

MEMORANDUM

DEPARTMENT OF PUBLIC WORKS
County of Placer

TO: BOARD OF SUPERVISORS DATE: July 10, 2007

FROM: KEN GREHM / KEVIN ORDWAY

SUBJECT: **GRANT OF EASEMENT FROM THE UNITED STATES BUREAU OF RECLAMATION – AUBURN FOLSOM ROAD WIDENING PROJECT**

ACTION REQUESTED / RECOMMENDATION

Adopt a Resolution approving the Grant of Easement from the United States Bureau of Reclamation (USBR) and authorizing the Chairman to accept the easement subject to County Counsel approval once executed by the USBR, and authorizing the expenditure of \$104,000 to purchase the easement.

BACKGROUND / SUMMARY

The Auburn Folsom Road Widening Project will widen Auburn Folsom Road in three phases from two lanes to four lanes from south of Douglas Boulevard to the Sacramento County Line. The main purpose of the project is to provide additional roadway capacity to accommodate increasing traffic levels. Right-of-Way for the project is required from twelve properties on each side of Auburn Folsom Road, the majority of which will come from the Bureau of Reclamation / Folsom Lake State Recreation Area property.

The USBR has prepared the easement document and it has been approved in form by their regional office. USBR's policy is that they receive the fair market value for the easement prior to their Regional Manager executing the easement. The fair market value has been appraised at \$95,000 for a road and utility easement, and \$9,000 for a temporary construction easement; total \$104,000. The Agreement has a provision (Section 2L) stipulating, when in the opinion of the United States, the County is responsible to "eliminate any threat to the safety of property of the United States or of any third party", during the course of construction. After approval by your Board, the purchase price will be deposited with USBR who will then execute the easement and return it for acceptance by the Chairman.

ENVIRONMENTAL CLEARANCE

The Board of Supervisors certified and approved the Final Environmental Impact Report for this project on June 22, 2004.

FISCAL IMPACT

This road easement is being purchased for the appraised value of \$104,000 for approximately 4.8 acres. The Auburn Folsom Road Widening Project is being funded with Traffic Mitigation Fees. Funding for this project is included in the Fiscal Year 2007/2008 Budget.

Attachments: Resolution
USBR Easement Document

**Before the Board of Supervisors
County of Placer, State of California**

In the matter of: A RESOLUTION APPROVING AND AUTHORIZING THE CHAIRMAN TO ACCEPT THE GRANT OF EASEMENT FROM THE UNITED STATES BUREAU OF RECLAMATION AND THE COUNTY OF PLACER – AUBURN FOLSOM ROAD WIDENING PROJECT AND EXPEND \$104,000 FOR THE PURCHASE OF THE EASMENT..

Resol. No:.....

Ord. No:.....

First Reading:.....

The following RESOLUTION was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held _____, by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:
Clerk of said Board

Chairman, Board of Supervisors

BE IT RESOLVED by the Board of Supervisors of the County of Placer, State of California, that the attached Grant of Easement between the United States Bureau of Reclamation and the County of Placer is hereby approved and the Chairman is authorized to accept the easement on behalf of Placer County and the Department of Public Works is authorized to expend \$104,000 to purchase the easement.

WHEN RECORDED MAIL TO:

U.S. Department of the Interior
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

DOCUMENTARY TRANSFER TAX: None
This conveyance is exempt from any
documentary transfer tax per California
Revenue and Taxation Code Section 11922.

Contract No. 07-LC-20-9430

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

**GRANT OF EASEMENT AND
ISSUANCE OF TEMPORARY CONSTRUCTION PERMIT
TO COUNTY OF PLACER
FOR WIDENING AUBURN-FOLSOM ROAD**

Folsom Dam and Reservoir
Central Valley Project

THIS EASEMENT, made this _____ day of _____, 2007, in accordance with the Act of Congress approved June 17, 1902 (32 Stat. 388) and all other acts amendatory or supplementary thereto, particularly the Reclamation Project Act of 1939 (53 Stat. 1187), is entered into, by and between THE UNITED STATES OF AMERICA (United States), acting by and through its Department of the Interior, Bureau of Reclamation (Reclamation), represented by the officer executing this instrument on its behalf, and the County of Placer, hereinafter called "County," a political subdivision of the State of California, acting by and through its Board of Supervisors.

