

## MEMO

TO: Board of Directors  
FROM: District Manager  
SUBJECT: Settlement Agreement; Pisciotta and Maffia  
  
DATE: March 27, 2009

### **RECOMMENDATION:**

It is recommended that the Board of Directors review this memo and approve the attached resolution.

### **BACKGROUND:**

On July 25, 2007 the District filed a complaint in Santa Cruz County Superior Court (Action No. CV157662) against Constance Noel, et al. for quiet title, nuisance, trespass, injunction and prescriptive easement with respect to a dispute over the properties on and surrounding the District's Lower Pasatiempo Water Tank.

On September 26, 2007 Constance Noel filed a cross complaint against the District for breach of contract, declaratory relief and inverse condemnation. The complaint included two (2) adjacent property owners; Daron and Traci Pisciotta (APN 021-101-22) and Charles and Christina Maffia (APN 021-115-06). A trial was held on November 24, 2008. The court entered a Statement of Decision and Judgment on February 9, 2009 relative to the equitable issues and the cause of action for inverse condemnation. A motion for judgment has been filed to dismiss the final outstanding matter in this case, Noel's request that the court set a jury trial for breach of contract.

Prior to the trial, the District reached a tentative agreement with Pisciotta and Maffia which resolved all outstanding issues between the parties. See Attachment 1. Pursuant to the proposed settlement agreement, the Pisciottas will grant an easement for ingress and egress to the District for the portion of the tank access road which encroaches on the Pisciotta's property. The Maffias and the District will grant reciprocal easements for ingress and egress and/or encroachment relative to their respective properties. It is recommended that the Board approve the attached resolution which authorizes and directs the District Manager to execute the Settlement Agreement.

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James A. Mueller  
District Manager

JAM/bsb

**SAN LORENZO VALLEY WATER DISTRICT**

**RESOLUTION NO. (08-09)**

**SUBJECT: SETTLEMENT AGREEMENT; PISCIOTTA AND MAFFIA**

WHEREAS, San Lorenzo Valley Water District filed a complaint (Action No. CV157662) in Santa Cruz County Superior Court for quiet title, nuisance, trespass, injunction and prescriptive easement;

WHEREAS, the complaint includes the properties of Daron and Traci Pisciotta, APN 021-101-22; and the properties of Charles and Christina Maffia, APN 021-115-06;

WHEREAS, the District has negotiated a proposed Settlement Agreement with the Pisciotta's and Maffia's relative to the complaint;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Lorenzo Valley Water District that the District Manager is hereby authorized and directed to execute any and all pertinent documents relative to the subject Settlement Agreement.

FURTHER, BE IT RESOLVED that the District Manager is hereby authorized and directed to record the Settlement Agreement on behalf of the District.

\* \* \* \* \*

PASSED AND ADOPTED by the Board of Directors of the San Lorenzo Valley Water District, County of Santa Cruz, State of California, on the 2<sup>nd</sup> day of April, 2009 by the following vote of the members thereof:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Brandon Barchi, District Secretary  
San Lorenzo Valley Water District

## **SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

The parties (hereinafter "Parties") to this Settlement Agreement and Release of All Claims (hereinafter "Release") are, Daron Pisciotta and Traci Pisciotta, Charles and Christina Maffia, and the San Lorenzo Valley Water District (District).

The District owns Tank Lot A which contains a water tank. The District also owns Tank Road A that leads to Tank Lot A and borders the property of Pisciottas at 1055 Whispering Pines Drive, Scotts Valley and Maffias at 1085 Whispering Pines Drive, Scotts Valley. At certain locations, the pavement of Tank Road A veers onto the property of Pisciottas' and Maffias' while portions of Maffias' driveway and planters veer onto Tank Road A. District filed suit in Santa Cruz County, Case number CV157662 claiming a prescriptive easement, in favor of Tank Road A, over the land of Pisciottas where the pavement veers onto the land of Pisciottas. Although there is no litigation between District and Maffias, both parties wish to resolve the problems with encroachments at this time.

