

Staff Report

for the Board of Directors' Meeting of July 27, 2016

TO: Board of Directors
FROM: Timothy Crough, Assistant GM
DATE: 7/18/2016
SUBJECT: Private Road Maintenance – Beitler Road

ADMINISTRATION

RECOMMENDATION:

Approve the Beitler Road Maintenance Contribution Agreement as a form agreement for contributions to private road maintenance governed by District Rules and Regulations, as recommended by the Maintenance and Resource Management Committee, and authorize the General Manager to execute all such form agreements.

BACKGROUND:

For many years, the District has used Beitler Road to access the water treatment plant and pipelines at the east side of the Lake Wildwood Subdivision – refer to the attached Vicinity Map. Over the past year or longer, several property owners along Beitler Road have inquired about the possibility of the District's participation in the cost to maintain the road. Each time, staff explained the provisions of Section 13.05.03 of the District's Rule and Regulations (attached), indicating that the District can pay up to \$300 per year, provided that the funds were paid to a legitimate road maintenance association.

On 2/5/2016, the District received a request to make the maximum contribution or \$300 – see attached letter. Since then, Operations Staff confirmed that the District's use of the road and that it warranted the maximum contribution. In addition, staff confirmed the Beitler Road Maintenance Association was established with a separate checking account.

Staff drafted the attached draft agreement with the help of Legal Counsel to memorialize the promises and obligations of the parties, and accounting of the funds expended each year.

The Beitler Road Maintenance Association does not maintain the entire length of Beitler Road, but rather just the northerly portion; we will need to make similar arrangements with four or five property owners, at the south end of the road to contribute to the entire length of Beitler Road. As such, staff will make contact with the property owners at the south end in the near future. Meantime, the association members (on the north) are ready to execute the attached agreement.

On 5/24/2016, the Maintenance and Resource Management Committee considered this item and recommended that the attached agreement can be used as a template for similar road maintenance contributions authorized by Section 13.05.03.

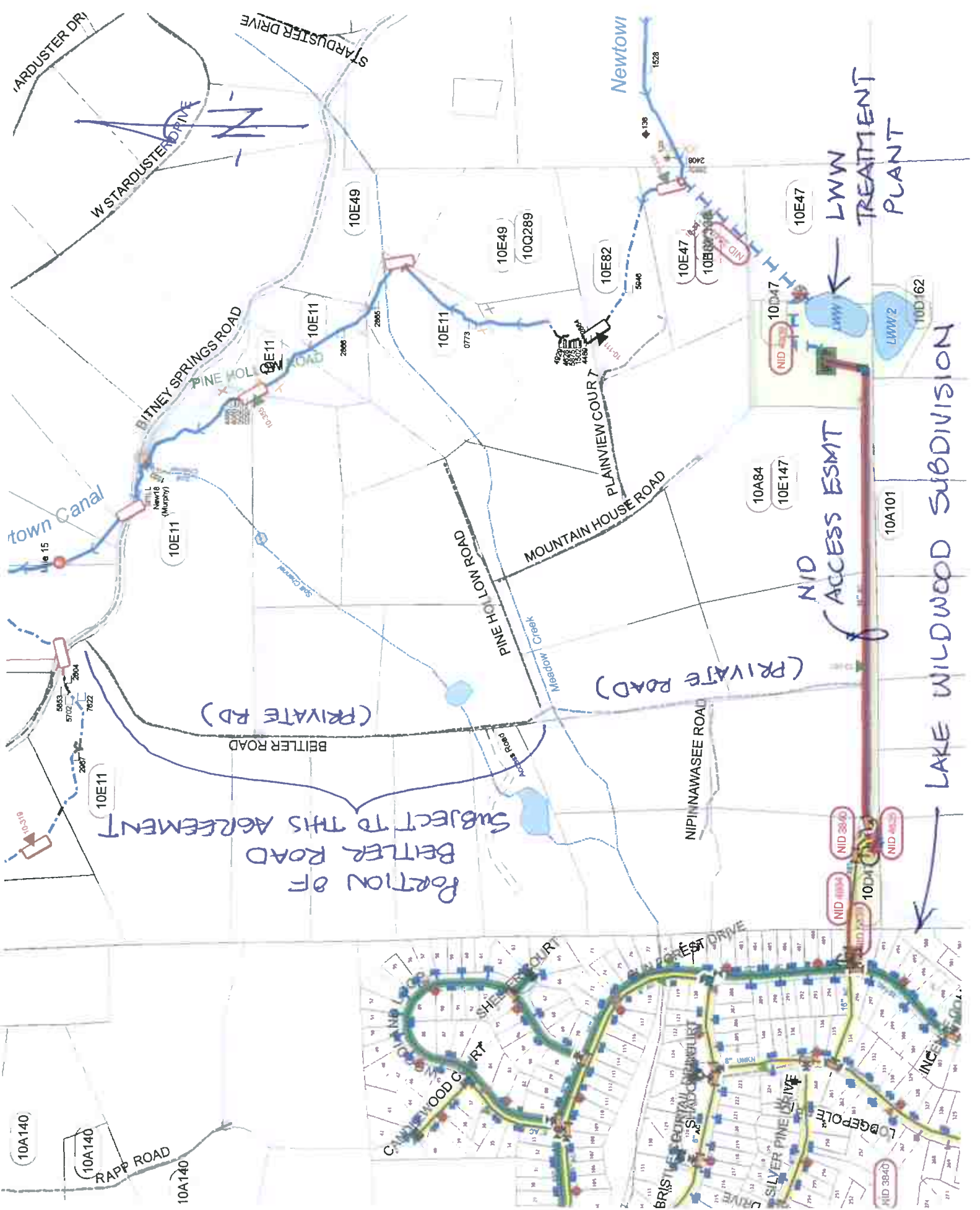
BUDGETARY IMPACT:

Minor annual expense to be budgeted each year by executed agreement.

tac

attachments(4):

- Vicinity Map
- Letter from Amy Umpleby, dated 2/2/2016
- Excerpt of Rules & Regulation, Section 13.05
- Draft Agreement



February 2, 2016

Remleh Scherzinger, General Manager
Nevada Irrigation District
1036 W. Main Street
Grass Valley, CA 95945

RECEIVED
FEB - 5 2016
Nevada IRRIGATION DISTRICT

Dear Mr. Scherzinger,

On behalf of the Beitler Road Management Association, I am requesting ongoing financial assistance from NID for the maintenance of Beitler Road in (unincorporated) Nevada City. Beitler, a private, gravel, dead-end road accessed via Bitney Springs Road, is NID's preferred access route to its water treatment plant and storage tanks. Available access through the Lake Wildwood property requires an extra 5 mile drive, a security gate, and a second manually locked gate. Obviously Beitler is a better option for NID but we residents desperately need assistance in its maintenance. This letter is our formal request for your support.

The distance from Bitney Springs to the paved NID road from which the water treatment plant and storage tanks are accessed is 0.8 miles. Since this is a dead end road, each vehicle makes a 1.6 mile round trip. Last spring I set up a motion sensor camera for a week and the average number of NID vehicles traveling daily was 5. This number may increase or decrease other times of year, and I'm sure your Operations department would know more accurately how many vehicles make the trek every day. Based on my observation:

$1.6 \text{ mi per trip} \times 5 \text{ trips per day} \times 365 \text{ days} = 2920 \text{ mi per year} \times \$0.1 = \$292 \text{ annual NID contribution.}$

To a person, the NID Operations crew is polite and they drive on our road respectfully. We have no objection to their use of Beitler Road. However, we want to point out that the time, fuel and wear and tear saved on NID vehicles making this shortcut down Beitler (rather than driving through Lake Wildwood) could perhaps be shared with Beitler residents. Going through Lake Wildwood, I estimate it would be an additional 5 or 6 miles one way for NID vehicles to access the water treatment facility. At your 10 cents a mile rate, NID is saving over \$1800 a year just in vehicle use and gas by driving on Beitler – not to mention employee time saved by the shorter drive on our road and the absence of two gates!

We ask that you make the maximum annual NID contribution (\$300) to the Beitler Road Maintenance Association. Given the horrid condition of our road (to which your Ops crew will attest), if it is at all possible, a one-time donation for proposed overdue road work would also be VERY much appreciated. I realize it is an unusual request, but we have not received any contributions from NID since the water treatment plant was built over a decade ago.

Thank you for your consideration. Please don't hesitate to contact me if you need more information.