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RECITALS

The United States has acquired certain lands for the construction of the Folsom Dam and Reservoir, a feature of the Central Valley Project, California; and

The County has requested a perpetual easement for widening Auburn-Folsom Road, over, on, under, and across United States land currently leased to the State of California, Department of Parks and Recreation (DPR), and administered as part of the Folsom Lake State Recreation Area (FLSRA), located within a portion of Sections 11, 12, and 14, Township 10 North, Range 7 East, Mount Diablo Base and Meridian; containing 4 acres of land, more or less; and

The County has also requested a temporary construction permit adjacent to the proposed road widening easement area; and

The United States has no objections to such use of the land and the use is, at this time, not incompatible with the purpose for which the land was acquired and is now being administered.

NOW THEREFORE, in consideration of the mutual agreements and subject to the terms and conditions herein contained, the parties hereto agree as follows:

1. EASEMENT. The United States hereby grants to the County, without warranty of title, the following described non-exclusive easement and ancillary temporary construction permit within a portion of the lands acquired by the United States for the Folsom Dam and Reservoir as follows:

a. A non-exclusive easement for the purpose of widening the existing public road and installing a utility corridor within the easement premises, including constructing, improving, operating, and maintaining the same over those certain lands in Sections 11, 12, and 14, Township 10 North, Range 7 East, Mount Diablo Meridian, more particularly described in the legal descriptions in Exhibit A and shown on the map in Exhibit A-1, both of which are attached hereto and made a part hereof and hereinafter referred to as the "Easement Premises"

b. A Temporary Construction Permit for approximately 1.8616 acres of land, more particularly described in the legal description in Exhibit B and shown on the map in Exhibit B-1, both of which are attached hereto and made a part hereof. The land under this permit, which lies adjacent to the Easement premises, is for purposes associated with construction for the widening of Auburn-Folsom Road. In addition to all other terms and conditions of this Grant of Easement, this temporary construction permit is granted subject to conditions in this Article 1.b.(1) through (6) that pertain to the permit only:

(1) This temporary permit shall terminate upon completion of construction as described in Article 2.(b) of this Grant of Easement or no later than June 1, 2012, whichever occurs first.

(2) All work associated with the construction area must be coordinated with Reclamation and DPR. The County shall provide 10 days advance written notice to Reclamation and DPR of the construction start date and written notice within 10 days after completion.

(3) The County is responsible for restoring the construction site to pre-construction conditions under the direction from Reclamation. Prior to termination of the temporary construction permit, the County shall remove any improvements, alterations, and additions, and any personal property, and restore the construction area to its pre-construction or better condition. Said removal and restoration shall be completed by and at the sole expense of the County prior to termination. In the event the County fails to comply with said removal and restoration requirements prior to termination of this temporary construction permit, Reclamation may enter and restore the land and the County, upon receipt of an itemized statement, shall reimburse the United States for all associated costs.

(4) A site inspection and approval by Reclamation of the easement and permit premises is required prior to termination of the permit.

(5) No interest in land is conveyed to the County by this Temporary Construction Permit.

e. The term "easement" as used in this Grant of Easement includes both the perpetual easement and the temporary construction permit.

2. SPECIAL TERMS AND CONDITIONS. The easement granted herein is subject to the following:

a. This Grant of Easement shall become effective on the date hereinabove written. In accordance with 43 CFR 429.6(b), the County shall pay to the United States all administrative fees including, but not limited to, engineering, environmental, and realty work associated with processing this easement and the fair market value of **\$104,000**, for land use based on an appraisal reviewed and approved by the United States Department of the Interior Appraisal Services Directorate, National Business Center.

b. The rights granted herein are subject to existing rights-of-way in favor of the public or third parties. The County recognizes that it has sole responsibility to make whatever arrangements are necessary to obtain such rights as may be needed by the County from any other party or parties holding any other interest in the easement premises.

c. The United States reserves the right of its officers, agents, and employees at all times to have unrestricted access and ingress to, passage over, and egress from all of said lands, to make investigations of all kinds, dig test pits, and drill test holes, and to survey for and construct reclamation and irrigation works and other structures incidental to Federal Reclamation Projects.

for any purpose whatsoever. Reclamation will make every reasonable effort to keep damages to a minimum.

d. Jurisdiction and supervision of the United States over the easement premises are not surrendered or subordinated by the issuance of this easement and the United States reserves the right to issue easement, right-of-way, permits, or other agreements for the lands described in this Grant of Easement.

e. There is reserved from the rights herein granted, the prior rights of the United States acting through the Bureau of Reclamation, Department of the Interior to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for severance or other damage to the County's work; provided, however, that if such reserved rights are not identified in a least general terms in this grant and exercised for works authorized by the Congress within ten (10) years following the date of this grant, they will not be exercised unless the County or County's successor in interest is notified of the need and grants an extension or waiver. If no extension or waiver is granted, the Government will compensate or institute mitigation measures for any resultant damages to works placed on said lands pursuant to the rights herein granted. Compensation shall be in the amount of the cost of reconstruction of the County's works to accommodate the exercise of the Government's reserved rights. As alternatives to such compensation, the United States, at its option and its own expense, may mitigate the damage by reconstructing the County's works to accommodate the Government facilities, or may provide other adequate mitigation measures for any damage to the County's property or right. The decision to compensate or mitigate is that of the Regional Director, Mid-Pacific Region, Bureau of Reclamation.

