

AS ADOPTED 7-19-07

DISTRICT POLICY REGARDING ENTRIES ON PRIVATE PROPERTY

BIMID's primary function is to prevent the island from flooding. BIMID carries out this function by maintaining the levees which surround the island and by pumping water from the island. Maintaining the levees protects the health and safety of the residents of the island. In order to protect the levees, BIMID personnel and contractors hired by BIMID will sometimes need to enter upon private property to perform their duties. BIMID enters private property for several reasons. The most common reason is to perform ditch maintenance, such as sediment, weed, brush and trash removal. Ditch maintenance also includes work which is necessary to keep culvert pipes flowing properly where roads and driveways cross a ditch. For properties at the levee, it may be necessary for BIMID to enter the property to inspect the land-side base and sides of the levee for excess seepage, animal damage or other levee problems. Furthermore, it is periodically necessary for BIMID's engineer to enter private property to obtain elevation data, because parts of Bethel Island are slowly sinking due to underlying peat soil, which adversely affects the flow of the drainage ditches. Property owners, especially those who are new to the island, may not be accustomed to having BIMID personnel and BIMID contractors enter onto their private property.

For properties located away from the levee, but near a District ditch, except in an emergency, BIMID will attempt to give reasonable notice to the owner before entering private property. (The Board of Directors of BIMID has determined that "reasonable notice" is at least 24 hours in advance of the entry, except in an emergency.)

Properties located at the levee present a unique situation. BIMID enters properties along the levee for two purposes. First, BIMID employees and contractors periodically patrol the levee, from the levee road, looking for problems on either side of the levee. Second, if BIMID receives a report (either from the public or from BIMID personnel while on a levee patrol) that something suspicious exists, such as excessive seepage at the landside toe of the levee (which could indicate a serious problem with the levee), people from BIMID will need to investigate.

With regard to the first type of entry (levee patrols using the levee road) those inspections occur periodically, and are more frequent during high water. It is not possible to notify all property owners along the levee before a levee patrol takes place. However, in times of high water, a notice that there will be frequent levee patrols is usually posted on the BIMID website (www.bimid.com) and at the same places where agendas are posted.

As for the second type of entry (to check out a possible levee problem), sometimes the evidence of a levee problem exists in the yard of a home. When BIMID employees see something suspicious on the landside of the levee, BIMID needs to check it out immediately, as small problems can quickly escalate into big problems. Therefore, there often is not enough time to notify the owner of the property that we need to take a closer look. Although what looks like a potential problem from a distance often turns out to be no problem at all, the need to check it out immediately still exists. For these reasons, it is rare that BIMID employees or contractors will have enough time to notify a homeowner that they are coming onto private property when they see signs of what could be a problem with the levee. If, after the initial investigation, BIMID determines that there is a problem, BIMID will make a reasonable effort to notify the occupants of the property.

The timing and manner of giving that notice will depend upon the circumstances (such as time of day, seriousness of the suspected problem, and availability of personnel).

Sometimes BIMID needs to leave its equipment on private property for a short period of time. An example would be a ditch cleaning project or levee re-sloping project that cannot be completed in one day. When BIMID employees or contractors feel there is a need to leave equipment on private property, BIMID will notify the property owner and attempt to coordinate the matter with the property owner. Except in an emergency, it is BIMID policy not to leave equipment on private property unless the property owner, or the property owner's representative, consents.

When BIMID needs to enter a property at the levee for purposes other than levee patrols and to check out a potential problem, BIMID will attempt to give reasonable notice before that entry. (The Board of Directors of BIMID has determined that “reasonable notice” is at least 24 hours in advance of the entry, except in an emergency.)

BIMID’s authority to enter upon private property comes from five sources: (1) an 1894 agreement among the owners of land on the island; (2) specific easements; (3) the District’s Ordinances enacted under the authority of the [BIMID Act](#); (4) policies adopted by the BIMID Board; and (5) a state statute. Each of these is described below.

