

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: PUBLIC WORKS SE
Urgent Routine ✓
CEO Concurs with Recommendation YES NO
(Information Attached)

BOARD AGENDA # *C-8
AGENDA DATE OCTOBER 30, 2001
4/5 Vote Required YES NO

SUBJECT: APPROVAL OF FUND ALLOCATIONS FROM SALIDA TRAFFIC FEE ACCOUNTS FOR PIRRONE ROAD IMPROVEMENTS AND APPROVAL OF REIMBURSEMENT AGREEMENT WITH SCM SALIDA GATEWAY, LLC

STAFF
RECOMMEN-
DATIONS:

1. AUTHORIZE THE AUDITOR-CONTROLLER TO SET UP A SPECIAL TRUST ACCOUNT FOR THE PIRRONE ROAD REALIGNMENT PROJECT;

(CONTINUED ON PAGE 2)

FISCAL
IMPACT: There is no fiscal impact associated with this action.

BOARD ACTION AS FOLLOWS:

No. 2001-834

On motion of Supervisor Blom , Seconded by Supervisor Mayfield
and approved by the following vote,
Ayes: Supervisors: Mayfield, Blom, Simon, and Chair Paul
Noes: Supervisors: None
Excused or Absent: Supervisors: Caruso
Abstaining: Supervisor: None

- 1) X Approved as recommended
- 2) Denied
- 3) Approved as amended

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

By: Christine Ferraro
Deputy

File No.

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**STAFF
RECOMMEN-
DATIONS**

(Continued):

2. AS ADMINISTRATORS OF THE SALIDA TRAFFIC FEE ACCOUNTS, AUTHORIZE THE AUDITOR-CONTROLLER TO TRANSFER \$896,639.00 FROM THE SALIDA ROAD-SUPPLEMENTAL-ENVIRONMENTAL IMPACT REPORT ACCOUNTS #1, 2 AND 3 TO COUNTY AS SECURITY FOR THE PARTIAL CONSTRUCTION OF PIRRONE ROAD. THE TRANSFER WILL CONSIST OF \$298,879.67 FROM EIR ACCOUNTS #1 AND 2 EACH AND \$298,879.66 FROM EIR ACCOUNT #3 TO THE NEWLY ESTABLISHED PIRRONE ROAD REALIGNMENT PROJECT TRUST ACCOUNT;
3. ALLOCATE \$527,399 FROM THE COUNTY'S PIRRONE ROAD REALIGNMENT PROJECT TRUST ACCOUNT TO PAY FOR THE CONSTRUCTION OF PIRRONE ROAD IN FRONT OF VIZCAYA, UNITS NO. 1 AND 2, AFTER THE IMPROVEMENTS ARE COMPLETED; AND,
4. AS ADMINISTRATORS OF THE SALIDA TRAFFIC FEE ACCOUNTS, APPROVE THE REIMBURSEMENT AGREEMENT WITH SCM SALIDA GATEWAY, LLC.

DISCUSSION: The Salida Planned Development Guidelines require various improvements to be constructed in the Salida area. The funding for these improvements include Mello-Roos bonds and developer fee program. The developer fees, as outlined in the *Planned Development Guidelines*, are paid as building permits are issued. The fees are categorized by the types of improvements and the amounts are generated based on the estimated cost for each type of improvement.

As a condition of approval of the Vizcaya, Units No. 1 and 2 subdivision, the subdivider is required to construct a portion of Pirrone Road in Salida. This improvement is a portion of a larger project for the realignment of Pirrone Road. Although the subdivider, SCM Vizcaya, LLC, is required to construct the improvements, the subdivider is not financially responsible for the improvements. Improvements for this portion of the roadway will be paid for by funds from Salida traffic fee accounts. The accounts that will be used to fund the project include essentially equal dollar amounts from the Road-Supplemental-Environmental Impact Report, accounts #1, 2 and 3. These accounts have a total of approximately \$1,005,654.00 that has been earmarked for this particular project.

Normally, the subdivider is required to provide security in the form of bonds to ensure performance of work is completed and the payment of labor and materials is accomplished. However, in this particular situation, funds have been and continue to be generated by the Salida development process for the construction of the Pirrone Road Realignment project and other Salida road improvement projects.

