



## **Brea Midbury Assessment Authority**

**Established Date:** May 18, 1999

**Amended Date:** N/A

**Members:** City of Brea, County of Los Angeles and County of Orange

**Purpose:**

The purpose of the Brea Midbury Assessment Authority is to provide for the formation of an assessment district that will finance a portion of the street maintenance in the Midbury neighborhood. The Authority is administered by the Board which is represented by Brea's City Council and the Mayor.

COOPERATIVE AND JOINT EXERCISE OF POWERS AGREEMENT

This Cooperative and Joint Exercise of Powers Agreement is dated as of MAY 18, 1999 and is made by and among the City of Brea (the "City"), the County of Los Angeles ("Los Angeles County") and the County of Orange ("Orange County").

RECITALS:

A. The Midbury Neighborhood is located within unincorporated Los Angeles County.

B. The Parties desire that the Midbury Neighborhood be annexed to the City provided that the City is able to finance the installation and construction of needed improvements to certain streets within the Midbury Neighborhood (the "Project") through a contribution of moneys by Los Angeles County and Orange County and the levy of assessments against benefitted properties in the Midbury Neighborhood.

C. In order that the Midbury Neighborhood be annexed to the City, Los Angeles County and Orange County must first accomplish a boundary change between the two counties so that, following such boundary change, the Midbury Neighborhood is located within Orange County.

D. Prior to the Parties undertaking proceedings to accomplish a boundary change between the two counties and undertaking proceedings to annex the Midbury Neighborhood to the City, the Parties desire to provide for the formation of an assessment district pursuant to the 1913 Act to finance a portion of the cost of the Project and for Los Angeles County and Orange County to contribute moneys toward the cost of the Project.

E. Provided that the formation of an assessment district to finance a portion of the cost of the Project is successful, the Parties desire to cooperate in undertaking proceedings to accomplish a boundary change between Los Angeles County and Orange County and to annex the Midbury Neighborhood to the City.

F. The 1913 Act provides that entities authorized to use the 1913 Act include any joint powers entity created pursuant to the Joint Powers Act.

G. The Joint Powers Act provides that public agencies by agreement may jointly exercise any power common to the contracting parties. The City, Los Angeles County and Orange County are "public agencies" within the meaning of that term as used in the Joint Powers Act.

H. The common powers of the Parties include the power (i) to improve, acquire, install, construct, reconstruct, manage, maintain and operate streets and related improvements, and (ii)

to undertake proceedings pursuant to the 1913 Act to form an assessment district and to levy assessments against the benefitted properties within such assessment district to finance street and street-related improvements.

I. The Parties desire to enter into this Agreement to provide a vehicle for the Parties to contribute monies in payment of a portion of the cost of the Project and to provide for the formation of an assessment district and the levy of assessments to finance the balance of the cost of the Project and, in the event the formation of the assessment district is successful, to provide for the Parties to cooperate in undertaking proceedings to accomplish a boundary change between Los Angeles County and Orange County and to annex the Midbury Neighborhood to the City.

NOW, THEREFORE, the City, Los Angeles County and Orange County agree as follows:

## ARTICLE I

### DEFINITIONS, PURPOSE AND AUTHORIZATION

Section 1.01 Definitions. As used herein, the following terms shall have the meaning ascribed thereto, unless the context requires otherwise.

"Agreement" means this Cooperative and Joint Exercise of Powers Agreement.

"Authority" means the City of Brea Midbury Assessment Authority, a joint powers authority duly organized and validly existing pursuant to the Constitution and laws of the State.

"Authority Commission" means the governing body of the Authority, as described in Section 2.02 hereof.

"Authority Treasurer" means the Treasurer of the City.

"Chief Administrative Officer" means the City Manager of the City.

"City" means the City of Brea, a municipal corporation duly organized and validly existing pursuant to the Constitution and laws of the State of California.

"City Council" means the City Council of the City.

"Joint Powers Act" means Chapter 5 of Division 7 of Title 1 of the California Government Code (commencing with Section 6500), as amended from time to time.

"Los Angeles County" means the County of Los Angeles, State of California.

