


30yr lease
for antenna on tank

COMMUNICATIONS SITE LEASE AGREEMENT (TOWER)

This Communications Site Lease Agreement ("Agreement") is entered into this 5 day of August 1999, between NEXTEL OF CALIFORNIA, INC., a Delaware Corporation, d/b/a Nextel Communications, ("Lessee"), and MARINA COAST WATER DISTRICT, a California Water District ("Lessor").

For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows: *Seaside* 

1. **Premises.** Lessor is the owner of a parcel of land (the "Land") and a water tower (the "Tower") located in the City of *Marina*, County of Monterey, State of California, more commonly known as Welsh Ridge Water Tank "E" (the Tower and Land are collectively, the "Property"). The Land is more particularly described in Exhibit A annexed hereto. Lessor hereby leases to Lessee and Lessee leases from Lessor, approximately one hundred seventy five (175) square feet of the Land and additional space on the Tower and all access and utility easements (collectively, the "Premises"), as described in Exhibit B annexed hereto.

2. **Use.** The Premises may be used by Lessee for any activity in connection with the provision of communications services. Lessor agrees to cooperate with Lessee, at Lessee's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.

3. **Tests and Construction.** Lessee shall have the right at any time following the full execution of this Agreement to enter upon the Property for the purpose of making appropriate engineering and boundary surveys, inspections, soil test borings, other reasonably necessary tests and constructing the Lessee Facilities (as defined in Paragraph 6(a) below). Upon Lessee's request, Lessor agrees to provide promptly to Lessee copies of all plans, specifications, surveys and tower maps for the Land and Tower. The tower map shall include the elevation of all antennas on the Tower and the frequencies upon which each operates.

4. **Term.** The term of this Agreement shall be five (5) years commencing on the date Lessee begins construction of the Lessee Facilities or twelve (12) months following full execution of this Agreement, whichever first occurs ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date (the "Term") unless otherwise terminated as provided in Paragraph 10. Lessee shall have the right to extend the Term for five (5) successive five (5) year periods (the "Renewal Terms") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each successive Renewal Term unless Lessee notifies Lessor of its intention not to renew prior to commencement of the succeeding Renewal Term.

5. Rent

(a) Within fifteen (15) business days following the Commencement Date and on the first day of each month thereafter, Lessee shall pay to Lessor as rent ONE THOUSAND FIVE HUNDRED and 00/100 DOLLARS (\$1,500.00) per month ("Rent"). Rent for any fractional month at the beginning or at the end of the Term or Renewal Term shall be prorated. Rent shall be payable to Lessor at 11 Reservation Road, Marina, CA 93933; Attention: Jim Dowless.

(b) On each anniversary of the Commencement Date, Lessee shall pay the then current Rent, increased by any percentage increase which occurred in the Consumer Price Index ("CPI") for "All Items - All Urban Consumers" for the San Francisco-Oakland-San Jose Metropolitan Statistical Area during the preceding year period. However, such increase shall not exceed six percent (6%) of the Rent in effect during the previous year.

(c) Within fifteen (15) business days following the Commencement Date as additional consideration for Lessor entering into this Agreement, Lessee shall pay to Lessor the sum of FOURTEEN THOUSAND SEVEN HUNDRED THIRTY SEVEN and 52/100 DOLLARS (\$14,737.52) as payment to allow Lessor to modify its currently existing SCADA metering system so that the Lessee Facilities do not cause any adverse interference thereto.

6. Facilities; Utilities; Access.

(a) Lessee has the right to erect, maintain and operate on the Premises radio communications facilities, including without limitation utility lines, transmission lines, air conditioned equipment shelter(s), electronic equipment, radio transmitting and receiving antennas and supporting equipment and structures thereto ("Lessee Facilities"). In connection therewith, Lessee has the right to do all work necessary to prepare, maintain and alter the Premises for Lessee's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Title to the Lessee Facilities shall be held by Lessee. All of Lessee Facilities shall remain Lessee's personal property and are not fixtures. Lessee has the right to remove all Lessee Facilities at its sole expense on or before the expiration or earlier termination of the Agreement; provided Lessee repairs any damage to the Premises caused by such removal.