f. The County shall not use the easement premises for any purpose except as set forth in Article 1.

g. The County accepts the easement premises as is and acknowledges that the United States is under no obligation to improve the present condition of the easement premises.

h. All construction work to be performed shall be accomplished to the satisfaction of the United States and the DPR by and at the expense of the County and the County shall be in full accordance with the previously submitted and accepted plans and specifications prepared by the County, entitled: Auburn Folsom Road Widening Project – South Phase, dated January 23, 2007, Sheet No. 1 of 95 and Auburn Folsom Road Widening Project – Middle Phase, dated December 7, 2006, Sheet No. 1 of 102. All work associated with the road widening must be coordinated with Reclamation and any changes to the accepted plans must be submitted in writing for Reclamation and the DPR's prior approval. The United States reserves the right to inspect the road widening and appurtenances at project completion. Upon completion of the project, the County will notify Reclamation of project completion and will coordinate with Reclamation for a final walk-through. Within ninety (90) days of completion of construction, the

County shall provide Reclamation with an electronic copy of As-Built drawings (.pdf and .dwg format with the .ctb file) covering construction on Reclamation land.

i. The County, at its sole expense, shall reconstruct and maintain said road widening substantially as shown on the aforesaid plans. Additional construction, reconstruction, relocation, or use of the easement premises which is not in accordance with this easement and the plans shall not be initiated without the prior written approval of the United States. Additionally, the District will be required to reimburse the United States for its administrative costs involved in the review and approval of such additional activities.

j. The County and its contractors shall execute and maintain their work so as to avoid injury or damage to any person or property. All work shall be done in conformance with the State of California, Division of Industrial Safety and OSHA Standards. The County and its contractor shall have emergency phone numbers and addresses posted on the job site.

k. The County is a self-insured political subdivision of the State of California. Throughout the period of construction, the County or its contractors shall maintain in force policies of liability insurance or proof of self insurance, providing limits of not less than \$2,000,000 for each person/occurrence and \$5,000,000 aggregate for bodily injury or death, and not less than \$2,000,000 for property damage. Said policies shall name the United States and DPR as additional insured and shall provide that they will not be canceled or reduced in coverage without ten (10) days prior notice from the County. Prior to commencement of construction, the County shall deliver to Reclamation a copy of the Certificate of Insurance reflecting all essential coverage.

l. During the construction authorized by this Grant of Easement, if a situation develops which, in the opinion of the United States, presents a threat to the safety of property of the United States or of any third party, the County shall take immediate action to eliminate the threat. In the event the County does not immediately provide the necessary protection, the United States reserves the right, after notifying the County, to take such action as may be necessary to eliminate the immediate threat and the County shall, upon receipt of an itemized statement, reimburse the United States for all such costs.

m. The widened Auburn-Folsom Road shall be maintained in a good and safe condition and to the reasonable satisfaction of the United States at the expense of the County; and all construction, alterations, and repairs shall be in accordance with plans previously approved by the United States. The County shall at all times exercise its rights herein in accordance with all applicable statutes, orders, rules and regulations of any public authority having jurisdiction, including but not limited to all those related to or concerned with the environment. The County shall, from time to time, upon reasonable request from the United States, promptly repair or alter any part of the County's road to preclude damage to the facilities of the United States. The County agrees to perform all such repairs or alteration without regard to the cause, except where caused or necessitated by an act or omission of the United States. This provision shall not,

however, relieve the County from the duty of inspecting and keeping its facilities in a proper and safe condition without the request of the United States nor place upon the United States the duty of inspecting or maintaining any of the facilities installed by or for the County. In the event the County should fail to promptly make such repairs or maintain its facilities after 30 days written notice by the United States, the United States may, at the direction of the Regional Director of the Bureau of Reclamation, Mid-Pacific Region, enter and make such repairs or perform such maintenance at the expense of the County, and the County shall, upon receipt of an itemized statement, reimburse the United States for all such costs.

n. The County shall repair, at its sole expense, any damages it causes to access roads, culvert crossing, siphon barrel, bridges, fences, gates, posts, and any other equipment/facilities of the United States. No construction debris of any kind shall be left on United States property.

