

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
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Th16d

**6-20-0160 (California Department of Transportation and San Diego
Association of Governments)**

November 5, 2020

CORRESPONDENCE

DEPARTMENT OF TRANSPORTATION

DISTRICT 11

4050 TAYLOR STREET, MS-242

SAN DIEGO, CA 92110

PHONE (619) 688-6668

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*Making Conservation
a California Way of Life.*

10/28/20

Ms. Kanani Leslie
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Dear Ms. Leslie

The San Diego Association of Governments (SANDAG) and the California Department of Transportation (Caltrans) have a pending Coastal Development Permit (CDP 6-20-0160) for the San Dieguito W19 Restoration Project. Coastal Commission staff have asked for clarification of the intent to complete 2.736 acres of salt marsh restoration required by CDP 6-04-088-A10 by the San Dieguito River Park Joint Powers Authority (JPA).

SANDAG and the JPA entered into an agreement (5001331) on October 15, 2009 that would allow SANDAG to obtain restoration rights on land the JPA owns west of El Camino Real and south of the San Dieguito River. Section VIII 2 of the agreement identifies the JPAs need to restore 2.736 acres of salt marsh along the edge of the San Dieguito River for impacts from the construction of the Coast to Crest Trail and freshwater treatment ponds. In a subsequent letter to the California Coastal Commission on August 17, 2011, SANDAG and the JPA requested an amendment to special condition 8 of CDP 6-04-088-A10 clarifying that the 2.736 acres of mitigation would be completed as part of a larger restoration project (San Dieguito Lagoon W-19) that SANDAG and the JPA were in the planning phases on. That CDP was amended in September 2011 allowing the mitigation to be part of the larger San Dieguito W19 Restoration Project. This amendment required that if this was not completed by December 31, 2016, the JPA had to implement mitigation at the Boudreau site. This backup mitigation plan was to complete the 2.736 acres of mitigation along the edge of the San Dieguito River in the same location as a portion of the W19 restoration project (Boudreau site). By the end of 2016 the draft Environmental Impact Report for the W19 restoration project was almost completed and trying to permit and implement a small restoration in the same area was not feasible.

It is the intent of SANDAG and Caltrans that the 2.736 acres of salt marsh mitigation required by the JPA for the Coast to Crest Trail and freshwater treatment ponds will be provided by the San Dieguito W19 Restoration Project. The 2.736 acres of salt marsh mitigation needed for the Coast to Crest trail will be deducted from the total salt marsh mitigation credits available. The total proposed creation/restoration of salt marsh wetlands on the W19 site is 59.3 acres. After the 3.8 acres of permanently impacted wetlands onsite is subtracted that leaves 55.5 acres of credit available for mitigation. Subsequently, when the 2.736 acres for the JPA mitigation is subtracted from the 55.5 acres of credit that leaves a total of 52.764 acres of salt marsh creation/restoration credits available for use in the I-5 North Coast Corridor covered under the

Ms. Kanani Leslie
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Public Works Plan/Transportation Enhancement Plan (PWP/TREP).

The inclusion of the 2.736 acres of mitigation for the JPA is identified in the Habitat Mitigation and Monitoring Plan for the San Dieguito W19 Restoration Project and the Environmental Impact Reports for the San Dieguito Lagoon W19 Project and the I-5 North Coast Corridor. If you have any questions please contact Sue Scatolini (Caltrans) or Kim Smith (SANDAG).

Sincerely,

A handwritten signature in black ink, appearing to read 'M Khatib'.

Mohamad Khatib
I-5 North Coast Corridor Project Manager

A handwritten signature in blue ink, appearing to read 'Kim Smith'.

Kim Smith
Authorized representative for Keith Greer, SANDAG

Enclosure

SANDAG and JPA Agreement 5001331

August 17, 2011 Letter from SANDAG and the JPA to the Coastal Commission

August 24, 2011 Staff Report for amendment 10 CDP 6-04-088-A10

**AGREEMENT REGARDING RESTORATION OF LAND WITHIN
THE SAN DIEGUITO RIVER VALLEY**

SANDAG CONTRACT #5001331

THIS AGREEMENT REGARDING RESTORATION OF LAND WITHIN THE SAN DIEGUITO RIVER VALLEY ("Agreement") is made this 15th day of October 2009, between The San Dieguito River Valley Regional Open Space Park Joint Powers Authority, a local government agency created by the County of San Diego and the Cities of Del Mar, Escondido, Poway, San Diego, and Solana Beach for the purpose of creating a greenway and natural open-space park system in the San Dieguito River Valley ("JPA"), and the San Diego Association of Governments, a legislatively-created regional government agency ("SANDAG"), hereafter collectively referred to as the Parties, with respect to the following facts:

