

American River Flood Control District
RECREATIONAL TRAILS POLICY

The American River Flood Control District is responsible for operating and maintaining over 40 miles of levees protecting the Sacramento community. The primary purpose of the levee system is to provide flood protection to the Sacramento area; nonetheless, **the District fully supports and encourages the use of its flood control properties by members of the public for recreational purposes, as long as those activities do not interfere with the District's ability to operate and maintain the levees to the highest standard.** To advise other agencies and members of the public on our position, the District has developed a Recreational trails policy.

This policy has the following elements:

1. ***Support for Recreational Trails.*** The District will support and assist in implementing proposals for recreational trails on or across District facilities, including but not limited to walking, jogging and bicycling as long as the proposed recreational trail conforms to the terms of this policy. To that end, the District will require that encroachments be implemented only under permits approved by the District Board of Trustees and may, at the discretion of the Board, grant easements for trails over lands owned by the District in fee title. All permits and easements will be subject to terms and conditions necessary to make the encroachment consistent with the effective and efficient performance of the District's flood protection obligations. Encroachment rights will be granted only for proposals sponsored by qualified, responsible, financially sound public agencies. The District supports equestrian trails appropriately located in floodways or parkways outside the levee cross section and maintenance access areas (approximately 20 feet from the levee toe). Equestrian trails may cross the levees when necessary for access or other reasons and must be approved by the District. The crossings shall be designed to avoid damages to the levee or otherwise conflict with the District's operation and maintenance functions. The District does not support recreational use by motorized vehicles on its property. Other potential recreational uses on the District's facilities may be considered on a case-by-case basis.

2. ***District's Use Has Priority Over Public Recreational Use.*** The District's facilities were constructed to provide the residents of Sacramento with protection against flooding. Recreational uses of those facilities must not interfere with the District's ability to fight floods or to carry out necessary repairs and maintenance (e.g. mowing, spraying, repairing slopes, etc.). The District will try to limit the need to close the recreational trails system and provide advance notice to the trail operator of any closures so we may coordinate in notifying the public. However, the District reserves the right to close the system at any time without notice to the public in order to carry out its flood control obligations. The District also reserves the right to close the trail to certain types of uses, if experience shows that those uses impose undue stress on the flood control facilities or increase maintenance costs of the District. The District shall notify the trail operator of its concern or problem with the uses and provide the operator with an opportunity to work with the District to correct the problem to the satisfaction of the District.

3. **Layout of Trail.** In designing the recreation trail system, the applicant shall include the following standards:

~~a.) a.)~~ The District's strong preference is to locate trails off the levee crown on either the land or waterside of the levee, where feasible, in accordance with the California Central Valley Flood Protection State-Reclamation-Board regulations. This shall apply to be observed in every reach of proposed trail for the purpose of reducing the risk of collisions between recreating individuals and District heavy equipment and service vehicles. For the sake of this topic, feasibility shall mean any case where sufficient landform geography exists adjacent to the levee cross-section to locate a trail on a berm or geologic bench of earthen material. A bench width of at least 12-feet must be available or constructible with cut-and-fill methods for the off-crown trail alignment to be considered feasible. If it is not feasible to construct or locate the trail on the waterside or landside of the levee per the above conditions, or if the applicant desires to locate the trail on the crown for other reasons, the Board may, but need not, approve locating the trail along the crown on a case-by- case basis. If approved, the District will still require stretches of the trail along a levee segment to be located off-the crown for a reasonable distance (200 to 300 feet). This provides for the extended storage of material and equipment by the District to facilitate levee maintenance without impacting trail usage. Varying the trail between the crown and land or waterside levee toes most easily accommodates thisThe trail must immediately return to an off-crown alignment at the first available reach where suitable geographic landform conditions exist. The Board may grant variances on a case-by- case basis.

~~—~~ If an applicant seeks to request a variance from the Board to allow a reach of on-crown trail alignment, the applicant must perform an alternatives analysis, 30% preliminary engineering design, and cost analysis of each alternative to support a claim that an off-crown alignment is not feasible. The Board expects an applicant to invest at least approximately 3 months of study time, \$ _____, and will require the applicant to hold holding at least one public meeting in the neighborhood(s) impacted by the trail prior, at the discretion of the District, to placing the applicant's request for a variance on the Board's agenda.

~~cb.)~~ In designing the layout, detour routes shall be planned and incorporated into the trail design. These provide for the temporary closure of the trail to allow levee maintenance activities and not leave the trail user without an alternate route around the closed section. Signs will be required which can be placed by the District crew at access points to the trail alerting users of the closure and designating an alternate route.

