

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:

Prepared on: September 11, 2003

Department: Parks

Budget Unit:

Agenda Date: September 23, 2003

Placement: Administrative

Estimate Time:

Continued Item: NO

If Yes, date from:

TO: Board of Supervisors

FROM: Terri Maus-Nisich, Director
Parks Department

STAFF CONTACT: Claude Garciacelay
Parks Department (568-2469)

SUBJECT: Waller Park Private Storm Drain (Folio 3434)
Fourth Supervisorial District

Recommendation:

That the Board of Supervisors authorize the Chair to execute the attached Temporary Entry Permit granting Parke Orcutt, LLC, a private developer, the right to enter upon a portion of Waller Park for the purpose of constructing and installing a storm water runoff pipeline to connect from the developer's adjacent private development to an existing drainage system that runs through Waller Park.

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion:

Parke Orcutt, LLC has applied to the County for permits to construct residential units on property that is immediately adjacent to the County-owned Waller Park in Santa Maria. On August 14, 2002, the Planning Commission unanimously voted to approve the Final Development Plan (Case No. 01DVP-00000-00053, application filed October 12, 2001), subject to certain conditions. One such condition required Parke Orcutt to facilitate the conveyance of storm water to an existing storm drain located on Waller Park.

To transport the storm water from the private development to the existing storm drain, the developers are required to construct a storm water runoff pipeline that runs from the private development to the existing storm drain. The portion of the pipeline that will be located on the County's Waller Park property is indicated on Exhibit B of the Temporary Entry Permit.

Subject: Waller Park Private Storm Drain (Folio 3434)
Fifth Supervisorial District
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This Temporary Entry Permit will enable the developer to enter upon the County land to excavate and construct the pipeline. Your Board's execution of this Permit is also a condition that must be satisfied prior to the granting of the Land Use Permit that will allow the associated excavation and construction on the developer's adjacent property.

Once the water runoff pipeline from the private property to the existing storm drain is completed, a permanent non-exclusive easement will be granted by the County to Parke Orcutt, LLC that will provide for the continued presence of the pipeline on Waller Park property. Parke Orcutt, LLC will pay fair market value for the easement and will assume all maintenance obligations associated therewith.

Mandates and Service Levels:

No change in programs or service levels.

Fiscal and Facilities Impacts:

No impacts associated with this item.

Special Instructions: After Board action, distribute as follows:

- | | |
|--|--|
| 1. Original signed documents | - Board's Official File |
| 2. Duplicate original signed documents | - Don Grady, Facilities Svcs. Division,
Courthouse, 2 nd Floor Annex |
| 3. Copy of signed document | - Claude Garciacelay, Parks Department |

Concurrence:
General Services

Project: Waller Park Storm Drain
APN: 111-010-015 (portion)
Folio: 003434
Agent: DG

TEMPORARY ENTRY PERMIT

The COUNTY OF SANTA BARBARA, a political subdivision of the State of California, hereinafter "COUNTY", and PARKE ORCUTT, LLC, a California Limited Liability Company, hereinafter "PERMITTEE", do hereby agree as follows:

COUNTY hereby grants to PERMITTEE, its authorized agents or contractors, officers and employees, a personal, non-exclusive and revocable right of entry, including the right to enter upon and move workers, equipment, and materials over, within and upon that real property commonly known as Waller Park, in the unincorporated area of the County of Santa Barbara, State of California, more particularly described as Assessor Parcel Number 111-010-015, hereinafter "Property". The Property is described in Exhibit "A", attached hereto and incorporated herein by this reference.

This right of entry shall be for the purpose of allowing the PERMITTEE, its authorized agents or contractors, officers and employees to install a storm water pipeline thereon, hereinafter "Project", and for such other purposes as may be incidental thereto. The pipeline shall be installed within the proposed easement area, hereinafter "Easement Area", as such is shown on Exhibit "B" attached hereto and incorporated herein by this reference.

This Temporary Entry Permit shall be subject to the following provisions, requirements, and restrictions:

1. PERMITTEE, its authorized agents, employees and contractors shall only enter upon that portion of the Property as is reasonably necessary to complete the Project. PERMITTEE may not use the Property for any other purpose or business without obtaining COUNTY'S prior written consent.

2. It is agreed that PERMITTEE shall perform all work on the Property in a quality manner and in accordance with legal and governmental standards for such work and this Permit.

If so required, PERMITTEE shall obtain permits to proceed with the storm water pipeline installation on the Property from the appropriate governmental agencies and provide copies of

said permits to the COUNTY prior to the commencement of work. All required permits hereunder shall be processed on the merits of the application thereof, and nothing in this Permit, or other communications between COUNTY and PERMITTEE shall be construed to require the County of Santa Barbara, or any other government agency to grant such permits. The requirements relating to the pipeline installation set forth herein are those of COUNTY as landowner and not as a governmental entity. Nothing in this Permit shall be construed to entitle PERMITTEE to commence construction without previously complying with all permitting required by the appropriate governmental agencies, including COUNTY in its governmental capacity.

PERMITTEE shall give COUNTY no less than five (5) business days written notice prior to the commencement of any work in, on, or about the Property. Said notice shall be given to the County Parks Department, Mr. Claude Garciacelay at 805-568-2469 and the County Architect, Robert Ooley at 805-568-3085. COUNTY has the right to reasonably refuse and reschedule the date(s) of construction in the event such date(s) interfere with the COUNTY'S or the public's use of the Property.