RECITALS

WHEREAS, in April 2003, SANDAG's Board of Directors (SANDAG Board) adopted the 2030 Regional Transportation Plan (RTP) entitled "MOBILITY 2030, The Transportation Plan for the San Diego Region"; and

WHEREAS, the RTP includes a list of transportation network improvements and other transportation programs that are intended to improve the mobility of people and goods throughout the region; and

WHEREAS, the *TransNet* Extension Ordinance and Expenditure Plan (*TransNet* Extension Ordinance) was adopted by the SANDAG Board on May 28, 2004, and approved by the voters on November 2, 2004, to provide for continuation of the half-cent transportation sales tax for 40 years to relieve traffic congestion, improve safety, and match state/federal funds; and

WHEREAS, the *TransNet* Extension Ordinance included the establishment and implementation of an Environmental Mitigation Program (EMP), including 11 principles that further defined the major elements of the EMP; and

WHEREAS, the *TransNet* EMP is intended, in part, to provide for early large-scale acquisition and management of important habitat areas and to create a reliable approach for funding required mitigation for future transportation improvements, thereby enabling the purchase of habitat that may become more scarce in the future, reducing future costs and accelerating project delivery; and

WHEREAS, proactive mitigation of transportation projects would provide an opportunity to implement the *TransNet* EMP by providing opportunities for early large-scale conservation, permit streamlining, and certain cost savings; and

WHEREAS, on September 26, 2008, the SANDAG Board of Directors delegated authority to its Executive Director to secure mitigation property for regional transportation projects and local streets and roads as long as the purchase would be consistent with the Guidelines for Implementation of the *TransNet* EMP; and

WHEREAS, the Parties have identified property owned by the JPA that is located on the east side of Interstate 5 (I-5) in the San Dieguito River Valley, just south of Via de la Valle, consisting of approximately 100 acres, as more specifically described in Exhibit A, which is attached hereto and incorporated herein by this reference, that could be used to satisfy some of the mitigation requirements of regional transportation projects ("Mitigation Property"); and

WHEREAS, a technical report prepared by Nordby Biological Consultants (Nordby Report) has indicated that the Mitigation Property could be restored to inter-tidal wetlands and upland habitat; and

WHEREAS, the Nordby Report is preliminary, and no commitment to proceed with restoration of the Mitigation Property will be made by any Party, until after completion of environmental review in compliance with the California Environmental Quality Act (CEQA), and if a federal action is required, the National Environmental Policy Act (NEPA); and

WHEREAS, any restoration of the Mitigation Property would have to be designed and implemented in a manner that did not adversely impact the San Dieguito Wetlands Restoration Project being implemented by Southern California Edison (SCE); and would also require SCE's written consent because SCE has certain restoration rights in the Mitigation Property pursuant to a 1998 MOU between SCE and the JPA (1998 MOU) that would have to be respected; and

WHEREAS, the Mitigation Property is located within the Multiple Species Conservation Planning Area of the City of San Diego and identified as potential restoration area in the San Dieguito JPA's Park Master Plan; and

WHEREAS, consistent with the *TransNet* EMP Memorandum of Agreement signed on March 19, 2008, by SANDAG, Caltrans, and the Wildlife Agencies, and with the SANDAG Board of Directors' September 26, 2008, delegated authority, the Executive Director of SANDAG is authorized to execute this Agreement; and

WHEREAS, the California Department of Transportation ("Caltrans") has by way of a separate Cooperative Agreement, attached hereto as Exhibit B, reserved the right to use up to 20 acres of JPA and/or City of San Diego land within the San Dieguito River Valley as mitigation property for projects along the I-5 Transportation Corridor; and

WHEREAS, Caltrans and SANDAG are working cooperatively to acquire and develop mitigation for projects within the I-5 Transportation Corridor, including restoration of property within the San Dieguito River Valley, in a manner that is consistent with the Cooperative Agreement; and

WHEREAS, the Parties desire to enter into an agreement that establishes a process for the design, environmental review, consideration, and implementation of a restoration project on the Mitigation Property.

