

NO. 08-06-19C

**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT
SETTING DISTRICT POLICIES CONCERNING THE WAIVER
OF FEES FOR, AND DEMOLITION ASSISTANCE FOR,
NONCONFORMING STRUCTURES**

June 19, 2008

WHEREAS, in May, 1990 the Board of Directors of the Bethel Island Municipal Improvement District (herein "BIMID" or the "District") passed a motion "that the BIMID fee be waived on all new homes built when a nonconforming home was removed"; and

WHEREAS, on August 15, 1990, the Contra Costa County Public Works Department waived the Bethel Island Area of Benefit fee and the East County Corridor Area of Benefit fee for the relocation of structures "encroaching on the levee setback area," provided there was no expansion of the structure nor "major remodeling, work on the existing structure"; and

WHEREAS, on October 16, 1997, the Board of Directors of BIMID reviewed the fee waiver policy and established that the first \$3,000 of the BIMID fee will be waived for replacement structures when a nonconforming structure is removed; and

WHEREAS, on a case-by-case basis, the District has rendered assistance to the property owner when a nonconforming encroaching structure has been demolished; and

WHEREAS, there has been continued confusion with respect to the interpretation of the District's policies concerning the waiver of fees with respect to certain types of qualifying construction projects related to nonconforming structures; and

WHEREAS, the Board of the District desires to amend and restate its policies concerning the fee waiver for, and assistance in demolishing, nonconforming structures within the District.

NOW THEREFORE, BE IT RESOLVED, that the following is the District's policies concerning a waiver of fees for, and assistance in demolishing, both nonconforming structures and nonconforming encroaching structures:

- (A) **DEFINITION:** As used in this resolution, the term "NONCONFORMING STRUCTURE" shall mean a structure that does not conform with BIMID's present or future ordinances and/or present or future regulations of other governmental agencies having some direct or indirect jurisdiction over levees, such as the Federal Emergency Management Agency ("FEMA"). A "NONCONFORMING STRUCTURE" includes a structure that encroaches into an established levee setback area.

- (B) **DEFINITION:** As used in this resolution, the term "NONCONFORMING ENCROACHING STRUCTURE" shall mean a residence or commercial building that meets all of the following criteria: (i) it encroaches into the levee; (ii) it is identified as a Category 1, 2, 3 or 4 encroachment in "Table 1" of the document entitled "Final Report Bethel Island Levee Encroachment Financing Study" dated January 1994 and on file at the BIMID office; and (iii) it was first constructed before February 19, 1976 (the date when BIMID's Ordinance 9 was first enacted) or was constructed after February 19, 1976 with a District Approval for that construction. The term NONCONFORMING ENCROACHING STRUCTURE shall not mean any of the following: (i) minor encroaching structures such as stairways and sheds; (ii) an encroaching structure that exists where the levee has been upgraded so as to substantially eliminate the threat imposed by that encroaching structure (such as a structure where sheet pile has been installed in the levee to the District's satisfaction); nor (iii) an encroaching structure that was built after February 19, 1976 (unless a District Approval was granted for such post-February 19, 1976 construction).

The intent of the definition contained in this section is to create a sub-category within the definition of "NONCONFORMING STRUCTURE." Thus, all NONCONFORMING ENCROACHING STRUCTURES are also NONCONFORMING STRUCTURES.

- (C) **DEFINITION:** As used in this resolution, the term "BIMID BUILDING PERMIT FEE" shall mean the BIMID fee, calculated as a percentage of the construction cost, collected by the County of Contra Costa on behalf of BIMID when a building permit is issued by the County.

- (D) **MANDATORY FEE WAIVER WHEN DEMOLITION OF A NONCONFORMING ENCROACHING STRUCTURE IS FOLLOWED BY NEW CONSTRUCTION:** If a structure which is a NONCONFORMING ENCROACHING STRUCTURE is demolished and construction on a new structure, with a similar type of occupancy, on the same lot, is commenced within twenty-four (24) months after the demolition, BIMID shall waive a fractional amount of the BIMID BUILDING PERMIT FEE. The amount to be waived under this section shall be a fraction, where the square footage of the new structure is the denominator, and the square footage of the old structure is the numerator, thus:

$$\frac{\text{Square footage of old structure}}{\text{Square footage of new structure}} = \text{Percent of Fee to Be Waived}$$

If the percent exceeds 100%, the excess over 100% shall be ignored, (not applied to any other fee).

A fee waiver under this section is not transferrable to a subsequent owner of the real property. If the title to the real property is transferred during the twenty-four (24) month period referred to above, the fee waiver becomes null and void.

In order to be eligible for the fee waiver under this section, the construction on the new structure must be undertaken pursuant to a District Approval.

- (E) **MANDATORY FEE WAIVER WHEN MOVING A NONCONFORMING ENCROACHING STRUCTURE:** If a structure that is a NONCONFORMING ENCROACHING STRUCTURE is physically moved to a new location on the same lot so that it is no longer a "NONCONFORMING ENCROACHING STRUCTURE," BIMID shall waive all of the BIMID BUILDING PERMIT FEE, to the extent such fee applies to construction necessitated by the move itself, such as a new foundation and infrastructure to facilitate the re-connection of utilities. If post-move construction involves construction not necessitated by the move, (for example, a bathroom remodel in the structure or an addition to the structure), BIMID shall waive a fractional amount of the BIMID BUILDING PERMIT FEE. The amount to be waived shall be a fraction, where the cost of construction necessitated by the move is the numerator, and the total cost of construction is the denominator, thus:

$$\frac{\text{Cost of construction Necessitated by the Move}}{\text{Total cost of Construction}} = \text{Percent of Fee to Be Waived}$$

The burden shall be on the applicant to prove the cost(s) of construction. When determining the cost of construction, the BIMID Board may, in its discretion make an independent determination of such cost(s).

