

Memorandum

To: Programs, Projects, and Operations Subcommittee

Subject: Interlocal Agreement with Newport Hill Subdivision

Date: May 4, 2007

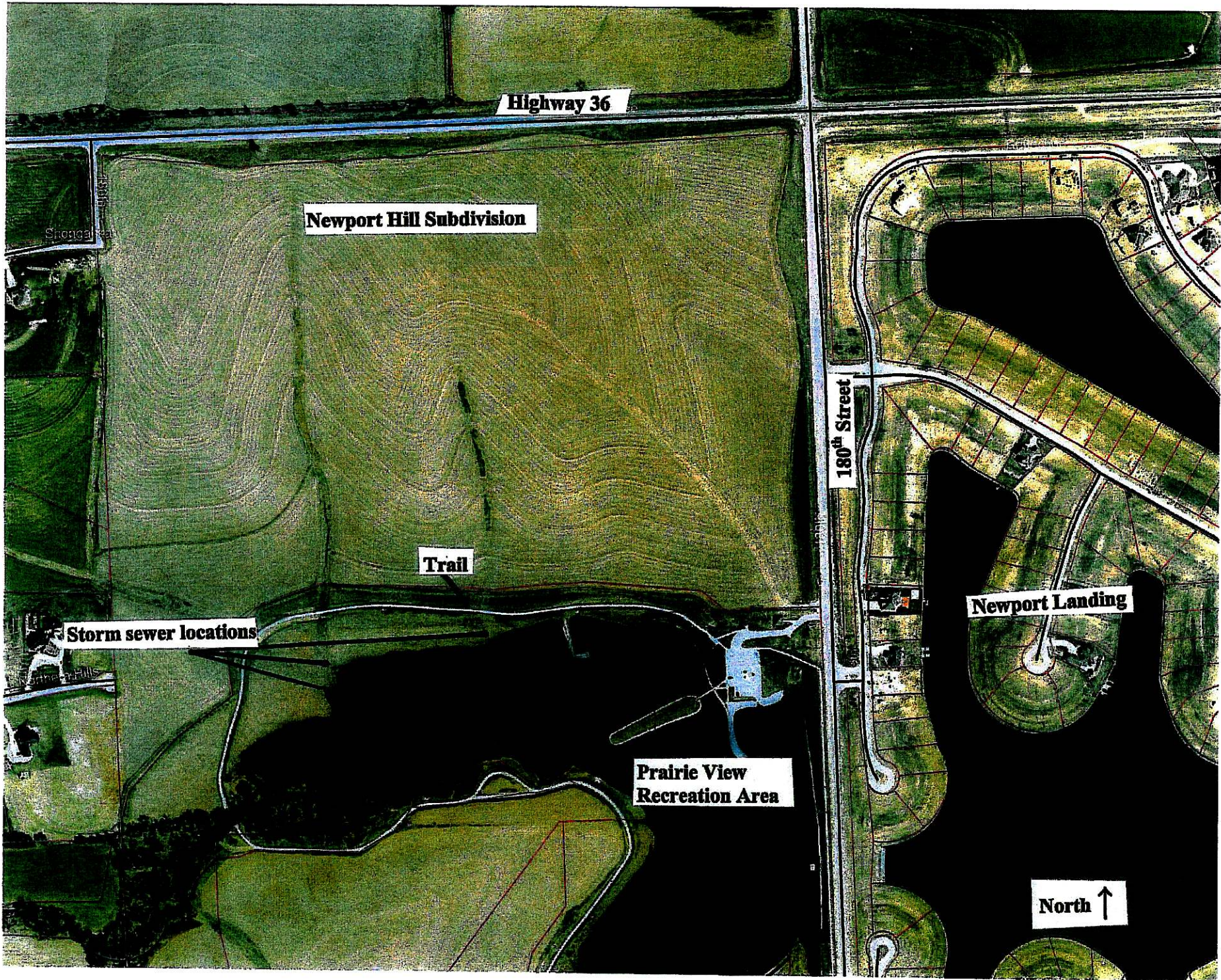
From: Gerry Bowen

The District considered this agreement in April and decided to delay action on it until Douglas County and NRD staffs had approved the low impact development best management practices planned by the developer.