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein as a substantive part of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to California law, the Parties agree as follows:

I. SANDAG'S RESTORATION RIGHTS

The JPA hereby grants SANDAG the right to design a restoration project for the Mitigation Property that includes tidal wetlands and upland habitat (Restoration Project); the right to process the Restoration Project for approval by the JPA and all other agencies with jurisdiction over the project; and, if a Restoration Project is approved, the right to implement the Restoration Project for mitigation credits, and the right to the mitigation credits (these rights are collectively referred to as the "Restoration Rights"). The Restoration Rights are subject to the following terms and conditions:

1. SANDAG's Restoration Rights shall commence on the date this Agreement is signed by all Parties and shall continue for a period of seven (7) years or until such time as the JPA approves a Restoration Project, whichever occurs first.
2. If a Restoration Project is approved by the JPA, the terms and conditions of SANDAG's future Restoration Rights shall be specified in the approval and/or separate agreement between SANDAG and the JPA. If after the passage of seven years from the signing of this agreement the JPA has not approved a Restoration Project, either because one or more proposals were denied or no proposal was submitted for approval, then this Agreement shall automatically terminate and be of no further force or effect.
3. SANDAG, its agents, and consultants are granted access to the Mitigation Property for the purposes of development of a restoration plan; including but not limited to access to obtain elevations, groundwater depths, hazardous material assessments, and biological and cultural resource surveys.
4. Any Restoration Project proposed shall comply with minimum design criteria set forth in Section II, below.
5. The Restoration Rights granted herein are not a commitment by the JPA to approve a Restoration Project proposal. The JPA agrees that restoration of the Mitigation Property to increase tidal and freshwater wetlands and restore upland habitat is consistent with the overall objectives for the San Dieguito River Valley, but the JPA cannot make any commitment to a particular Restoration Project until all of its environmental consequences have been considered. Likewise, acceptance of the Restoration Rights granted herein is not a commitment by SANDAG to proceed with a Restoration Project. Accordingly, final approval of any Restoration Project by the JPA or SANDAG shall not be considered until after completion of environmental review process in compliance with CEQA, and, if applicable, NEPA.

6. Subject to the existing rights possessed by SCE and Caltrans, as described in the November 16, 1998, Memorandum of Agreement between the City of San Diego, SCE, and the JPA, and the 2001 Cooperative Agreement between SANDAG and Caltrans, the Restoration Rights granted herein are exclusive. During the term of this Agreement, the JPA shall not offer or grant any other person or entity Restoration Rights in the Mitigation Property.
7. SANDAG and/or Caltrans will undergo the design of restoration opportunities for review by the JPA, the appropriate regulatory agencies, and SCE.
8. Implementation of a Restoration Project shall not commence until all required permits and approvals have been obtained from the JPA and the appropriate regulatory agencies, including written consent of SCE. In addition, SCE and SANDAG shall enter into an agreement regarding the rights and obligations of each Party prior to commencement of any Restoration Project work by SANDAG.

II. RESTORATION PROJECT DESIGN

SANDAG shall be responsible for the Restoration Project design, which shall include the following elements:

1. It shall be limited to creation, restoration, and enhancement of natural open space habitat, both wetland and upland habitats on the land, as shown in Exhibit A;
2. It shall not impair the San Dieguito Wetlands Restoration Project being implemented by SCE, as shown on Exhibit B;
3. It shall not increase flooding hazards or scour over the conditions identified in the final design for the San Dieguito Wetlands Restoration Project approved by the Coastal Commission;
4. It shall be peer reviewed by one or more independent experts, qualified in such restoration designs;
5. It shall include restoration of up to 10 acres of tidal wetlands that would be reserved and available for use by SCE for a period of ten years following the date this Agreement is signed, if needed to satisfy SCE's Coastal Permit obligations for the San Dieguito Wetlands Restoration Project ("Option Period"). SCE shall have the right to exercise its option at any time prior to expiration of the Option Period. If SCE exercises its option, it would compensate SANDAG for the actual restoration costs of any restored wetlands used.

The conditions set forth above are minimum standards and shall not limit imposition of additional conditions deemed appropriate by the Parties to this Agreement or any other party with approval authority over a Restoration Project.

Upon request, SANDAG shall provide copies of any technical reports and informational documents prepared by consultants or in conjunction with the Restoration Project Design.