Sincerely,



Amy Umpleby for the Beitler Road Maintenance Association
14118 Beitler Road, Nevada City, CA 95959 cell: 264-6868

cc: Tim Crough

13.02.02 Private Facilities

District employees and representatives of the federal, state and local authorities shall have the right of ingress and egress of the customer's premises at reasonable hours for any purpose reasonably related to the furnishing of water service and the exercise of any and all rights secured to it by law, or these Regulations, including inspection of the water user's piping and equipment as to compliance. The water user shall provide and maintain reasonable access to all such equipment.

13.02.03 Land Surveys

Pursuant to Government Code Section 22229, District employees shall have the right to enter upon any land to make surveys and determine the location of any facility thereon and for surveys and investigation of soil conditions prior to the commencement of property acquisition.

13.03 PRESCRIPTIVE EASEMENTS

The District has, through operation of its system and long continued use, acquired certain property rights in lands within the District. These rights normally pertain to the use of canals, ditches, water lines and roads, which usage has been developed over a substantial period of time.

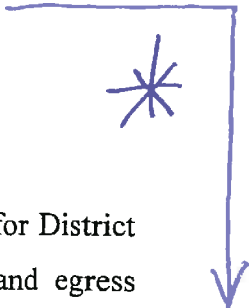
13.04 SPILL CHANNELS

The District has the right to utilize natural watercourses, ravines, and randoms, for the transmission of District controlled water, or for use for spillage or excess of storm water runoff. The use of such natural watercourses can take place at any time and without notice to the affected property owners. No construction should take place within the bed or banks of a natural watercourse or random without determining the extent and frequency of District use of said watercourse, if any.

13.05 PRIVATE ROADS

13.05.01 Routine Use

The District shall not provide road maintenance on private roads except as required for District vehicles and equipment which may use the road on a routine basis for ingress and egress



purposes. Road maintenance by District shall be limited to that required to keep it in a usable condition for District use only.

13.05.02 Specific Damage

When specific, identifiable damage is done to a private road by District's vehicles or equipment, the District shall restore the road to an equal condition as existed on the day prior to being damaged.



13.05.03 District Contribution

Any request for District participation to the cost of maintaining private roads must be made in writing and directed to the General Manager. The written request must contain information as to the road mileage involved, type of surface to be maintained, and the amount being requested from the District. Upon approval of the General Manager to contribute towards the road maintenance, the following formula will be used to compute the District's participation. The mileage shall be based on the preceding year's usage. The formula shall be reviewed every 5 years.

Miles per trip x trips per day x number of days per year =

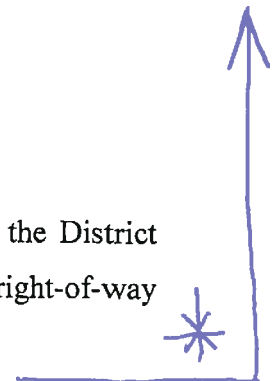
Mileage per year x 10 cents = District Contribution

Minimum = \$50.00 Maximum = \$300.00

eff. 6/25/97; rev. 6/11/03

13.05.04 Right-of-Way Agreements

Nothing in these Regulations shall supercede or contradict any responsibilities of the District regarding maintenance of private roads which have been set forth in valid right-of-way agreements.



13.06 DISTRICT ROADS

Any roadway within a District easement, even though the roadway may be used by others, shall be maintained only to a condition as required for the District's use. In the event that these roads may be upgraded by other parties for their use, the District will not be responsible for damages to

Recording requested by,
and when recorded, mail to:

Nevada Irrigation District
1036 West Main Street
Grass Valley, CA 95945

Space above this line for Recorder's use

ROAD MAINTENANCE CONTRIBUTION AGREEMENT

Beitler Road Maintenance Association

Nevada County, CA

THIS ROAD MAINTENANCE CONTRIBUTION AGREEMENT (Agreement), made this ___ day of _____, 2016, (Effective Date) between NEVADA IRRIGATION DISTRICT, a California Irrigation District formed and existing under the California Water Code (District), through its Board of Directors, and the BEITLER ROAD MAINTENANCE ASSOCIATION (Association), an unincorporated association that maintains Beitler Road, between Bitney Springs Road and Pine Hollow Road, in the unincorporated area of Nevada County, California (Beitler Road), as illustrated on Exhibit A attached hereto, by and through the undersigned landowners. Collectively hereafter District, Association, and undersigned landowners shall be referred to as the "Parties."