Since that time, Douglas County staff has indicated that the plans include the measures sought by them so that they could cede jurisdiction to the City of Bennington. It is anticipated that the interlocal agreement between Douglas County and Bennington will be approved by the County on May 8, 2007.

NRD staff, however, has some issues that the developer and engineer need to address before a recommendation of approval of the interlocal agreement can be made. At the time of this writing, these issues have not been addressed.

It is anticipated that the issues will be resolved by the Subcommittee meeting and Management will make a recommendation on this item.



INTERLOCAL COOPERATION ACT AGREEMENT AND EASEMENTS

SANITARY AND IMPROVEMENT DISTRICT NO. 544 OF DOUGLAS COUNTY, NEBRASKA and PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

NEWPORT HILL TRAIL CONNECTION AND STORM SEWERS AT PRAIRIE VIEW RECREATION AREA

THIS AGREEMENT (hereinafter referred to as "**THIS AGREEMENT**") is entered into by and between **SANITARY AND IMPROVEMENT DISTRICT NO. 544 OF DOUGLAS COUNTY, NEBRASKA** (hereinafter referred to as "**the SID**") and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as "**the NRD**"), and is made pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1997, et seq.)

WHEREAS, the SID intends to construct, operate and maintain public bicycle and pedestrian trails in the Newport Hill subdivision ("**the NEWPORT HILL TRAILS**"); and,

WHEREAS, the SID desires to construct a segment of the **NEWPORT HILL TRAILS** ("**the CONNECTOR TRAIL**") on a parcel of NRD land described or depicted in the document attached hereto and incorporated herein by reference as Exhibit "A," comprising part of the NRD'S **PRAIRIE VIEW RECREATION AREA** ("**the RECREATION AREA**"), for the purpose of connecting the **NEWPORT HILL TRAILS**

to the public bicycle and pedestrian trails constructed, operated and maintained by the NRD in the RECREATION AREA.

WHEREAS, the SID desires to construct three storm sewer conduits ("the **STORM SEWERS**") on parcels of NRD land described or depicted in the documents attached hereto and incorporated herein by reference as Exhibits "B," "C," and "D," respectively, comprising additional parts of the RECREATION AREA.

NOW, THEREFORE, for and in consideration of the foregoing recitals and the mutual covenants of the parties hereinafter expressed, the parties agree as follows:

1. GENERAL BENEFIT. The parties do hereby find and determine that SID construction, operation and maintenance of the CONNECTOR TRAIL and the STORM SEWERS will be of general benefit to the SID and the NRD, with only an incidental special benefit.

2. PLANS. Plans and specifications for the CONNECTOR TRAIL and the STORM SEWERS shall be drawn by the engineers for the SID, without NRD cost or expense, in accordance with written criteria provided by the SID; and, the preliminary and final plans and specifications for the CONNECTOR TRAIL and the STORM SEWERS shall be subject to the written approval by the NRD, which approval shall not be withheld or delayed unreasonably.

3. RIGHTS-OF-WAY ACQUISITION. Lands, easements and rights-of-way, additional to the tracts of land described in Exhibits "A," "B," "C," and "D," and all other necessary local, state and federal permits, utility relocations, and other prerequisites that the SID determines are necessary for construction, operation and maintenance of the CONNECTOR TRAIL and/or the STORM SEWERS, shall be obtained and held by the SID, without NRD cost or expense.

4. CONSTRUCTION. Following the approval(s) by the NRD of the final plans and specifications for construction of the CONNECTOR TRAIL and the STORM SEWERS, such approval(s) to not be withheld or delayed unreasonably, the SID shall construct the CONNECTOR TRAIL and the STORM SEWERS in accordance therewith, without NRD cost or expense.

5. OPERATION AND MAINTENANCE. After completion of construction of the CONNECTOR TRAIL and the STORM SEWERS, and SID acceptance of the same from the SID'S contractor(s), the SID, without additional NRD cost or expense, may permanently operate, maintain, and repair the CONNECTOR TRAIL and the STORM SEWERS, in such manner and at such times as the SID in its sole discretion determines necessary and feasible, in accordance with applicable and generally-accepted engineering practices, in accordance with rules and regulations adopted by the NRD for the NRD'S trails in the RECREATION AREA, and in accordance with the aforesaid NRD-approved plans and specifications. The SID shall construct and maintain signs on the CONNECTOR TRAIL, as approved by the NRD, informing the public of the NRD'S trail rules and regulations.