4. **Construction, Operation, and Maintenance of the Trail.** The District, as a flood control agency, has not equipped itself with the necessary staff, equipment, or other resources to construct, operate, or maintain a recreational trail. The District will

require the proponent public agency, which may be assisted by citizen constituent proponents, to plan, design, construct, operate, and maintain the recreational trail in a manner that is consistent with standards adopted by the California Central Valley Flood Protection Reclamation Board and otherwise satisfactory to the District. All costs of such planning, design, construction, operations, and maintenance of the recreational trail shall be borne by the proponents or applicant public agency. The District will use reasonable efforts to avoid damaging the trail infrastructure while conducting its required tasks. However damage to the recreational trail which results from the District's flood emergency response or operation and maintenance of the levee will be the responsibility of the trail owner to repair except for damages caused by negligent actions of the District. Therefore in designing the trail, proponents should consult with the District on the equipment used to maintain the levee. The District is not responsible for damage caused by other users of the levee system such as a Fire Department or Utility Company.

5. ***Indemnifications and Insurance.*** The District will require the applicant public agency/permittee responsible for planning, design, construction, operation and maintenance of the trail to indemnify, and hold the District harmless in the event of any claim, lawsuit, judgment, or action arising from the public use of the recreational trail and to pay for the reasonable costs of any defense of such litigation by counsel mutually selected by the District and the trail operator except for the sole negligence or willful misconduct of District or its Board members, officers, employees, agents or authorized volunteers.. The District will also require the responsible applicant public agency/permittee to carry sufficient liability insurance, naming the District as an additional insured, to adequately protect the District, in an amount to be set by the District Board of Trustees. Provision may be made for self-insurance with the approval of the District Board of Trustees.
6. ***Special Terms and Conditions.*** The District Board of Trustees has approved in form certain special terms and conditions, in implementation of this Policy, which will be attached to permits and easements (if any) issued for encroaching recreational trails. The Special Terms and Conditions are attached hereto as Exhibit A. The Form of Permit is attached hereto as Exhibit B.
7. ***Additional Standard Term & Condition for Encroachment Permits.*** Permittee acknowledges that this Permit incorporates by reference the foregoing district policy. By accepting this Permit, Permittee agrees to exercise the rights and perform the obligations created by this Permit in full compliance with those policies.

**EXHIBIT B
PERMIT**

The American River Flood Control District hereby issues to _____ an encroachment permit for the purpose of _____ subject to the following terms and conditions:

[Terms and Conditions established by the Board or taken, in whole or part, from Exhibit A]

AGREED AND ACCEPTED:

(Applicant)

By: (Signature)

(Name, printed)

(Date)

PERMIT ISSUED:

By: American River Flood Control District

Date: _____

Signature: _____
Timothy R. Kerr General Manager, ARFCD

EXHIBIT A

SPECIAL TERMS AND CONDITIONS

1. Easements/permits shall be conveyed/issued to the applicant for the exclusive purpose of constructing, operating, maintaining, repairing, rehabilitating, and replacing a recreational trail that will be used by members of the public.
2. The recreational trail and all related improvements (the "Recreational Trail"), at a minimum, shall satisfy the planning, location, design, construction, access, signage, and other applicable standards established by the California Central Valley Flood Protection-Reclamation Board. However, the District reserves the right to impose such additional requirements as it believes are reasonably necessary to adequately protect: (i) the District's levees and other facilities, (ii) public and private property that is protected from flooding by the District's levees and other facilities, and (iii) the health and safety of individuals who use the levee (including, without limitation, members of the public and employees of the District)
3. The applicant must operate and maintain the Recreational Trail itself or submit to the District evidence of an agreement with a qualified public agency pursuant to which that public agency agrees to operate and maintain the Recreational Trail. Prior to issuance of the permit by District, as a part of the supporting documentation for the permit, applicant shall develop and submit to the District for review and acceptance and shall agree to implement a plan of operation and maintenance for the Recreational Trail which addresses all aspects of operating and maintaining the Trail, including but not limited to public safety, litter control, graffiti control, signage, access control, security, compliance enforcement, repair, rehabilitation, replacement, and removal of Recreational Trails facilities and a plan and budget for financing and accomplishing the O&M Plan.
4. The applicant shall bear all costs associated with the planning, design, construction, operation, maintenance, repair, rehabilitation, and removal of the Recreational Trail., including, but not limited to, any repairs required as a result of actions by the District or others to respond to a flood emergency. Should applicant not fulfill its obligations with respect to operation and maintenance of the Recreational Trail, the District shall notify the applicant in writing of such failure. Applicant shall have thirty (30) days from the receipt of such notice either to cure such failure or to submit an acceptable plan to the District to cure such failure. If, within thirty (30) days after receipt of District's notice, the applicant does not either cure such failure or submit a plan acceptable to the District to cure such failure, the District, at the expense of applicant, may perform the applicant's obligations with respect to operation and maintenance of the Recreational Trail. (Alternatively, the District may close the trail to the public recreational use until the applicant takes corrective action satisfactory

