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

July 24, 2012

FROM: GERRY NEWCOMBE, Director
Flood Control District

SUBJECT: ADOPTION - ORDINANCE OF THE SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT, COUNTY OF SAN BERNARDINO, STATE OF
CALIFORNIA, RELATING TO PUBLIC SAFETY; THE PROTECTION AND
PRESERVATION OF DISTRICT PROPERTY, RESOURCES, AND
INFRASTRUCTURE; PROHIBITION OF TRESPASS; ENFORCEMENT

RECOMMENDATION(S)
CONTINUED FROM TUESDAY, JULY 10, 2012, Item #67 - Acting as the governing body of the
San Bernardino County Flood Control District (District), adopt the proposed Ordinance No. FCD 12-02
relating to public safety; the protection and preservation of District property, resources, and
infrastructure; prohibition of trespass, enforcement.
(Affected Districts: All)
(Presenter: Gerry Newcombe, Director, 387-7906)

BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES
Improve County Government Operations.
Maintain Public Safety.

BACKGROUND INFORMATION
The proposed Ordinance will establish that it shall be unlawful to trespass on San Bernardino
County Flood Control District property where access and entry is prohibited; whether or not the
person so doing is an equestrian, pedestrian, or operator of a private vehicle. Fines and Civil
penalties are outlined in the ordinance. In addition, the ordinance also establishes that as an
alternative to the criminal or civil prosecution, all violations of this ordinance may be subject to
enforcement through the initiation of an administrative citation action in the same manner as
provided by the San Bernardino County Code Title I; Government and Administration; Division 1;
General Provisions; Chapter 2: Violations and Enforcement; Section 11.0208 Administrative
Citation Actions.

cc: w/ ordinance
    Flood-Newcombe
    County Counsel-Messer
    File - Flood w/ attach
    jr 7/26/12

ITEM 67
ORDINANCE NO. FCD 12-02

AN ORDINANCE OF THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, RELATING TO PUBLIC SAFETY; THE PROTECTION AND PRESERVATION OF DISTRICT PROPERTY, RESOURCES, AND INFRASTRUCTURE; PROHIBITION OF TRESPASS; ENFORCEMENT.

The Board of Supervisors of the San Bernardino County Flood Control District, County of San Bernardino, State of California, ordains as follows:

The following is added to the uncodified ordinances of the San Bernardino County Flood Control District:

SECTION 1. Preamble.

The purpose of this ordinance is to provide for the protection of San Bernardino County Flood Control District ("District") property, its resources, and its infrastructure from trespass, for the conservation and use of flood and storm waters, and to provide, without limitation, for the protection of life and property from flood or storm waters pursuant to §43-2 of the Act, all in furtherance of its legislated mission to provide for the control of such waters of the District pursuant to the San Bernardino County Flood Control Act (the "Act"), California Water Code, App. Chapter 43, § 43-1 et seq.,

SECTION 2. Authorized Representatives.

For the purposes of enforcing this ordinance and pursuant to the authority conferred under § 43-3 of the Act regarding ex officio officers, the Board of Supervisors of the District hereby designates the San Bernardino County Sheriff's Department; the San Bernardino County Land Use Services Department, Code Enforcement Division; any other division or department of the County of San Bernardino as designated by the Chief Executive Officer of San Bernardino County (including the authorized deputies thereof); and the law enforcement and code enforcement officers of adjoining
jurisdictions, the territorial limits of which include real property owned, operated, and/or
maintained by the District or for which the District has easements, and upon the
effective date of a Memorandum of Understanding between the District and the
applicable government agencies for such jurisdictions.

SECTION 3. Definitions.

For the purposes of this ordinance, the following words shall be defined as set
forth herein:

"Equestrian" shall mean any person riding or walking with a horse or any other
animal reasonably suitable for riding, as the terms "horse" and "animal" are commonly
understood.

"Pedestrian" shall mean any person who is "afoot" within the meaning of
California Vehicle Code ("CVC") § 467; any person who is operating any form of
conveyance as defined at CVC § 467; any person possessing or using in any manner
any kind of skateboard, as that term is commonly understood; and any person
possessing or using in any manner any bicycle, as defined at CVC § 231.