III. ENVIRONMENTAL REVIEW AND PARK MASTER PLAN AMENDMENT PROCESS

1. The JPA shall serve as the lead agency for purposes of state environmental review pursuant to CEQA, and shall prepare the appropriate environmental document, which is anticipated to be a supplemental or subsequent environmental impact report. SANDAG agrees to cooperate in providing any information in its control necessary for the CEQA process.
2. The JPA shall prepare a proposed amendment to its Park Master Plan and any other applicable land use documents needed for final consideration of the Restoration Plan.
3. If required, the JPA shall prepare or assist in the preparation of a National Environmental Policy Act ("NEPA") environmental document under the direction of a federal lead agency.
4. The JPA will prepare a scope and budget for the Restoration Project's environmental review for approval by SANDAG prior to its implementation. SANDAG shall reimburse the JPA for the actual cost of the environmental review and plan amendment process, including the cost of consultants, technical reports, and staff time so long as those costs are within the scope approved by SANDAG, are reasonable, and do not exceed the amount of the budget approved by SANDAG.

IV. RESTORATION PROJECT APPROVAL BY THE JPA

1. After certification of the CEQA document for the Restoration Project, the JPA Board of Directors will consider whether to approve the Restoration Project. The approval would include an amendment of the JPA's Park Master Plan and any other applicable land use documents.
2. The Board's decision shall be guided by, among other things: (i) the general agreement that restoration of River Park property as natural, open space habitat and expansion of tidal wetlands is consistent with the JPA's overall purpose and goals; (ii) the basic design standards set forth in Section II, above; (iii) the results of the peer review process; (iv) the results of the environmental review process; and (v) the testimony and evidence submitted by interested agencies and members of the public.
3. The JPA will not unduly withhold its approval of the Restoration Plan on technical grounds without documenting the technical aspects needed to modify the Restoration Plan to satisfy its concerns and obtain its consent.
4. Any JPA approval shall include a commitment to help with attainment of required consents from and/or agreements with SCE.

V. SCE APPROVAL

In accordance with the 1998 MOU, SCE's written consent for the Restoration Project to proceed forward shall be required as a condition of the JPA's approval, provided that such consent is not unreasonably withheld. The Parties agree that compliance with the design criteria set forth in Section II, above, is a necessary prerequisite to SCE's approval.

VI. OTHER APPROVALS

1. SANDAG and/or Caltrans shall be responsible for obtaining all other Restoration Project approvals and permits.
2. The JPA shall cooperate in the approval processes.

VII. RESTORATION PROJECT IMPLEMENTATION, PRESERVATION, AND LONG-TERM MAINTENANCE

1. If approved by the JPA, and if all state and federal project approvals are obtained, the Restoration Project may be implemented by SANDAG, its contractors, agents, or employees. The JPA shall grant all necessary easements and/or licenses required and shall otherwise cooperate with implementation of the Restoration Project.
2. The Restoration Project shall be permanently preserved as protected, natural open space by way of a deed restriction, conservation easement, or other method acceptable to the Parties.
3. Long-term maintenance of the Restoration Project shall be performed by the JPA pursuant to a habitat management plan ("HMP") approved by the Parties. The HMP, or other agreement acceptable to the Parties, shall define when SANDAG's restoration obligations end and the JPA's long-term management obligations begin, and it shall provide for an endowment from SANDAG to fully fund the JPA's reasonably expected long-term management obligations occurring during the period for which SANDAG agrees to be responsible.
4. In addition, the SANDAG and SCE shall mutually agree on a cost-sharing agreement for any management obligations resulting from the Restoration Project that are outside of the Restoration Property, such as the cost of keeping the San Dieguito River mouth open, if appropriate.

VIII. CONSIDERATION FOR RESTORATION RIGHTS

In addition to the obligations set forth in this Agreement, SANDAG agrees to the following as additional consideration for the Restoration Rights granted herein:

1. Upon signing this Agreement, to make an initial payment of Three Hundred Thousand Dollars (\$300,000) to the JPA, followed by \$50,000 payments annually, due on or before June 30 of each year, to the JPA for four years, with the final payment due on or before June 30, 2013. SANDAG's four annual payments of Fifty Thousand Dollars (\$50,000) to

the JPA shall be made after being invoiced by the JPA and shall be used by the JPA to satisfy its obligations to build and monitor a water treatment pond, including landscaping for the pond and water quality monitoring costs.

