

CALIFORNIA COASTAL COMMISSION

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W-16

Energy and Ocean Resources
Staff: JLL, SMH—SF
Staff Report: May 24, 2001
Hearing Date: June 13, 2001

STATUS REPORT ON SONGS MITIGATION PROGRAM

Following is a brief status report for the mitigation projects required in Southern California Edison Company's (SCE) coastal development permit for the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 (permit no. 6-81-330, formerly 183-73). The conditions originally were adopted by the Commission in 1991 to mitigate the adverse impacts of the power plant on the marine environment. The 1991 conditions also require SCE to provide the funds necessary for Commission technical oversight and independent monitoring of the mitigation projects, to be carried out by independent contract scientists under the direction of the Executive Director. In 1993, the Commission added a requirement for the permittee to partially fund construction of an experimental fish hatchery. The Commission has since approved amendments to the conditions in April 1997 and October 1998.

WETLAND RESTORATION MITIGATION

The Project

Condition A of the permit requires the permittee to create or substantially restore a minimum of 150 acres of wetlands to mitigate for impacts to fishes caused by the operation of SONGS. In April 1997, the Commission reaffirmed its 1992 approval of the permittee's choice of the San Dieguito River Valley as the site for the wetland restoration project and allowed for up to 35 acres credit for enhancement at San Dieguito Lagoon on the condition of perpetual inlet maintenance.

Progress Report

Wetland Restoration Planning. The Commission approved SCE's preliminary wetland restoration plan for the San Dieguito Lagoon in November 1997. The CEQA/NEPA environmental review incorporated the mitigation project into the overall San Dieguito River Valley Regional Open Space Park project and included additional wetland restoration required under the permittee's settlement agreement with the Earth Island Institute. The lead agencies for the CEQA/NEPA review were the San Dieguito River Valley Regional Open Space Park Joint Powers Authority (JPA) and the U.S. Fish and Wildlife Service.

Following the review period on the January 2000 draft EIR/EIS, the final EIR/EIS was released on September 5, 2000. At a public hearing on September 15, 2000, the JPA certified the EIR and voted to support the EIR's designation of Mixed Habitat plan as the environmentally preferred alternative. The Commission's contract scientists attended the meeting and concurred with this decision. As required by NEPA, the availability of the final EIR/EIS was published in the Federal Register in September 2000, and the USFWS will prepare and issue a final Record of Decision. Lawsuits challenging the adequacy of the final EIR/EIS have been filed by the Del Mar Sandy Lane Association and Citizens United to Save the Beach.

The permit requires SCE to submit the final restoration plan to the Commission within 60 days following the final action on the EIR/EIS, which will be the USFWS Record of Decision. SCE is proceeding diligently to complete the planning process and is in compliance with the Commission's permit conditions on the wetland restoration project. In January 2001, SCE submitted an administrative draft final restoration plan to the JPA for review of the plan's compliance with the EIR/EIS. The JPA found the Draft Final Restoration Plan generally consistent with the approved Final EIR/EIS and requested further elaboration and clarification in a number of areas.

The remaining issues involving the least tern nesting sites (e.g., maintenance and maintenance monitoring responsibilities, mitigation of potential impacts to existing wetlands) are complex and require additional discussion and negotiation among the primary parties. Although the least tern nesting sites are included in the overall plan, they are a previous requirement from a coastal development permit granted to the 22nd Agricultural District (CDP No. 6-84-525), and not a requirement of SCE's SONGS permit. SCE has agreed to construct the nesting sites for the District in exchange for access to and use of District property near the rivermouth. At issue is who is to take on the financial responsibility for implementing the maintenance, monitoring, and mitigation requirements.

Staff is working with SCE, USFWS, Department of Fish and Game, the JPA, and the 22nd Agricultural District (District) to bring these issues to closure as soon as possible. At a meeting on April 26, staff discussed the annual nesting site maintenance and maintenance monitoring (i.e., site maintenance, including vegetation control and fence inspection and repair, predator monitoring and control, and bird monitoring) needed to maintain a viable least tern habitat as required under the District's coastal development permit. Staff also discussed the need for mitigating impacts to existing wetlands caused by the construction of the nesting sites. In a follow-up letter to the District (attached), staff presented a draft annual maintenance plan and estimated annual costs. Staff will prepare a more formal interpretation of the District's obligations under its permit and respond to the District's May 18 letter (received May 23, attached). Staff will continue to work with the parties to try to reach consensus and enable SCE to move forward with the Final Restoration Plan.

Pre-restoration Monitoring. The Commission contract scientists continued pre-restoration monitoring in San Dieguito Lagoon and in other southern California wetlands that may be used as reference sites in post-restoration monitoring. In recent months, this monitoring has focused on determining the appropriate number and spacing of samples for use in the post-restoration monitoring of intertidal epibenthic and infaunal invertebrates. Fieldwork for this study, carried out in Tijuana Estuary, Mugu Lagoon, and Carpinteria Salt Marsh, was completed in early December 2000. Laboratory analysis of the samples is continuing. The contract scientists are

continuing to monitor water quality in San Dieguito lagoon and Carpinteria Salt Marsh and have recently established a station in Mugu lagoon.

Contract scientists also visited potential reference wetlands with representatives from SCE to examine the types of habitat that will be used to assess the performance of the restored site during post-restoration monitoring. In addition, contract scientists helped wetland consultants for SCE to collect soil samples at three potential reference wetlands, the Tijuana estuary, the Mugu lagoon, and the Carpinteria salt marsh. The samples were taken along marked transects at known tidal elevations. These transects were established by the contract scientists for pre-restoration monitoring study of the relationship between salt marsh vegetation and tidal inundation. Data from the soil samples, along with samples collected in the San Dieguito lagoon, will be used by SCE consultants to determine whether the soils in the San Dieguito restoration are likely support healthy salt marsh vegetation and to help in designing soil amendments in case they do not.

KELP REEF MITIGATION

The Project

Condition C of the permit requires construction of an artificial reef that consists of an experimental reef and a larger mitigation reef. The experimental reef must be a minimum of 16.8 acres and the mitigation reef must be of sufficient size to sustain 150 acres of medium to high density kelp bed community. The purpose of the experimental reef is to determine what combination of substrate type and substrate coverage will best achieve the performance standards specified in the permit. The design of the mitigation reef will be contingent on the results of the experimental reef. Construction of the 56-module experimental reef was completed in September 1999. Construction monitoring done by SCE confirmed that the area and the percentage covers of reef material of the modules conformed closely to the design specifications.

In April 1997, the Commission added the requirement for a payment of \$3.6 million to the State's Ocean Resource Enhancement and Hatchery Program (OREHP) to fund a mariculture/marine fish hatchery to provide compensation for resources not replaced by the artificial mitigation reef. SCE has fully satisfied this requirement.

Progress Report

Some of the major results seen in the analyses done to date are:

- (1) The amount of artificial reef material placed on the reef as determined from dive surveys by Commission contract scientists is considerably higher than the intended nominal coverages of 17%, 34% and 67%.
- (2) There has been substantial colonization of giant kelp on all reef designs with a trend for declining density of new kelp with increasing distance from the nearest natural kelp bed (San Mateo Kelp bed).
- (3) The abundance of invertebrates and understory algae on the artificial reef tends to increase with the coverage of hard substrate. The abundance and number of species of invertebrates and understory algae on the artificial reef is generally within the range observed on nearby

natural reefs. The relative abundance of invertebrates and algae, however, differs substantially between artificial and natural reefs.

- (4) Fish species composition and abundance on the artificial reef modules is generally similar to that found on nearby natural reefs with the exception that water column species were substantially less abundant on the artificial reef.

Commission contract scientists presented talks on these issues for the symposium, "Marine Ecology of Rocky Reefs and Areas of Biological Significance," held as part of the Southern California Academy of Sciences annual meeting on May 4-5. The contract scientists are continuing the first of their two semi-annual surveys of giant kelp for 2001. Kelp recruits counted in last year's surveys have now reached the sea surface and are forming canopies. These surface canopies occur throughout the length of the artificial reef, but are thickest in the southern modules closest to the San Mateo kelp bed.

FISH BEHAVIORAL MITIGATION

The Project

Condition B requires the permittee to install and maintain behavioral barrier devices at SONGS to reduce fish impingement losses.

Progress Report

SCE conducted a number of laboratory and in-plant experiments testing the behavioral response of fish to lights and sound devices from 1992 through 1999. None of the experiments showed evidence that these devices would reduce fish impingement losses as required by Condition B. At the same time, SCE continued its modified heat cleaning treatments at the plant, which result in a considerable reduction in fish impingement losses.

In October 2000, the Commission reviewed the conclusions on the effectiveness of the behavioral barriers (see staff report entitled *Executive Director's Determination that Fish Behavioral Barriers Tested at SONGS are Ineffective*, dated September 22, 2000) and concurred that (1) the fish behavioral barriers installed and tested at the plant were ineffective and unlikely to result in a two metric ton (MT) reduction in fish impingement losses as required by Condition B of the permit, (2) no currently available alternative behavioral barriers are likely to be effective or feasible in reducing fish losses as required by Condition B, and (3) a procedural modification made by SCE in the heat cleaning treatment of the cooling water intake systems of SONGS Units 2 and 3 has reduced fish losses on average by approximately 4.3 MT per year. Based on this determination, the Executive Director concluded that no further testing of alternative behavioral barriers should be required at this time, provided that (1) SCE continues to adhere to the operating and monitoring procedures for the modified heat cleaning treatments and (2) SCE makes every effort to test and install, if feasible, future technologies or techniques for fish protection if such techniques become accepted industry standards or are required by the Commission in other power plant regulatory actions. Thus, the Executive Director determined, and the Commission concurred, that SCE is currently in compliance with Condition B of the SONGS permit.

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May 7, 2001

Mr. Robert Vice
Board of Directors
22nd District Agricultural Association
2260 Jimmy Durant Boulevard
Del Mar, California 9201-2216

Dear Bob:

Thank you for taking the time to meet with us on April 26. Although we may not have accomplished all that we hoped, we believe that the meeting was useful and that the information exchange will be helpful in crafting a solution to the least tern nesting site issues.

We are still in the process of reviewing all of the various permits and agreements to provide you with our interpretation of the District's obligations. In the interim we wanted to follow-up on some of the issues raised at the meeting.

Maintenance and Maintenance Monitoring

According to resource agency wildlife experts, the maintenance and maintenance monitoring requirements outlined during our meeting are essential to the success of nesting sites for least terns. These requirements are not new but are part of the District's existing agreements. What is at issue among the various parties, of course, is who is to take on the financial responsibility for implementing the maintenance and monitoring requirements.

