

# CITY OF PACIFICA CITY COUNCIL AGENDA

MAYOR MARY ANN NIHART  
MAYOR PRO TEM PETE DEJARNATT  
COUNCILMEMBER JIM VREELAND  
COUNCILMEMBER SUE DIGRE  
COUNCILMEMBER LEN STONE

CITY COUNCIL CHAMBERS  
2212 BEACH BOULEVARD  
PACIFICA, CALIFORNIA 94044

## SPECIAL MEETING March 17, 2011

[www.ci.pacifica.ca.us](http://www.ci.pacifica.ca.us)

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Vehicles parked without permits are subject to citation. You should obtain a  
permit from the rack in the lobby and place it on the dashboard of your  
vehicle in such a manner as is visible to law enforcement personnel.*

### 6:00 p.m. SPECIAL COUNCIL MEETING

Call to Order  
Roll Call

### CONSIDERATION

1. Approval of License Agreement between the City of Pacifica and JMB Construction for the Non-Exclusive Use of City-owned Property at 2212 Beach Blvd. (**Proposed action:** approve the agreement between the City of Pacifica and JMB Construction for the use of city-owned property; and authorize the City Manager to sign the license agreement)

### ADJOURN

\* \* \* \* \*

NOTICE: If you challenge a city's zoning, planning or other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. Judicial review of any city administrative decision may be had only if a petition is filed with the court not later than the 90<sup>th</sup> day following the date upon which the decision becomes final. Judicial review of environmental determinations may be subject to a shorter time period for litigation, in certain cases 30 days following the date of final decision.

The City of Pacifica will provide assistance for disabled citizens upon at least 24 hours advance notice to the City Manager's Office (650) 738-7301, or send request via email to: [o'connellk@ci.pacifica.ca.us](mailto:o'connellk@ci.pacifica.ca.us) If you need sign language assistance or written material printed in a larger font or taped, advance notice is necessary. All meeting rooms are accessible to the disabled.

*The Pacifica Municipal Code is available on line at the City's website ([www.ci.pacifica.ca.us](http://www.ci.pacifica.ca.us)); at the website, scroll down to find the Link.*

### HOW TO OBTAIN CITY COUNCIL AGENDAS

#### Posted agendas:

Agendas are posted the Friday prior to the City Council meeting date, at the entrance to City Hall, 170 Santa Maria Avenue

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City Clerk's Office/City Manager's Office  
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**Council meetings:**

Agendas are available at the City Council meeting

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A copy of the complete agenda packet is available for public review on the Friday prior to the City Council meeting, at the Pacifica Library, 104 Hilton Way or the Sanchez Library, 1111 Terra Nova Blvd., Pacifica

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**Council meetings:**

A complete agenda packet is available for review at the City Council meeting.

**HOW TO REACH YOUR LEGISLATORS**

- Governor Jerry Brown, State Capitol Building, Sacramento CA 95814 (916) 445-2841
- State Senator Leland Yee, 400 So. El Camino Real, Ste. 630, San Mateo, CA 94402 (650) 340-8840
- Assemblymember Jerry Hill, 1528 So. El Camino Real, Ste 302, San Mateo CA 94402 (650) 341-4319
- Congressman Jackie Speier, 400 So. El Camino Real, Ste 410, San Mateo CA 94402 (650) 342-0300
- Senator Barbara Boxer, 1700 Montgomery Street, Ste 240, San Francisco CA 94111 (415) 403-0100
- Senator Dianne Feinstein, #1 Post Street, Ste 2450, San Francisco CA 94104 (415) 393-0710
- President Barack Obama, 1600 Pennsylvania Ave.. NW, Washington DC 20500 (202) 456-1111

**CITY OF PACIFICA  
COUNCIL AGENDA SUMMARY REPORT  
March 17, 2011**

Agenda Item No.

**SUBJECT:**

Approval of license agreement between the City of Pacifica and JMB Construction for the nonexclusive use of City-owned property at 2212 Beach Blvd.

**ORIGINATED BY:**

Department of Public Works

**BACKGROUND/DISCUSSION:**

North Coast County Water District (NCCWD) has commenced construction of its Recycled Waterline Project. JMB Construction is the contractor for the said project and had approached the City for the non-exclusive use of a portion of the old Wastewater Treatment Plant site at 2212 Beach Blvd. for the purpose of a staging area.