"Midbury Neighborhood" means the territory proposed to be annexed to the City and shown on the diagram attached hereto as Exhibit A and incorporated herein.

"1913 Act" means the Municipal Improvement Act of 1913, being California Streets and Highways Code Section 10000, et seq., as amended from time to time.

"Orange County" means the County of Orange, State of California.

"Party" means any party to this Agreement.

"Project" means the installation and construction of improvements to certain streets in the Midbury Neighborhood as more fully described on Exhibit B, attached hereto and incorporated herein.

"State" means the State of California.

Section 1.02. Purpose of Agreement.

(A) The Parties each possess the powers referred to in Paragraph (H) of the Recitals hereof. The purpose of this Agreement is to exercise such powers (i) to establish the Authority, (ii) to provide for the Authority to undertake proceedings pursuant to the 1913 Act to form an assessment district and to levy assessments against the benefitted properties in such assessment district to finance a portion of the cost of the Project, and (iii) to provide for Los Angeles County and Orange County to contribute moneys in payment for a portion of the cost of the Project.

(B) If the formation of the assessment district is successful, the further purpose of this Agreement is to provide for the Parties to cooperate in undertaking proceedings to accomplish a boundary change between Los Angeles County and Orange County and to annex the Midbury Neighborhood to the City.

Section 1.03. Authorization. The Parties are hereby authorized to jointly exercise those powers common to them as set forth in Section 1.02 and Paragraph (H) of the Recitals hereof, including all powers incidental to accomplishing the purposes of this Agreement. The Parties are further authorized to cooperate in undertaking proceedings to accomplish a boundary change between Los Angeles County and Orange County and to annex the Midbury Neighborhood to the City.

ARTICLE II

THE AUTHORITY

Section 2.01. Creation of Authority: Authority as Separate Public Entity. There is hereby created pursuant to the

Joint Powers Act a joint powers authority separate and apart from the Parties hereto to be known as the "City of Brea Midbury Assessment Authority." The Authority shall be a public entity separate from the Parties to this Agreement.

Section 2.02. Authority Commission. The five members of the City Council shall constitute the governing body of the Authority, which governing body shall be known as the Authority Commission. The Authority Commission shall be vested with all of the rights, powers, duties, privileges and immunities of the Authority. The Mayor and City Clerk of the City shall act *ex officio* as the Chairperson and Secretary, respectively, of the Authority Commission. The Chairperson shall preside over all meetings of the Board and shall perform such other duties as may be imposed by the Board. The Secretary shall perform such duties as may be imposed by the Board.

Section 2.03. Accountability; Reports; Audits. There shall be strict accountability of all funds and report of all receipts and the Authority Treasurer shall either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority, except that the Authority Treasurer need not make or contract for such audit in any case where an annual audit of the accounts and records of the Authority by a certified public accountant or public accountant is otherwise made by any agency of the State or the United States only as to such accounts and records which are directly subject to such a federal or state audit. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under California Government Code Section 26909 and shall conform to generally accepted auditing standards. Where an audit of an account and records is made by a certified public accountant or public accountant, the Authority Treasurer shall cause a report thereof to be filed as public records with each of the Parties and also with the Auditor-Controllers of Orange County and Los Angeles County. Such report shall be filed within 12 months of the end of the fiscal year or years under examination. Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit pursuant to this Section 2.03 shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for such purpose. By unanimous request of the Authority Commission, the Authority may replace the annual special audit with an audit covering a two-year period. Notwithstanding the foregoing provisions of this Section 2.03 to the contrary, the Authority shall be exempt from the requirement of an annual audit if the financial statements are audited by the State Controller to satisfy federal audit requirements.