At the meeting, we laid out our expectations for annual nesting site maintenance and maintenance monitoring (i.e., site maintenance, including vegetation control and fence inspection and repair, predator monitoring and control, and bird monitoring), as well as the cost estimates. As you may recall, the annual cost estimates are based on actual maintenance programs. In instances where the maintenance was not done properly, the nest sites have failed.

We have attached the current draft plan and cost estimates for your further review and discussion.

Nesting Site Selection

The District's existing agreements provide several options for selecting the permanent least tern nesting sites required under Coastal Development Permit No. 6-85-525. The property originally envisioned in the December 1984 Memorandum of Agreement between the District and the California Department of Fish and Game ("First MOA")

ATTACHMENT
SONGS STATUS REPORT

failed to be purchased within the timeframe specified therein. In addition, no alternative permanent nesting site has been created.

In the early 1990s, pursuant to the provisions of a second MOA between the District and CDFG, the District purchased the rivermouth property with the intent of locating on it the permanent nesting site contemplated by the First MOA. However, that project also has not gone forward due to a number of objections regarding the suitability of the site and the need to complete planning for the full San Dieguito wetland restoration project. The October 1991 settlement agreement on Coastal Act Violation No. V-6-90-9 also provides for the selection of alternative sites that meet the intent of the First MOA and criteria.

The Settlement Agreement authorizes the Commission to approve or reject the creation of nesting habitat on the riverfront property as a means of resolving the violation. The Commission has not formally acted on the District's proposal to use the rivermouth property for least tern nesting habitat. However, in a May 1998 letter to the District's consultant, Patricia Butler, the staff indicated that the site is too small to meet the original 16-acre requirement in the permit, is subject to inundation well into the nesting season in some years, and is likely to be required for the construction of inlet improvements to keep the lagoon mouth open on a permanent basis. The staff concluded that the District's rivermouth property is unlikely to be formally endorsed as a least tern nesting site, based largely on the Commission's approval of the preliminary wetland restoration plan for San Dieguito (November 1997).

Since then, the EIR/EIS for the wetland restoration at San Dieguito has been completed. The EIR/EIS identifies four suitable sites for least tern nesting habitat (NS 11, 12, 13 and 14). The Commission has yet to act on a final restoration plan or coastal development permit for the restoration project. However, the staff, in consultation with the California Department of Fish and Game and U.S. Fish and Wildlife Service, has concluded at this stage of our analysis that, with proper maintenance and maintenance monitoring and any mitigation required as a result of nesting site construction impacts, these four sites (as slightly reconfigured) would be suitable for least tern nesting site habitat. Representatives of both the CDFG and USFWS concur with our conclusion.

Mitigation for Impacts to Existing Wetlands

We recognize that the District was not prepared to discuss the 4:1 mitigation requirement for construction impacts to existing wetlands from two of the nesting sites (NS 11 and 12, west of Interstate 5) during our April 26 meeting. However, we are surprised with the District's characterization of this information as completely new. The District has been aware of the proposed locations for the least tern nesting sites for some years, has had access to the Commission-approved preliminary restoration plan, and has participated in the EIR/EIS in which the anticipated impacts and mitigation ratio were fully discussed.

We will, of course, continue to look at the requirements for these sites. But if the construction of any least tern nesting site selected to fulfill the District's mitigation requirements under CDP No. 6-84-525 impacts existing wetlands, then those impacts will have to be mitigated in accordance with the Coastal Commission's policies. It is the District's obligation under its permit to provide the least tern habitat and not Edison's responsibility under its SONGS permit. Unless some other agreement is reached between the District and another responsible party, we will be looking to the District to undertake the mitigation for any construction impacts as part of its overall responsibilities under the permit.

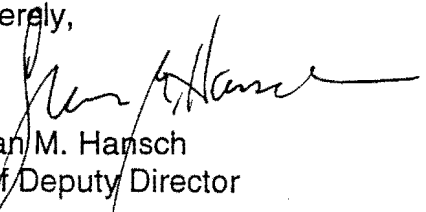
Next Steps

As I mentioned above, we are in the process of putting together our interpretation of the District's obligations. We will do our best to forward it to you in advance of your June 2001 board meeting. If it would be helpful to you, we could have someone attend the board meeting to answer questions. We should then plan to meet again as soon as possible after the board meeting.

On another note, in response to Brad Gessner's April 30 email comment regarding the recent ruling about the constitutionality of the Coastal Commission, we would remind the District that the Coastal Act, and its requirements, remains intact. Although the judge's ruling is final, a court order has not yet been issued that could affect the Commission's ability to conduct business. We don't expect an order to be issued immediately and the plaintiff's attorney has been quoted as saying he would agree to a stipulation that the Commission can continue to carry out its business until this issue has been finally decided on appeal. Until the appeals are final or until directed otherwise by a court of law, the Commission will continue to conduct business as usual.

We look forward to continuing our dialogue and to resolving the least tern nesting site issues so that the San Dieguito restoration project can move forward. As I explained it in our April 26 meeting, the Coastal Commission staff role is to work closely with all parties to achieve compliance with all pending coastal permits and prepare solid, scientifically sound recommendations for consideration and action by the Coastal Commission. The Commission will after public hearings consider the staff's recommendations and vote on the proposed Final Restoration Plan for the SONGS mitigation program and possible permit amendments for the 22nd Agricultural District permits. Please call me if you have any questions or would like to discuss anything further.

Sincerely,



Susan M. Hansch
Chief/Deputy Director

Attachment

Robert Vice
May 7, 2001
Page 4

cc: Tim Fennell
Brad Gessner
Patricia Butler
Supervisor Pam Slater
Dick Bobertz, JPA
Jack Fancher, USFWS
Terry Stewart, CDFG
David Kay, SCE
Coastal Commissioners

Annual Maintenance & Maintenance Monitoring of Least Tern Nesting Sites

May 7, 2001

Need for maintenance and maintenance monitoring

There is a general consensus among experts that nesting sites constructed for California Least Terns and Western Snowy Plovers will not be successful unless they are adequately maintained (J. Fancher, K. Keane, N. Reed, pers. com.). The two principal maintenance issues that affect the success of constructed nesting sites involve the removal of vegetation prior to nesting and predator control. Least terns and snowy plovers generally require an open area with sandy substrate largely free of vegetation for nesting although some low profile native vegetation (e.g., verbenas) can help conceal chicks from avian predators. Optimal vegetation coverage has been reported to be from 0.2 % to 5% (Minsky 1987, from Thompson et al. 1997). The lack of success of several constructed nesting sites (e.g., Batiquitos Lagoon W1, San Elijo nesting islands, Upper Newport Bay) has been attributed, at least in part, to above optimal coverage by non-native vegetation. Second, loss of chicks through predation can be a serious problem at Least Tern and Snowy Plover nesting sites. Predation can occur on eggs and chicks from ground-based predators, such as rodents, feral cats, opossums, raccoons, and foxes. Predation can also occur from avian predators. The presence of peregrine falcons may drive terns away (e.g., Bolsa Chica), although these predators are generally not a recovery-threatening problem. Kestrels, on the other hand, may pose a serious threat to least tern and snowy plover nesting. For example, these raptors took 80 least tern chicks in 2 days at a 7-acre nesting site with several hundreds of breeding pairs at Venice. Crows and ravens can also be a problem and are the worst avian predators at Batiquitos Lagoon.

Annual maintenance and maintenance monitoring of vegetation and predators*Prior to the nesting season*

Vegetation. To provide a site attractive to nesting California Least Terns and Western Snowy Plovers, the site must be relatively free of vegetation prior to the breeding season. Snowy Plovers may begin nesting about one month sooner than Least Terns so all nesting sites should be inspected in February. If vegetation coverage exceeds 5%, it must be removed. The method required to remove vegetation (dragging of a log, discing, and/or manual removal) will depend on the extent of coverage. The use of equipment to remove vegetation shall cease by March 15 to insure that maintenance activities do not disturb nesting. If vegetation clearing or spraying must be repeated after this date, the site should be checked for the presence of Snowy Plover nests. Judgments about the adequacy or appropriateness of vegetation clearing may be deferred to US Fish and Wildlife experts in Carlsbad who routinely provide such technical assistance. A preseason walkover with Fish and Wildlife personnel to determine action items is a common practice.

Attachment to
May 7, 2001 Letter

Fences. Fences have been successfully used to exclude ground-based predators from nesting sites. Fences will not work unless they are properly maintained. It is not unusual for windblown sand to accumulate around the base of the fence, thereby creating a ramp that serves as an access route for ground-based predators. Raccoons can scale chain-link fences and some predators may be able to dig under them. All fences used in predator exclusion shall be inspected for breaks and other predator access points and repaired prior to March 15.

Other predator control. Removal of ground-based predators may also be required. To determine if ground-based predators will pose a threat to nesting birds, monitoring of the area for these animals shall be conducted prior to the breeding season, preferably beginning February 1. If a ground-based predator(s) is consistently observed in the area of a nesting site and considered to be a potential problem by experts, it should be removed (by live trapping if possible). Observations of avian predators and/or nests in the area may also require preemptive removal if deemed a potential problem by experts. Often predator control is contracted to the US Department of Agriculture, Fish and Wildlife Service. However, there are other capable predator management contractors available not associated with government.

Monitoring and maintenance activities outside the nesting sites do not require an Endangered Species permit from US Fish and Wildlife or California Department of Fish and Game. Monitoring and maintenance activities inside the nesting sites require permits from US Fish and Wildlife and California Department of Fish and Game.

During the nesting season

Maintenance monitoring is required during the nesting season to insure that disturbances do not reduce the successful production of fledglings. Predation on eggs and/or chicks is likely to be the most common form of disturbance, although other types of disturbance (e.g., from humans, dogs, etc.) could also occur. Maintenance monitoring during the nesting season will require frequent longer visits (e.g., some time every day observing each site) to detect potential problems. Monitoring shall consist of observations of ground-based and avian predators in the area, acts of predation, damage to fences and other types of disturbances that may require action. This monitoring should be conducted daily from April 1 (or beginning of the nesting season) to September 1 (or end of the nesting season) by an experienced observer (permit from US Fish and Wildlife Service not required).

Observations of predators usually are not sufficient to detect impacts due to predation; time series data on the number of breeding pairs and clutch size (e.g., egg and fledging number) are also needed to evaluate whether methods of predator control have been successful. Such data shall be collected from April 1 (or beginning of the nesting season) to September 1 (or end of the nesting season). Based on standard methods used at other nesting sites, the census shall be conducted twice per week by a permitted biologist who can also recognize and record the nests and fledglings of the Snowy Plover, which may also occur at these sites. The use of blinds is recommended for these observations. Data collection from blinds is more time consuming than walking through the nesting site, but

less intrusive for birds, because the birds normally remain off nest during a walk through census. The most likely problem detected through monitoring within the nest site will be predation. A sudden decrease in the number of adults or fledglings should stimulate increased frequency of monitoring around the nesting sites to detect the predators. Once detected, the predators should be removed through trapping or other means.