(b) Lessee shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee shall have the right to draw electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Property (including a standby power generator for Lessee's exclusive use). Lessor agrees to sign such documents or easements as may be required by said utility companies to provide such service to the Premises, including the grant to Lessee or to the servicing utility company at no cost to the Lessee, of an easement in, over across or through the Land as required by such servicing utility company to provide utility services as provided herein.

(c) Lessee, Lessee's employees, agents, subcontractors, lenders and invitees shall have access to the Premises without notice to Lessor twenty-four (24) hours a day, seven (7) days a week, at no charge. Lessor grants to Lessee, and its agents, employees, contractors, guests and invitees, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across that portion of the Land described in Exhibit B.



(d) Lessor shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. Lessor shall be responsible for maintaining and repairing such roadway, at its sole expense, except for any damage caused by Lessee's use of such roadways.

Interference.

(a) Lessee shall operate the Lessee Facilities in a manner that will not cause interference to Lessor and other lessees or licensees of the Property, provided that their installations predate that of the Lessee Facilities. All operations by Lessee shall be in compliance with all Federal Communications Commission ("FCC") requirements. Lessee acknowledges that Lessor's primary purpose is to provide utility service to the public from the Property and that Lessor utilizes a wireless SCADA system for monitoring utility activity of its customers. In conjunction therewith, Lessee agrees to not in anyway interfere electronically or otherwise with Lessor's use and operation of the SCADA system. The parties hereto agree that as of the Commencement Date the Lessee Facilities do not cause interference to the SCADA system.

(b) Subsequent to the installation of the Lessee Facilities, Lessor shall not permit itself, its lessees or licensees to install new equipment on the Property or property contiguous thereto owned or controlled by Lessor, if such equipment is likely to cause interference with Lessee's operations. Such interference shall be deemed a material breach by Lessor. In the event interference occurs, Lessor agrees to take all action necessary to eliminate such interference, in a reasonable time period. In the event Lessor fails to comply with this paragraph, Lessee may terminate this Agreement, and/or pursue any other remedies available under this Agreement, at law, and/or at equity.

8. **Taxes.** If personal property taxes are assessed, Lessee shall pay any portion of such taxes directly attributable to the Lessee Facilities. Lessor shall pay all real property taxes, assessments and deferred taxes on the Property.

Waiver of Lessor's Lien.

(a) Lessor waives any lien rights it may have concerning the Lessee Facilities which are deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time without Lessor's consent.

(b) Lessor acknowledges that Lessee has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Lessee Facilities (the "Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Lessor (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

10. **Termination.** This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is ten (10) days from receipt of notice; or (ii) by Lessee for any reason or for no reason, provided Lessee delivers written notice of early termination to Lessor no later than thirty (30) days prior to the Commencement Date; or (iii) by Lessee if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of Lessee Facilities; or (iv) by Lessee if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; or (v) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference.

11. **Destruction or Condemnation.** If the Premises or Lessee Facilities are damaged, destroyed, condemned or transferred in lieu of condemnation, Lessee may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Lessor no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If Lessee chooses not to terminate this Agreement, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.

12. **Insurance.** Lessee, at Lessee's sole cost and expense, shall procure and maintain on the Premises and on the Lessee Facilities, bodily injury and property damage insurance with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Lessee, its employees and agents arising out of or in connection with Lessee's use of the Premises, all as provided for herein. Lessor, at Lessor's sole cost and expense, shall procure and maintain on the Property, bodily injury and property damage insurance with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Lessor, its employees and agents arising out of or in connection with Lessor's use, occupancy and maintenance of the Property. Each party shall be named as an additional insured on the other's policy. Each party shall provide to the other a certificate of insurance evidencing the coverage required by this paragraph within thirty (30) days of the Commencement Date.

13. **Waiver of Subrogation.** Lessor and Lessee release each other and their respective principals, employees, representatives and agents, from any claims for damage to any person or to the Premises or to the Lessee Facilities thereon caused by, or that result from, risks insured against under any insurance policies carried by the parties and in force at the time of any such damage. Lessor and Lessee shall cause each insurance policy obtained by them to provide that the insurance company waives all right of recovery by way of subrogation against the other in connection with any damage covered by any policy. Neither Lessor nor Lessee shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by Paragraph 12.