Section 2.04. Power of Authority; Scope and Exercise: The Authority shall have all of the powers common to the Parties set forth in Section 1.02 and Paragraph (H) of the Recitals

hereof, including all powers incidental to accomplishing the purposes of this Agreement, and the Authority is hereby authorized to do all acts necessary or appropriate for the exercise of such powers. Such powers include the power:

- A. To make and enter into contracts.
- B. To incur debts, liabilities, and obligations and to encumber real or personal property.
- C. To acquire, hold, or dispose of real or personal property, contributions and donations of real or personal property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities.
- D. To sue and be sued in its own name, and to settle any claim against it.
- E. To receive and use contributions and advances as provided in Section 6504 of the Joint Powers Act, including contributions or advances of personnel, equipment or property.
- F. To invest any money in its treasury that is not required for its immediate necessities, pursuant to Section 6509.5 of the Joint Powers Act.
- G. To acquire, construct, manage, maintain or operate real or personal property or any interest therein.
- H. To employ agents and employees.
- I. To receive, collect and disburse moneys.
- J. To lease, sell, convey or otherwise transfer title or rights to or an interest in real or personal property and to enter into any agreement or instrument in connection with any such lease, sale, conveyance or transfer.
- K. To exercise other reasonable and necessary powers in furtherance of any purpose of the Authority as set forth in this Agreement.

Section 2.05. Contributions; Payments and Advances; Use of Personnel, Equipment or Property. In addition to the contributions required by Sections 3.02 and 3.03 hereof, the Parties, in their sole and complete discretion, may make contributions from their respective treasuries in furtherance of any or all of the purposes set forth in this Agreement. The Parties, in their sole and complete discretion, may make payments of public funds to defray the cost of any or all of such purposes. The Parties, in their sole and complete discretion, may make advances of public funds for any or all of such purposes. Such advances shall be repaid as may be provided by separate agreement regarding advances which may be entered into between the Authority and the Party or Parties making such advance. Except as provided in Sections 3.02 and 3.03, personnel, equipment or property of any of the Parties to this Agreement may be used in lieu of other contributions or advances. The funds may be paid to and disbursed by the Authority, or by any or all of the Parties.

Section 2.06. Bonding Persons Having Access to Property. The Parties hereby designate the Chief Administrative Officer of the Authority and the Authority Treasurer and the designees thereof as the person or persons who shall have charge of, handle, or have access to any property of the Authority. Such person or persons shall file an official bond in the amount required by the City for the City office held by such person.

Section 2.07. Treasurer or Certified Public Accountant; Designation as Depositary; Duties; Auditor. The Authority Treasurer shall be the depositary and have custody of all the money of the Authority, from whatever source. The Authority Treasurer shall: (i) receive and receipt for all money of the Authority and place it in the treasury of the City Treasurer to the credit of the Authority; (ii) be responsible upon his or her official bond for the safekeeping and disbursement of all Authority money so held by him or her; (iii) pay, when due, out of money of the Authority so held by him or her, all sums payable on outstanding bonds of the Authority; (iv) pay any other sums due from the Authority from Authority money, or any portion thereof, only upon warrants of the Authority Treasurer; and (v) verify and report in writing on the first day of July, October, January, and April of each year to the Authority and to the Parties the amount of money he or she holds for the Authority, the amounts of receipts since his or her last report, and the amount paid out since his or her last report. The Authority Treasurer shall draw warrants to pay demands against the Authority when the demands have been approved by any person authorized to so approve by this Agreement. The City Council shall determine charges to be made against the Authority for the services provided pursuant to this Agreement.

Section 2.08. Services. Except with respect to the services contemplated by Section 1.02 (B) hereof, the City shall

provide all of the necessary services to carry out the provisions of this Agreement, including all necessary administrative services. The City shall also provide all necessary personnel, supplies, equipment, office and meeting space, and furnishings, and any Party, in their sole and complete discretion, may advance all costs and expenses of the Authority. By separate agreement, the Parties, in their sole and complete discretion, may provide for reimbursement by any Party to the other or others for the cost of administrative, overhead and other expenses advanced pursuant to or in furtherance of this Agreement. The Parties may be reimbursed for the cost of administrative, overhead and other expenses advanced pursuant to this Agreement from the proceeds of bonds or other obligations of the Authority.

Section 2.09. Obligations of Authority: Contracts for Separate Responsibility. The debts, liabilities, and obligations of the Authority shall not be the debts, liabilities, and obligations of the Parties. A Party to this Agreement may separately contract for, or assume responsibility for, specific debts, liabilities or obligations of the Authority.