Estimated annual cost for maintenance and maintenance monitoring of nesting sites
See attached

Reference

Thompson, B. C., J. A. Jackson, J. Burger, L. Hill, E. M. Kirsch, and J. L. Atwood.
1997. *The Birds of North America*.

DRAFT

Estimated Cost for Annual Maintenance and Maintenance Monitoring of Nesting Sites¹
(in 2001 dollars)

Vegetation maintenance

(includes vegetation removal, herbicide use if necessary, fence repair)

Initial vegetation removal/site prep (2 pers x 8 hr/day/site x 5 days x 4 sites x \$30/hr)	9,600
Follow-up manual vegetation removal, herbicide use (2 pers x 2 hr/day/site x 4 sites x 7 days x \$30/hr)	3,360
Fence inspection, repair (1 pers x 1 hr/day/site x 4 sites x 14 days x \$30/hr)	1,680
Miscellaneous (e.g. equipment rental fees)	<u>1,000</u>
Total for vegetation maintenance	\$15,640

Predator monitoring and management

(includes one full time Wildlife Specialists from Wildlife Services for entire year²)

Salary and benefits	38,224
(Includes 300 hrs comp time ³ , 16 hrs holiday pay)	
Vehicle lease and operating costs	7,312
Training/travel	600
(Wildlife Services, Qualified Applicator Certificate)	
Equipment and supplies	<u>1,300</u>
Project direct costs	47,436
Indirect @ 20%	<u>9,487</u>
Total for predator monitoring and management	\$56,923

Bird monitoring (nesting pairs, fledglings)⁴

Monitors (1 pers x 2 hr/site x 4 sites x 2x/wk x 28 wks (4/1-9/1) x \$60/hr)	26,880
Report preparation	2,000
Transportation costs, field supplies	<u>1,000</u>
Total for bird monitoring	\$29,880

TOTAL ANNUAL COST **\$102,443**

¹Based on data from Batiquitos Lagoon for 2000 nesting season; cost figures supplied by Terry Stewart and Tim Dillingham, California Department of Fish and Game.

²Compensatory time generated during the breeding season is to be used during the fall/winter period.

³Based on 2000/1 season at Batiquitos Lagoon. Seasonal predator maintenance did not adequately control tern mortality; year-round Wildlife services specialist was required to adequately control predators.

⁴Required for effective predator management.

*Attachment to
May 7, 2001 Letter*



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22ND DISTRICT AGRICULTURAL ASSOCIATION
State of California

RECEIVED
MAY 23 2001

CALIFORNIA
COASTAL COMMISSION

May 18, 2001

Ms. Susan M. Hansch
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2218

SUBJECT: LEAST TERN NESTING SITE RESPONSIBILITIES

Dear Ms. Hansch:

Your May 7, 2001 letter summarizes the current Coastal Commission staff opinion on how the 22nd District Agricultural Association might fulfill the outstanding least tern nesting site condition compliance requirement of our CDP #6-85-522. However, I am alarmed by your interpretation of the 22nd District's responsibilities under that permit. The 22nd District has cooperated with the San Dieguito River Park Joint Powers Authority and Southern California Edison throughout the lengthy planning process for the Wetlands Restoration Project (WRP), based on the following understanding.

Background

1. The 22nd District owns certain property at the mouth of the San Dieguito River that is required to implement the WRP. This property was initially purchased by the District upon consultation with the Department of Fish & Game to satisfy its liability for construction of a 7-acre least tern nesting site within the San Dieguito Lagoon.
2. The 22nd District submitted a coastal development permit application to the Coastal Commission in 1992, which was deemed complete, to construct the nesting site at the river mouth property, pursuant to the terms of the original MOA, the amended MOA and the 1991 Settlement Agreement. The Coastal Development Permit application, which was accepted as complete, did not indicate any wetlands mitigation was required for creation of the nesting site on the river mouth property.
3. Coastal Commission staff asked the 22nd District to voluntarily "hold in abeyance" the least tern nesting site application for an undefined period of time, to allow the resources agencies time to prepare and complete the plan for a Wetlands Restoration Project at San Dieguito Lagoon, to be constructed by Southern California Edison in compliance with a condition in SCE's coastal development permit for SONGS.

4. The 22nd District agreed to hold its application in abeyance with the express understanding and commitment on the part of Coastal Commission and JPA that the WRP would address providing sufficient least tern nesting habitat to satisfy the 22nd District's outstanding permit condition. In return, the 22nd District would allow SCE and the JPA to use its river mouth property for the purpose of the WRP. The 22nd District consistently documented this understanding in correspondence to the Coastal Commission and the JPA throughout the planning and environmental review process (see enclosed).
5. The 22nd District staff and our environmental planning consultant, Trish Butler, did not participate in the development of the specific size and locations for the nesting sites conducted by Coastal Commission staff and JPA technical consultants. Nor were we invited to participate in those evaluations. We believed that the resources agencies were the best qualified to develop an optimal habitat restoration plan that would include appropriate acreage and locations for least tern nesting sites. We were never sent copies of draft nesting site layouts beyond the graphics available in the EIR/EIS.

The very first we heard that the agencies had identified sites that would impact wetlands was at a meeting our Deputy Manager Brad Gessner and Trish Butler had with David Kay of SCE last December. At that meeting, Mr. Kay expressed his concern that the Coastal Commission would likely require mitigation of the wetlands impacts associated with nesting site creation, but that the agencies were working on trying to re-configure the sites to avoid wetlands impacts. Brad and Trish told Mr. Kay that the 22nd District would not accept sites that would require wetlands mitigation. We anticipated that the agencies would design a plan that avoids wetlands impacts.

Conclusion

The 22nd District submitted a coastal development permit application for creation of our 7-acre share of the least tern nesting habitat, which did not impact wetlands and would not have required any wetlands mitigation. It is patently unfair and in bad faith for the very agencies who designed the nesting site plan with no input from the 22nd District, to now demand that the District be responsible for mitigation of impacts caused by their design. The 22nd District will not accept any liability for mitigating loss of one sensitive habitat type for creation of another. We draw your attention to the original San Dieguito Lagoon Resource Enhancement Plan, which was endorsed by the Coastal Commission in 1979. That plan clearly shows the proposed creation of least tern nesting sites in the western lagoon in areas that were and are today wetlands, presumably recognizing the offsetting value of restoring a healthy, functioning coastal marsh environment.

If the Coastal Commission staff insists that wetlands impacts from nesting site creation be mitigated by creation of new wetlands, the 22nd District suggests that the WRP delete least tern nesting sites that would impact existing wetlands. The nesting site acreage in the original permit condition was arbitrary and based on an inexact assumption that the size of the assessor's parcel corresponded to actual area available to create a least tern nesting site on the Fairgrounds south dirt parking lot.

Without getting into a debate on the validity of the original permit condition, the 22nd District feels that as co-State agencies, we should cooperate with one another to facilitate implementation of the San Dieguito Lagoon Wetlands Restoration Project, which will provide immense benefit to the natural and human environment. To that end, the 22nd District proposes the following solution:

1. The WRP to be submitted to the Coastal Commission shall include the optimal acreage for least tern nesting sites at locations where the nesting sites can be constructed without impacting existing wetlands (i.e., 100% avoidance of wetlands impacts).
2. The 22nd District shall submit an application to amend Special Condition 1 of CDP #6-85-525 to correspond to the acreage and locations of least tern nesting sites shown in the WRP. The California Coastal Commission will hear said permit amendment concurrently with the WRP permit application.

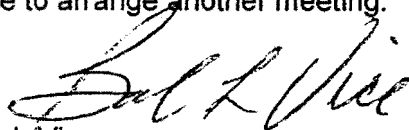
With respect to the issue of monitoring, the original MOA clearly directed that the Department of Fish & Game would be responsible for long-term monitoring (Ref. Par. 6, page 7 of the 1984 MOA). While the subsequent amended MOA was not approved by the Coastal Commission, the amended MOA confirmed CDFG's "patrol" and "survey" responsibilities. As a result of entering into these agreements, CDFG agreed to monitor the nesting site(s) "at a level consistent with available manpower and funds" (Par. 3, page 3 of the 6/8/90 MOA).

With respect to maintenance responsibilities, the original MOA was unclear on long-term maintenance responsibilities. The amended MOA signed by the District and CDFG indicated that the 22nd District would be responsible for maintenance. In the context of these previous agreements, maintenance, as described in the 1984 MOA, was a far more limited undertaking than you are now describing. The 22nd District is willing to work with the Coastal Commission, JPA and SCE to resolve the issue of maintenance on a reasonable and equitable basis.

I felt it was important to respond immediately to this issue of the unacceptable, significant added burden of eight acres of wetlands mitigation, as discussed at the end of our April 26, 2001 meeting and as described in your May 7, 2001 letter. Resolution of this issue to our mutual satisfaction is critical to our collective ability to conclude the three-way agreement, which will facilitate proceeding with the long awaited San Dieguito Lagoon Wetlands Restoration Project.

We look forward to further discussions with you and your staff on this issue. Please contact Tim Fennell, General Manager of the 22nd District Agricultural Association at (858) 792-4200 when it is appropriate to arrange another meeting.

Sincerely,



Director Bob Vice
Chairman, Master Plan Committee
Board of Directors

cc: Tim Fennell, 22nd District
22nd District Board of Directors
Ron Small, Dept. of General Services
Patricia Butler, BRG Consulting
Supervisor Pam Slater
Dick Bobertz, JPA
Jack Fancher, USFWS
Terry Stewart, CDFG
David Kay, SCE
Coastal Commissioners



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22ND DISTRICT AGRICULTURAL ASSOCIATION
State of California

RECEIVED
MAR 21 2000

March 20, 2000

BY:.....

Principal Planner
San Dieguito River Park Joint Powers Authority
18372 Sycamore Creek Road
Escondido, CA 92025

SUBJECT: COMMENTS ON DRAFT EIR/EIS FOR THE SAN DIEGUITO
WETLANDS RESTORATION PROJECT

Dear Principal Planner:

The State of California, 22nd District Agricultural Association (District) appreciates this opportunity to provide comments regarding the adequacy of the analysis of significant environmental impacts of the proposed San Dieguito Wetlands Restoration Project. The District owns and operates the Del Mar Fairgrounds and Racetrack, located adjacent to the San Dieguito Lagoon at the mouth of the San Dieguito River, and Del Mar Horsepark, adjacent to the San Dieguito River at El Camino Real.

