

Apalachee 3B

License Agreement Between The California
Tahoe Conservancy and the County of El Dorado
For Soil Erosion Control Project Access
to Conservancy-Owned Properties

This Agreement is entered into this 20th day of March, 2008, by and between the State of California acting by and through the California Tahoe Conservancy, (hereinafter "the Conservancy") and the County of El Dorado (hereinafter "the County").

Recitals

WHEREAS, pursuant to its authority under Government Code Section 66906.7, the Conservancy awarded a grant to the County for the construction of erosion and siltation control facilities;

WHEREAS, most of the erosion control work undertaken by the County will be confined to the existing roadways, embankments, gutters, pathways and drainage ditches within the right-of-way of roads maintained by the County;

WHEREAS, some of the embankments, gutters, pathways and drainage ditches extend beyond the road right-of-way and onto adjoining properties;

WHEREAS, the County desires access to the lands adjoining the road right-of-way in order to conduct surveys, regrade and revegetate a slope, restore an access road, and construct infiltration galleries, rock-lined channels, and grass-lined swales, as more particularly described in Exhibit B ("the improvements");

WHEREAS, the Conservancy owns or has an interest in certain real property adjoining the County road right-of-way, described in Exhibit A attached hereto and incorporated herein ("the Property"), on which the County desires access for the purposes stated above; and

WHEREAS, pursuant to Government Code Section 66907.8 and its duly adopted resolution of June 19, 1987, the Conservancy may give licenses for erosion control purposes.

NOW THEREFORE, in consideration of the mutual covenants, terms, restrictions and conditions hereafter set forth, the Conservancy and the County hereby agree as follows:

Term of Agreement

The term of this Agreement shall be three (3) years, commencing on the date of execution of this Agreement, unless terminated earlier by mutual agreement in writing by all parties to this Agreement. Provided, however, that if erosion control project improvements are constructed on the Property within said period, the County shall have the right to enter on the Property for up to twenty (20) years from the date of completion of said improvements, for maintenance purposes as set forth herein.

Access

The Conservancy agrees that for the duration of this Agreement, subject to all of the conditions and terms hereof, any employee or agent of the County or duly authorized contractor performing construction pursuant to a Conservancy or County erosion control project, may enter upon and use the Property for the purposes set forth herein.

Purpose

The Property may be entered upon and used by the County solely for the purpose of conducting surveys, regrading and revegetating a slope, restoring an access road, constructing infiltration galleries, grass-lined swales, and rock-lined channels, and incidental purposes related thereto.

Condition Precedent to Construction

In addition to any other conditions contained herein, improvements shall not be constructed on the Property until the Executive Officer of the Conservancy has approved the construction plans.

Maintenance

The County shall be obligated to operate and maintain any improvements it constructs on the Property for purposes of soil erosion and drainage control. Where the improvements are being constructed pursuant to a soil erosion control project funded in whole or in part by the Conservancy under a Conservancy grant agreement, the improvements shall be operated and maintained in a manner consistent with the terms and provisions of the grant agreement. The County may be excused from its maintenance only upon the written approval of the Executive Officer of the Conservancy for good cause shown. "Good cause" includes, but is not limited to, natural disasters which destroy the improvements and render the soil erosion control project obsolete or impracticable to rebuild.

Standards of Workmanship

All work undertaken by the County under this Agreement shall comply with and conform to all applicable building, fire and sanitary laws, ordinances, and regulations of any governmental agency having jurisdiction over the Property. The County shall seek all permits, license and/or approvals applicable to the repair and operation of the facility as contemplated by this Agreement, including but not limited to building and/or use permits required by any public body

having jurisdiction over the Property. All such permits shall list the Conservancy as co-permittee. The Conservancy shall have the right to use and occupy the Property provided said use and occupancy does not interfere with the construction, operation and maintenance of the soil erosion control project.

Liability and Indemnification

The County waives all right to recourse against the Conservancy, including the right to contribution or indemnification for any and all claims, demands, costs, expenses, liabilities, and losses arising out of any damage or injury to any person or persons, including the Conservancy, or property of any kind whatsoever and to whomsoever belonging, including the Conservancy, from any cause or causes reasonably related to the County's presence or activities on the Property, except for matters arising out of the sole and active negligence of the Conservancy.