Section 2.10. Restrictions on Powers. Pursuant to and to the extent required by Section 6509 of the Joint Powers Act, the Authority shall be restricted in the exercise of its powers in the same manner as the City is restricted in its exercise of similar powers.

Section 2.11. Compensation of Authority Commission. The persons who serve on the Authority Commission shall not be entitled to compensation. The Authority Commission may authorize reimbursement of expenses incurred by individual Authority Commissioners.

Section 2.12. Powers of Authority Commission. Except as otherwise provided in this Agreement, the Authority Commission shall exercise all powers and conduct all business of the Authority, either directly or by delegation to other bodies or persons. The Authority Commission shall provide for officers of the Authority and appoint or employ such staff as may be provided in bylaws of the Authority. The Authority Commission shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Authority. Adoption of the budget may not be delegated. The Authority Commission shall receive, review and act upon periodic reports and audits of the funds of the Authority. The Authority Commission shall have such other powers and duties as are reasonably necessary to carry out the purposes of the Authority.

Section 2.13. Meetings. The Authority Commission shall hold at least one regular meeting each year. The Authority Commission shall fix by resolution or in its bylaws the date upon which, and the hour and place at which, each regular meeting is to be held. Each meeting of the Authority Commission, including without limitation regular, adjourned regular, and special



meetings shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, being California Government Code Section 54950, et seq. The Authority shall have minutes of regular, adjourned regular, and special meetings kept by the Secretary. A majority of the members of the Authority Commission is a quorum for the transaction of business. However, less than a quorum may adjourn a meeting from time to time. A vote of the majority of a quorum at a meeting is sufficient to take action.

Section 2.14. Liability of Authority Commission Officers and Employees. The members of the Authority Commission, officers and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. They shall not be liable for any mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of Authority funds, or failure to invest. No Commissioner, officer or employee shall be responsible for any action taken or omitted by any other commissioner, officer or employee. Except as set forth in Section 2.06 hereof, no director, officer or employee shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement.

Section 2.15. Bylaws. The Authority Commission shall adopt bylaws consistent with this Agreement which shall provide for the administration and management of the Authority, and the regulation of its business and the conduct of its affairs.

Section 2.16. Conflict of Interest Code. The Authority Commission by resolution shall adopt a Conflict of Interest Code as required by law.

### ARTICLE III

#### ASSESSMENT DISTRICT PROCEEDINGS

Section 3.01. Assessment District Proceedings. Within a reasonable time after the execution of this Agreement by the Parties, the Authority shall commence and diligently proceed with the formation of an assessment district and the levy of assessments against benefitted properties to finance a portion of the cost of the Project. Proceedings may be taken up to and including the confirmation of the assessment prior to the completion of the proceedings to annex the Midbury Neighborhood to the City; provided, however, if the annexation proceedings fail, the Authority shall record a release of the liens securing the assessments.

Section 3.02. Contribution by Orange County. Commencing with the first year that Orange County receives

property tax revenues generated within the Midbury Neighborhood under the ad valorem tax rate established by Article XIII A of the Constitution of the State of California and continuing through the fifth year in which Orange County receives such property tax revenues, Orange County shall pay to the City 100 percent of its share of property tax revenues generated within the Midbury Neighborhood (except property tax revenues generated by Assessor Parcel Nos. 8269-002-025, 8269-002-026, 8269-002-027, and 8269-002-028).

Section 3.03. Contribution by Los Angeles County. Within 14 days after being notified of the recordation of the certificate of completion of the annexation of the Midbury Neighborhood to the City, Los Angeles County shall pay to the City the sum of \$29,329.00.

#### ARTICLE IV

##### ANNEXATION OF THE MIDBURY NEIGHBORHOOD

Section 4.01. Boundary Change and Annexation Proceedings. Within a reasonable time after the formation of an assessment district and the confirmation of assessments by the Authority pursuant to Article III, the Parties shall commence and diligently pursue all proceedings necessary to (i) accomplish a boundary change between Los Angeles County and Orange County so that, following the boundary change, the Midbury Neighborhood is located within Orange County, and (ii) complete the annexation of the Midbury Neighborhood to the City. The Parties shall cooperate with each other in such proceedings.