2. Upon the signing of this Agreement, make an additional one-time payment of \$140,000 to the JPA to help pay for the restoration of 2.73 acres of seasonal salt marsh required by an existing JPA mitigation requirement.
3. In accordance with Section III, Paragraph 4, of this Agreement, SANDAG shall also pay the JPA for the Restoration Project's environmental review and plan amendment.

IX. COOPERATION

The Parties agree:

1. To cooperate in determining and obtaining any necessary approvals and permits, including but not limited to agreements with SCE and attainment of a coastal development permit;
2. To cooperate with the lead agency in the context of CEQA and NEPA matters related to this Agreement; and
3. To cooperate to secure the rights over City of San Diego land to the San Dieguito River pursuant to the existing Cooperative Agreement between Caltrans, the JPA, and the City of San Diego entered into on December 5, 2001.

X. JPA'S WARRANTIES

1. JPA, its heirs, successors, or assigns agree to promptly cooperate with and accommodate any of SANDAG's reasonable requests regarding the baseline condition of the Property.
2. JPA certifies to SANDAG that to the JPA's actual knowledge, there are no structures or improvements, encroachments, debris, or hazardous materials of any kind whatsoever existing on the property. In the event such property rights are determined to exist at a later date, and SANDAG determines that such rights negatively interfere with the potential purpose and value of the Mitigation Project, the Parties agree that SANDAG Board of Directors approval may be needed and SANDAG may request that the terms and conditions of this Agreement be renegotiated.
3. JPA certifies, represents, and warrants to SANDAG that to the JPA's actual knowledge, there are no currently pending or previously offered or granted easements, liens, licenses, offers, invitations, solicitations, and/or encroachments, including, without limitation, to Poseidon Resources Corporation, on or affecting the property that interfere or conflict with the purposes of this Agreement. In the event such property rights are determined to exist at a later date, and SANDAG determines that such rights negatively interfere with the potential purpose and value of the Mitigation Project, the Parties agree that SANDAG Board of Directors approval may be needed and SANDAG may request that the terms and conditions of this Agreement be renegotiated.

4. JPA certifies, represents, and warrants that it has fully disclosed to, and provided SANDAG with, all documents and agreements, whether written or verbal, that impact, or may impact, SANDAG's desire to restore the Mitigation Property, for its mitigation credit value as outlined in this Agreement.

XI. SPECIFIC RIGHTS OF SANDAG

SANDAG, its employees, agents, or assignees, may, without additional approval or license from JPA:

1. Access the Property at any and all times to perform the rights and duties set forth herein, and those outlined in the Habitat Management Plan, as amended from time to time; and
2. Erect, maintain, and/or remove, at SANDAG's expense, signs or other appropriate markers in prominent locations on the Mitigation Property, visible from public roads or other adjoining property, bearing information indicating that *TransNet* Environmental Mitigation Program funds were used for the purpose of protecting the Mitigation Property's sensitive habitat, and those additional purposes outlined in this Agreement; and
3. Enforce the terms and conditions of this Agreement and the Habitat Management Plan and any amendments thereto; and
4. Exercise its discretion in taking any reasonable actions necessary to fulfill the purposes of this Agreement.

XII. GENERAL PROVISIONS

1. NO THIRD-PARTY RIGHTS

This Agreement is not intended to create any rights for third parties.

2. TERMINATION OF RIGHTS AND OBLIGATIONS

The JPA may only terminate this Agreement for failure to make the payments required by Section VIII or other material breach of this Agreement, and only after first giving a 90-day written notice to SANDAG and allowing SANDAG an opportunity to cure.

Except as required by law, and in particular Public Utilities Code Section 132321 *et. seq.*, SANDAG may terminate this Agreement by giving the JPA ninety (90) days' advance written notice.

All payments made to the JPA prior to termination of this Agreement shall be nonrefundable, and the Parties liability for acts or omissions that occurred prior to the effective date of the termination shall survive.

3. TRANSFER, ASSIGNMENT, SALE, OR CONVEYANCE OF PROPERTY

Subject to consent of the JPA, which shall not be unreasonably withheld, consistent with Public Utilities Code Section 132321 et seq., and any amendments thereto, SANDAG shall have the right to transfer or assign its rights under this Agreement to any entity, and/or entities that is/are qualified under applicable law to hold Conservation Easements and which assignee or transferee agrees to comply with the terms of this Agreement. In the event the transfers, described herein, occur, the JPA, its agents, successors, or assigns, agree to cooperate with SANDAG in effecting any such transfers.

4. SUCCESSORS

The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns.