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to the District.) Notwithstanding the foregoing, in the event of an emergency caused by the applicant's failure to fulfill its obligations with regard to operating and maintaining the Recreational Trail, which the District reasonably believes jeopardizes the safety or security of (i) the District's levees and other facilities, (ii) public and private property that is protected from flooding by the District's levees and other facilities, and (iii) the health and safety of individuals who use the levee (including, without limitation, members of the public and employees of the District), the District, after providing notice to the applicant and at the applicant's sole expense, may perform those obligations immediately. In any of these circumstances, the District shall begin proceedings with the California Central Valley Flood Protection State Reclamation Board to revoke the recreation trails permit.

5. To the fullest extent permitted by law, applicant shall indemnify, hold harmless and pay counsel selected by the District for all fees and costs associated with defense of District, its Board members, officers, employees, agents, and authorized volunteers, and each of them from and against:
 - a). Any and all claims, demands, causes of action, damages, costs, expenses, losses, or liabilities, in law or in equity, of every kind and nature whatsoever for, but not limited to, injury to or death of any person, including but not limited to any Board members, officers, employees, agents, or authorized volunteers of District or Applicant, and damages to or destruction of property of any person, including but not limited to, District and/or Applicant and their Board members, officers, employees, agents, or authorized volunteers, arising out of or in any manner directly or indirectly connected with this permit/easement, however caused, regardless of any negligence of District or its Board members, officers, employees, agents, or authorized volunteers, except the sole negligence or willful misconduct of District or its Board members, officers, employees, agents, or authorized volunteers;
 - b). Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of applicant.
 - c). Any and all losses, expenses, damages (including damages to the work itself), attorney's fees, expert's fees, and other costs, including

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all costs of defense, which any of them may incur with respect to the

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failure, neglect, or refusal of applicant to faithfully perform all of its obligations under the permit/easement. Such costs, expenses, and damages shall include all costs, including attorney's fees and expert's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

Applicant shall pay and satisfy any judgment, award, or decree that may be rendered against District or its Board members, officers, employees, agents, or authorized volunteers, in any such suit, action, or other legal proceeding.

Applicant shall reimburse District and its Board members, officers, employees, agents, or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Applicant agrees to carry insurance for this purpose as specified by the District. Applicant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District or its Board members, officers, employees, agents, or authorized volunteers.

6. By signature hereon, Applicant certifies that Applicant is aware of the provisions of Section 3700 of the California Government Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Applicant will comply with such provisions in connection with any work performed on the subject Recreational Trail(s). Any persons providing services with or on behalf of Applicant shall be covered by workers' compensation (or qualified self-insurance).

Applicant shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their officers, employees, agents, and authorized volunteers working on or about the subject Recreational Trail(s), in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Applicant shall provide employer's liability insurance in the amount of at least \$1,000,000 per accident for bodily injury and disease.

Applicant shall provide and maintain the following commercial general liability and automobile liability insurance:

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Coverage: Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001)
2. Insurance Services Office Automobile Liability Coverage (Form CA 0001), covering Symbol 1 (any auto)
3. Excess coverage reasonably acceptable to the District

Limits: Applicant shall maintain limits not less than the following:

1. General Liability — Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply to the Recreational Trail(s) hereunder (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the District) or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability - Two million dollars (\$2,000,000) for bodily injury and property damage each accident limit.
3. Excess Liability. Ten million (\$10,000,00) per occurrence.

These policies shall contain or be endorsed to contain the following provisions:

- A. The District, its Board members, officers, employees, agents, and authorized volunteers are to be given insured status (via ISO endorsement CG 2011, CG 2024 [if land only], or insurer's equivalent for general liability coverage) as respects: liability arising out of Applicant's use of District properties by Applicant and the public; or automobiles owned, leased, hired, or borrowed by the Applicant. The coverage shall contain no special limitations on the scope of protection afforded to the District, its Board members, officers, employees, agents, or

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authorized volunteers.