14. **Assignment and Subletting.** Lessee may not assign, or otherwise transfer all or any part of its interest in this Agreement or in the Premises without the prior written consent of Lessor; provided, however, that Lessee may assign its interest to its parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets, subject to any financing entity's interest, if any, in this Agreement as set forth in Paragraph 9 above. Lessor may assign this Agreement upon written notice to Lessee, subject to the assignee assuming all of Lessor's obligations herein, including but not limited to, those set forth in

Paragraph 9 above. Notwithstanding anything to the contrary contained in this Agreement, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

15. **Warranty of Title and Quiet Enjoyment.** Lessor warrants that: (i) Lessor owns the Property in fee simple and has rights of access thereto and the Property is free and clear of all liens, encumbrances and restrictions; (ii) Lessor has full right to make and perform this Agreement; and (iii) Lessor covenants and agrees with Lessee that upon Lessee paying the Rent and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises. Lessor agrees to indemnify and hold harmless Lessee from any and all claims on Lessee's leasehold interest.

16. **Repairs.** Lessee shall not be required to make any repairs to the Premises or Property unless such repairs shall be necessitated by reason of the default or neglect of Lessee. Except as set forth in Paragraph 6(a) above, upon expiration or termination hereof, Lessee shall restore the Premises to the condition in which it existed upon execution hereof, reasonable wear and tear and loss by casualty or other causes beyond Lessee's control excepted.

17. **Hazardous Substances.** Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Land in violation of any law or regulation. Lessor represents, warrants and agrees (1) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Land in violation of any law or regulation, and (2) that Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Land in violation of any law or regulation. Lessor and Lessee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which the Land is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Agreement.

18. **Liability and Indemnity.** Lessee shall indemnify and hold Lessor harmless from all claims (including attorneys' fees, costs and expenses of defending against such claims) arising from the negligence or willful misconduct of Lessee or Lessee's agents or employees in or about the Property. Lessor shall indemnify and hold Lessee harmless from all claims (including attorneys' fees, costs and expenses of defending against such claims) arising or alleged to arise from the acts or omissions of Lessor or Lessor's agents, employees, licensees, invitees, contractors or other tenants occurring in or about the Property. The duties described in Paragraph 18 survive termination of this Agreement.

19. **Miscellaneous.**

(a) This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties.

(b) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(c) This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(d) Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

Lessor: Marina Coast Water District
11 Reservation Road
Marina, CA 93933
Attn: Jim Dowless, General Manager

Lessee: Nextel of California, Inc.
475 14th Street, Suite 200
Oakland, CA 94612
Attn.: Property Manager

With a copy to: Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191-3436
Attn.: Legal Dept., Contracts Manager

Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt.

(e) This Agreement shall be governed by the laws of the State of California.

(f) Lessor acknowledges that a Memorandum of Agreement in the form annexed hereto as Exhibit C will be recorded by Lessee in the official records of the County where the Property is located. In the event the Property is encumbered by a mortgage or deed of trust, Lessor agrees to obtain and furnish to Lessee a non-disturbance and attornment instrument for each such mortgage or deed of trust.

(g) Lessee may obtain title insurance on its interest in the Premises. Lessor shall cooperate by executing documentation required by the title insurance company.



(h) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

(i) All Riders and Exhibits annexed hereto form material parts of this Agreement.

(j) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

20. **Tower Marking and Lighting Requirements.** Lessor acknowledges that it, and not Lessee, shall be responsible for compliance with all Tower marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC. Lessor shall indemnify and hold Lessee harmless from any fines or other liabilities caused by Lessor's failure to comply with such requirements. Should Lessee be cited by either the FCC or FAA because the Tower is not in compliance and, should Lessor fail to cure the conditions of noncompliance within the time frame allowed by the citing agency, Lessee may either terminate this Agreement immediately on notice to Lessor or proceed to cure the conditions of noncompliance at Lessor's expense, which amounts may be deducted from the Rent.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:
MARINA COAST WATER DISTRICT,
a California Water District

LESSEE:
NEXTEL OF CALIFORNIA, INC.,
a Delaware corporation,

By: [Signature]

By: Mark B. Nelson

Date: 2/29/99

Date: _____

Title: Gen MGR

Title: Mark B. Nelson
Vice President of Engineering & Operations

Tax ID#: _____

MARK NELSON

AUG 05 1999

**VICE PRESIDENT OF ENGINEERING
NEXTEL OF CALIFORNIA, INC.**



EXHIBIT A
DESCRIPTION OF LAND

to the Agreement dated August 5, 1999, by and between MARINA COAST WATER DISTRICT, a California Water District as Lessor, and NEXTEL OF CALIFORNIA, INC., a Delaware corporation, d/b/a Nextel Communications, as Lessee.