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DISCUSSION: Because the County administers these funds, staff feels it is inappropriate to require the subdivider to provide bonds as security when the funds already exist and are *earmarked for this project*. By taking this approach, the actual bond cost of approximately \$17,900 will be eliminated and the same amount of savings will be realized for these accounts. Therefore, it is prudent to avoid this expense by setting aside a total of \$896,639.00 of these account funds in a separate trust account as security for the construction of this specific portion of Pirrone Road. The \$896,639.00 will be transferred to the Pirrone Road Realignment project trust account for the following purposes: Performance security in the amount of \$560,399.00 to secure faithful performance, Labor and Materials security in the amount of \$280,000.00 to secure payment of all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of these improvements, and Maintenance security in the amount of \$56,040.00 for the one year warranty period.

The actual cost of constructing these road improvements, which is estimated at \$560,399.00, will be reimbursed to SCM Vizcaya, LLC once the improvements are constructed by the subdivider. The remaining funds in this account may be transferred back to the EIR accounts when obligations are met.

At the time the Department of Public Works approached SCM Corporate Group about realigning Pirrone Road, the property owner agreed to the concept as long as the realignment did not cost him any additional money. With this understanding, the realignment project went forward.

Prior to the realignment project, the residentially zoned property for the proposed Vizcaya Subdivision (aka Salida Gateway Commons) did not front on Pirrone Road. As such, the County acknowledges the subdivider is not financially responsible for the Pirrone Road frontage improvements that will be constructed adjacent to the subdivision. Furthermore, the County and subdivider both agree the commercial property (Lot A of 39-M-47) which fronts on existing Pirrone Road is responsible for the cost of frontage improvements on this existing alignment as its contribution towards the improvements on the new road alignment. These frontage improvements for the existing alignment are estimated to cost \$585,637.50

As part of this acknowledgment that the residential development (Vizcaya, Units No. 1 and 2) is not financially responsible, staff feels it is reasonable for SCM Salida Gateway, LLC to execute a reimbursement agreement for the future Pirrone Road frontage improvements along commercial Lot A. This agreement is to ensure the Salida traffic fee accounts will be reimbursed by the developer after these improvements are constructed. It is appropriate at this time to require the subdivider to execute this reimbursement agreement since the commercial and residential properties are controlled by SCM Corporate Group. By executing this agreement, SCM Salida Gateway, LLC agrees to reimburse the Salida traffic fee accounts for the cost of constructing the Pirrone Road improvements in an amount not to exceed \$585,637.50. This amount is based on the cost of constructing the road improvements on the existing Pirrone Road alignment (not new alignment) in front of the commercial property.

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POLICY

ISSUE: This action is consistent with the Board's policy of providing a safe, healthy community.

STAFFING

IMPACT: There is no staffing impact associated with this action.

RC/la

(H:\SERVICES\VIZCAYA.REIMBURSMNTAGRMNT.RC)

Requested By
And For The Benefit Of:
and
When Recorded Mail To:

County of Stanislaus
Department of Public Works
Attn: Ron Cherrier
1010 Tenth Street, Ste. 3500
Modesto, CA 95354

Space Above For Recorder's Use

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (the Agreement) is made and entered into by and between the **COUNTY OF STANISLAUS** ("County"), on behalf of the Salida traffic fee accounts, and **SCM SALIDA GATEWAY, LLC** ("Owner") on October 30, 2001.

Recitals

WHEREAS, the Owner and other land developers in the Salida area voluntarily agreed to pay certain fees to offset the cost of constructing necessary public improvements for the Salida Planned Development, some of which are referred to as the Salida traffic fee accounts (including, without limitation, the Road-Supplemental-Environmental Impact Report Accounts Nos. 1, 2 and 3 (the "EIR Accounts"), and the Transportation Improvement Coordination ("TIC") account), and the County agreed to hold and to disburse such funds in accordance with the intent and instructions of the Salida developers who deposited the funds; and

WHEREAS, the Owner is the owner of the real property described as Lot A on the Final Map No. 39-M-47 (Vizcaya Unit 1), located in a portion of the North-Half of Section 33, Township 2 South, Range 8 East, Mount Diablo Base and Meridian in the unincorporated area of Stanislaus County; and