The 1894 Agreement

In 1894 the owners of land on Bethel Island signed an agreement to create a Board of Trustees to oversee the reclamation activities on the island. By the terms of the 1894 Agreement, the trustees were vested with the power to control and manage the “levee system, ditches and flood gates” on Bethel Island. The [1894 Agreement](#) was recorded on May 18, 1894 in the land records at the Contra Costa County Recorder’s Office, in Book 67 of Deeds, at page 489. A transcript of the [1894 Agreement](#) is available for review at the BIMID office and on the BIMID website (www.bimid.com).

When Reclamation District 1619 was created in 1915 to replace the trustees under the 1894 Agreement, any rights which still existed under the [1894 Agreement](#) became vested in the Reclamation District pursuant to a decision by the California Supreme Court which applied to all reclamation districts in the state. When BIMID was created by state law in 1960, the rights of Reclamation District 1619 became vested in BIMID under Section 100 of the [BIMID Act](#).

BIMID is aware that some title companies are not disclosing the existence of the [1894 Agreement](#) on title reports issued for properties being sold on Bethel Island. BIMID has conducted some research into the [1894 Agreement](#), and no document was found that released the [1894 Agreement](#) from the titles on Bethel Island. It is possible that the records of some title companies, as they pertain to Bethel Island, do not go back to the 1890's, and that is why the [1894 Agreement](#) is left off of some title reports.

The [1894 Agreement](#) is subject to multiple interpretations. One interpretation is that it creates a blanket easement for reclamation purposes over the entire island, and that the easement is now owned by BIMID. Another interpretation is that it only created a legal entity to collect assessments to be used to pay for the repair and maintenance of the levees and ditches, and that the agreement is now null and void. Other interpretations are somewhere in between these two. So far, no court has ruled on the issue of what the [1894 Agreement](#) means today. One of the reasons why the District is mentioning the [1894 Agreement](#) here is so that its existence can be disclosed, and to raise the awareness that the [1894 Agreement](#) possibly gives BIMID implied rights to enter private property.

Specific Easements

Over the years, BIMID (or one of its predecessor entities) has acquired easements on private land for roads, up-ramps, ditches, pumps, pipelines and utilities, as well as for portions of the levee. Those easements allow BIMID to enter upon that land for the purpose of exercising the specific type of easement described in the document which created the easement. A particular easement may also contain clauses preventing the property owner from undertaking certain activities within the easement.

BIMID is currently working with a real estate attorney to prepare a master list of all specifically created easements which BIMID owns on the island. When completed, BIMID will make that list available for inspection by the public.

BIMID Ordinances

Section 96 of the [BIMID Act](#) gives BIMID the power to enact regulations for “the supplying of ... storm water and reclamation service.” Currently, BIMID’s regulations are in the form of Ordinances. It is anticipated that BIMID will soon begin transferring its regulations to a Code of Regulations.

Some of BIMID’s ordinances contain provisions allowing BIMID personnel to enter upon private property for the purpose of exercising their authority under a particular ordinance. An example would be BIMID personnel inspecting work being performed, by a property owner, on or near the levee, after the property owner obtained a District Approval from BIMID.

Policies Adopted by the BIMID Board

The BIMID Board periodically adopts policies to implement the District's Ordinances. Some of those policies contain provisions allowing BIMID personnel to enter upon private property for specific purposes related to the policy. For example, in order to encourage private property owners to clean-up the portion of the levee that crosses their property, a District policy currently allows certain types of vegetation and wood to be disposed of at the District's 100-acre mitigation site. The policy only applies to vegetation and/or wood that was removed from the Bethel Island levee. Under the policy, District personnel are authorized to enter the property from where the vegetation and/or wood will be removed, to verify that it is actually being removed from the levee and not from some other location.

State Statute

California Business and Professions Code section 8774 allows a person who is “legally authorized to practice land surveying” to enter upon private property. Advance notice to the owner or tenant is only required “where practicable.” Under this statute, BIMID’s engineer has the right to enter private property when performing a survey, including periodic elevation surveys of those portions of the island that are slowly sinking.

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