The Land is described and/or depicted as follows (metes and bounds):

APN: N/A

The area shown on the Record of Survey map filed on September 7, 1994, in Volume 19 of Surveys at page 1, Monterey County Records, and designated as 'FORT ORD MILITARY RESERVATION, PARCEL 1 AND PARCEL 2'. Commonly known as Water Tank "E".

INITIALS
CAW
MBN

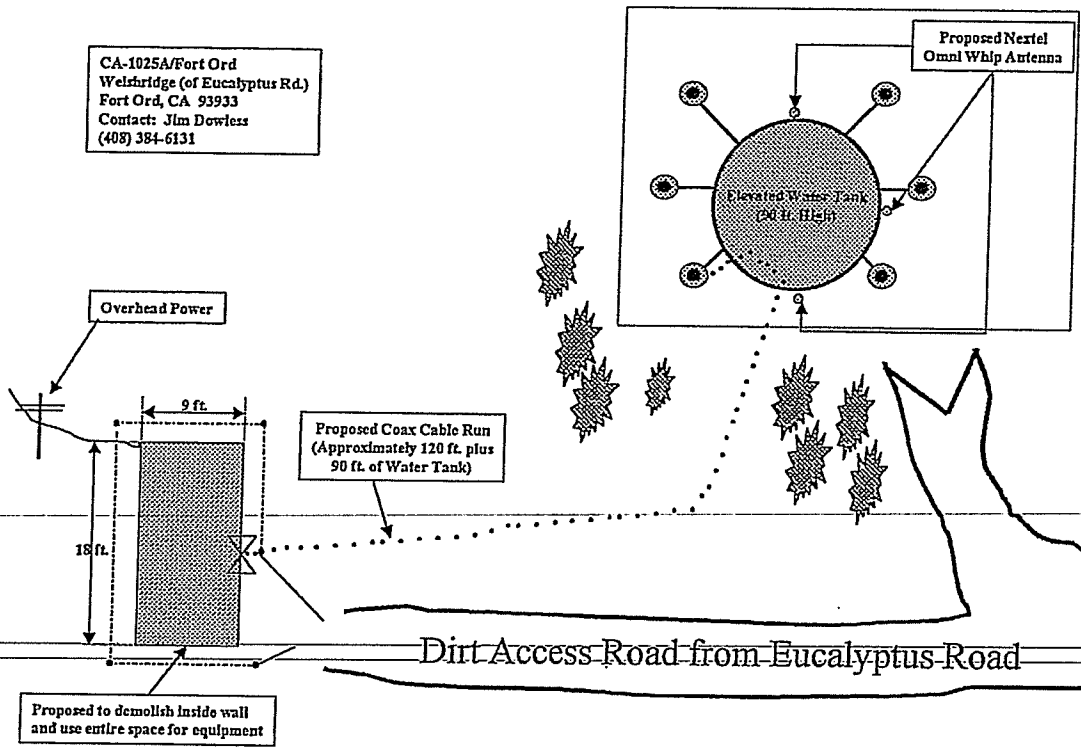


EXHIBIT B

DESCRIPTION OF PREMISES

to the Agreement dated August 5, 1999, by and between MARINA COAST WATER DISTRICT, a California Water District as Lessor, and NEXTEL OF CALIFORNIA, INC., a Delaware corporation, d/b/a Nextel Communications, as Lessee.

The Premises are described and/or depicted as follows:



INITIALS
JMD
MPW

Notes:

1. This Exhibit may be replaced by a land survey of the Premises once it is received by Lessee.
2. Setback of the Premises from the Land's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers, mounting positions may vary from what is shown above.
5. The location of any utility easement is illustrative only. Actual location shall be determined by the servicing utility company in compliance with all local laws and regulations.



EXHIBIT 2

EASEMENT AGREEMENT

to the Agreement dated _____, 2011, by and between Nextel of California, Inc., a Delaware corporation, ("Licensor"), and Marina Coast Water District ("Licensee").

The Easement Agreement is attached hereto.