6. RISK OF LOSS. The SID shall have and bear the sole risk of loss of or damage to the CONNECTOR TRAIL and the STORM SEWERS, whether such loss or damage results from flood or other casualty whatsoever.

7. INDEMNIFICATION. Except as otherwise specifically provided in THIS AGREEMENT, the SID shall defend and indemnify the NRD and hold and save the NRD harmless (1) from and against any and all costs of construction, operation, maintenance, repair, replacement, management or regulation of the CONNECTOR TRAIL and the STORM SEWERS; and, (2) from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part caused by or arising out of the SID'S design, construction, operation, maintenance or repair of the CONNECTOR TRAIL and the STORM SEWERS; or caused by the negligence or other actions or inactions of the SID, its employees, officers, contractors or agents, in the design, construction, operation, maintenance, repair, replacement, management or regulation of the CONNECTOR TRAIL and the STORM SEWERS (except as proximately caused by the sole negligence of the NRD or its employees, officers, contractors or agents).

8. RELOCATION. The CONNECTOR TRAIL and the STORM SEWERS shall exist and be used by the SID and the public at the pleasure of the Board of Directors of the NRD. In the event the Board of Directors of the NRD, in its sole

discretion, determines that it is necessary that the CONNECTOR TRAIL or the STORM SEWERS, or portions thereof, be closed, relocated, damaged or destroyed in order to permit the NRD to feasibly perform necessary construction, maintenance, repair, replacement, modifications, management or regulation of NRD'S improvements in the parcel described in Exhibit "A," or of the RECREATION AREA or NRD improvements thereto, the NRD may take any such actions that it finds necessary, without liability to the SID for costs of reconstruction, loss of use, or other damages to such CONNECTOR TRAIL or STORM SEWERS.

9. NRD APPROVALS. Except as otherwise specifically provided in THIS AGREEMENT, approvals and other NRD actions contemplated by THIS AGREEMENT are authorized to be provided by the General Manager of the NRD, in his sole discretion.

10. ENTIRE AGREEMENT. THIS AGREEMENT contains the entire agreement between the parties, and the SID agrees that neither the NRD, nor any of its officers, agents, or employees have made any representation or promise with respect to the CONNECTOR TRAIL and/or and the STORM SEWERS not expressly contained herein.

11. TIME. Time is of the essence of THIS AGREEMENT.

12. DEFAULT. If the SID shall default hereunder in any material respect, the NRD may terminate THIS AGREEMENT, obtain specific performance thereof, or exercise any such other remedies as may be available at law or in equity.

13. EFFECTIVE DATE. THIS AGREEMENT shall be in force and effect from and after its execution by both parties hereto and shall have permanent duration.

14. CAPTIONS. Captions used in THIS AGREEMENT are for convenience and not for use in the construction of THIS AGREEMENT.

IN WITNESS WHEREOF, the parties have executed THIS AGREEMENT on the dates hereinafter indicated pursuant to authorizing resolutions duly adopted at regularly-called meetings of their governing bodies.

The SID has executed THIS AGREEMENT on _____, 2007.

**SANITARY AND IMPROVEMENT DISTRICT NO. 544
OF DOUGLAS COUNTY, NEBRASKA**

By _____

Name _____
Chairperson

Attest:

SID Clerk

The NRD has executed THIS AGREEMENT on _____, 2007.

**PAPIO-MISSOURI RIVER NATURAL RESOURCES
DISTRICT**

By _____
JOHN WINKLER, General Manager

State of Nebraska)
) ss.
County of Douglas)

On this _____ day of _____, 2007, before me, a Notary Public, personally came **JOHN WINKLER**, to me personally known to be the General Manager of the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, whose name is affixed to the above and foregoing instrument, and he acknowledged the same to be his voluntary act and deed and the voluntary act and deed of such district.

WITNESS my hand and Notarial Seal the date last aforesaid.

NOTARY PUBLIC