The type of materials to be stored at the site will be pipes, concrete K rails, container material and equipment consistent with Project installation. The City has made it abundantly clear to the contractor that no spoil or hazardous waste will be stored in the area. The Department of Public Works will also be monitoring the contractor's use of the property. Staff has reviewed JMB Construction's request and has determined that the request may be granted.

Attached is the License Agreement that spells out the conditions for the use of the City's property. JMB is willing to pay \$1,830.00 per month. It is estimated that the contractor will need the property up to the end of the calendar year.

**FISCAL IMPACT:**

Fiscal impact will be in the form of revenue in the amount of \$1,830.00 per month until December 31, 2011.

**DOCUMENTS ATTACHED:**

License Agreement between the City of Pacifica and JMB Construction.

**COUNCIL ACTION REQUESTED:**

Approve the agreement between the City of Pacifica and JMB Construction for the use of City-owned property; and authorize the City Manager to sign the license agreement.

## LICENSE AGREEMENT

This License Agreement ("**License Agreement**") dated \_\_\_\_\_, 2011 ("Effective Date"), is entered into by and between JMB Construction, a \_\_\_\_\_ Corporation ("**Licensee**"), and City of Pacifica, a California municipal corporation ("**City**").

### RECITALS

A. Licensee is installing approximately 14,000 linear feet of recycled waterline, 2500 linear feet of potable waterline, with associated appurtenances, and 3800 linear feet of roadway, and constructing a water pump station, a chemical building, an electrical building, a recycled waterline and a recycled water storage tank and associated appurtenances within Pacifica boundaries in connection with a recycled water project undertaken by the North Coast County Water District ("Project").

B. City owns property at 2212 Beach Blvd., Pacifica, California, ("Property"). Licensee, at its sole risk and expense, seeks to temporarily store pipe material, concrete K rails, container material and equipment consistent with Project installation and also to grade and level the work zone area and place 6" of Class II aggregate base ("Activities") on an approximately 6130 square foot portion of the Property, as delineated on the site plan attached as Exhibit A ("License Area").

C. City desires to grant and Licensee desires to receive a non-exclusive license to enter the Premises for the purpose of conducting Activities.

D. City is willing to permit Licensee to use the License Area on a temporary basis subject to the terms set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. Grant of License. City hereby grants to Licensee, and Licensee hereby accepts from City, the temporary, non-exclusive right, privilege, and permission to use the License Area, for the purpose of conducting Activities and for no other purpose.

2. Term; Termination. The term ("**Term**") of this License Agreement shall commence on the Effective Date, and, unless terminated as provided in Section 19 below, shall expire on the earlier of: (i) completion of the Project; or (ii) December 31, 2011.

3. Condition and Maintenance.

a. Licensee represents and warrants that Licensee has inspected and examined the License Area, and accepts the License Area in its present "as-is" condition.

b. Licensee shall keep, maintain and preserve the License Area in a clean, orderly and sanitary condition to the satisfaction of City Manager or his or her designee.

c. Licensee shall not bring spoils or any material removed from the street onto the License Area, and City does not grant any permission for such spoils or materials removed from the street to be stored on the License Area or anywhere on the Property.

d. In consideration of this License Agreement, Licensee shall pay City the amount of \$1,830.00 (One Thousand Eight Hundred Thirty Dollars and no cents) each month or portion of month in which this License Agreement is in effect. The initial payment for the month of March shall be made upon execution of this License Agreement; thereafter payment shall be made upon the first date of each calendar month. Payment shall be made to the "City of Pacifica" and submitted to the City Finance Department at 170 Santa Maria Avenue, Pacifica, California.

4. Surrender of License Area; Licensee Obligations. Upon termination of this License Agreement:

a. Licensee shall surrender the License Area to City in as good order and condition as the License Area was in at the date of the execution of this License Agreement, reasonable wear and tear excepted;

b. Licensee, at its expense, shall remove or cause to be removed from the License Area all debris and rubbish and all items of equipment or other property installed, placed or stored by Licensee on or about the License Area, and repair all damage or injury that may occur to the License Area or property of City therein caused by such removal; and

5. Alterations. No alterations, changes and/or additions of any character shall be made to the License Area without the prior written consent of City Manager or his or her designee and, if such consent is secured, such changes shall be at the sole cost and expense of Licensee.