The Parties agree as follows:

1. For valuable consideration, as set forth, each of the Parties agrees to forever discharge and release each of the other Parties, as well as each of the Parties' employees, officers, successors in interest and attorneys, from any and all claims, demands, damages, or causes of action in the complaint filed in this matter.
2. Pisciottas will record an easement for ingress and egress appurtenant to the property owned by District, commonly known as Tank Road A, Scotts Valley. The easement, including a description and map, is attached as Exhibit A to this settlement agreement.

3. Maffias and District will record reciprocal easements for ingress and egress and/or encroachment appurtenant to their respective properties. The easements, including a description and map, are attached as Exhibit B to this settlement agreement.
4. The Parties understand that liability for the claims released is disputed by the respective releasees and that this Release is a compromise and shall not be construed by any Party, or any person or entity claiming under any Party, as an admission by any releasee of the releasee's purported wrongdoing and/or liability.
5. The Parties abandon and dismiss with prejudice all causes of action that have been filed and authorize and direct their counsel to execute and file with the appropriate court a Request for Dismissal (with prejudice) with respect to such actions.
6. This is a full and final release applying to all injuries, losses and/or damages arising out of the Parties' involvement with the Property and/or any claims, whether or not now known or disclosed, and the parties waive and release all rights or benefits which he/she/it now has or in the future may have under the terms of Section 1542 of the Civil Code of the State of California (or any successor statute or rule), which section presently reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

This document is a legally binding contract that is intended to provide a comprehensive release of liability, but is not intended to assert any claims or defenses that are prohibited by law.

7. Each Party warrants and represents that he/she/it has not assigned or transferred any interest or right in the claims referred to and released in this Release, or any of them, to

any third person, and that he/she/it is free to enter into this Release without the consent or agreement of any other person or entity. Each Party agrees to indemnify and save harmless any other Party from any loss, claim, expense, demand or cause of action of any kind or character incurred by the indemnitee by reason of his/her/its reliance upon any false representation or warranty made by the indemnitor in this Release.

8. Except as specifically provided in ¶ 9, each Party waives any claim he/she/it may have against any other Party for costs and/or attorneys' fees incurred.
9. In the event that any Party commences any action to enforce, interpret or challenge the terms of this Release or the settlement it evidences, the prevailing party in any such action shall be entitled to recover from the opposing party(ies) his/her/its attorneys' fees and court costs, and other non-reimbursable litigation expenses, including expert witness fees and attorney and witness travel expenses, and including all attorneys' fees and costs incurred in enforcing any judgment or in collecting upon any amounts that may be awarded in any such action. Any such action or special proceeding shall be filed in the Santa Cruz County Superior Court and the court shall reserve jurisdiction of this settlement under CCP §664.6.
10. This Release constitutes a fully negotiated agreement and shall not be construed or interpreted for or against any Party. The Parties thus agree that neither California Civil Code §1654 nor any nonstatutory rule of interpretation shall be used in interpreting this Release.
11. This Release may be executed in counterparts, and except as specifically stated, shall become binding upon the Parties at such time as the Parties have executed it and

exchanged executed signature pages with one another. A fax signature shall be as valid as an original signature.

Dated: \_\_\_\_\_, 2009

San Lorenzo Valley Water District

By \_\_\_\_\_

Title \_\_\_\_\_

Dated: \_\_\_\_\_, 2009

\_\_\_\_\_  
Traci Pisciotta

Dated: \_\_\_\_\_, 2009

\_\_\_\_\_  
Daron Pisciotta

Dated: \_\_\_\_\_, 2009

\_\_\_\_\_  
Charles Maffia

Dated: \_\_\_\_\_, 2009

\_\_\_\_\_  
Christina Maffia

**BOUNDARY DESCRIPTION FOR A PROPOSED ROAD AND UTILITY EASEMENT ON THE LANDS OF DARON L. PISCIOTTA & TRACI T. PISCIOTTA (DOCUMENT 2002-0073131 OF OFFICIAL RECORDS OF SANTA CRUZ COUNTY, A.P.N. 021-101-22, LOT 189 & LOT 190 OF "PASATIEMPO PINES UNIT NO. 4," TRACT 348, VOLUME 40 OF MAPS AT PAGE 1) TO BE GRANTED TO SAN LORENZO VALLEY COUNTY WATER DISTRICT**