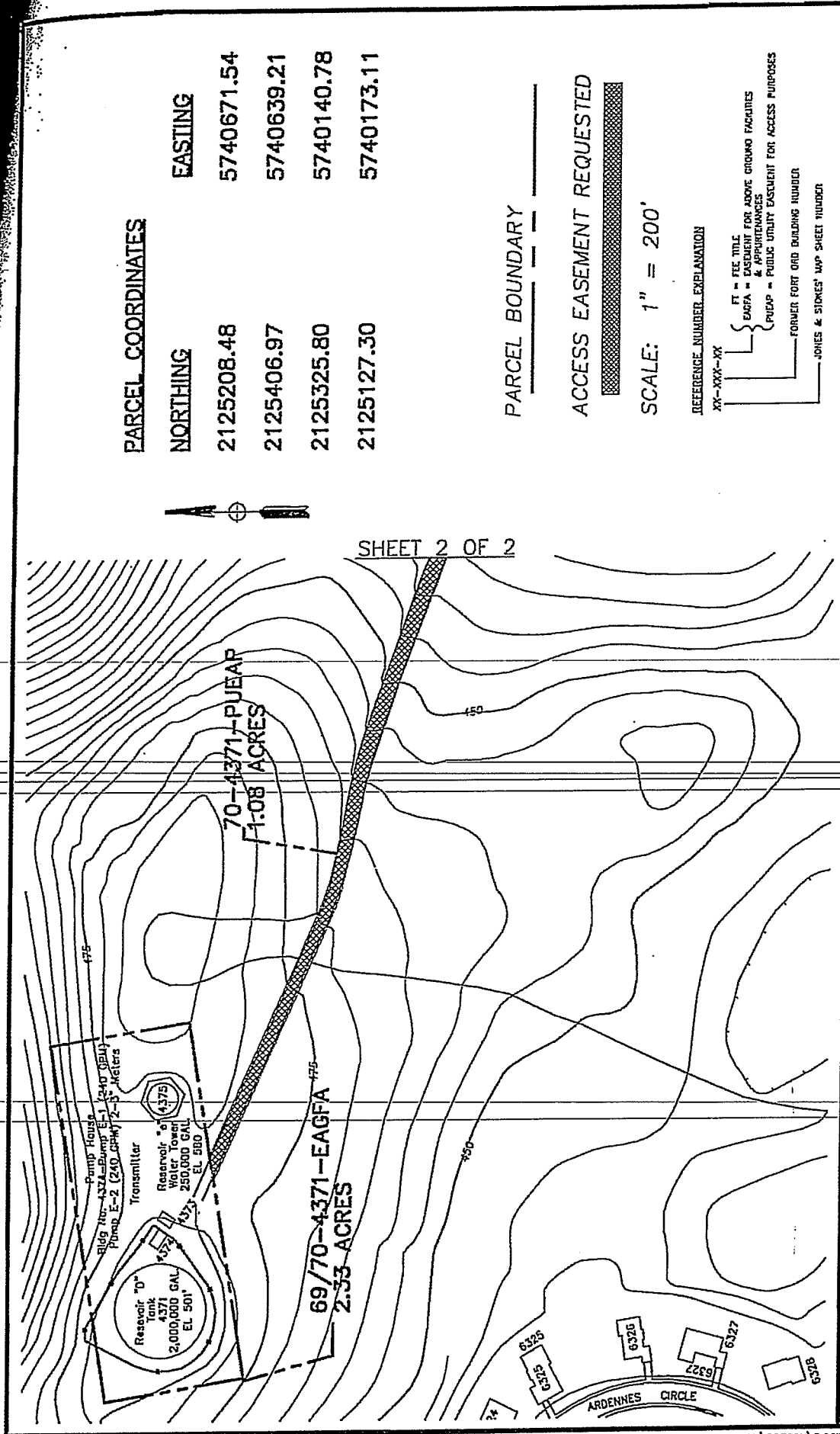




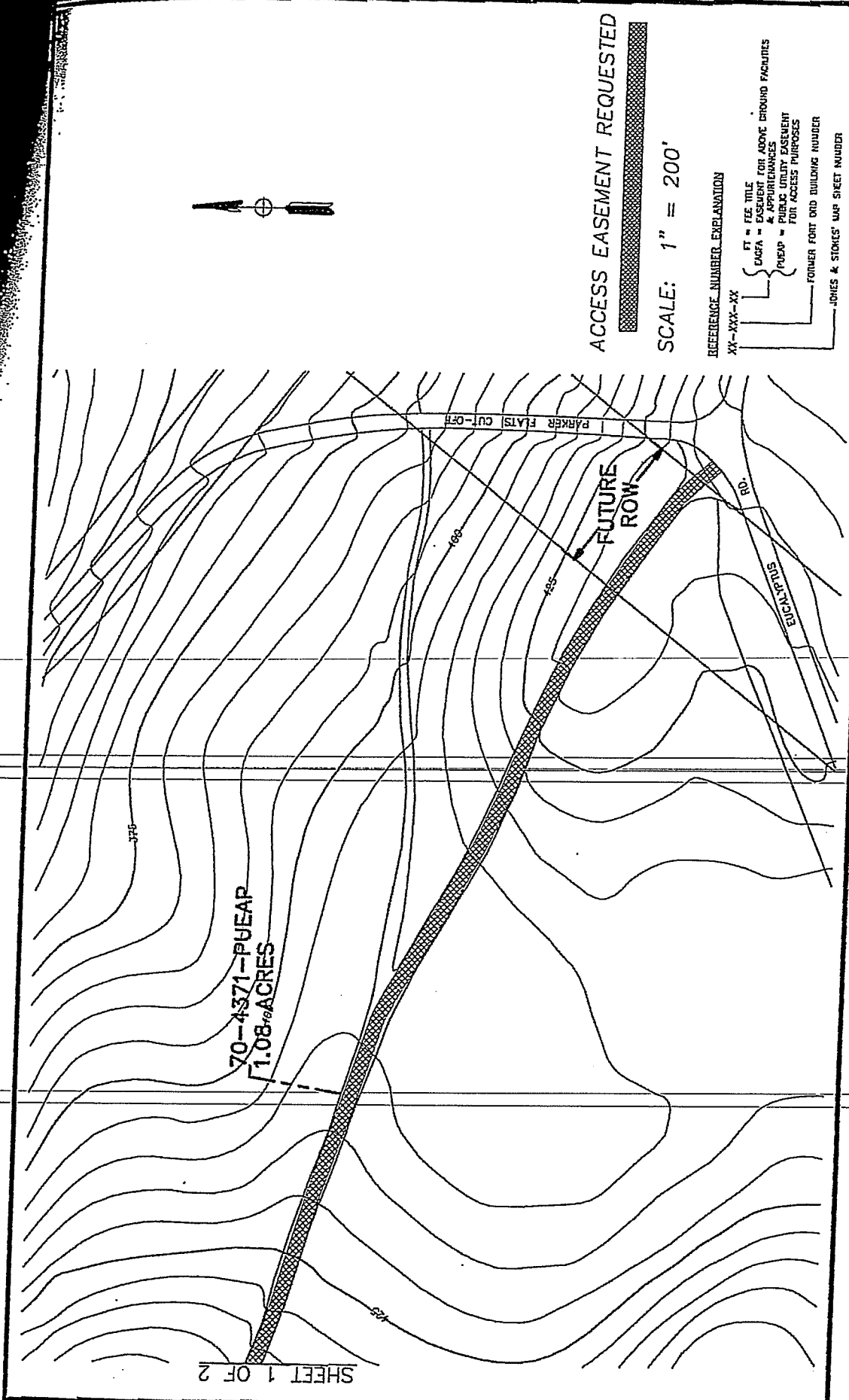
MARINA COAST WATER DISTRICT PUBLIC BENEFIT CONVEYANCE APPLICATION FEE TITLE / EASEMENT REQUESTS

'D' & 'E' WATER TANKS

SHEET
1 OF 2



SHEET 2 OF 2



SHEET 1 OF 2

ACCESS EASEMENT REQUESTED

SCALE: 1" = 200'

REFERENCE NUMBER EXPLANATION

- FT - FEE TITLE
- EACRA - EASEMENT FOR ABOVE GROUND FACILITIES OR APPURTENANCES
- PUEAP - PUBLIC UTILITY EASEMENT FOR ACCESS PURPOSES
- FORMER FORT ORD BUILDING NUMBER
- JOHNS & STONES' MAP SHEET NUMBER

MARINA COAST WATER DISTRICT
 PUBLIC BENEFIT CONVEYANCE APPLICATION
 FEE TITLE / EASEMENT REQUESTS

'D' & 'E'
 WATER TANKS

SHEET
 2 OF 2