6. Indemnification. Licensee, as a material part of the consideration to be rendered to City under this License Agreement, shall exercise its privileges hereunder at its own risk and Licensee shall indemnify, defend (with counsel reasonably acceptable to City), and hold harmless City and its elected officers, officials, employees, agents, representatives and volunteers (collectively, "**City Parties**") from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including attorneys' fees and costs incurred in the defense of any such claim or any action or proceeding brought thereon (collectively, "**Claims**"), at any time during or after the Term arising (directly or indirectly) from (i) any default in the performance of any obligation on Licensee's part to be performed under the terms of this License Agreement; and/or (ii) the entry or use of the License Area by Licensee or any of Licensee's

agents, partners, shareholders, members, representatives, employees, contractors, subcontractors, sub-licensees, successors or assigns, (collectively, "**Licensee Parties**"), including Claims for bodily injury, death, and/or property damage, except to the extent such Claims result from City's sole, active negligence or willful misconduct. Licensee's obligations under this Section 6 shall survive the termination of this License Agreement.

7. Insurance.

a. Licensee shall, at its expense, obtain and keep in force at all times during the Term the following insurance and shall be liable for all premiums, deductibles, and self-insured amounts, if any, in connection therewith: (i) a policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability, premises, products/completed operations and bodily injury and death; (ii) Workers' Compensation insurance, if required by law, which complies with all applicable state statutes and regulatory requirements, and, if Licensee hires any employees, employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000) or such greater amount as may be required by applicable law; and (iii) Automobile liability insurance having a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence insuring Licensee against liability for claims arising out of the ownership, maintenance, or use of any owned, hired or non-owned automobiles.

b. Insurance required to be maintained by Licensee shall be written by companies licensed to do business in California and having a "General Policyholders Rating" of at least A-VIII as set forth in the most current issue of "Best's Insurance Guide."

c. Licensee shall deliver to City certificates of insurance for all insurance required to be maintained by Licensee pursuant to this License Agreement, in the form of the ACORD standard certificate of insurance, no later than seven (7) days following execution of this License Agreement. Licensee shall, at least ten (10) days prior to expiration of the policy, furnish City with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to City as required in this License Agreement (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days' notice has been given to City). If Licensee fails to maintain any insurance required under this License Agreement, Licensee shall be liable for all losses and cost resulting from said failure.

d. City shall be named as an additional insured on the commercial general liability and automobile liability policies required by Section 7.a. An additional insured endorsement naming City as an additional insured shall be attached to the certificate of insurance.

e. All insurance to be maintained by Licensee shall be primary, without right of contribution from any insurance, self insurance of joint self insurance of City.

f. Any umbrella liability policy or excess liability policy shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by Licensee shall not limit Licensee's liability under this License Agreement.

g. Licensee waives any and all rights of recovery against City and City Parties for loss of, or damage to, Licensee or its property or damage that is insured against and under any insurance policy in force at the time of such loss or damage. This provision is intended to waive fully, and for the benefit of City and City Parties, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by Licensee pursuant to this License Agreement shall include a waiver of subrogation endorsement attached to the certificate of insurance.

h. Licensee shall notify City within twenty-four (24) hours after the occurrence of any accident or incident in, on or about the License Area which could give rise to a claim against City, Licensee or Licensee's insurance. Licensee's notice shall be accompanied by a copy of any accident/incident form prepared by Licensee, reporting, and/or relating to, the accident/incident.

8. Taxes. Licensee shall pay when due any taxes of any kind and every nature, including but not limited to possessory interest tax, that may be imposed upon the Property as a result of Licensee's use of the License Area or any portion thereof.

9. Permits and Licenses. Licensee shall obtain, at its expense, any and all permits or licenses that may be required in connection with Licensee's use of the License Area and shall pay all debts incurred by Licensee for the purchase of supplies, materials, and equipment, and for services of any sort, for use in connection therewith.

