



San Bernardino County

Legislation Text

File #: 7402, Agenda Item #: 61

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT
AND RECORD OF ACTION**

January 24, 2023

FROM

**TERRY W. THOMPSON, Director, Real Estate Services Department
BRENDON BIGGS, Chief Flood Control Engineer, Flood Control District**

SUBJECT

Special Use Permit with the United States of America for Use of Land for Weather Monitoring Stations in the San Bernardino National Forest

RECOMMENDATION(S)

Acting as the governing body of the San Bernardino County Flood Control District:

1. Approve a nearly 29-year Special Use Permit, including non-standard terms, with the United States of America, acting through the United States Department of Agriculture, Forest Service, for the San Bernardino County Flood Control District's non-exclusive use of a total of 0.005 acres of federal land throughout the San Bernardino National Forest, comprising of 21 sites of approximately nine square feet each, for the operation and maintenance of San Bernardino County weather monitoring stations providing telemetry weather data, commencing upon full execution of the Special Use Permit through December 31, 2051, for no use fee.
2. Direct the Clerk of the Board of Supervisors to maintain the confidentiality of Appendix A and B to the Special Use Permit with the United States of America pursuant to California Government Code Section 6254.19.

(Presenter: Terry W. Thompson, Director, 387-5000)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). There are no fees payable by San Bernardino County (County) Flood Control District (District) for this nearly 29-year Special Use Permit (Permit) for the District's use of federal land. While the Permit typically requires the payment of use fees, as determined by the United States Department of Agriculture (USDA), Forest Service (FS), acting on behalf of the United States of America (US), USDA-FS typically waives collection of use fees from governmental users under current guidelines. The other cost associated with this Permit, which is considered minimal, is maintenance, which will be paid from the District's budget (1970002510). Sufficient appropriation is included in the District's 2022-23 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

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The recommended action will provide for a new Permit with the US, acting through the USDA-FS, for a term of nearly 29 years, commencing upon full execution (which is expected to occur on or about February 24, 2023), and expiring on December 31, 2051, for the non-exclusive use of a total of 0.005 acres of federal land, comprising approximately 21 sites of approximately 9 square feet each, for the operation and maintenance of District weather monitoring stations providing telemetry weather data, at no cost to the District.

The District has operated and maintained telemetry transmitting weather monitoring stations in the San Bernardino National Forest since the 1980s. In March 2021, the USDA notified the District of the need for a new comprehensive agreement for the use of all 21 weather monitoring sites since some sites were covered by previous permits that will be superseded by this proposed Permit and others were not under any agreements. The District requested that the Real Estate Services Department (RESD) submit a Standard Form 299 application for the use of federal land to the USDA. USDA-FS completed its site assessment and other historical and environmental reports for each of the 21 weather monitoring sites and the parties now desire to enter into the Permit.

Staff has reviewed the recommended action pursuant to the California Environmental Quality Act (CEQA) and has determined that it does not constitute a project. Accordingly, no further action is required under CEQA.

Summary of Special Use Permit Terms

Permitter:	United States of America, Department of Agriculture (Jody Noiron, Forest Supervisor, San Bernardino National Forest)
Location:	21 weather monitoring station sites located throughout San Bernardino National Forest
Size:	Total of 0.005 acres, comprising 21 sites of approximately 9 square feet each
Term:	Nearly 29 years, commencing upon full execution of the Permit December 31, 2051
Options:	None
Use Fee:	None for District use (waived by current DA-FS permits for other public entities)
Improvement Costs:	None
Maintenance:	Provided by District
Utilities:	None
Insurance:	Both Parties are self-insured public entities
Right to Terminate:	The District has no right to terminate except due to non-use of the land and at all other purposes

The Permit includes terms that differ from the standard County contract. The non-standard terms include the

following:

1. The District will indemnify, defend, and hold the US harmless for any judgements, claims, costs, damages, liabilities, and demands in connection with the District's use of the land.
 - The County standard contract does not include any indemnification or defense by the District of other parties to the contract.
 - Potential Impact: The District would be responsible to defend and reimburse the US for costs, expenses, and damages, which could exceed the total Permit amount.

PROCUREMENT

This Permit is exempt from the provisions of County Policy No. 12-02 - Leasing Privately Owned Real Property for County Use, because the real property is owned by a governmental agency.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Agnes Cheng, Deputy County Counsel, and Aaron Gest, Deputy County Counsel, 387-5455) on December 13, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on January 5, 2022; Public Works (Brendon Biggs, Director, 387-7906) on December 14, 2022; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on December 15, 2022; Finance (Carl Lofton, Administrative Analyst, 387-5404, and Penelope Chang, Administrative Analyst, 387-4886) on December 29, 2022; and County Finance and Administration (Valerie Clay, County Deputy Executive Officer, 387-5423) on January 5, 2023.

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