The County agrees to indemnify, protect, defend and hold harmless the Conservancy, its successors and assigns from any and all claims, demands, costs, expenses, liabilities, and losses arising out of any damage or injury to any person or persons, including the Conservancy, or property of any kind whatsoever and to whomsoever belonging, including the Conservancy, from any cause or causes reasonably related to the County's presence or activities on the Property except for matters arising out of the sole and active negligence of the Conservancy.

Fees and Assessments

The County shall pay, before they become delinquent, all charges, fees, taxes and assessments imposed on the Property by reason of this Agreement. The Conservancy may pay such charges, fees, taxes or assessments, and such payment will be repaid by the County on demand.

The County covenants and agrees to keep the Property free from any mechanic's or materialmen's liens claimed by any person, firm or corporation employed by or on behalf of the County for any work or services performed under this Agreement. In the event of the filing of any such liens, the County shall cause such lien to be released within five (5) days after the Conservancy's written notice to do so. The County shall indemnify and defend the Conservancy and the State of California against any and all liability, cost and expense including attorney's fees incurred by the Conservancy or the State of California as a result of any such lien.

Prior Encumbrances

This Agreement is subject to all easements, leases, liens, conditions, restrictions, encumbrances and claims of title which may affect the Property. The County accepts the Property (including, without limitation, Conservancy-owned improvements, if any) in their present condition and without any representation or warranty by the Conservancy as to the condition of such Property or improvements, and the Conservancy shall not be responsible for any defect or change of conditions in the Property or such improvements, any damage occurring thereto or for the existence of any violation of any municipal, County, State or Federal law, order, rule, regulation or ordinance.

Assignment

Without the written consent of the Conservancy or its successors or assigns, the County's rights and responsibilities under this Agreement may not be assigned. In the event the Conservancy consents to an assignment, the terms of this Agreement shall be binding on the County's assignee.

Forbearance Not a Waiver

Any forbearance on the part of either party to this Agreement, or their successors in interest and assigns, to enforce the terms and provisions of this Agreement in the event of any violation or breach shall not be deemed a waiver of either party's legal rights regarding any subsequent violation or breach.

Severability

The provisions of this Agreement are intended to be severable, separate, and distinct from each other. If any provision hereof is determined to be invalid or for any reason becomes unenforceable, no other provisions shall be thereby affected or impaired.

Captions

The captions on the paragraphs of this Agreement are for convenience only and shall be of no force and effect whatsoever in interpreting the obligations or rights of the parties hereunder.

Entire Agreement

This Agreement contains the entire Agreement between the Conservancy and the County, relating to the rights granted and the obligations assumed herein. Any oral representations or modifications of this Agreement shall be of no force and effect unless embodied in a subsequent modification in writing signed by the party to be charged.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CALIFORNIA TAHOE CONSERVANCY

Executive Officer

COUNTY OF EL DORADO

By: _____
Chairman, Board of Supervisors

Date: _____

ATTEST:
Cindy Keck
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Date: _____

Exhibit A

The land herein referred to is described as follows:

All that certain real property lying in the unincorporated area, State of California, County of El Dorado, described as follows:

APN	PROPOSED IMPROVEMENTS
033-682-22	Regrade and Revegetate slope
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033-873-22	Rock-lined Channel, Grass-lined swale, infiltration gallery
033-873-26	Infiltration gallery
033-873-31	Rock-lined Channel, Grass-lined swale, infiltration gallery
033-873-32	Rock-lined Channel, Grass-lined swale, infiltration gallery
033-884-12	Grass-lined swale, Biospreaders
033-884-13	Grass-lined swale, Biospreaders
080-071-25	Rock-lined channel, Grass-lined swale, restore access road
080-071-26	Rock-lined channel, Grass-lined swale, restore access road
080-103-02	Construct grass-lined swale
080-103-03	Construct grass-lined swale