The District has been a longstanding and early supporter of the JPA's Wetlands Restoration Project and related park planning efforts. The District notes that the proposed Wetlands Restoration Project identifies use of certain District property to accomplish the contemplated restoration, and the JPA proposes to implement significant segments of the Coastal portion of the proposed Coast to Crest Trail on District property. The proposed project has the potential to substantially affect District property and its operations, namely the Del Mar Fairgrounds and Racetrack, which serve over three million visitors annually, and Del Mar Horsepark, which the District operates as one of the premier equestrian facilities in the United States.

The District previously responded to the original Notice of Preparation (NOP) for the joint EIR/EIS on July 6, 1998, and subsequently responded to the Amended NOP on March 17, 1999. The District provided a detailed description of the issues and concerns it felt should be addressed in the Draft EIR/EIS in this previous correspondence. This comment letter focuses on the adequacy of the Draft EIR/EIS analysis in addressing the District's issues of concern.

1. Project Description

It is noteworthy that both the Fairgrounds/Racetrack property and Horsepark are outside the project area boundaries for the Coastal Area Park Master Plan, as shown on Figure 2 of the draft plan and Figure 1-2 in the Draft EIR/EIS. Yet, substantial portions of the

Attachment to
May 18, 2001 Letter

most significant park facility, the Coast to Crest Trail, are proposed for these two 22nd District properties. Thus, it appears that the JPA is proposing to construct and operate park facilities outside the proposed park boundaries.

The District requests that the project description in the Final EIR/EIS be revised to indicate that the 22nd District has not endorsed, approved or accepted the salt marsh restoration proposal shown on the 8-acre parcel it owns, shown as Area W6b in the Draft EIR/EIS. The District had previously requested that JPA staff remove this proposal from the proposed Wetlands Restoration Plan, because it is our understanding that this area is not necessary to achieve the purpose and need for the project. The JPA'S inclusion of this parcel in the restoration plan, over the District's objections, unnecessarily constrains future use of this parcel.

★ **2. *Least Tern Nesting Sites***

The District notes that the Draft EIR/EIS identifies the proposed least tern nesting sites as being provided to meet the District's Coastal Permit condition to provide 16 acres of least tern nesting habitat, with the District responsible for 7 acres and the CDFG responsible for 9 acres. It is important to revise Section 1.9 of the EIR/EIS to add the following action to the list of required permits and approvals:

California Coastal Commission acceptance of the proposed 15.7 acres of least tern nesting habitat as satisfying Special Condition 1 of CDP #6-84-525.

3. *Proposed Levee/Berm along Horsepark Western Boundary*

The District has consistently objected to the north-south berm proposed just west of and adjacent to Horsepark's western boundary. In previous conversations with Dr. Howard Chang during the planning process, Dr. Chang acknowledged that the north-south berm would cause a "backwater" effect on Horsepark. Together with the increased velocity of flood flows predicted by the Draft EIR/EIS analysis, this increased risk at Horsepark is unacceptable. The Draft EIR/EIS is silent on the site-specific hydrology impacts at Horsepark, other than to indicate that the proposed weir at River Mile 2.09 would provide additional hydraulic capacity at the 25-year flood level. The District is very concerned that the hydrology effects of the proposed project during the far more common 10-year to 20-year flood conditions are not addressed, when apparently the weir would not come into effect to transmit flood flows through Horsepark and the berm would cause a backwater effect on Horsepark. This condition is totally unacceptable. Any exacerbation of flooding conditions will cause a serious hazard for the horses and humans who occupy Horsepark; horses are very sensitive to abrupt changes in their environment and are susceptible to dangerous panic reactions in flood conditions.

The District understands that the purpose of the berms in the Wetland Restoration Plan is to protect the constructed tidal basins and associated constructed wetlands from washing out in a major flood. The District questions the legitimacy of protecting constructed

wetlands that can be reconstructed after a major flood, at the expense of possibly seriously endangering people, horses and capital facilities at Horsepark.

In addition to our concerns regarding the flooding impacts on Horsepark, the Draft EIR/EIS does not adequately address the visual quality, aesthetic and public health and safety effects of the proposed 18' to 20' high berm adjacent to Horsepark's western boundary. The Draft EIR/EIS documents the prevailing westerly onshore flow of seabreezes through the San Dieguito River Valley, which frequently reverse to easterly offshore air flows in the evening and colder months. This pattern of breezes and airflow is critical to the health and enjoyment of the equestrian and human users of Horsepark year-round. The free flow of air across the Horsepark site aids in dispersing odors and potential vectors, as well as provides important cooling for the equestrian occupants of the Horsepark site. The Draft EIR/EIS does not address the significant adverse effect the proposed north-south berm would have on this important environmental feature of Horsepark.

The 18' to 20' berm west of Horsepark will also deprive Horsepark events and users of the existing scenic and visual qualities currently experienced at the property. The berm will eliminate the westerly views from this world-class equestrian facility. The Draft EIR/EIS does not address the visual quality impact of the berm on Horsepark, and consequently does not identify any mitigation measures or alternatives to reduce or avoid this significant adverse impact.

Lastly, the north-south berm totally defeats the purpose and need for the Villages property land exchange to mitigate the loss of almost one-third of Horsepark's usable land to the proposed Trail. The Villages land exchange is needed to offset the loss of the southern third of Horsepark to the Trail, including the loss of the equestrian cross-country course. The only acceptable mitigation for the proposed Trail alignment across the southern third of Horsepark is the addition of adjacent, contiguous property, which is necessary to maintain the operational program of this unique and important equestrian show and training center. The insertion of a 20-foot high wall between two sides of the facility is infeasible and unacceptable from an operational and facility management perspective. Any vertical separation between the two sites is unacceptable to Horsepark operations. The San Dieguito River Park JPA should embrace the protection and continuity of this very compatible equestrian center within the River Park. The importance of Horsepark as a local, regional, statewide and indeed, national equestrian training and show facility is perhaps best exemplified by the selection of Horsepark as the location for this summer's Olympic show jumping trials.

The cross-sections shown in Figure 2.3.1-5 do not illustrate the proposed height of the berm relative to the existing elevation of the adjacent Horsepark property. Notwithstanding, all of the preceding comments apply to a berm of any height along Horsepark's western boundary. The EIR/EIS should be revised to identify and address alternatives that eliminate the north-south berm adjacent to Horsepark, as the District had

requested in its responses to the NOP. The impacts of the proposed north-south berm on the Horsepark property and its continued safe operation are significant and unmitigable, and can only be avoided by an alternative that eliminates the north-south berm.

4. Proposed Trail Alignment and Associated Improvements

The proposed Trail Alignment and Interpretive Locations shown in Figure 2.3.1-15 of the Draft EIR/EIS illustrate a number of proposals that appear to be incompatible with the continued operations at the Fairgrounds and Racetrack. While we have previously discussed each of these features in concept with JPA staff during the planning process, the Draft EIR/EIS provides the first more specific description of the JPA's proposal for the location of each facility.

Unfortunately, the project description in the Draft EIR/EIS has insufficient detail of the proposed Trail improvements and facilities at both Horsepark and the Fairgrounds to allow an adequate analysis of the impacts and any necessary mitigation measures and/or alternatives. Thus, the Draft EIR/EIS is inadequate as the project-specific environmental document for the proposed Trail improvements on District property. Once the District and the JPA have determined the preferred Trail alignment and related facilities on District property, subsequent environmental review will be required for the District to consider approving such improvements. Examples of several problematic features of the proposed Trail concepts identified in the Draft EIR/EIS, which will need to be resolved, include the following:

Interpretive Point "g" in the Driving Range

The proposed plan shows an "Interpretive Point" along the trail in the Surf & Turf Driving Range. It is difficult to tell from this conceptual plan exactly what is envisioned, but the draft Park Master Plan shows a detail for the design of the interpretive points with fairly substantial signage that would likely need to be setback from the trail to the north, into the driving range. In all of our previous conversations with JPA staff, we have consistently cautioned them that no facilities should be planned for the driving range, other than the trail alignment itself, which should be pushed as close to the river's edge as possible. The proposed plan includes protective fencing for the trail, recognizing the potential hazard from "errant" golf balls.

The proposed content for Interpretive Point "g" (page 70 of plan) could be well served at any number of alternative locations along the trail, including Interpretive Point "h" east of I-5, and should be eliminated from the currently proposed location.

Trailhead Parking Location in South Overflow Lot

The proposed plan shows a 20-space Parking Location for the western trailhead in the South Overflow Lot, at the same location where we have our permitted Flower Show Dirt Stockpile. The storage location for our Flower Show dirt is permitted by the California Coastal Commission. Minimally, if the District were to agree to this park access and

parking location, the District would need to relocate and re-permit the Flower Show dirt stockpile location. However, more importantly, the proposed parking may not work very well for the District. It is too close to the very narrow transition route between the South Overflow and East (Big Dirt) parking lots. This is a very constrained area that is critical to driving cars between the two lots, which keeps cars off of Jimmy Durante Boulevard when parking management needs to direct cars to travel between the two lots.

This parking proposal raises a larger issue that is not adequately addressed in the Draft EIR/EIS or the draft Park Master Plan. The District is not comfortable with the JPA's assumed use of the South Overflow Lot and its driveway and handicap access ramp for all pedestrian, bicycle and equestrian access between Jimmy Durante Boulevard and the Trail. Again, while we have discussed these issues in concept, the JPA has not been ready to discuss the details of the trail alignment and access points with the District. While the District has consistently supported the Park and the Coast to Crest Trail, it is critical that the JPA work closely with the District to design an acceptable trail alignment and access facilities on District property. The specific locations of these facilities will materially affect District operations.

5. *Disposal of Dredge Material on District Property*

The District has consistently indicated its willingness to accept dredge spoil material in its parking lots, as long as the material is clean of hazardous materials and is of structural quality (i.e., can support the weight of a car). The District objects to the Draft EIR/EIS assertions that fill with dredge spoil material on the Surf & Turf parcel would cause significant land use compatibility impacts. This conclusion is based on purely speculative assumptions. It is wholly inappropriate for the JPA to assume that the District's future reuse of the Surf & Turf parcel would be incompatible with other adopted plans and the adjacent wetlands restoration project. The District is just beginning an approximately two-year planning and environmental review process to update its Master Plan. No long range plan for the Surf & Turf parcel has yet been identified, so there is no basis for the impact assumptions presented in the Draft EIR/EIS.

The speculative statements regarding future land use impacts associated with a yet to be defined reuse of the Surf & Turf parcel are prejudicial to the District's planning process, and should be removed from the Final EIR/EIS. The District requests that the Final EIR/EIS simply retain the statement on page 4.1-7 that ". . . any future use of the site for purposes other than parking or driving range would require subsequent environmental review in accordance with CEQA to evaluate project-specific impacts".