- B. For any claims related to this permit/easement, Applicant's insurance shall be primary insurance as respects the District, its Board members, officers, employees, agents, or authorized volunteers. Any insurance, self-insurance, or other coverage maintained by the District, its Board members, officers, employees, agents, or authorized volunteers shall not contribute to it.
- C. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its Board members, officers, employees, agents, or authorized volunteers.
- D. Applicant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- E. Each insurance policy required by this provision shall state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for non-payment of premium) prior written notice by US Mail has been given to District.

Such liability insurance shall indemnify the Applicant and Applicant's contractors against loss from liability imposed by law upon, or assumed under contract by, the Applicant or Applicant's contractors for damages on account of such bodily injury (including death), property damage, and personal injury.

The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, and blanket contractual liability.

The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

Acceptance of the insurance by District shall not relieve or decrease any liability of Applicant.

All of the insurance shall be provided on policy forms and through companies satisfactory to the District or by means of a self-insurance program acceptable to

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the District.

Any deductible or self-insured retention must be declared to and accepted by the District. At the option of the District, the Applicant shall either reduce or eliminate such deductibles or self-insured retention to levels acceptable to the District.

Insurance is to be placed with insurers having a current A.M. Best rating of not less than A-:VII or equivalent or, in the case of self-insurance programs, as otherwise acceptable to the District.

Prior to approval of the permit by the District/execution of the easement, applicant shall file with the District a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative. Such evidence of insurance shall include original copies of the additional insured endorsement signed by the insurer's representative and evidence of waiver of rights of subrogation against the District (if Property Insurance is applicable). Such evidence shall also include confirmation that coverage includes or has been modified to include Required Provisions A through E above.

Applicant shall, upon demand of the District, deliver to the District such policy or policies of insurance (or copies thereof) and the receipts for payment of premiums thereon.

Applicant shall provide and maintain property insurance covering all risks of direct physical loss, damage, or destruction to:

- The Recreational Trail(s) in the amount of \$1,000,000

District shall be a named additional insured on any such policy (ies).

Applicant shall provide and maintain property insurance covering all risks of direct physical loss, damage, or destruction to any personal property used in connection with the Recreational Trail(s).

Applicant and insurer shall waive all rights of subrogation against the District, its Board members, officers, employees, agents, or authorized volunteers. Applicant shall provide the District with a certificate(s) of insurance evidencing property coverage.

7. The District's use of its properties for flood control purposes, including, but not limited to, the maintenance, repair, construction, and reconstruction of levees, will

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have priority over the use of those properties as a recreational trail. The District will endeavor to avoid interfering with the use of its properties, or any portion thereof, as a recreational trail in conducting its operations whenever feasible; however, the District shall not be under any obligation to avoid such interference. The District reserves the right to close the Recreational Trail and to prohibit recreational uses of its properties, or any portion thereof, during flood emergencies, during flood fights, and during routine maintenance, repair, construction, or reconstruction of levees. Whenever possible, the District will endeavor to give advance notice of such closings; however, it shall be under no obligation to do so. Trail closures may be of short duration during maintenance activities but may also be for extended periods for major or capital improvement projects. This right to close the trail for extended periods may be used for purposes of construction, reconstruction or repairs of levees by others including the State of California-Reclamation-Board and the United States Army Corps of Engineers. The applicant shall be responsible for developing and implementing a detour plan if they desire a detour during construction or maintenance activities. Neither the District nor its agents such as the State or Corps of Engineers are obligated to provide a detour during the construction or maintenance activities.

8. The District reserves the right to grant to third parties the right to use all or any portion of its properties, so long as any such right granted to a third party does not unreasonably interfere with the exercise of the rights conveyed/issued to the applicant. It shall be presumed, as a presumption affecting the burden of proof that any rights granted to any third party by the District within all or any portion of the District's properties will not unreasonably interfere with the exercise of the rights conveyed/issued to applicant.
9. Applicant may not convey the right to use all or any portion of the District's properties for recreational purposes, or for any other purpose, to any third party without the written consent of District, which consent shall not be unreasonably withheld or delayed. Any such conveyance shall be subject to the terms and conditions of the original easement/permit, subject to any and all terms and conditions additionally imposed by District, and subject to the District's encroachment control procedures (i.e. a permit will be required to be issued by District to the third party).
10. Applicant may surrender this easement/permit at any time by (1) providing written notice of its intent to surrender it to the District at least one hundred twenty (120) days prior to the proposed date of actual surrender, and (2) not less than one hundred twenty (120) days after giving such notice, with regard to interests that have been conveyed by grant of an easement, preparing and recording a quitclaim deed surrendering to the District all rights conveyed by the original easement.