SITUATE IN THE CITY OF SCOTTS VALLEY, COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA, AND MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF LOT 189 OF "PASATIEMPO PINES UNIT NO 4," TRACT 348, AS SHOWN ON THE SUBDIVISION MAP RECORDED IN VOLUME 40 OF MAPS AT PAGE 1 OF SANTA CRUZ COUNTY RECORDS, AND FROM WHICH A FOUND 1/2" PIPE TAGGED "L.S. 4234" AT THE NORTH CORNER OF LOT 189 ON THE SOUTH LINE OF WHISPERING PINES DRIVE AS SHOWN ON THE RECORD OF SURVEY RECORDED IN VOLUME 110 OF MAPS AT PAGE 39 OF SANTA CRUZ COUNTY RECORDS BEARS N 4°32'20" E, 27.00 FEET. THENCE, FROM SAID POINT OF BEGINNING, THE FOLLOWING FOURTEEN COURSES AND DISTANCES:

- (1) SOUTH 34°14'00" EAST, 8.03 FEET TO A POINT; THENCE,
- (2) SOUTH 21°48'15" EAST, 11.32 FEET TO A POINT; THENCE,
- (3) SOUTH 14°58'30" EAST, 6.44 FEET TO A POINT; THENCE,
- (4) SOUTH 8°43'40" EAST, 7.64 FEET TO A POINT; THENCE,
- (5) SOUTH 5°25'40" WEST, 8.42 FEET TO A POINT; THENCE,
- (6) SOUTH 23°26'30" WEST, 9.46 FEET TO A POINT; THENCE,
- (7) SOUTH 50°33'20" WEST, 11.51 FEET TO A POINT; THENCE,
- (8) SOUTH 7°10'30" WEST, 34.92 FEET TO A POINT; THENCE,
- (9) SOUTH 36°02'45" EAST, 21.35 FEET TO A POINT; THENCE,
- (10) SOUTH 53°48'00" EAST, 38.96 FEET TO A POINT; THENCE,
- (11) SOUTH 50°53'00" EAST, 81.07 FEET TO A POINT ON THE NORTHERN LINE OF TANK ROAD "A" FROM WHICH THE NORTH-WESTERN LINE OF TANK LOT "A" BEARS S 54°02'40" E, 41.78 FEET, AS SAID TANK ROAD "A" AND TANK LOT "A" ARE SHOWN ON THE SURVEY RECORDED IN VOLUME 110 OF MAPS AT PAGE 39 OF SANTA CRUZ COUNTY RECORDS; THENCE,
- (13) NORTH 54°02'40" WEST, ALONG THE NORTHERN LINE OF TANK ROAD "A", 134.37 FEET TO A POINT FROM WHICH A FOUND 1/2" PIPE TAGGED "L.S. 4234" BEARS SOUTH 54°02'40" EAST, 0.15 FEET AND SOUTH 35°57'20" WEST, 0.09 FEET; THENCE,
- (14) NORTH 4°32'20" EAST, ALONG THE EASTERN LINE OF TANK ROAD "A", 102.76 FEET TO THE POINT OF BEGINNING.

PART OF A.P.N. 021-101-22

PREPARED BY:

MICHAEL F. BEAUTZ  
R.C.E. 24266

AUGUST 22, 2008

TR. 281  
PASATIEMPO PINES  
UNIT NO. 2  
38-M-32  
LOT 38

A.P.N. 021-101-20  
N 4°32'20" E, 140.92'

TANK ROAD A  
40-M-1  
110-M-39

LOT 189  
102.76'

LOT 189  
134.37'

LOT 189  
41.78'

TANK ROAD A  
40-M-1  
110-M-39

TANK LOT A  
40-M-1  
110-M-39

WHISPERING PINES DRIVE  
S 85°38'30" E, 175.32'  
(S 85°30' E, 175.38')