3. Upon COUNTY'S granting of a permanent easement in the Easement Area, PERMITTEE shall compensate COUNTY for the value thereof. No additional compensation is required for the rights granted hereunder. Should PERMITTEE fail to obtain said permanent easement, all improvements obtained hereunder shall be removed.

4. PERMITTEE shall comply with all applicable laws, regulations, rules, and orders regardless of when they become or became effective, including without limitation those relating to construction, grading, signing, health, safety, noise, environmental protection, waste disposal, water and air quality, and shall furnish satisfactory evidence of compliance upon request of COUNTY.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon the Property or Easement Area due to PERMITTEE'S use and occupancy, PERMITTEE shall clean all property affected to the satisfaction of COUNTY and any governmental body having jurisdiction therefore.

5. PERMITTEE, its authorized agents, employees and contractors shall exercise reasonable precautions necessary to prevent damage to and protect the Property during PERMITTEE'S entry thereon.

6. By PERMITTEE'S exercise of this Temporary Entry Permit, COUNTY assumes no liability for loss or damage to PERMITTEE'S property, or injury to or death of any agent, employee, or contractor of PERMITTEE, unless said loss, damage, injury, or death is a result, in part or wholly, of the COUNTY'S negligence.

7. PERMITTEE shall defend, indemnify and hold COUNTY harmless from and against all claims, damages, losses, causes of action and expenses, including attorneys' fees, for any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state, or municipal law, ordinance or constitutional provision, or other cause which arise out of, relate to or result from the activities or omissions, negligent or otherwise, contemplated under this Temporary Entry Permit of PERMITTEE, and PERMITTEE'S officers, agents and employees.

8. Without limiting the PERMITTEE'S indemnification of the COUNTY, PERMITTEE shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Permit. Failure to comply with the insurance requirements shall place PERMITTEE in default. Upon request by the COUNTY, PERMITTEE shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

A. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all PERMITTEE'S staff while performing any work incidental to the performance of this Permit. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after mailing of such notice to the COUNTY. In the event PERMITTEE is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if PERMITTEE has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Permit and PERMITTEE submits a written statement to the COUNTY stating that fact.

B. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of PERMITTEE and

shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the PERMITTEE in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Permit between COUNTY and PERMITTEE. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of PERMITTEE pursuant to PERMITTEE'S activities hereunder. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY. Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form: "Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."

If the policy providing liability coverage is on a 'claims-made' form, the PERMITTEE is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this Permit. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

PERMITTEE shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Permit becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Permit. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the PERMITTEE may be held responsible for payment of damages resulting from PERMITTEE'S activities pursuant to this Permit, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the PERMITTEE is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the PERMITTEE'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY'S Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Permit that results in an increase in the nature of COUNTY'S risk and such change of provisions will be in effect for the term of the amended Permit. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Permit. PERMITTEE agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

9. Prior to termination, PERMITTEE shall remove all of PERMITTEE'S improvements, equipment, materials and supplies from the Property and shall restore the Property to the same or better condition as of the date of COUNTY'S execution hereof unless otherwise agreed to in writing by COUNTY.

10. PERMITTEE, its authorized agents, employees and contractors shall replace and/or repair any improvements, destroyed or damaged, as a result of the rights granted under this Temporary Entry Permit. If any improvements are damaged or removed by PERMITTEE, its authorized agents, employees and contractors, they shall be restored or replaced by PERMITTEE to as near the original condition and location as is practicable.

11. In the event that any vegetation is damaged as a result of the work contemplated herein to the extent that it does not survive, PERMITTEE shall replace such vegetation so as to restore the Property to its condition prior to PERMITTEE'S entry hereunder, at PERMITTEE'S sole cost and expense.

12. In the event that any slope or grade on the Property is materially altered in any way by the excavation or other work contemplated herein, PERMITTEE, at COUNTY'S request, shall restore such slope or grade to its prior condition, as nearly as is practicable.

13. PERMITTEE shall work diligently toward completion of the Project, and shall minimize any disturbance of the Property.

14. The term of this Temporary Entry Permit shall commence upon execution by COUNTY, and shall terminate August 31, 2004, or upon completion of the Project, whichever is earliest.

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Project: Waller Park Storm Drain
APN: 111-010-015 (portion)
Folio: 003434
Agent: DG

IN WITNESS WHEREOF, COUNTY and PERMITEE have executed this Temporary Entry Permit by the respective authorized officers as set forth herein, to be effective as of the date executed by the COUNTY.

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

“COUNTY”
COUNTY OF SANTA BARBARA

CHAIR, BOARD OF SUPERVISORS

By: _____
Deputy

Date: _____

“PERMITTEE”
PARKE ORCUTT, LLC

APPROVED
SANTA BARBARA COUNTY PARKS

Anthony Alosi, Manager

Terri Maus-Nisich
Director of Parks

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

APPROVED AS TO FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: _____
Deputy

By: _____

APPROVED:

APPROVED AS TO INSURANCE FORM:

Ronn Carlentine, SR/WA
Real Property Manager

John A. Forner, MBA, ARM
Management Specialist/ Risk Manager