10. Relocation Waiver. Licensee fully releases and discharges City and City Parties from any and all manner of rights, demands, liabilities, obligations, claims, or causes of action, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to the redevelopment, sale or any other use of the Building or License Area or the termination of Licensee's right to use the License Area as provided herein, including, without limitation, the specific waiver and release of any right to any relocation benefits or assistance and any other compensation of any nature whatsoever available under any Federal, State or local law, regulation or ordinance, including the California Relocation Assistance Act of 1970, as amended (California Government Code § 7260 *et seq.*), and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*) and implementing State and Federal regulations (collectively "**Relocation Assistance Laws**"), and compensation for any interest in Licensee's business operations to be conducted on the License Area including, but not limited to, improvements; license or leasehold bonus value; fixtures, furniture, or equipment; loss of business goodwill; attorneys' fees or any other compensation of any nature whatsoever. Licensee acknowledges and agrees that the release and waiver set forth in this Section 10 is material consideration for City's agreement to allow Licensee to use the License Area on the terms set forth herein.

11. Compliance with Laws; Liens. Licensee shall at all times comply with, and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with, any and all permitting requirements, laws, statutes, labor codes, ordinances, rules and regulations, hazardous materials laws, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, *et seq.*, as amended, covenants and restrictions of record, life and fire safety and similar requirements, including those of the State of California, the County of San Mateo, the City of Pacifica, or other applicable public authority ("**Laws**") which apply to the operation and use of the License Area or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices to be maintained or installed in, on or about the License Area or any portion thereof under any Laws now or hereafter adopted, enacted or made and applicable to the License Area or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to Licensee's use of the License Area or any portion thereof. Licensee shall not permit or suffer any mechanic's lien to be filed against the Building or underlying land, or any interest of City or Licensee therein, and shall immediately discharge any such lien and shall protect, indemnify, defend and hold harmless City in connection therewith, except to the extent the lien is caused by City's sole, active negligence or willful misconduct.

12. Environmental Matters.

a. Licensee shall, at its sole cost and expense, comply with all federal, state and local laws from time to time in effect ("**Hazardous Materials Laws**") concerning the management, use, generation, storage, transportation, presence, discharge or disposal of hazardous, toxic, radioactive or carcinogenic materials, substances or wastes ("**Hazardous Materials**"). Neither Licensee nor any Licensee Parties shall use, handle, store, transport, release or dispose of any Hazardous Materials anywhere in, on, under or about the License Area. Licensee shall cause any and all Hazardous Materials brought onto, used, generated, stored or discharged on the License Area to be removed from the License Area and transported for disposal in accordance with applicable Hazardous Materials Laws. City shall have the right to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Licensee's compliance with its obligations concerning Hazardous Materials and Hazard Materials Laws. Licensee shall immediately notify City in writing of any voluntary clean-up or removal action instituted or proposed by Licensee; any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened or any claim made or threatened by any person against Licensee or the License Area relating to Hazardous Materials or Hazardous Materials Laws. Licensee shall also supply to City as promptly as possible, and in any event within five (5) business days after Licensee receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the License Area or Licensee's use thereof and concerning Hazardous Materials or Hazardous Materials Laws.

b. Licensee shall indemnify, defend (with counsel reasonably acceptable to City) and hold City harmless from any and all Claims caused or alleged to have been caused by Licensee or Licensee Parties' use, handling, storage, transportation, release or disposal of any Hazardous Materials to, from, on or about the License Area, including any Claims for tangible or intangible property damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment; including any



personal injury, death, property damage, or decrease in value of the Building or underlying land, caused or alleged to have been caused by Licensee or Licensee Parties' use, handling, storage, transportation, release or disposal of Hazardous Materials, whether such Claims are first asserted during the Term or thereafter. Licensee's indemnity obligations under this Section 12.b. shall survive the termination or expiration of this License Agreement.

13. Utilities. Any electricity, natural gas, water, or janitorial services which Licensee may desire shall be furnished and paid for by Licensee at its sole expense.

14. Assignment of License Agreement. The license granted herein is personal to Licensee. Licensee shall not assign this License Agreement, or any interest therein, or rights under it, nor enter into any agreement with any third person or persons respecting the use or occupation of the License Area or any portion thereof, without the prior written consent of the City Manager in his or her sole and absolute discretion. Any assignment in violation of this Section 14 shall be void.