#### ARTICLE V

##### MISCELLANEOUS

Section 5.01. Termination and Distribution of Assets.

This Agreement shall terminate upon a determination by the Authority Commission that proceedings for the formation of an assessment district to finance a portion of the cost of the Project should be abandoned. In such event, all assets of the Authority shall, after payment of all unpaid costs, expenses and charges incurred under this Agreement, be distributed among the Parties hereto in accordance with the respective contributions of each of the Parties.

Provided further, following the formation of an assessment district to finance a portion of the cost of the Project and the annexation of the Midbury Neighborhood to the City, this Agreement shall terminate upon the transfer of jurisdiction over the assessment district to the City, or the release, discharge and/or expiration of all assessment liens pertaining to the assessment district, whichever is earlier, so long as no obligations of the Authority are outstanding and no

Section 5.06. Effective Date. This Agreement shall become effective as of the date first above written.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates indicated below.

DATE: \_\_\_\_\_

CITY OF BREA

By: \_\_\_\_\_

Mayor

ATTEST:

Chime Cappe  
City Clerk

DATE: \_\_\_\_\_

COUNTY OF ORANGE

By: \_\_\_\_\_

Chairman

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



Darlene J. Bloom  
Darlene J. Bloom  
Clerk of the Board of Supervisors  
of Orange County, California

DATE: MAY 18 1999

COUNTY OF LOS ANGELES



*Don Krabe*

By: \_\_\_\_\_  
Chairman

ATTEST: JOANNE STURGES  
EXECUTIVE OFFICER -  
CLERK OF THE BOARD OF SUPERVISORS  
By: *Angie Monte*, Deputy

APPROVED AS TO FORM  
LLOYD W. PELLMAN, County Counsel

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

By: *Francis E. Scott*  
Deputy

4

MAY 18 1999

*Joanne Sturges*  
JOANNE STURGES  
EXECUTIVE OFFICER

I hereby certify that pursuant to  
Section 25103 of the Government Code,  
delivery of this document has been made.

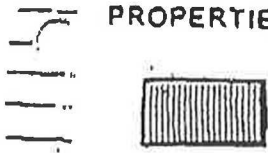
JOANNE STURGES  
Executive Officer -  
Clerk of the Board of Supervisors