6. *Flooding Liability on District Property*

The preceding comments on the increased flood hazard impacts at Horsepark identify the District's concern that the flooding impacts at that facility are not adequately addressed in the Draft EIR/EIS. The District understands one of the primary habitat enhancement

goals of the proposed plan is to maintain an open rivermouth, which should have the beneficial, coincidental effect of improving flood protection for properties adjacent to the floodway in the City of Del Mar and the Fairgrounds/Racetrack. The District remains concerned that the plan be fully and carefully reviewed for its predicted effect on water surface elevations within the San Dieguito River channel and the tributary Stevens Creek channel, as they will affect the drainage facilities at the Fairgrounds/Racetrack.

Additional hydrology concerns that the District specifically requested to be addressed in its responses to the NOP include the following issues that do not appear to be adequately addressed in the Draft EIR/EIS:

- a. A primary source of flooding at the Fairgrounds is when the water surface elevation in the river channel rises above the elevation of the storm drain outlets, typically as a result of the river mouth being closed. The Draft EIR/EIS needs to document that the proposed project would result in water surface elevations that will not block the Fairgrounds storm drain outlets to the river channel.
- b. The District's NOP responses specifically requested that the EIR/EIS address the hydrology effects of the proposed project on the Stevens Creek drainage that traverses the north and west sides of the Racetrack backstretch (barn) area. Stevens Creek is an important local drainage that receives the majority of the watershed of the City of Solana Beach, and enters the San Dieguito River Channel at the railroad trestle. Any rise in the water surface elevation in the Stevens Creek channel has the potential to flood the Racetrack backstretch and upstream properties, endangering millions of dollars worth of capital facilities, as well as the lives of humans and horses who live and work in the Racetrack backstretch.

7. *Protection of Existing Sewer Main*

The District feels it is not appropriate to defer a determination of the potential impact of the project on the sewer main that crosses the river channel between the Fairgrounds and the City of Del Mar pump station. This conditional approach to the probable need to relocate the sewer main does not provide adequate public disclosure of the significant public health and safety impacts of a potential failure of this sewer line as a result of the increased flow velocities designed for the river channel and the maintenance dredging activities that will be needed to maintain the open river mouth inlet. Furthermore, the mitigation alternatives should be subject to appropriate environmental review. The District has long maintained that the sewer main should be relocated out of the river channel as part of the proposed project.

8. *Seasonal Tram Usage of Trail*

The District has indicated that one acceptable mitigation to offset the impacts of the proposed project on District parking and operations would be for the Coastal portion of the Trail from Horsepark to the Fairgrounds property to be designed to provide for

seasonal use by the District's pedestrian tram. The Draft EIR/EIS addresses this potential use. The District disagrees with the conclusion that such minimal use of the trail by the District's pedestrian tram would cause significant unmitigable impacts. Compatible joint use of the Trail by the District's tram for the three-week annual Del Mar Fair and a few days during the Race meet is certainly achievable by sensible management of the Trail.

For example, while the District and the JPA have not even begun to discuss the details of Trail management, it is the District's position that the Trail across the Fairgrounds west of I-5 should be closed to public use during the Fair, thus avoiding a myriad of possible conflicts between Trail usage and Fair traffic and parking. The District believes that Trail usage and tram usage on the remaining segment from I-5 to Horsepark can be managed to successfully achieve joint use during the relatively few days per year when the District believes tram usage would be very beneficial to reducing localized traffic congestion during the Fair and Races.

9. Construction Impacts

The District concurs with the Draft EIR/EIS mitigation measure that indicates that all construction activities to be located on District property will need to be coordinated with the District in advance of the beginning of construction. Similar to the preceding observations regarding the specific location of trail facilities, the District has previously discussed its willingness to cooperate with the JPA in finding an acceptable location for a construction staging area on the District's property, understanding the need for close proximity to the river channel. However, the Draft EIR/EIS is the first we have seen the proposed "Construction Staging Area" in the southeast corner of the driving range, which may not be acceptable for ongoing driving range operations.

The District is also concerned about the proposed desilting basin shown to occupy a major portion of the Surf & Turf driving range. Again, there is not enough information in the Draft EIR/EIS to understand the effects of this proposal on use of the driving range for parking during the Del Mar Fair, or on driving range operations. Elimination of this much area from parking use during the Fair would be an extreme hardship on Fair operations, and would cause a significant parking impact.

10. Future District Use of Villages Property Exchange Land

The District objects to the findings in the Draft EIR/EIS regarding the hypothetical impacts of the future, yet-to-be designed equestrian facilities at the Villages property. The discussions in the Draft EIR/EIS are purely speculative, and as such, are prejudicial to the future use and related environmental review that will be required for those improvements. Moreover, mitigation measures identified in the Draft EIR/EIS may limit the usefulness of the exchange property to the District. Such limitations may prevent the District from accepting the Villages property in exchange for the desired Horsepark property for the Trail, thereby rendering the proposed Trail alignment across Horsepark infeasible. The Draft EIR/EIS clearly indicates that the District's future use of the

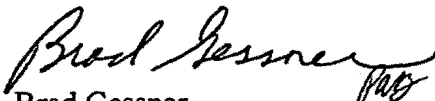
Villages property will be subject to subsequent environmental review. Therefore, the District requests that all of the speculative and prejudicial discussion of possible impacts and mitigation be removed from the Final EIR/EIS.

The Draft EIR/EIS raises another issue relative to the proposed land exchange at the Villages property. Page 4.1-13 indicates "If disposal is not permitted on this site, the property would not be transferred to the JPA and no District uses would occur in association with this project". It is important to note that the District's consideration of a Trail alignment across the Horsepark property is conditional upon the District receiving the Villages property to offset the loss of a significant portion of the Horsepark property to the Trail.

Thank you for considering the District's comments on the Draft EIR/EIS in your preparation of the Final EIR/EIS. The District is a responsible agency as defined by Section 15381 of the State CEQA Guidelines, and will be unable to use this EIR for its consideration of the respective implementation activities that require District participation without a CEQA document that adequately addresses the environmental issues that affect District property and operations. The District looks forward to receiving the revised analysis in sufficient time to conduct a reasonable assessment of the JPA's responses to these comments.

Sincerely yours,

22ND DISTRICT AGRICULTURAL ASSOCIATION


Brad Gessner
Deputy General Manager



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22ND DISTRICT AGRICULTURAL ASSOCIATION
State of California

MEMORANDUM

TO: Susan Hansch, California Coastal Commission *via fax #(415)904-5400*

FROM: Brad Gessner, Deputy General Manager *(BG)*

DATE: April 26, 1999

Thank you for sending a copy of the "Status Report on SONGS Mitigation Program." I have reviewed it and offer the following comments and clarification.

1. Our Board President, General Manager and myself met with the JPA's wetland committee on Monday, April 19, 1999 to discuss our "Surf & Turf development." It was not our Master Plan Committee of our Board that has been participating in the negotiations on the wetlands enhancement project. We only briefly discussed this issue.
2. Inlet - Proposals Being Considered
Options 1 and 2 are not being considered by the District. The District has no desire to sell any portion of the inlet property. We are interested in an agreement with SCE that would require them to satisfy our least tern nesting requirement in return for an easement on this property. If this arrangement can't be worked out, we plan to pursue building the least tern nesting site on this property as originally planned. *
3. Trails - Proposals Being Considered
The District is not considering purchasing a portion of the Villages property to replace lost equestrian uses at Horsepark. The "Conceptual Deal Points" negotiated between the three entities would allow SCE to build a berm running east/west, and utilize Horsepark as a convenient disposal site, allows the JPA to install the trail at the top of the berm, in return the District would be deeded 15 to 20 acres of the Villages property.
4. Berm - Proposal Being Considered
I would add that the east/west berm at Horsepark makes the JPA trail more viable as it is segregated from other equestrian activities at Horsepark which alleviates security and quarantine issues.

Also, it is our belief that the City of San Diego cannot widen the El Camino bridge without protecting the Horsepark from the increased potential for flooding.

I hope this information helps clarify the issues. Let us know if you have any questions.

cc: Trish Butler



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22ND DISTRICT AGRICULTURAL ASSOCIATION
State of California

March 22, 1999

Jody Loeffler
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Jody,

It was a pleasure talking with you recently and I look forward to seeing you and your associates on Monday, March 29 here at the Fairgrounds.

As promised I am sending you copies of information that is pertinent to this project and hopefully will prove beneficial in giving you some background on what the District's position has been all along.

Please review the letter of October 1, 1996 to then Coastal Commission Chairman, Louis Calcagno, and the commissioners, in addition to Susan Hanch. This letter summarizes what the District's concerns were and our position has been for the past 2 - 3 years.

The District purchased the land at the San Dieguito rivermouth in 1988 for \$235,000 for the primary purpose of being able to keep the rivermouth open to avoid flooding on the Fairgrounds, in addition to providing land needed to satisfy the least tern nesting requirement. The District understands that the California Coastal Commission is considering allocating 30 acres of wetland credits to Southern California Edison for keeping this rivermouth open. We feel the District should receive some of these credits as we own the property and are keeping it open currently. ✕

As our correspondence shows, the District is concerned that the design proposed by Southern California Edison will also exacerbate flooding at our Horsepark property and will undermine the integrity of our main sewer line that lies across the San Dieguito river.

I look forward to discussing all of this with you on Monday.

Sincerely,

Brad Gessner
Deputy General Manager

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Attachment to
May 18, 2001 Letter



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22ND DISTRICT AGRICULTURAL ASSOCIATION
State of California

October 1, 1996

Honorable Chairman Louis Calcagno and Commissioners
California Coastal Commission
Attn: Susan Hansch
Energy Department
45 Fremont Street, Suite 2000
San Francisco, CA 94105

SUBJECT: SAN DIEGUITO WETLANDS RESTORATION PROJECT
(CDP #6-81-330 Amendment), October 8, 1996 Meeting

Dear Chairman Calcagno and Commissioners:

The State of California, 22nd District Agricultural Association (District), owns and operates the Del Mar Fairgrounds and Racetrack, located adjacent to the San Dieguito Lagoon, at the mouth of the San Dieguito River. The District has had the recent opportunity to review the proposed Conceptual Wetlands Restoration Plan as proposed by Edison for the Commission's approval at your October 8, 1996 meeting.