WHEREAS, Pirrone Road borders Lot A on the west and, as a condition of development of Lot A, the Owner would be required to dedicate right-of-way to widen Pirrone Road and to construct certain road improvements in Pirrone Road, and the parties have reasonably estimated that the cost to construct the required road improvements in Pirrone Road is \$585,637.50 (the "Initial Cost"), as set forth in the engineer's estimate attached as Exhibit 1; and

WHEREAS, the Owner, together with the County and the owner of the Salida Gateway Commons subdivision (now the Vizcaya Subdivision), agreed to relocate Pirrone Road to the east of Lot A, provided that the Owner's obligation for constructing road improvements for the realigned Pirrone Road not exceed the Initial Cost; and

WHEREAS, it is the understanding of the Owner and the County that the Salida Traffic Fee Accounts shall be the sole source of funding for construction and acquisition costs that exceed the Initial Cost; and

WHEREAS, a condition of development of the Vizcaya Subdivision requires construction of a portion of the realigned Pirrone Road improvements that front the subdivision concurrent with construction of other subdivision improvements (i.e.; from east edge of right-of-way to 16-feet west of the center median); and

WHEREAS, the owner of the Vizcaya Subdivision is willing to construct the realigned Pirrone Road improvements that front the subdivision, provided the Owner of Lot A and the Salida Traffic Fee Accounts pay for such improvements; and

WHEREAS, the Owner is not obligated to construct the improvements in Pirrone Road until and as a condition of approval for development on Lot A; and

WHEREAS, the County, as fiduciary agent for disbursement of Salida Traffic Fee Accounts, is willing to advance the cost of constructing the Pirrone Road improvements from the Salida Traffic Fee Accounts, provided the Owner agrees to reimburse those accounts when Lot A is developed;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1. **Pirrone Road Construction Costs.**

The County agrees to reimburse the owner of the Vizcaya Subdivision for the cost of constructing the improvements in Pirrone Road that front the subdivision from the Salida Traffic Fee Accounts. In its sole discretion, the County may elect to construct all of the road improvements for the realigned Pirrone Road, or to construct only that portion of Pirrone Road realignment that the Vizcaya Subdivision is required to construct.

2. **Reimbursement.**

2.1 Owner agrees to reimburse the Salida Traffic Fee Accounts for the cost of constructing the Pirrone Road improvements, not to exceed the Initial Cost of \$585,637.50, within 30-days of demand by the County. If all of the realigned Pirrone Road improvements are paid by the County through the Salida Traffic Fee Accounts, then the Owner shall reimburse those accounts the sum of \$585,637.50. If the Owner constructs any portion of the realigned Pirrone Road improvements, the Owner shall be reimbursed from the Salida Traffic Fee Accounts for the actual cost of construction.

2.2 The Owner's obligation to reimburse the Salida Traffic Fee Accounts shall begin upon the issuance of any building permit for development of Lot A.

2.3 The Owner hereby grants to the County a lien upon the real property described as Lot A for the purpose of securing its obligation to reimburse the Salida Traffic Fee Accounts for the Initial Cost of construction of Pirrone Road in an amount not to exceed \$585,637.50. The benefits of all statutes of limitation relating to collection of such indebtedness are hereby and forever waived.

2.4 The Owner may set-off from the reimbursement amount, all or any portion of the amount of compensation that the Owner otherwise is entitled to receive from the Salida Traffic Fee Accounts for dedication of right-of-way for the Pirrone Road realignment.

3. Defense and Indemnification

Neither party, nor any of its officers or employees, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the other party under or in connection with any work delegated to that party under this Agreement. The parties further agree that each party shall fully indemnify and hold harmless the other party and its agents, officers, employees and contractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with action taken or omitted to be taken by such party under this Agreement. The County shall indemnify and hold Owner harmless for the cost of any litigation or proceeding initiated by a third party to contest the validity of this Agreement, subject to available funds in the Salida Traffic Fee Accounts.

4. Documents.

The parties agree to act in good faith and to promptly execute any and all agreements or other documents which are necessary, or may become necessary, to complete or effectuate the purposes of this Agreement.