In order to be eligible for the fee waiver under this section, the moving of the structure and the construction necessitated by the move must be undertaken pursuant to a District Approval.

- (F) **ASSISTANCE FOR NONCONFORMING ENCROACHING STRUCTURE:** When a NONCONFORMING ENCROACHING STRUCTURE is demolished, removed, or relocated, regardless of whether a new structure is planned to replace the one demolished or removed, BIMID will provide logistical support by conducting visual inspections and monitoring during the demolition, removal or relocation, in order to ensure levee integrity.

After the demolition, removal, or relocation is complete, BIMID will also re-grade the levee prior to any subsequent construction.

- (G) **POSSIBLE FEE WAIVER OR OTHER ASSISTANCE FOR ALL TYPES OF NONCONFORMING STRUCTURES:** The BIMID Board will consider, on a case-by-case basis and upon good cause being shown by the applicant, a partial or full waiver of the BIMID BUILDING PERMIT FEE, and/or the grant of other assistance, if a NONCONFORMING STRUCTURE is demolished or otherwise removed. To the extent the Board finds it to be applicable to the circumstances, the fee waiver or other assistance may be in any of the forms referred to in Sections "(D)" through "(F)" of this resolution.

area, when considering a request under this section, the Board shall take into account whether the structure was constructed without required District Approvals after the levee setback area had been established for the immediate area where the structure is located. If the Board finds that the NONCONFORMING STRUCTURE is located within the levee setback area, and was constructed without required District Approvals after the levee setback area had been established for the immediate area where the structure is located, that finding may constitute a ground for denial of a request made under this section.

If the NONCONFORMING STRUCTURE is not located within the levee setback area, when considering a request under this section, the Board shall take into account whether the structure was constructed without any District Approvals that were required at the time of such construction. If the Board finds that the NONCONFORMING STRUCTURE is not located within the levee setback area, and was constructed without required District Approvals, that finding may constitute a ground for denial of a request made under this section.

(H) APPLICABILITY TO OTHER BIMID FEES; WAIVER OF OTHER FEES: The fee waiver policies described above in this resolution are applicable only to the BIMID BUILDING PERMIT FEE. The BIMID Board reserves the authority to consider, on a case-by-case basis, a partial or full waiver of other BIMID fees, for the types of structures described above in this resolution.

(I) VARIANCE PROCESS TO BE USED FOR FEE WAIVER IN CASE-BY-CASE DECISIONS; EXCEPTION: When a fee waiver policy in this resolution refers to a decision being made on a "case-by-case" basis, the District's variance process shall be used to bring the matter before the Board, however, for good cause, the Board may allow such a matter to be considered as part of an application for a District Approval without the need to file a separate application for a variance.

The variance process need not be used to bring, before the BIMID Board, the matter of financial and/or other assistance not related to the BIMID BUILDING PERMIT FEE.

(J) COORDINATION WITH COUNTY POLICY: The District shall continue to encourage the County to waive, or partially waive, non-BIMID fees to promote the removal of NONCONFORMING STRUCTURES and NONCONFORMING ENCROACHING STRUCTURES, in a similar manner as BIMID fees are waived, or partially waived, pursuant to the policies within this resolution.

(K) TIME LIMIT ON POLICIES: Each of the policies described in this resolution shall only exist until such time as such policy is placed in, or otherwise addressed in, an ordinance adopted by the District. Thereafter, the policy, as expressed in the ordinance, shall prevail.

(L) AMENDMENTS: The BIMID Board may, from time to time, amend or
Fee Waiver & Demolition Assistance Policy
Resolution No. 08-06-19C

repeal the policies described in this resolution.

- (M) **SEVERABILITY:** If any policy within this resolution is for any reason held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining policies of this resolution. The Board hereby declares that it would have enacted this resolution and every policy thereof, irrespective of the fact that any one or more policies be unconstitutional or invalid.
- (N) **PRIOR POLICIES REPEALED:** To the extent that the BIMID Board may have previously adopted policies concerning the waiver of the BIMID BUILDING PERMIT FEE with regard to demolishing, replacing, and/or moving a NONCONFORMING STRUCTURE, and/or policies concerning the rendering of assistance in demolishing a NONCONFORMING STRUCTURE, including Resolution No. 07-06-21B, those prior policies are hereby repealed and replaced with the policies in this resolution.
- (O) **WEBSITE:** The policies within this resolution shall be placed on the District's internet website.

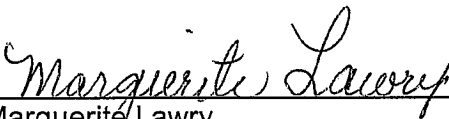
PASSED by the Board of Directors at a regular meeting of the Bethel Island Municipal Improvement District on June 19, 2008 by the following vote:

Ayes: Lawry, Goodson, Jones and Knorr

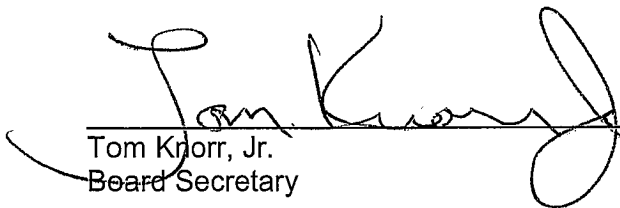
Noes: None

Abstentions: None

Absent: Cornfield



Marguerite Lawry
President, Board of Directors



Tom Knorr, Jr.
Board Secretary