The District notes that the proposed Conceptual Wetlands Restoration Plan identifies use of certain District property to accomplish the contemplated restoration, and that the proposed plan has the potential to substantially affect District property and its operations, namely the Del Mar Fairgrounds and Racetrack; which serve over three million visitors annually. The District respectfully requests that the Commission consider the following concerns of the District, in its review and consideration of the proposed Conceptual Wetlands Restoration Plan submitted by Edison.

- ★
1. **Least Tern Nesting Site.** The District has a pending coastal development permit application (CDP App. #6-92-9) for construction of a least tern nesting site on its property at the San Dieguito River mouth, which the District purchased for such purpose in 1991. Establishment of a 16-acre least tern nesting site within the San Dieguito Lagoon is a condition of the District's CDP #6-84-525, with the District responsible for 7 acres, and the California Department of Fish & Game responsible for 9 acres. The District has agreed to

hold its permit application in abeyance at the request of Commission staff, understanding that the Commission approved the San Dieguito River Valley for Edison's SONGS permit compliance in 1991 (see attached status report to the Commission, dated May 19, 1993). The District has cooperated with Edison and the JPA, with the consistent understanding among all three parties that the District's needs for establishment of a least tern nesting site would be included in the plan and accomplished within the planning area. The Edison plan proposes to maintain an open rivermouth in a manner that will require use of the District's rivermouth property, and will preclude establishment of a least tern nesting site at the rivermouth. The District is concerned that establishment of an acceptable least tern nesting site is not specifically identified in the plan submitted to the Commission as part of this amendment application.

2. **Disposal of Dredge Material on District Property.** The District's unpaved East Parking Lot and driving range adjacent to the San Dieguito River have long been identified as the preferred location for disposal of dredge material from lagoon/wetlands restoration activities, dating from the original approved "San Dieguito Lagoon Resource Enhancement Plan" (1979). The District has expressed a willingness to consider accepting dredge spoil material, provided the following conditions are met:
 - a. the material is tested and found to be free of hazardous materials contamination;
 - b. the fill material is of structural quality; and,
 - c. the fill material can be placed on the District's property in a manner and configuration that meets the District's current operational and long-term planning needs.
3. **Wetlands Restoration Credit.** The District expects to work with the San Dieguito River Park JPA and the Coastal Commission to establish appropriate regulatory credit for wetlands restoration opportunities on its properties within the San Dieguito Wetlands Restoration Project.
4. **Flooding Liability on District Property.** The District understands one of the primary habitat enhancement goals of the proposed plan is to maintain an open

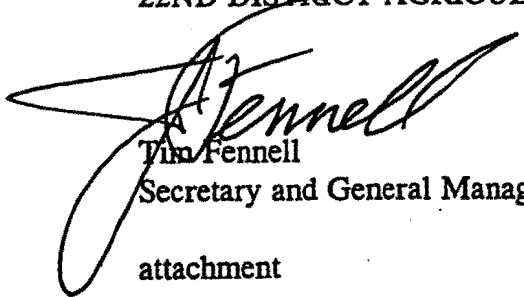
rivermouth, which should have the beneficial, coincidental effect of improving flood protection for properties adjacent to the floodway in the City of Del Mar and the Fairgrounds/Racetrack. The District remains concerned that the plan be fully and carefully reviewed for its predicted effect on water surface elevations within the San Dieguito River channel and the tributary Stevens Creek channel. The District must be assured that the proposed plan will not exacerbate flooding potential at the Del Mar Fairgrounds and Racetrack.

5. **Protection of District Utilities.** The District notes that part of the conceptual plan proposal is to maintain the flow capacity in the San Dieguito River channel between the Jimmy Durante Bridge and the railroad trestle by means of regular, periodic dredging of the river channel. The District has consistently reminded Edison and the JPA that the District's main sewer trunk connection between the Fairgrounds/Racetrack and the City of Del Mar sewer system crosses the river channel at this location, and maintenance and protection of this vital utility will be critical consideration for the plan's implementation.

In summary, the District is not opposed to the conceptual plan for San Dieguito Lagoon Wetlands Restoration, as described in Edison's submittal for related amendments to its SONGS permit. We ask that the District's concerns be addressed in the specific planning and environmental review which will be undertaken prior to the plan's specific approval and implementation. The District looks forward to the opportunity to work with Edison, the JPA and the Commission to accomplish this most worthwhile effort to enhance the wetlands resources of the lower San Dieguito River Valley in a manner that benefits and protects all participants.

Sincerely,

22ND DISTRICT AGRICULTURAL ASSOCIATION


Tim Fennell
Secretary and General Manager

attachment

cc: Diane Coombs, Exec. Director, San Dieguito River Park JPA

cc: *Irish B*
Jim Pile
Brad
Bill
Blaine B

Brad



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22ND DISTRICT AGRICULTURAL ASSOCIATION
State of California

March 23, 1999

Mr. Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

SUBJECT: 22ND DISTRICT SUPPORT OF SAN DIEGUITO WETLANDS
RESTORATION PROJECT

Dear Mr. Douglas:

It is our understanding that during the February 1999 Commission staff's status report on the San Dieguito Wetlands Restoration Project, the Commission was given the impression that the 22nd District was a source of delay to the progress of the project. In view of our long-standing participation in the planning process, and the fact that our Board of Directors was the first participant to formally approve the conceptual agreement between the San Dieguito Joint Powers Authority (JPA) and Southern California Edison, we are surprised and disappointed that the 22nd District was characterized as a source of delay in the JPA's and Edison's progress on the project.

Our staff has been in regular attendance at committee and working group meetings throughout the planning process, since the inception of the SONGS wetlands mitigation project at San Dieguito. We have previously communicated the 22nd District's support for the San Dieguito Wetlands Restoration Project to the Commission on a number of occasions. Our last communication to the Commission was at the April 9, 1997 hearing in Huntington Beach when the Commission reaffirmed the selection of San Dieguito as the appropriate location for the SONGS mitigation, and gave its conceptual approval to the San Dieguito Wetlands Restoration plan. A copy of our Board's resolution letter of support, which was delivered to the Commission at your April 9, 1997 meeting, is attached for your reference.

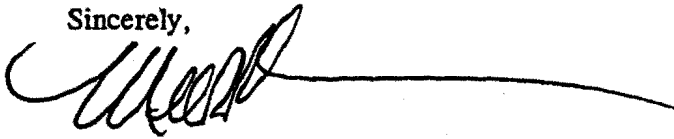
Prior to the Commission's November 1998 meeting, both the JPA and Edison felt it was important for the three major players in the San Dieguito Wetlands Restoration Project to be able to demonstrate our mutual cooperation and commitment to specific elements of the Project. To that end, members of our respective boards and staff negotiated a three-party conceptual agreement regarding the main points requiring future agreement among the parties. The 22nd District Board of Directors gave its conceptual approval of the agreement developed by the joint agency subcommittee at its November 3, 1998 meeting. However, subsequent to our Board's approval of the three-party conceptual agreement, we understand the JPA's Board of Directors refused to approve the agreement and directed their staff to "negotiate" further.

*Attachment to
May 18, 2001 Letter*

Mr. Peter Douglas, Executive Director
California Coastal Commission
March 23, 1999
Page 2

The 22nd District has consistently identified its issues and concerns regarding the potential impacts of the Wetlands Restoration Project on 22nd District property and operations at every meeting we have attended and in all of our previous communications to the Commission and the JPA over the past several years. We remain committed to working with Edison, the JPA and the Commission toward the ultimate success of this valuable coastal resources restoration project.

Sincerely,



Michael J. Padilla, President
22nd DAA Board of Directors

MP:BG:sp
032399
coastal

enclosure

cc: Sara Wan, Chair and members of the California Coastal Commission
Dick Bobertz, Executive Director, San Dieguito JPA
Frank Melone, Southern California Edison
Timothy J. Fennell, CEO, 22nd DAA



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22ND DISTRICT AGRICULTURAL ASSOCIATION
State of California

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE STATE OF CALIFORNIA 22ND DISTRICT AGRICULTURAL ASSOCIATION EXPRESSING SUPPORT FOR A 150 ACRE WETLAND RESTORATION PROJECT BY SOUTHERN CALIFORNIA EDISON AT THE SAN DIEGUITO LAGOON

WHEREAS, The San Dieguito River Valley Regional Open Space Park Joint Powers Authority ("JPA") goals, objectives and plans endorse the restoration of the San Dieguito Lagoon and associated wetlands to create functional ecological and hydrological units that provide for tidal flushing, open water, wetlands and other habitat; and,

WHEREAS, The JPA supported the selection of San Dieguito and the Coastal Commission approved the site in 1992 for a 150-acre wetland creation and restoration project to be implemented in the western end of the river valley within the park focused planning area and funded by Southern California Edison ("SCE") and its owner/partners in the San Onofre Nuclear Generating Station ("SONGS") in partial satisfaction of California Coastal Commission required mitigation for Units 2 and 3 impacts to the fishery, all as set forth in more detail in the 1991 Coastal Permit issued for the project; and,

WHEREAS, The San Dieguito Lagoon has long been recognized as an environmental habitat and wetland asset on a local, regional, and state wide basis; and,

WHEREAS, Restoration of the lagoon and wetland areas is a key goal of the JPA, supported and endorsed by their member agencies; and,

WHEREAS, The JPA, the California Coastal Conservancy and the San Dieguito River Valley Land Conservancy have funded studies by independent consultants and a proposed plan has been prepared which demonstrates that the entire 150-acre project can be implemented at San Dieguito and which reduces and addresses the incremental scour and liability problems; and,

WHEREAS, While it is recognized that a final decision as to the precise design of the Wetlands Restoration Project cannot be made at this time and no commitment to any specific project can be made until the CEQA and NEPA processes are completed (with the JPA as lead agency under CEQA and the U.S. Fish & Wildlife Service as lead agency under NEPA); and,

WHEREAS, The Board of Directors of the San Dieguito River Valley JPA at its meeting on March 7, 1997 adopted a resolution of support for the 1997 Wetlands Restoration Design - Alternative B, prepared by their consultants as their preferred project for the CEQA/NEPA review; and,

WHEREAS, The JPA's preferred project for the Wetlands Restoration Project includes the proposed use of certain real property owned by the 22nd District, and implementation of the proposed Wetlands Restoration Project has the potential to materially and substantially affect the 22nd District's property and its operations.