RECITALS:

A. WHEREAS, for a period exceeding five continuous years, District and its personnel have openly and notoriously accessed the Lake Wildwood Water Treatment Plant and related water facilities with vehicles, workers and construction equipment across the sections of Beitler Road depicted in Exhibit A; and

B. WHEREAS, the Association provides for the maintenance of the north portion of Beitler Road, as shown on Exhibit A, on behalf its members, which includes the undersigned landowners; and

C. WHEREAS, in consideration of potential adverse impacts to the physical condition of the road resulting from District's use of the identified road segment, District has agreed to make the contributions described in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties mutually agree as follows:

1.0 ROAD USE.

1.1 Maintenance of Status Quo of Rights: Nothing herein shall constitute evidence of permissive use, revocation of rights, or abandonment of rights that would limit or affect District's prescriptive right to use Beitler Road.

1.2 Waiver: During the term of this Agreement the Association and Undersigned Landowners waive all rights to challenge, oppose, obstruct or interfere with District's continued reasonable use of Beitler Road.

1.3 Term: The initial term of this Agreement shall be 5 years from the Effective Date, with automatic successive annual renewals thereafter. Either party may terminate this Agreement by providing notice of non – renewal at least 30 days prior to the anniversary of the effective date.

1.4 No Representation of Condition of Road by Association: Neither Association nor undersigned landowners make any representation or warranty, express or implied, as to the condition of Beitler Road. District accepts the condition of the road "as-is".

1.5 Gates/Fences/Speed: Association shall have the right to install, maintain and

operate entry gates across Beitler Road, provided they do not reduce the width of the right of way. If said gate is to be locked, Association shall make provisions for a keypad entry code for use by District. District further agrees to abide by posted speed limit signs on Beitler Road.

1.6 Binding on Successors and Assigns: The Parties intend that the covenants herein contained shall be binding on their respective heirs, executors, administrators, successors, and assigns. Any subsequent purchaser of any portion land subject to this Agreement, by acceptance or delivery of a deed or conveyance, shall be deemed to have consented to and become bound by these presents.

1.7 Recording: This Agreement may be recorded in the office of the County Recorder of Nevada County. District shall be responsible for all fees and costs incurred therewith.

2.0 MAINTENANCE

2.1 District Maintenance Contribution: District shall annually compensate Association for District's use of Beitler Road in an amount of three hundred dollars (\$300.00), payable on or before July 1 of each year in which this Agreement is effective. District shall additionally make a one-time payment of three hundred dollars (\$300.00), representing District's contribution for its past use of Beitler Road, payable within 30 days of the date of this Agreement. Annual payments by District will be made payable to, and mailed to the following name and address, unless modified by mutual agreement of the Parties:

Payable: BEITLER ROAD MAINTENANCE ASSOCIATION

Mail: 13868 Beitler Road
 Nevada City, CA 95959-9752

2.2 **Stipulated Amount.** The Parties acknowledge that the actual amount of wear and tear caused by District’s use of the road segment identified in Exhibit A is extremely difficult to establish or quantify. The Parties acknowledge that the Maintenance Contribution provided above constitutes the Parties’ best estimate of the costs incurred by the Beitler Road Maintenance Association in connection with District’s use of the identified road segment, and that District shall be required to make no contributions exceeding such amounts during the term of this Agreement.

3.0 MISCELLANEOUS

3.1 This Agreement shall be construed in accordance with the laws of California.

3.2 Nothing in this Agreement shall be construed to make the Parties hereto partners or joint ventures or render either of said parties liable for the debts or obligations of the other.

3.3 To the extent set forth herein, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

3.4 Any failure of a party to perform its obligation under this Agreement shall not be a breach of this Agreement to the extent such failure results from Acts of God.

* * * * *

WHEREFORE, this Agreement is effective as of the date first above written.

DISTRICT:

NEVADA IRRIGATION DISTRICT

Dated: _____

By _____
General Manager

Attest:

Dated: _____

By _____
Secretary to the Board of Directors

BEITLER ROAD MAINTENANCE ASSOCIATION:

Dated: _____

By _____
Name:

Dated: _____

By _____
Name:

Dated: _____

By _____
Name:

Dated: _____

By _____
Name:

[Notarize all Signatures]