o. The County shall at all times exercise its rights herein in accordance with all State, Federal, and local laws, regulations, rules, ordinances, and orders affecting such operations on United States lands.

p. Enforcement of the terms of this Grant of Easement shall be at the discretion of the United States, and any forbearance by the United States to exercise its rights under this Grant of Easement in the event of any breach of any term of the Grant of Easement shall not be construed to be a waiver by United States of such terms or of any subsequent breach of the same or any other term of this Grant of Easement or of any of the United States' rights under this Grant of Easement. No delay or omission by the United States in the exercise of any right or remedy upon any breach by the County shall impair such right or remedy or be construed as a waiver. Further, nothing in this Grant of Easement creates a non-discretionary duty upon the United States to enforce its provisions, nor shall deviation from these terms and procedures, or failure to enforce its provisions give rise to a private right of action against the United States by any third parties.

3. UTILITY CORRIDOR. During the term of this Grant of Easement, the County agrees as follows:

a. The County shall administer the utility corridor located within the easement premises.

b. The County may not allow placement of any utility or related appurtenances on, in, under or above the easement premises, including pipelines, power lines, telecommunications, or municipal services without prior written notification and submission of plans to the United States and the written approval by the United States.

c. If written approval is given, any work to be performed within the easement premises shall be accomplished to the satisfaction of the United States and at no expense to the United States and shall be in full accordance with submitted and accepted engineered plans/drawings. The United States reserves the right to inspect any construction or other activities during the progress of the work and at project completion. Within ninety (90) days of completion of the

work, the municipality shall provide Reclamation with an electronic copy of As-Built drawings covering the work on Reclamation land.

d. Additional construction, reconstruction, relocation, or use of the utility corridor which is not in accordance with the plans shall not be initiated without the prior written approval of the United States. All work associated within the utility corridor must be coordinated with Reclamation and the DPR.

e. The County will be required to reimburse the United States for its administrative costs involved in the review and approval or denial of proposals for placement of utilities within the easement premises.

f. The County further agrees that under no circumstance will utility facilities be located on Federal lands outside of the easement premises.

g. Tree trimming maintenance activities will not be performed without prior notification to and approval by Reclamation and the DPR.

4. TERMINATION.

a. This easement will terminate and all rights of the County hereunder will cease, and the County will quietly deliver to the United States possession of the premises in like condition as when taken, reasonable wear and damage by the elements excepted:

(1) Upon occurrence of any activity of the County or any activity under the control of or permitted by the County deemed to be illegal on Federal lands;

(2) After failure of the County to observe any of the conditions of the Grant of Easement and on the tenth day following service of written notice on the County of termination because of failure to observe such conditions, provided that the County shall have the option and right to cure such failure within ten days of the service of written notice of the failure by Reclamation, or such longer reasonable period as agreed upon by Reclamation, and if the County cures such failure, Grant of Easement shall not terminate;

(3) At the option of the United States, upon failure of the County to use said easements, or any portion thereof, for a period of five (5) consecutive years; or,

(4) At the request of the County by giving three (3) months written notice to the United States.

b. If the termination is under Articles 3, a. (1) or 3, a. (2), the United States reserves the right to bar the County from future use of the easement premises for a period of time as determined by the Central California Area Manager.

c. Termination of the easement granted herein shall not release the County from any liability or obligation, including any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release the County from its obligation and liability to remove any improvements, alterations, and additions made by the County and to restore the premises to a condition satisfactory to the United States at the expense of the County.

d. The notices provided by this Article shall be served by certified mail addressed to the respective addresses given in Article 4 herein, and the mailing of any such notice properly enclosed, addressed, stamped, and certified, shall be considered service.

5. NOTICES.

a. Unless expressly set forth elsewhere in this Grant of Easement, any notice, demand, or request required or authorized by this Grant of Easement to be given or made to or upon the United States and/or Reclamation shall be deemed properly given or made if delivered or mailed postage-prepaid, to the Area Manager, Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630-1799.

b. Any notice, demand, or request required or authorized by this Grant of Easement to be given or made to or upon the County shall be deemed properly given or made if delivered or mailed postage-prepaid, to Director, Placer County, Department of Public Works, 3091 County Center Drive, Suite 220, Auburn, CA 95603.

c. The designation of the person to or upon whom any notice, demand, or request is to be given or made, or the address of such person may be changed at any time by notice given in the same manner as provided in this Article for other notices.