NOW THEREFORE BE IT HEREBY RESOLVED AS FOLLOWS:

The Board of Directors of the State of California 22nd District Agricultural Association (22nd District) supports in concept the restoration of the San Dieguito Lagoon and associated wetlands to be undertaken by the JPA and Southern California Edison and its SONGS partners, subject to satisfactory resolution of the 22nd District's following concerns during the specific planning and environmental review process:

* 1. Least Tern Nesting Site. Establishment of a 16 acre least tern nesting site within the San Dieguito Lagoon is a condition of the 22nd District's CDP #6-84-525, with the 22nd District responsible for 7 acres, and the California Department of Fish & Game responsible for 9 acres. The 22nd District has a pending coastal development permit application (CDP App. #6-92-9) for construction of a least tern nesting site on its property at the San Dieguito River mouth, which the 22nd District purchased for such purpose in 1991. The SCE plan proposes to maintain an open rivermouth in a manner that will require use of the 22nd District's rivermouth property, and will preclude establishment of a least tern nesting site at the rivermouth. At the request of Coastal commission staff, the 22nd District has agreed to hold its

permit application in abeyance at the request of Commission staff, understanding that the Commission approved the San Dieguito River Valley for SCE's SONGS permit compliance in 1991.

The 22nd District has previously expressed its willingness to cooperate with SCE and the JPA, with the consistent understanding among all three parties that the 22nd District's needs for establishment of a least tern nesting site would be included in the plan and accomplished within the planning area. The 22nd District will require that the final Wetlands Restoration Project plans provide for an acceptable location and construction of a least tern nesting site in a manner that will satisfy the relevant condition of the 22nd District's CDP #6-84-525.

2. **Disposal of Dredge Material on 22nd District Property.** The 22nd District's unpaved East Parking Lot and driving range adjacent to the San Dieguito River have long been identified as the preferred location for disposal of dredge material from lagoon/wetlands restoration activities, dating from the original approved "San Dieguito Lagoon Resource Enhancement Plan" (1979). The 22nd District has expressed a willingness to cooperate with the JPA and SCE to further the goals of the Wetland Restoration Project by accepting dredge spoil material, provided the following conditions are met:

- a. the material is tested and found to free of hazardous materials contamination;
- b. the fill material is of structural quality; and,
- c. the fill material can be placed on the 22nd District's property in a manner and configuration that meets the 22nd District's current operational and long term planning needs.

3. **Wetlands Restoration Credit.** The 22nd District expects to work with the JPA and the Coastal Commission to establish appropriate regulatory credit for the 22nd District for wetlands restoration accomplished on its properties within the San Dieguito Wetlands Restoration Project.

4. **Flooding Liability on 22nd District Property.** The 22nd District understands one of the primary habitat enhancement goals of the proposed plan is to maintain an open rivermouth, which should have the beneficial, coincidental effect of improving flood protection for properties adjacent to the

floodway in the City of Del Mar and the Fairgrounds/Racetrack. The 22nd District remains concerned that the plan be fully and carefully reviewed for its predicted effect on water surface elevations, scour of the river channel and banks, and other flood-related characteristics within the San Dieguito River channel and the tributary Stevens Creek channel. The 22nd District must be assured that the proposed plan will not exacerbate flooding potential at the Del Mar Fairgrounds and Racetrack.

5. **Protection of 22nd District Utilities.** The 22nd District notes that part of the conceptual plan proposal is to maintain the flow capacity in the San Dieguito River channel between the Jimmy Durante Bridge and the railroad trestle by means of regular, periodic dredging of the river channel. The 22nd District has consistently indicated to SCE and the JPA that the 22nd District's main sewer trunk connection between the Fairgrounds/Racetrack and the City of Del Mar sewer system crosses the river channel at this location, and maintenance and protection of this vital utility will be a critical consideration for the plan's implementation. The 22nd District will require that implementation of the Wetlands Restoration Project maintain the sewer connection throughout construction, and replace the facility in a manner acceptable to the City of Del Mar and the 22nd District.

Passed and Adopted this 1st day of April, 1997.



Louis Wolfsheimer, Chair



ATTEST: Timothy J. Fennell, Secretary Manager



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22ND DISTRICT AGRICULTURAL ASSOCIATION
State of California

December 10, 1999

Mr. C.F. Raysbrook
California Department of Fish & Game
4949 Viewridge
San Diego, CA 92123

Mr. Ken S. Berg
U.S. Fish & Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

SUBJECT: RESOLUTION OF COASTAL PERMIT CONDITION COMPLIANCE FOR
LEAST TERN NESTING SITE IN SAN DIEGUITO LAGOON WETLANDS
RESTORATION PROJECT

Dear Mr. Raysbrook and Mr. Berg:

Our Board President, Robin Parsky, has forwarded to me your letter of November 19, 1999 regarding the USFWS and CDFG interest in facilitating the final resolution of the 22nd District's coastal permit condition compliance to provide a least tern nesting location in the San Dieguito Lagoon and has asked me to respond. Your letter correctly summarizes the current status of the 22nd District placing its long-time efforts to comply with this coastal development permit condition on hold, at the request of the California Coastal Commission, while the San Dieguito River Park JPA worked with the resources agencies and Southern California Edison (SCE) to develop the San Dieguito Lagoon Wetlands Restoration project. *

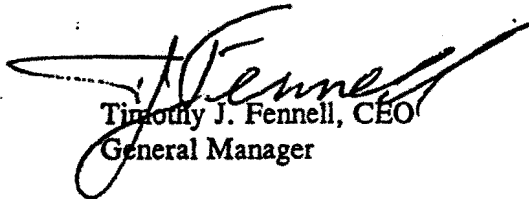
The 22nd District is encouraged that the USFWS and CDFG are offering to actively facilitate the resolution of the 22nd District's least tern nesting site requirement. Your suggestion of entering into a memorandum of agreement (MOA) sounds productive, provided the appropriate entities are all parties to the agreement. It seems that the San Dieguito River Park JPA and the California Coastal Commission should also be parties to this agreement, in addition to Southern California Edison who would be constructing the nesting site. If the preferred location for the least tern nesting site(s) is property owned by the JPA, they should be a party to the MOA as the property owner and primary participant in the overall restoration program. The Coastal Commission has previously insisted that they have approval authority over any agreement that replaces the 1985 MOA between the 22nd District and the CDFG, which was incorporated into the original coastal development permit that required the least tern nesting site as a permit condition (CDP No. 6-84-525). Lastly, to the extent that SCE may have involvement in the construction of the nesting site(s), they should be a party to the MOA as well. *

Mr. C.F. Raysbrook/ California Department of Fish & Game
Mr. Ken S. Berg/U.S. Fish & Wildlife Service
December 10, 1999
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Please be aware that our Deputy General Manager, Brad Gessner and the District's Land Planner, Trish Butler are the authorized negotiators for the District on this project. Negotiations over the past three years have resulted in a tentative agreement between the JPA, SCE and the District. The plan is to resume discussions once the EIR/EIS is completed with hopes of finalizing an agreement. Any agreement would be subject to review and approval by our Deputy Attorney General, the Department of General Services, and the 22nd DAA Board of Directors.

Thank you for your recognition that the 22nd District has cooperated as an interested participant in the restoration planning efforts to date in the San Dieguito Lagoon Wetlands Restoration Project. We look forward to a positive resolution of the outstanding least tern nesting site issue. Please contact Mr. Brad Gessner at (858) 792-4202 to initiate further discussions on this matter.

Sincerely yours,



Timothy J. Fennell, CEO
General Manager

TJF:BG:TB:sp
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USFWSltr

cc: 22nd DAA Board of Directors
Dick Bobertz, San Dieguito River Park JPA
Ellen Lirley, California Coastal Commission
Curtis L. Fossum, State Lands Commission



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22ND DISTRICT AGRICULTURAL ASSOCIATION
State of California

April 28, 1998

Frank Melone
Southern California Edison
P.O. Box 800
Rosemead, CA 91770

Dear Frank,

Thank you for your prompt response to the concerns I raised after receiving your initial offer of April 7, 1998. I understand that you considered that letter a starting point for negotiations, but I must reiterate how surprised I was by its content.

Our General Manager had informed our Board of Directors of the situation after we met in late March and after receiving your first letter of April 7. Prior to our April 14 Board meeting I reviewed your latest proposal with our Board President, a member of our Board's Master Plan subcommittee, and our General Manager, in addition to briefing the full Board during the meeting. Although several members expressed some concerns with the negotiations, in general I believe they were encouraged by your latest correspondence.

I would like to provide you with the following guidance regarding the District's needs and requirements with respect to your project proposal.

1. **Disposal of Dredge Material**

We would like the District's property to be identified as the preferred disposal location for dredge material. The District property disposal locations, in order of priority, shall include (1) Surf & Turf property; (2) the District's main parking lot; (3) portions of Horsepark; and, 4) the western "Carnival Lot". Where the fill material would be located on portions of the property that are currently paved, SCE would need to re-pave the lots and install necessary drainage. SCE will place said material on the identified District property at its sole costs and expense. As we have indicated in our previous correspondence on this matter, the dredge material must first be determined to be clean (i.e. containing no hazardous materials) and of structural quality.

Regarding obtaining the necessary permits and approvals to place the dredge material on District property, the District views this activity as integral to the larger proposed wetlands restoration project, and feels all necessary permits should be obtained by SCE and/or the JPA as part of the total permit package.

★ 2. **Least Tern Nesting Site**

Until we received your April 7, 1998 correspondence, the District had the clear understanding from both SCE and the JPA that our river mouth property would be required to implement the proposed wetlands restoration project, and at the request of the Coastal Commission, had agreed to hold in abeyance our pending coastal permit

* application for the least tern nesting site at the river mouth. We had further understood that the proposed wetlands restoration project would be designed to provide the required least tern nesting site acreage, and that the nesting sites(s) would be constructed as part of the larger project. The District had understood that its allowance of the use of its river mouth property for the wetlands restoration project would be the *quid pro quo* for the JPA/SCE project providing the replacement least tern nesting sites(s). This is a critical issue for the District, and the District is looking for a positive commitment from SCE and/or the JPA that the least tern nesting site acreage required by the District's 1989 coastal development permit will in fact be constructed and maintained as part of the larger wetlands restoration project.

3. **Protection of District Utilities**

Your letter also mentions that the proposed dredging will not extend upstream from the river mouth to the point where it would affect the District's main pipeline connection to the City of Del Mar sewer system. An independent technical review of the hydrology analysis would address this issue, which remains of grave concern to the District. Unless proven otherwise, the District will require SCE to relocate the sewer line from the river bottom to a safe and reliable location. Our preliminary discussions with the City of Del Mar indicate the Jimmy Durante Bridge would be the desirable location for the relocated sewer line.

As you know, we had previously received indications from you that SCE was very receptive to relocating this sewer line to the Jimmy Durante Bridge, and were surprised that you had changed your position.

