property for the purpose of performing their duties on behalf of the DISTRICT.
- (e) requiring a point of sale disclosure to potential buyers of real property within the DISTRICT will help reduce the DISTRICT's costs and will help the DISTRICT to efficiently supply storm water and reclamation services to the residents within the DISTRICT.

Section 9.13.020. Point of Sale Disclosure.

There shall be a point of sale disclosure for real property transfers within the DISTRICT, as specified in this Chapter.

Section 9.13.030. Form of Point of Sale Disclosure.

(A) The BOARD OF DIRECTORS may adopt a form for the point of sale disclosure, which shall be subject to modification from time to time, in the discretion of the BOARD OF DIRECTORS.

(B) If the BOARD OF DIRECTORS should fail to adopt a form of point of sale disclosure pursuant to subsection (A) of this Section, a form with substantially the following language shall be used:

BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT DISCLOSURE

1. THIS DISCLOSURE STATEMENT CONCERNS THE
REAL PROPERTY SITUATED IN THE COUNTY OF
CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED
AS FOLLOWS: [Insert Description.]

2. THE ABOVE DESCRIBED PROPERTY IS LOCATED WITHIN THE BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT, (HEREIN "DISTRICT").

3. THE DISTRICT HAS ORDINANCES AND REGULATIONS THAT CAN AFFECT THE USE, ENJOYMENT AND DESIRABILITY OF PROPERTY WITHIN THE DISTRICT. THOSE ORDINANCES AND REGULATIONS AFFECT THE LEVEE, THE DITCHES, AND CONSTRUCTION PROJECTS THAT COULD POTENTIALLY IMPACT THE LEVEE AND DRAINAGE WITHIN THE DISTRICT. YOU ARE STRONGLY URGED TO REVIEW THE DISTRICT'S ORDINANCES AND REGULATIONS BEFORE PURCHASING ANY PROPERTY WITHIN THE DISTRICT.

4. THE DISCLOSURES IN THIS DOCUMENT ARE REQUIRED BY THE BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT AND ARE NOT NECESSARILY THE DISCLOSURES OF THE SELLER(S), TRANSFEROR(S), NOR AGENT(S), IF ANY. THE DISCLOSURES IN THIS DOCUMENT ARE NOT INTENDED TO BE A PART OF ANY CONTRACT BETWEEN A BUYER AND A SELLER. THE DISCLOSURES IN THIS DOCUMENT ARE NOT A SUBSTITUTE FOR ANY DISCLOSURES OTHERWISE REQUIRED.

Signature of Seller/Transferor

Date: _____

Signature of Seller/Transferor

Date: _____

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Signature of Buyer/Transferee

Date: _____

Signature of Buyer/Transferee

Date: _____

(C) Any point of sale disclosure adopted pursuant to subsection (A) of this Section shall contain language which the BOARD OF DIRECTORS deems sufficient to disclose the existence of the DISTRICT and the existence of the DISTRICT's ordinances and regulations.

(D) In the discretion of the BOARD OF DIRECTORS, any point of sale disclosure adopted pursuant to subsection (A) of this Section may disclose: (i) the operations of the DISTRICT which could, in the opinion of the BOARD OF DIRECTORS, affect the use, enjoyment or desirability of real property on the ISLAND; (ii) the ordinances and/or regulations of the DISTRICT which could, in the opinion of the BOARD OF DIRECTORS, affect the use, enjoyment or desirability of real property on the ISLAND; (iii) what services the DISTRICT provides; (iv) what services the DISTRICT does not provide; (v) facts about the ISLAND which could affect the use, enjoyment or desirability of real property on the ISLAND, (such as the history of slow subsidence on parts of the

ISLAND); and (vi) any other matter deemed by the BOARD OF DIRECTORS as proper to include in the point of sale disclosure.

Section 9.13.030. Mandatory Use of Point of Sale Disclosure.

On and after July 1, 2007, whenever, pursuant to Division 2, Part 4, Title IV, Chapter 2, Article 1.5 of the California Civil Code (Sections 1102, et seq.), a written disclosure statement is required to be delivered by the transferor of real property situated within the DISTRICT, to a prospective transferee, such transferor shall also deliver, to the prospective transferee, the point of sale disclosure specified in this Chapter. The point of sale disclosure specified in this Chapter shall be delivered to the prospective transferee in the same manner as the written disclosure delivered pursuant to Division 2, Part 4, Title IV, Chapter 2, Article 1.5 of the California Civil Code (Sections 1102, et seq.).

Section 9.13.040. Effect of Non-Compliance.

No transfer of real estate subject to this Chapter shall be invalidated solely because of the failure of any transferor to comply with the provisions of this Chapter. However, if there is a failure to comply with this Chapter: (i) any transferee shall be entitled to recover actual damages against the transferor to the maximum extent allowed by law; and (ii) the DISTRICT shall be entitled to recover actual damages against the transferor to the maximum extent allowed by law.

Section 9.13.050. Duty of Brokers.

If there is a licensed real estate broker representing the transferor in any transaction involving real estate within the DISTRICT, it shall be the duty and responsibility of such broker to inform the transferor of the requirements of this Chapter.

Section 9.13.060. Copies to be Available to Public; Charges.

One copy of the point of sale disclosure specified in this Chapter shall be made available, free of charge, to any PERSON requesting it at the office of the DISTRICT. If more than one copy is requested, a fee may be charged for each copy in excess of one copy. Such charge may be set, from time to time, by the BOARD OF DIRECTORS. If the BOARD OF DIRECTORS should fail to set such charge, it shall be twenty-five cents (\$0.25) per page per copy in excess of one copy.

CHAPTER 9.14. ENFORCEMENT.

Section 9.14.010. District Abatement Officer.

The BOARD OF DIRECTORS may appoint, from time to time, a DISTRICT ABATEMENT OFFICER, to serve at the pleasure of the BOARD. The District Abatement Officer may be a member of the BOARD OF DIRECTORS or may be an officer of the DISTRICT. In the absence of such an appointment by the BOARD, the DISTRICT MANAGER shall act as the DISTRICT ABATEMENT OFFICER. This Section is enacted pursuant to the authority conferred by Section 93 of the BIMID ACT.

Section 9.14.020. Violation as Public Nuisance.

Any violation of this Ordinance shall constitute a public nuisance.

Section 9.14.030. Enforcement Options.

Any violation of this Ordinance may be enforced by the DISTRICT as follows:

- (a) by civil action or special proceeding in a court of competent jurisdiction;
- (b) by summary abatement pursuant to any nuisance ordinance adopted by the DISTRICT and in effect at the time of the violation;
- (c) by issuance of a "Stop Work Order" pursuant to any ordinance on that subject adopted by the DISTRICT and in effect at the time of the violation;
- (d) by issuance of an infraction citation pursuant to, and to the extent authorized by, Chapter 9.15 of this Ordinance;
- (e) as provided in Section 96 of the BIMID ACT; and/or
- (f) in any lawful manner not provided for above.