"Private vehicle" shall mean, without limitation, any of the following vehicles that
is not owned or operated by any local, state, or federal government agency: any
vehicle, as defined at CVC § 670; any motor vehicle, as defined at CVC §§ 415; any
off-highway vehicle as defined at CVC § 38006; any other specific classification of
vehicle or motor vehicle as defined at CVC §§ 100-680, inclusive; any form of aircraft
(as that term is commonly understood and shall include without limitation, airplane,
glider, hang-glider, ultra-light, gyrocopter, and helicopter); any form of watercraft (as
that term is commonly understood and which shall include without limitation boat,
Canoe, kayak, body board, and surfboard).

"Trespass" shall mean (1) any entry by any unauthorized person, without District
consent, onto District property for which entry is prohibited and notice of the prohibition
is posted by reasonably conspicuous signage or communicated in any manner by a District employee or representative; or (2) a refusal to leave after any such entry and the failure or refusal to comply with such notice, including any demand or direction made by the District employee or representative to the person refusing to leave.

"Unauthorized person" shall mean any person who is not subject to the exemptions or exceptions provided in Section 6 of this ordinance.

SECTION 4. Applicability.

This ordinance applies to all property owned, operated and/or maintained by the District, including property over which the District holds easement rights.

SECTION 5. Trespass on San Bernardino County Flood Control District Property Prohibited.

It shall be unlawful at all times for any person, who is not otherwise subject to the exemptions or exceptions provided in Section 6 of this ordinance, to trespass on San Bernardino County Flood Control District property where access and entry is prohibited; whether or not the person so doing is an equestrian, pedestrian, or operator of a private vehicle.

SECTION 6. Exemptions and Exceptions.

A. All law enforcement, fire, state, and federal government agencies are exempt from this ordinance.

B. All persons operating private vehicles pursuant to a valid permit issued by the District for conducting activities on District property shall be granted an exception to the enforcement of Section 5 of this ordinance, subject to the limitations of the permit issued and only for the period of time the permit remains valid.

C. All persons possessing a valid permit issued by the District allowing
access and entry onto District property shall be granted an exception to the enforcement of Section 5 of this ordinance, subject to the limitations of the permit issued and only for the period of time the permit remains valid.

D. All persons who are lawfully and properly using the designated recreation trails and who, while so doing, remain at all times within the designated trail area and within trail boundaries as identified in or referenced to the applicable agreements between the District and applicable government entities, in compliance with the applicable trail regulations, shall be granted an exception to the enforcement of Section 5 of this ordinance, subject to the extent of their compliance with the applicable trail regulations and this subsection.

E. All fee owners of property for which the District has been granted an easement are exempt from this ordinance.

F. All persons to whom the District has granted an easement are exempt from this ordinance.

G. All persons authorized access and entry pursuant to a written agreement with the District are exempt from this ordinance.

SECTION 7. Enforcement; Criminal Actions.

A. Criminal Penalties for Violations. It is unlawful for any person to violate this ordinance. Any person committing such violation shall be deemed guilty of an infraction or misdemeanor, as herein provided.

B. Infraction Violations. A violation of this ordinance may be cited, charged, and prosecuted as an infraction. Where so prosecuted each such violation shall be punishable, except as otherwise provided herein, upon conviction or upon a plea of nolo contendere (commonly called "no contest"), by a base fine not exceeding $100.00 for a first violation; a base fine not exceeding $200.00 for a second violation of the same Code section within one year; and a base fine not exceeding $500.00 for each
additional violation of the same Code section within one year of the first violation. Any court costs that the court may otherwise be required to impose pursuant to applicable State law or local ordinance shall be imposed in addition to the base fine.