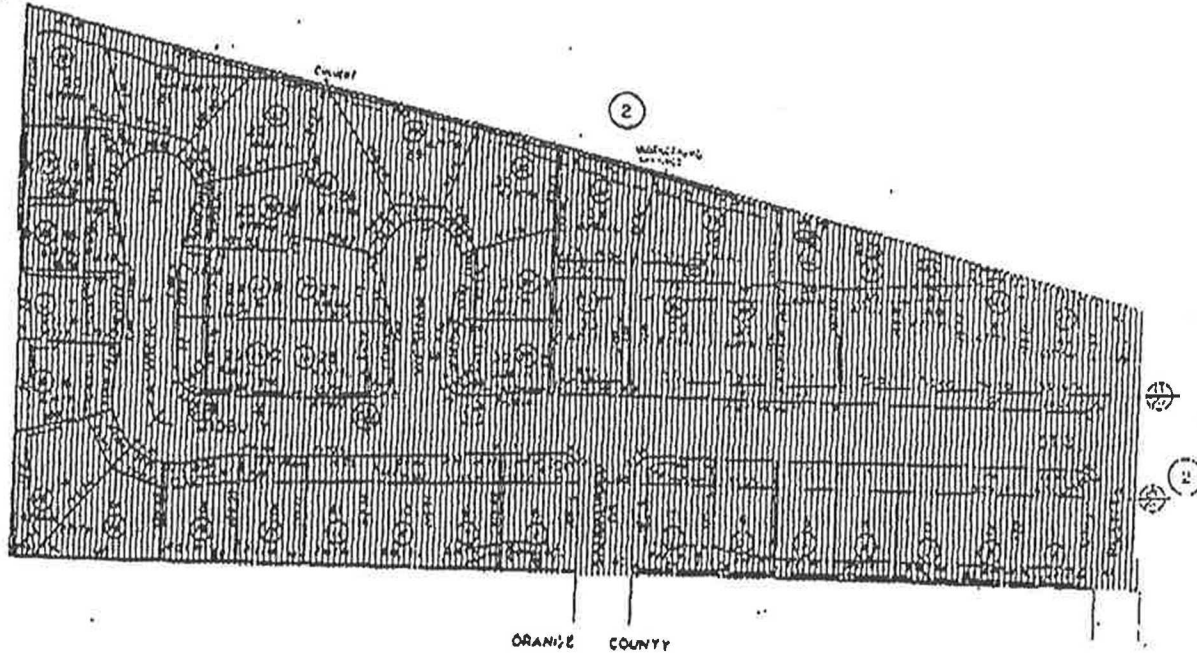
By: *Angie Monte*  
DEPUTY

# EXHIBIT A

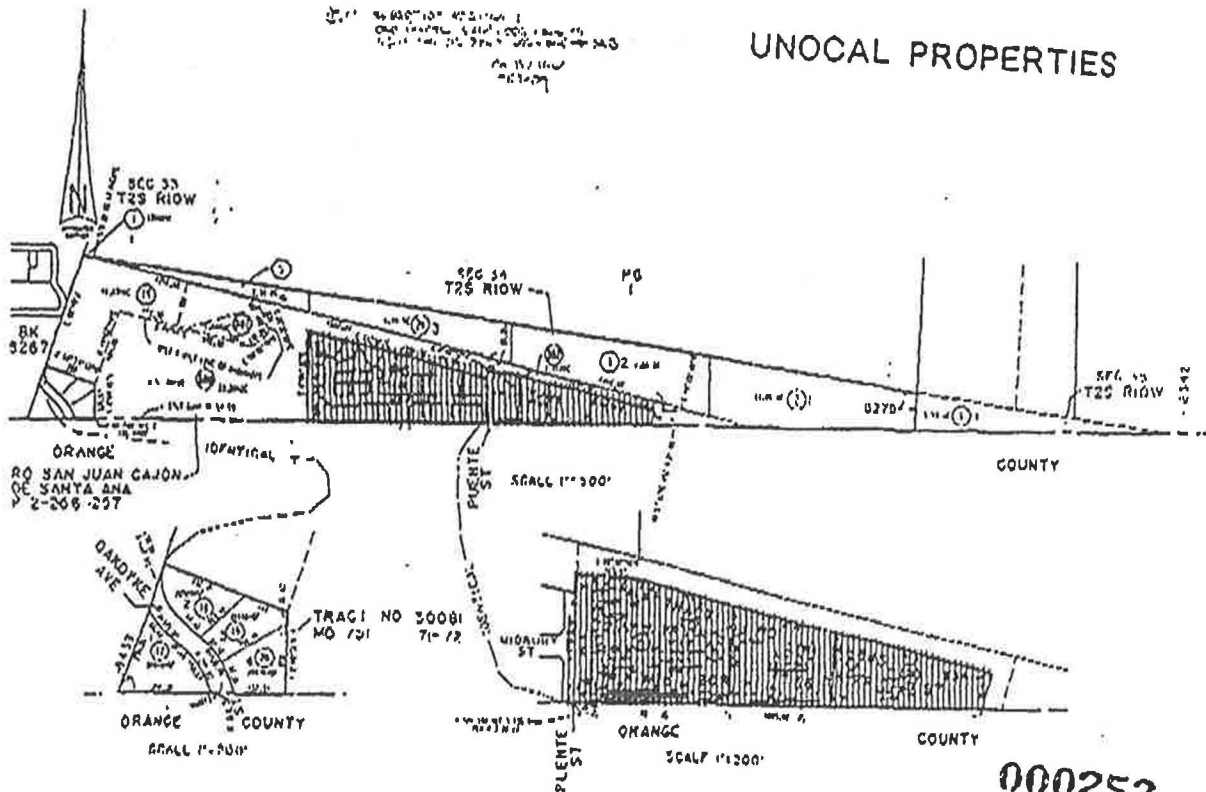
INCLUDED  
PROPERTIES



## MIDBURY TRACT



## UNOCAL PROPERTIES



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