6. MITIGATION. Mitigation for trees removed from United States land shall require mitigation on federal lands. The mitigation area shall be selected by Reclamation and DPR and shall be completed in accordance with the previously submitted and approved EA/EIR dated March 2003. Mitigation measures will be implemented in accordance with the EA/EIR and the Mitigation Monitoring Plan (MMP). Right-of-entry to the approved mitigation area is provided for the period needed to maintain the trees in accordance with the MMP. The County will provide a Mitigation and Monitoring Report every quarter until mitigation is successfully executed according to the MMP. In addition, the County will provide a report of complaints and concerns they receive from the public regarding this project. The United States shall not supply mitigation land for non-federal lands that are affected by the County's road widening project and related activities.

7. REMOVAL OF STRUCTURES. Upon the expiration, termination, or revocation of this Easement, the County shall remove all structures, equipment, or other improvements made by it

from the premises at no cost to the United States. Upon failure to remove any such improvements within one hundred and twenty (120) days of expiration, termination, or revocation, any remaining improvements shall, at the option of the United States, be removed or become the property of the United States. The County shall pay all expenses of the United States, or its assigns, related to removal of such improvements.

8. DISCOVERY OF CULTURAL RESOURCES. The County shall immediately provide an oral notification to Reclamation's authorized official of the discovery of any and all antiquities or other objects of cultural, historic, or scientific interest on Reclamation lands. The County shall forward a written report of its findings to Reclamation's authorized official within 48 hours. Objects under consideration include, but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and artifacts discovered as the result of activities under this Easement. The County shall immediately cease activity in the area of discovery, make a reasonable effort to protect such discovery, and wait for written approval from Reclamation's authorized official before resuming the activity. Protective and mitigative measures specified by Reclamation's authorized official shall be the responsibility of the County.

9. HAZARDOUS MATERIALS. During the term of this Easement, the County agrees as follows:

a. The County shall not allow contamination or pollution of Federal lands, waters or facilities and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include but are not limited to hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

b. The County shall comply with all applicable Federal, State, and local laws, rules, and regulations, and Reclamation policies and directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in Federal lands, waters or facilities.

c. "Hazardous material" means any substance, pollutant or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*), and the regulations promulgated pursuant to that Act.

d. Upon discovery of any event which may or does result in contamination or pollution of Federal lands, waters or facilities, the County shall initiate any necessary emergency measures to protect health, safety and the environment and shall report such discovery and full details of the actions taken to Reclamation. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the time of discovery if it is an emergency or

by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.

e. Violation of any of the provisions of this Article, as determined by Reclamation, may constitute grounds for termination of this Easement. Such violations require immediate corrective action by the County and shall make the County liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

f. The County agrees to include the provisions contained in paragraphs (a) through (e) of this Article in any subcontract or third-party contract it may enter into pursuant to this contract.

g. Reclamation agrees to provide information necessary for the County, using reasonable diligence, to comply with the provisions of this Article.

10. SUCCESSORS IN INTEREST OBLIGATED. This Grant of Easement shall be binding upon and inure to the benefit of the successors and assigns of the County; Provided, however, except as otherwise herein written, that no assignment of the privileges, benefits, obligations or liabilities of the County herein, whether by operation of law or otherwise, shall be valid without the prior written consent of the United States.

11. NO WARRANTY. The United States makes no warranty, expressed or implied, as to the extent or validity of the grant contained herein, or the condition at any time of the easement premises, or any of the property of the United States thereon, or the suitability of the easement premises for the purposes of the County.

12. INDEMNIFICATION AND HOLD HARMLESS. The County hereby agrees to indemnify and hold harmless the United States and DPR, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, death, property damage, or claims for personal injury, death, or property damage of any nature arising out of the activities of the County, its directors, officers, agents, employees, and contractors under this Grant of Easement.

13. COVENANT AGAINST CONTINGENT FEES. The County warrants that no person or firm has been employed or retained to solicit or secure this Easement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the County for the purpose of securing businesses. For breach or violation of this warranty, the United States shall have the right to annul this Easement without liability, or at its discretion require the County to pay, in addition to consideration for this Easement, the full amount of such commission, percentage, or brokerage or contingent fee to the United States.

14. OFFICIALS NOT TO BENEFIT. No member of or delegate to Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.

15. SEVERABILITY. Each provision of this Easement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Easement shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provisions, or of the easement as a whole.

IN WITNESS WHEREOF, the parties hereto have caused this Grant of Easement to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By: _____
Regional Resource Manager
Mid-Pacific Region
Bureau of Reclamation

NOTED:

California Department of Parks and Recreation

By: _____

ACCEPTANCE:

Placer County, Department of Public Works, and its authorized representatives, by signature below, agree to the terms and conditions above.

PLACER COUNTY, DEPARTMENT OF PUBLIC WORKS

By: _____

Title: _____