C. Misdemeanor Violations. A fourth or subsequent violation of this ordinance may be cited, charged, and prosecuted as a misdemeanor. Upon conviction of a misdemeanor, or upon a plea of nolo contendere (commonly called “no contest”), the penalty shall be a base fine of not less than $500.00 and not more than $1,000.00, or imprisonment in the County jail for a period of not more than six months, or both such base fine and imprisonment. Any court costs that the court may otherwise be required to impose pursuant to applicable State law or local ordinance shall be imposed in addition to the base fine.

D. The maximum fines for infraction violations of this ordinance imposed pursuant to this Section are based upon the provisions of Government Code § 25132 and will be increased automatically and without amendment to this Section upon any amendment to Government Code § 25132 increasing the amount of fines permitted.

SECTION 8. Enforcement; Civil Actions.

As an alternative to the criminal or administrative enforcement of this ordinance, all violations of this ordinance may be subject to enforcement through the initiation of a civil action in accordance with this section and in the same manner as provided in San Bernardino County Code Section 11.0207, the terms of which are incorporated herein by this reference as though fully set forth herein and which are hereby deemed adopted by the District for the purpose of this ordinance.

SECTION 9. Enforcement: Administrative Citation Actions.

As an alternative to the criminal or civil enforcement of this ordinance, all violations of this ordinance may be subject to enforcement through the initiation of an
administrative citation action in accordance with this section and in the same manner as provided in San Bernardino County Code Section 11.0208, the terms of which are incorporated herein by this reference as though fully set forth herein and which are hereby deemed adopted by the District for the purpose of this ordinance.

SECTION 10. Enforcement Remedies and Penalties are Cumulative and Discretionary; Not Exclusive; Declaration of Public Nuisance.

All remedies and penalties provided for by this ordinance shall be cumulative and discretionary and not exclusive of other applicable provisions of any other ordinance of the District or other applicable State or Federal law. Each and every violation of this ordinance is hereby declared unlawful and a public nuisance. The use of the enforcement remedies provided by this ordinance shall be at the sole discretion of the District. In the exercise of such discretion in selecting an appropriate enforcement remedy, the District shall not be required to institute available enforcement remedies in any particular order, or to prefer the application of one remedy to another.

SECTION 11. Declaration of District Property As Not Constituting A Public Forum.

All District property that is the site of District operated and maintained facilities or infrastructure or equipment and which is directly related to its operations in controlling, managing, directing, conserving, spreading, retaining, or storing flood and storm waters and run-off, is hereby declared to not constitute a public forum for any First Amendment purpose.

SECTION 12. Severability.

The Board of Supervisors of the San Bernardino County Flood Control District
declares that it would have adopted this ordinance and each section, sentence, clause, phrase, or portion of it irrespective of the fact that any one or more sections, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional. If for any reason any portion of this ordinance is declared invalid or unconstitutional, then all other provisions of it shall remain valid and enforceable.

**SECTION 13.** This ordinance shall take effect thirty (30) days from the date of adoption.

[Signature]

JOSIE GONZALES, Chair
Board of Supervisors
San Bernardino County Flood Control District

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD

LAURA J. WELCH, Clerk of the Board of Supervisors

[Signature]
STATE OF CALIFORNIA  )  
COUNTY OF SAN BERNARDINO  ) ss.

I, LAURA H. WELCH, Clerk of the Board of Supervisors of the San Bernardino County Flood Control District of San Bernardino County, State of California, hereby certify that at a regular meeting of the Board of Supervisors of said County and State, held on the 24th day of July, 2012, at which meeting were present Supervisors:

Rutherford, Derry, Ovitt, Gonzales

and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to wit:

AYES: SUPERVISORS: Rutherford, Derry, Ovitt, Gonzales

NOES: SUPERVISORS: None

ABSENT: SUPERVISORS: Mitzelfelt

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board of Supervisors this 24th day of July, 2012.

LAURA H. WELCH, Clerk of the Board of Supervisors of the San Bernardino County Flood Control District of San Bernardino County, State of California.

[Seal]

Deputy

Approved as to Form:

JEAN-RENE BASLE
County Counsel

By: KENNETH C. HARDY
Deputy County Counsel

Date: 4/8/12