15. Access. Licensee agrees that City or its appointed representatives shall have access to the License Area at all times.

16. Risk of Loss. City assumes no responsibility for loss or damage to the property of Licensee or any Licensee Parties.

17. Rights Limited. Except as provided herein, this License Agreement shall not be construed to grant any real property or other rights to Licensee in the Property, License Area or any portion thereof. By execution of this License Agreement, the City is not committing to or agreeing to (1) enter into any proposed Ground Lease; or (2) undertake any acts or activities requiring the subsequent independent exercise of discretion by the City or any department thereof, other than as specifically set forth and agreed to by the City under this License Agreement. Execution of this Agreement by the City is merely an agreement to allow Licensee to utilize the License Area under the terms and conditions set forth herein.

18. Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery to City's Address and Licensee's Address, or to such other place as City or Licensee may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

To City:                      City of Pacifica  
   170 Santa Maria Avenue  
   Pacifica, CA 94044  
   Attn: City Manager

With a copy to:            City of Pacifica  
   170 Santa Maria Avenue  
   Pacifica, CA 94044  
   Attn: City Attorney

To Licensee:                  JMB Construction

132 S. Maple Avenue  
South San Francisco, Ca 94080  
Attn: President Margaret Burke

19. Remedies. Failure by Licensee to perform any action or covenant required by this License Agreement within five (5) business days following City's written notice specifying the failure or default complained of, shall constitute a "**Default**" by Licensee under this License Agreement. Upon the occurrence of a Default by Licensee, City shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any Default, or to recover damages for any Default, or to immediately terminate the License Agreement without further notice to Licensee or opportunity to cure, or to obtain any other remedy consistent with the purpose of this License Agreement. Such legal actions must be instituted in the Superior Court of the County of San Mateo, State of California, or in the Federal District Court for the Northern District of the State of California. Following termination of this License Agreement, without prejudice to other remedies City may have, City may remove Licensee from the License Area and any other persons using the License Area, using such legal proceedings as may be available, and remove all property of Licensee in the License Area. Each right and remedy of City provided for herein or now or hereafter existing at law or in equity, by statute or otherwise shall be cumulative and shall not preclude City from exercising any other rights or remedies provided for in this License Agreement or now or hereafter existing at law or in equity, by statute or otherwise. Any failures or delays by City in asserting any of its rights and remedies as to any Default by Licensee shall not operate as a waiver of any Default or of any such rights or remedies, or deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

20. Entire Agreement; . This License Agreement, including the Recitals and all Exhibits (which are hereby incorporated by reference), contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this License Agreement. No alteration or modification of this License Agreement shall be valid unless made in writing and signed by City and Licensee.

21. Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of California. This License Agreement shall be deemed to be jointly prepared by both of the parties hereto, and any ambiguities or uncertainties herein shall not be construed for or against either party hereto. The words "including," "included," "include" and words of similar import shall be not be interpreted as words of exclusion but shall instead be interpreted as though followed by the words "but not limited to" or "without limitation." No waiver by City of any breach or default of any provision of this License Agreement shall be deemed a waiver of any other provision hereof or of any subsequent breach or default by Licensee of the same or any other provision. The invalidity of any provision of this License Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

22. Authority. Each individual executing this License Agreement on behalf of Licensee represents and warrants that he or she has full power and authority to execute and deliver the License Agreement on behalf of Licensee and that this License Agreement is binding upon Licensee.

23. Successors and Assigns. Except as otherwise provided in this License Agreement, all of the covenants, conditions and provisions of this License Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

24. Third-Party Beneficiaries. This License Agreement does not create any third-party beneficiary rights for any person or entity.

25. Attorneys' Fees. In the event any action is brought by either party hereto for the enforcement or declaration of any right or remedy in or under this License Agreement or for the breach of any covenant or condition thereof, the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, attorneys' fees.

*[Signatures follow on next page]*

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement at Pacifica, California, the day and year first above written.