DARON L. PISCIOTTA  
TRACI T. PISCIOTTA  
2002-0073131  
A.P.N. 021-101-22

TR. 348  
PASATIEMPO PINES  
UNIT NO. 4  
40-M-1

S 34°14'00" E, 8.03'  
S 21°48'15" E, 11.32'  
S 14°58'30" E, 6.44'  
S 8°43'40" E, 7.64'  
S 5°25'40" W, 8.42'  
S 23°26'30" W, 9.46'  
S 50°33'20" W, 11.51'

AREA OF PROPOSED  
NEW EASEMENT

S 7°10'30" W, 34.92'  
S 38°02'45" E, 21.35'

FD. 1/2" PIPE  
BEARINGS  
AND  
S 53°46'00" E, 38.96'  
S 54°02'40" E, 176.15'  
S 54°02'40" E, 187.37'  
S 54°02'40" E, 176.15'  
S 54°02'40" E, 176.15'



**SURVEYOR'S MAP**  
SHOWING A PROPOSED EASEMENT  
ON THE LANDS OF  
DARON L. & TRACI T. PISCIOTTA  
TO BE GRANTED TO  
SAN LORENZO VALLEY COUNTY WATER DISTRICT  
WITHIN THE CITY OF  
SCOTTS VALLEY, CALIFORNIA  
SCALE: GRAPHIC AUGUST 2008  
BY: MICHAEL F. BEAUTZ, C.E.  
A.P.N. 021-101-22 SHEET 1 OF 1

**BOUNDARY DESCRIPTION FOR A PROPOSED NEW ROAD RIGHT OF WAY OVER THE LANDS OF CHARLES J. MAFFIA & CHRISTINA L. MAFFIA (DOCUMENT 1998-0064237 OF OFFICIAL RECORDS OF SANTA CRUZ COUNTY, A.P.N. 021-115-06, LOT 38 OF "PASATIEMPO PINES UNIT NO. 2," TRACT 281, VOLUME 38 OF MAPS AT PAGE 32) TO BE GRANTED TO SAN LORENZO VALLEY COUNTY WATER DISTRICT**

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SITUATE IN THE CITY OF SCOTTS VALLEY, COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA, AND MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF LOT 38 OF "PASATIEMPO PINES UNIT NO 2," TRACT 281, AS SHOWN ON THE SUBDIVISION MAP RECORDED IN VOLUME 38 OF MAPS AT PAGE 32 OF SANTA CRUZ COUNTY RECORDS, AND FROM WHICH THE NORTHEAST CORNER OF SAID LOT 38 BEARS N 4°32'20" E, 26.37 FEET, AND ALSO FROM WHICH A FD. 1/2" PIPE "L.S. 4234" BEARS N 4°32'20" E, 26.20 FEET, AS SHOWN ON THE RECORD OF SURVEY RECORDED IN VOLUME 110 OF MAPS AT PAGE 39 OF SANTA CRUZ COUNTY RECORDS. THENCE, FROM SAID POINT OF BEGINNING, THE FOLLOWING FIVE COURSES AND DISTANCES:

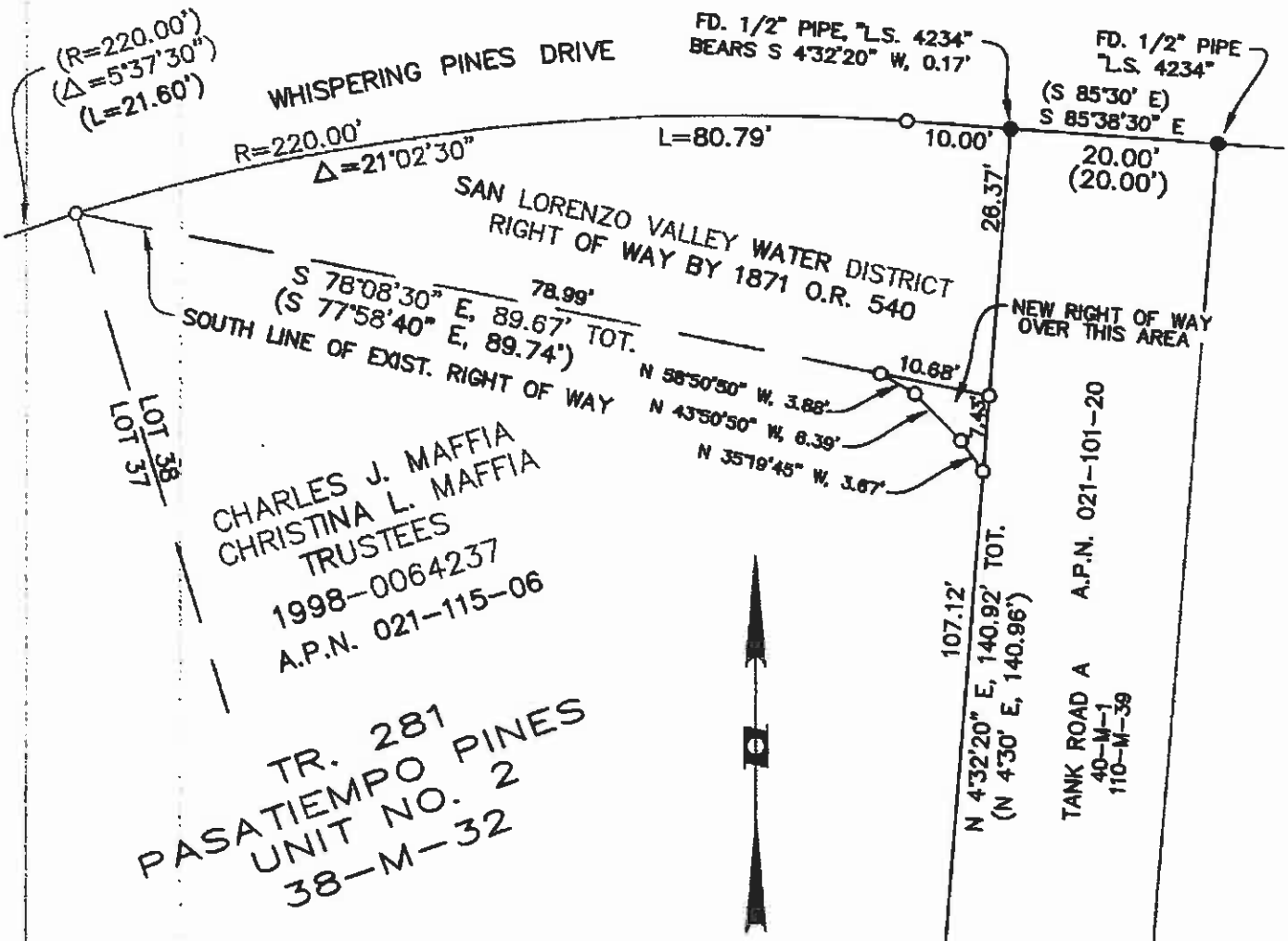
- (1) SOUTH 4°32'20" WEST, 7.43 FEET TO A POINT; THENCE,
- (2) NORTH 35°19'45" WEST, 3.67 FEET TO A POINT; THENCE,
- (3) NORTH 43°50'50" WEST, 6.39 FEET TO A POINT; THENCE,
- (4) NORTH 58°50'50" WEST, 3.88 FEET TO A POINT; THENCE,
- (5) SOUTH 78°08'30" EAST, 10.68 FEET TO THE POINT OF BEGINNING.

PART OF A.P.N. 021-115-06

PREPARED BY:

MICHAEL F. BEAUTZ  
R.C.E. 24266

AUGUST 22, 2008



**SURVEYOR'S MAP**  
 SHOWING A PROPOSED RIGHT OF WAY  
 ON THE LANDS OF  
 CHARLES J. & CHRISTINA L. MAFFIA  
 TO BE GRANTED TO  
 SAN LORENZO VALLEY COUNTY WATER DISTRICT  
 WITHIN THE CITY OF  
 SCOTTS VALLEY, CALIFORNIA  
 SCALE: GRAPHIC AUGUST 2008  
 BY: MICHAEL F. BEAUTZ, C.E.

A.P.N. 021-115-06 SHEET 1 OF 1