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11. As a condition of the District's conveyance of easement/approval of permit and of the continued existence of the easement/permit, applicant agrees that (1) if construction of the Recreational Trail is not commenced within twelve (12) months and completed within sixty (60) months of the date on which the District grants the easement/approves the permit, or (2) if the applicant fails to maintain the Recreational Trail or carry out any duties or responsibilities required as a condition of the easement/permit for a period of twelve (12) consecutive months after it has been completed, or (3) if the applicant ceases making the Recreational Trail available to the public for the recreational purposes for which the entitlement has been granted, the applicant shall be conclusively presumed to have surrendered the easement/permit. Following such surrender, upon written request by the District, applicant shall execute and record a good and sufficient quitclaim deed terminating all of its interests therein. If applicant fails to provide such a quitclaim deed within thirty (30) days after requested, the District may prepare for the applicant's execution such quitclaim deed, all costs of preparing and recording the quitclaim deed to be borne by applicant.
12. Should the District ever determine that the use of all or any portion of its properties as a recreational trail is inconsistent with the use of such lands for flood control purposes, the District may withdraw the easement/permit for the affected portion of the Recreational Trail upon thirty (30) days written notice to the applicant.
13. As a condition of any voluntary or involuntary surrender or withdrawal of this easement/permit, the applicant must remove the Recreational Trail and all associated facilities from District properties, at the sole cost and expense of applicant, within one hundred eighty (180) days of receipt/delivery of notice of surrender/withdrawal; except for those parts/facilities, if any, that the District has requested to be left in place. The District shall notify the applicant what portions, if any, of the Recreational Trail must be left in place within ninety (90) days of receipt/delivery of notices of surrender/withdrawal of easement/permit. If the applicant has not removed the Recreational Trail and restored the District's properties to the condition that existed before construction of the Recreational Trail within the required time period, or made arrangements satisfactory to the District for such removal and restoration, the applicant agrees that the District may carry out the removal and restoration and the applicant shall be liable for all costs thereof.
14. Should the District ever determine that a particular use of the easement/permit unduly stresses the flood control facilities or increases the District's costs of maintaining its levees or other facilities, the District reserves the right to prohibit such particular use of the easement/permit.

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15. Applicant shall operate and maintain the Recreation Trail(s) so as to avoid injury or damage to any person or property. Applicant shall be responsible for all security for the Recreation Trail(s).

In operating and maintaining the Recreation Trail(s), applicant shall, at all times, exercise all necessary precautions for the safety and environmental protection of public safety and the District's property, and be in compliance with all federal, state, and local statutory and regulatory requirements including, but not limited to, State of California, Division of Industrial Relations (Cal/OSHA) regulations, Cal/EPA, and the US Department of Transportation, including the Omnibus Transportation Employee Testing Act (as applicable).

Applicant shall not use or allow anyone else to use the Recreation Trail(s) or the District's property to generate, manufacture, refine, transport, treat, store, handle, recycle, release, or dispose of any hazardous material, other than as reasonably necessary for the operation of the applicant's activities as contemplated under the permit/easement. The term "hazardous material" means any hazardous substance, material, or waste, including but not limited to those listed in 49 CFR 172.101 (US Department of Transportation), the Cal/EPA Chemical Lists, or lists of petroleum products and their derivatives. However, this shall not apply to the use of petroleum products and related substances incidental to operation of motorized equipment and vehicles whose operation are necessary to the construction, operation, and maintenance of the Recreation Trail(s) or the District's flood control facilities.

Applicant shall immediately notify the District in writing upon becoming aware of any release of hazardous material, violation of any environmental law, or actions brought by third parties against the applicant alleging environmental damage.

16. Applicant shall give all notices required by law and shall comply with all laws, ordinances, rules, and regulations pertaining to the activities authorized by this permit/easement. The applicant shall be liable for all violations of the law in connection with this easement/permit.
17. No waiver of any violation or breach of the covenants or conditions of the easement/permit shall be considered to be a waiver or breach of any other violation or breach of the covenants and conditions of the easement /permit.
18. This easement/permit shall be binding on and inure to the benefit of the successors of the District and of the applicant. Consistent with other terms and conditions of this conveyance/approval, applicant may not assign its interest in, or obligations under, this easement/permit without the written consent of the District, which