5. Heirs and Assigns.

This Agreement shall be binding upon and inure to the benefit of each party and each party's respective heirs, legal representatives, successors and assigns.

6. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

7. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

8. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Owner or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus
Department of Public Works
Attention: Ron Cherrier
1010 Tenth Street, Suite 3500
Modesto, CA 95354

To Owner: SCM Corporate Group
Attention: Steve Mothersell, Sr.
1920 Standiford Avenue, Suite 1
Modesto, CA 95350

9. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

10. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

11. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.


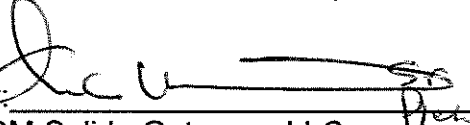

12. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

13. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

<p>COUNTY OF STANISLAUS</p> <p>By: <u></u> Pat Paul Chair of the Board of Supervisors</p> <p>"County"</p>	<p>SCM SALIDA GATEWAY, LLC</p> <p>By: <u></u> SCM Salida Gateway, LLC SCM Corp of Nevada, d.b.a. Nevada SCM Corp, Manager Steve C. Mothersell, Sr., President</p> <p>"Owner"</p>
<p>ATTEST: Christine Ferraro Tallman Clerk of the Board of Supervisors of the County of Stanislaus, State of California</p> <p>By: <u></u> Deputy Clerk</p>	

<p>APPROVED AS TO CONTENT: Department of Public Works</p> <p>By: <u>Steve Eul</u> George Stillman Director</p>	
<p>APPROVED AS TO FORM: Michael H. Krausnick County Counsel</p> <p>By: <u>John P. Doering</u> John P. Doering Deputy County Counsel</p>	

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State of CALIFORNIA

County of STANISLAUS

On 10-24-01 before me, S.K. Borrelli
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Steve C. Mothersell
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
[Signature]

SIGNATURE OF NOTARY



DESCRIPTION OF ATTACHED DOCUMENT

DESCRIPTION OF DOCUMENT (OPTIONAL)

State of _____

County of _____

On _____ before me, _____
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared _____
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

DESCRIPTION OF ATTACHED DOCUMENT

DESCRIPTION OF DOCUMENT (OPTIONAL)

EXHIBIT I
O'Dell Engineering

Opinion of Probable Cost
Old Pirrone Road (Vizcaya Subdivision)
Salida, Stanislaus County, CA

Description	Units	Unit Cost	36' Backbone		Development		Total	
			Quant.	Total	Quant.	Total	Quant.	Total
Wheel Chair Ramps (labor)	ea	\$350.00	0	\$0.00	0	\$0.00	0	\$0.00
Subtotal				\$0.00		\$26,425.00		\$26,425.00
Paving								
0.40'AC/1.25'AB	sf	\$3.25	31,900	\$103,675.00	64,500	\$209,625.00	96,400	\$313,300.00
6" AC Curb	lf	\$10.00	1,450	\$14,500.00	0	\$0.00	1,450	\$14,500.00
Monument Wells	ea	\$240.00	3	\$720.00	0	\$0.00	3	\$720.00
Subtotal				\$118,895.00		\$209,625.00		\$328,520.00
Electroliers								
200 Watt, pullboxes, conduit	ea	\$2,150.00	5	\$10,750.00	5	\$10,750.00	10	\$21,500.00
Subtotal				\$10,750.00		\$10,750.00		\$21,500.00
Miscellaneous								
Road Signs	ls	\$2,500.00	0.40	\$1,000.00	0.60	\$1,500.00	1.0	\$2,500.00
Pavement Markings & Striping	ls	\$3,000.00	0.45	\$1,350.00	0.55	\$1,650.00	1	\$3,000.00
Roadside Landscaping & Irrigation	sf	\$9.00	0	\$0.00	7,300	\$65,700.00	7,300	\$65,700.00
Subtotal				\$2,350.00		\$68,850.00		\$71,200.00
Contingency								
15% of Construction				\$24,162.00		\$76,387.50		\$100,549.50
				\$185,242.00		\$585,637.50		\$770,879.50

*Note: Estimate Based on Street Cross-Section "E"
of Salida Planned Development Guidelines, August 1991 Revision*