**CITY:**

CITY OF PACIFICA, a California municipal corporation

\_\_\_\_\_  
Stephen A. Rhodes  
City Manager

\_\_\_\_\_  
Kathy O'Connell  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Cecilia Quick  
City Attorney

**LICENSEE:**

JMB Construction Corporation

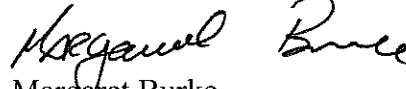
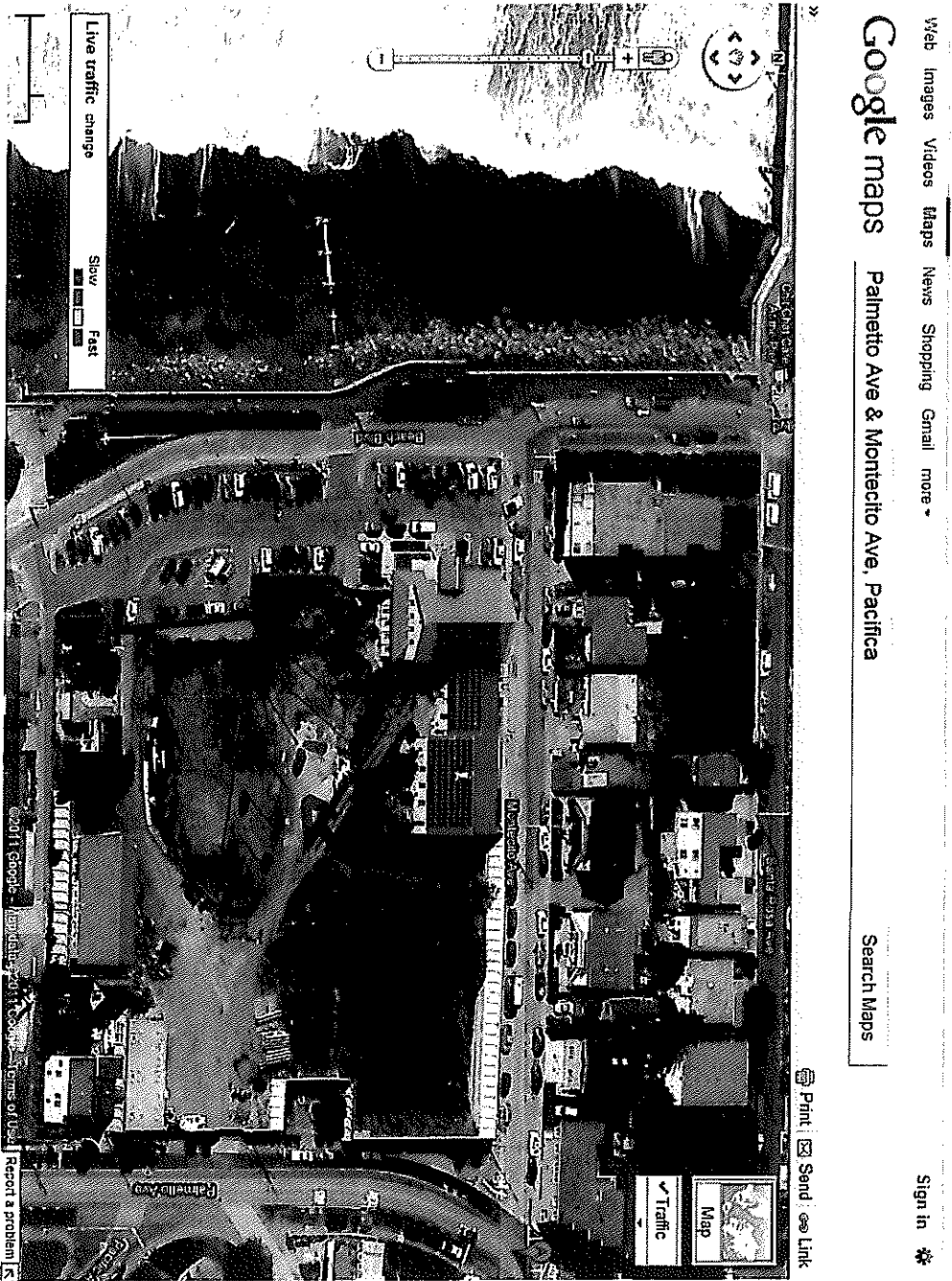
  
Margaret Burke  
President  
JMB Construction

EXHIBIT A  
LICENSE AREA

# ATTACHMENT # 1



Proposed Work Zone (Attachment #2)