4. **Review of Hydrology/Flood Impact Analysis**

The District remains concerned about the hydrology analysis, including the assumptions of the flooding evaluation as it would affect both Horsepark and the main Fairgrounds. We are not convinced that our concerns and questions were addressed by the "third party" peer review conducted for the Coastal Commission because the District was never contacted by the parties who conducted that review. The District will require an independent technical review of the reports you forwarded me. In our conversations with representatives of the North County Transit District (NCTD), we understand that they also feel they need an independent technical review of the hydrology studies to address their concerns. This review could address both of our agencies' concerns. Since neither of our agencies possesses the required technical expertise in-house, we feel that SCE should fund this independent review.

5. **Berm at Horsepark**

As I have previously indicated, the District will not allow construction of the previously proposed north-south berm along the western boundary of Horsepark because it would seriously impact current operations in addition to potentially exacerbating flood impacts. In reviewing how an alternative berm along the southern boundary of Horsepark might affect the District's programs at Horsepark, the District now has serious concerns regarding whether a berm along the southern side of the property would be acceptable. We would like to accommodate this berm as it could provide an excellent trail connection

Frank Melone
Southern California Edison
April 28, 1998
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in addition to protecting the property from some flood conditions. However, it appears the width proposed would seriously impact our operations. We are interested in looking into the feasibility of constructing this berm south of our current operations yet still on our property.

6. **Wetlands Mitigation Credits**

As we have indicated many times before, the District is interested in receiving wetland mitigation credits from this project. We felt that providing a long-term lease to SCE for our river mouth property in return for some credits was reasonable. We understand SCE will be receiving a substantial credit for keeping the river mouth open, a task the District has been doing since we purchased the property.

In addition, the District purchased approximately 8.1 acres of property just east of I-5 for the purpose of utilizing it for mitigation needs in future years. Although we are not interested in funding any portion of enhancing this property at this time, we would entertain any offer SCE would make for purchase of or to provide wetlands mitigation credits to the District in exchange for its use.

Positive resolution of these issues will be a requirement of the District in allowing SCE to use our property at the river mouth, as well as other areas of District property for the project. The need for resolution of these issues is consistent with the correspondence the District has submitted to SCE, the JPA and the California Coastal Commission throughout the District's participation in the planning process over the past several years. I look forward to our continuing discussions on these matters and sincerely hope we can come to an agreement.

Sincerely,



Brad Gessner
Deputy General Manager

BG:sp
042998
melone2

cc: Timothy J. Fennell, General Manager, 22nd DAA
Bob Vice, Chair-Master Plan Committee
Patricia Butler, BRG Consulting, Inc.
Diane Coombs, San Dieguito River Park JPA



22nd D.A.A.

22ND DISTRICT AGRICULTURAL ASSOCIATION
State of California

May 19, 1993

FILE COPY

Ms. Ellen Lirley
California Coastal Commission
San Diego Coast District Office
3111 Camino del Rio North, Suite 200
San Diego, CA 92108

SUBJECT: STATUS REPORT, SETTLEMENT AGREEMENT
RE: VIOLATION V-6-90-9

Dear Ms. Lirley:

As we have discussed, implementation of the above referenced settlement agreement has been complicated by the initiation of the Southern California Edison SONGS mitigation project in the lower San Dieguito River Valley, and the coincidence of a federal violation notice for grading in the South parking lot. When I met with your attorney Jamee Patterson on August 8, 1990 to discuss resolution of the Coastal Commission violation notice, Ms. Patterson agreed it would be prudent for the 22nd District to first resolve the Corps of Engineers issue as it affected the South parking lot, before we proceeded with final resolution of the related Commission violation. Nevertheless, we structured a settlement agreement with certain performance dates that are now passed as result of delays associated with the overlapping jurisdictional requirements of the Corps of Engineers and the SCE SONGS mitigation project, both of which have materially affected our ability to move forward on completion of the terms of the settlement agreement.

I have kept you informed on the progress of the Corps of Engineers resolution through copies of all correspondence with the Corps on that matter. The Corps' April 28, 1993 Restoration Order reflects the terms we have negotiated and agreed upon with the Corps of Engineers. You have received a copy of that order and you confirmed for me yesterday that implementation of the required wetlands restoration work on the District's property will require a coastal development permit.

With reference to the related events to date, I would like to provide the following status report regarding implementation

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of the October 11, 1991 settlement agreement, according to the action items identified in the agreement.

Progress to Date

1. Item 1c. required the District to submit an alternative least tern nesting site analysis by November 15, 1991, to be distributed among the various resources agencies. The report outline was submitted to the Commission on 11/15/91, in compliance with the settlement agreement schedule. However, the known interests of the San Dieguito River Park JPA and the City of Del Mar in opposition to the preferred alternative site selected by the California Department of Fish & Game, as identified in the Second MOU between the District and CDFG, dated June 20, 1990, delayed our completion of the alternatives sites analysis report until late-March 1992, when it was submitted to the Commission and distributed to the agencies.
2. Item 1d required the District to submit a coastal development permit for the preferred alternative nesting site by January 15, 1992, in order to provide for construction of the nesting site in time for the 1992 nesting season. The 22nd district submitted the required coastal development permit application on January 15, 1992. Said permit application was filed as CDP App. # 6-92-9.
3. Item 1e required the 22nd District to concurrently submit an application for an amendment to CDP # 6-84-525 to address the extent of the conservation easement to be applied on a portion of the District's South parking lot, and to designate the permanent least tern nesting site (CDP App. # 6-92-9). Said amendment application was submitted by the District on March 12, 1992.
4. It was agreed with Ms. Jamee Patterson that the extent of the conservation easement to be applied to a portion of the District's South parking lot could not be determined until we resolved the outstanding federal violation issue with the Corps of Engineers. Moreover, we understood that the SCE SONGS mitigation/wetlands

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restoration project was looking to our preferred permanent least tern nesting site as a sand trap for the expanded lagoon restoration project, and considered the nesting site designation as extremely problematic for the larger, overall wetlands restoration project. Consequently, the Commission staff advised the District that the April 1992 Commission hearing on the nesting site application 6-92-9 and the amendment application 6-84-525A would be postponed.

Current Status and Issues

The applications for the rivermouth least tern nesting site and the amendment to CDP 6-84-525 have not been rescheduled for hearing by the Commission. Settlement on a permanent least tern nesting site to conclude the 22nd District's compliance with CDP 6-84-525 has been seriously delayed by what appears to be conflicting directives by the Commission.

1. Least Tern Nesting Site. The Commission required the 22nd District to identify, acquire and construct a least tern nesting site within the San Dieguito Lagoon as a condition of CDP 6-84-525. The Memorandum of Understanding (MOU) approved by the Commission to implement this condition required the 22nd District to acquire 7 acres, and the Calif. Dept. of Fish & Game was required to acquire 9 acres, for a total 16 acre nesting site. The District complied with all required actions and deadlines in the original MOU, resulting in the second MOU dated June 20, 1990, wherein the CDFG designated the rivermouth property as the preferred nesting site location. Unfortunately, with the passage of time, the Commission's selection of the San Dieguito River Valley as the SCE SONGS mitigation location has effectively prevented the 22nd District, and the Commission, from moving forward on timely establishment of the least tern nesting site.

The 22nd District understands the need and importance of comprehensive resources planning for implementation of the larger SONGS mitigation wetlands restoration project. The 22nd District further understands the concern that a single, smaller habitat enhancement project constructed within the San Dieguito wetlands restoration project area could

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constrain implementation of the larger, comprehensive wetlands restoration project. However, the 22nd District feels it has been unreasonably delayed in being able to conclude its responsibilities under CDP 6-84-525 as a result of need to wait for the larger wetlands restoration project.

The District is further concerned by the fiscal implications of the delay and now conflicting demands on its rivermouth property. The 22nd District specifically purchased the rivermouth property with the intention of using a portion of it to satisfy the Commission mandate for establishment of a new least tern nesting site within the San Dieguito Lagoon. The District consulted with CDFG prior to its acquisition to determine if CDFG would consider the property a reasonable alternative site. The District was tasked to work with CDFG in the implementation of the least tern nesting site condition, as evidenced by the District and CDFG being the parties to the Commission-approved MOU. When CDFG staff indicated the property was acceptable for the purpose of meeting the requirements of the MOU (i.e., CDP 6-84-525), the District proceeded with the acquisition. The District did not anticipate subsequent "second guessing" of CDFG's direction in this matter.

Request for Resolution. The 22nd District hereby requests the Commission's direction on how the above described conflicting issues may be resolved to allow the District to conclude its responsibilities under Special Condition 1 of CDP 6-84-525. If it is deemed that the District's rivermouth property is needed for different uses to facilitate the larger wetlands restoration project, the District will be willing to contribute the property for that purpose, providing that action absolves the District from any further responsibilities under CDP 6-84-525. In other words, the dedication of the currently proposed least tern nesting site location for alternative habitat enhancement purposes will fulfill and complete the District's liabilities under CDP 6-84-525 and the related, Commission-mandated MOU with the California Department of Fish & Game.

2. South Parking Lot Conservation Easement. The MOU and Second MOU for implementation of Special Condition 1 of CDP 6-84-525 required the 22nd District to establish a

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conservation easement on the wetlands portions of the South parking lot, subsequent to removal of the interim nesting site on the southern 4 acres of the parking lot. The amendment application 6-84-525A was to provide for the delineation of the area of the easement. Now that the District has reached a resolution with the Corps of Engineers on the federal violation issue, the District is in a position to delineate the conservation easement, and is in fact also required to dedicate such an easement as a requirement of the federal Restoration Order.

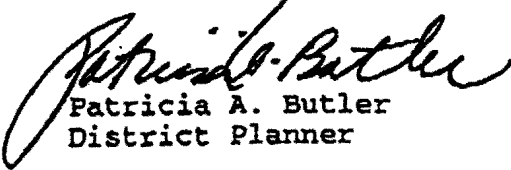
Since we have agreed that implementation of the federal Restoration Order will require a coastal development permit, we could use that application to transmit the conservation easement on portions of the South parking lot for Commission approval. The District expects to submit the permit application for the Restoration Order improvements as soon as the Corps of Engineers approves the revegetation plan, which will be submitted to the Corps by June 1, 1993.

Summary

This concludes our status report on the events and issues to date that have affected the 22nd District's ability to conclude the various issues associated with V-6-90-9. In summary, I believe we need Commission intervention to resolve the apparently conflicting demands on the property the 22nd District purchased for the purpose of fulfilling its obligations regarding establishment of a new least tern nesting site under CDP 6-84-525. Secondly, the District proposes that its submittal of the permit application for the wetlands restoration project required by the federal Restoration Order will include the conservation easement identified as a requirement in the CDP 6-84-525 documents. Moreover, that permit could in fact resolve the majority of the issues identified in V-6-90-9.

Yours truly,

22ND DISTRICT AGRICULTURAL ASSOCIATION


Patricia A. Butler
District Planner