5. AMENDMENT

This Agreement may be amended by the JPA and SANDAG, their successors or assigns, only by mutual written agreement, and subject to the written approval of SANDAG's Board or its authorized designee. Any such amendment shall be consistent with the purposes of this Agreement and applicable law.

6. DUTY TO DEFEND AND INDEMNIFY

(a) JPA, its successors and assigns, agrees to defend, indemnify, protect and hold harmless SANDAG, its successors and assigns, and its Directors, officers, employees, and agents from and against any and all claims asserted or liability established for damages or injuries to any person or property, including environmental claims (CERCLA, RCRA, etc.) or injury to the JPA's or its subcontractors' employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless, or willful acts or omissions of the JPA, its successors and assigns and its subcontractors and their agents, officers, or employees, in performing the terms and conditions of this Agreement, and all expenses of investigating and defending against same, including attorney's fees and costs; provided, however, that the JPA's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of SANDAG, its Directors, agents, officers, or employees.

(b) Likewise, SANDAG, its successors and assigns, agrees to defend, indemnify, protect and hold harmless JPA, its successors and assigns, and its Directors, officers, employees and agents from and against any and all claims asserted or liability established for damages or injuries to any person or property, including environmental claims (CERCLA, RCRA, etc.) or injury to SANDAG or its subcontractors' employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless, or willful acts or omissions of SANDAG, its successors and assigns and its subcontractors and

their agents, officers, or employees, in performing the terms and conditions of this Agreement, and all expenses of investigating and defending against same, including attorney's fees and costs; provided, however, that SANDAG's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of JPA, its Directors, agents, officers, or employees.

7. LIENS OR SUBDIVISION

Consistent with Public Utilities Code Section 132321, *et seq.*, the JPA, its successors or assigns shall not cause liens of any kind to be placed against, nor use the Property as collateral or security for any loan. Neither shall the JPA subdivide the Property. JPA shall ensure that the covenants in this section are passed through to its successors or assigns in written agreements.

8. SEVERABILITY

If a court of competent jurisdiction voids, invalidates, or declares unenforceable any part of this Agreement on its face, or the application thereof to a person, entity or circumstance, such action shall not affect the remainder of this Agreement, or its application to other persons, entities or circumstances.

9. LIBERAL CONSTRUCTION

Despite any general rule of construction to the contrary, this Agreement shall be liberally construed to affect the purposes of this Agreement. If any provision in this Agreement is found to be ambiguous, an interpretation consistent with the Purposes described herein that would render the provision valid shall be favored over any interpretation that would render it invalid.

10. ENTIRE AGREEMENT

This instrument sets forth the entire agreement between the Parties regarding this Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to it that are not incorporated herein by reference. No alteration or variation of this instrument shall be valid or binding unless amended consistent with the Amendment requirements outlined herein.

11. CONTROLLING LAW AND VENUE

The laws of the State of California shall govern the interpretation and performance of this Agreement. Venue shall lie in the County of San Diego, State of California.

EXHIBIT A

12. NOTICES

Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other party shall be in writing and be delivered by first-class mail, postage fully prepaid, or sent by a recognized overnight courier that guarantees next-day delivery, addressed as follows:

JPA:

San Dieguito River Park
Joint Powers Authority
18372 Sycamore Creek Rd.
Escondido, CA 92025
Attn: Executive Director

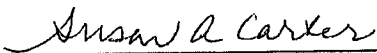
SANDAG:

Office of General Counsel
401 B Street, 8th Floor
San Diego, CA 92101

EXECUTION

JPA and SANDAG have executed this Agreement on the date first written above.

JPA:



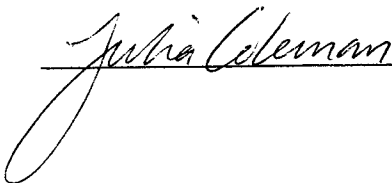
SUSAN A. CARTER
DEPUTY DIRECTOR

SANDAG:



GARY L. GALLEGOS
Executive Director

Approved as to Form:



Approved as to Form:

EXHIBITS INCORPORATED INTO MEMORANDUM OF UNDERSTANDING:

- Exhibit A: Project Area Map and APNs
- Exhibit B: December 5, 2001, Cooperative Agreement
- Exhibit C: Master Agreement between Caltrans and SANDAG
- Exhibit D: 1998 MOU between the City of San Diego, SCE, and JPA

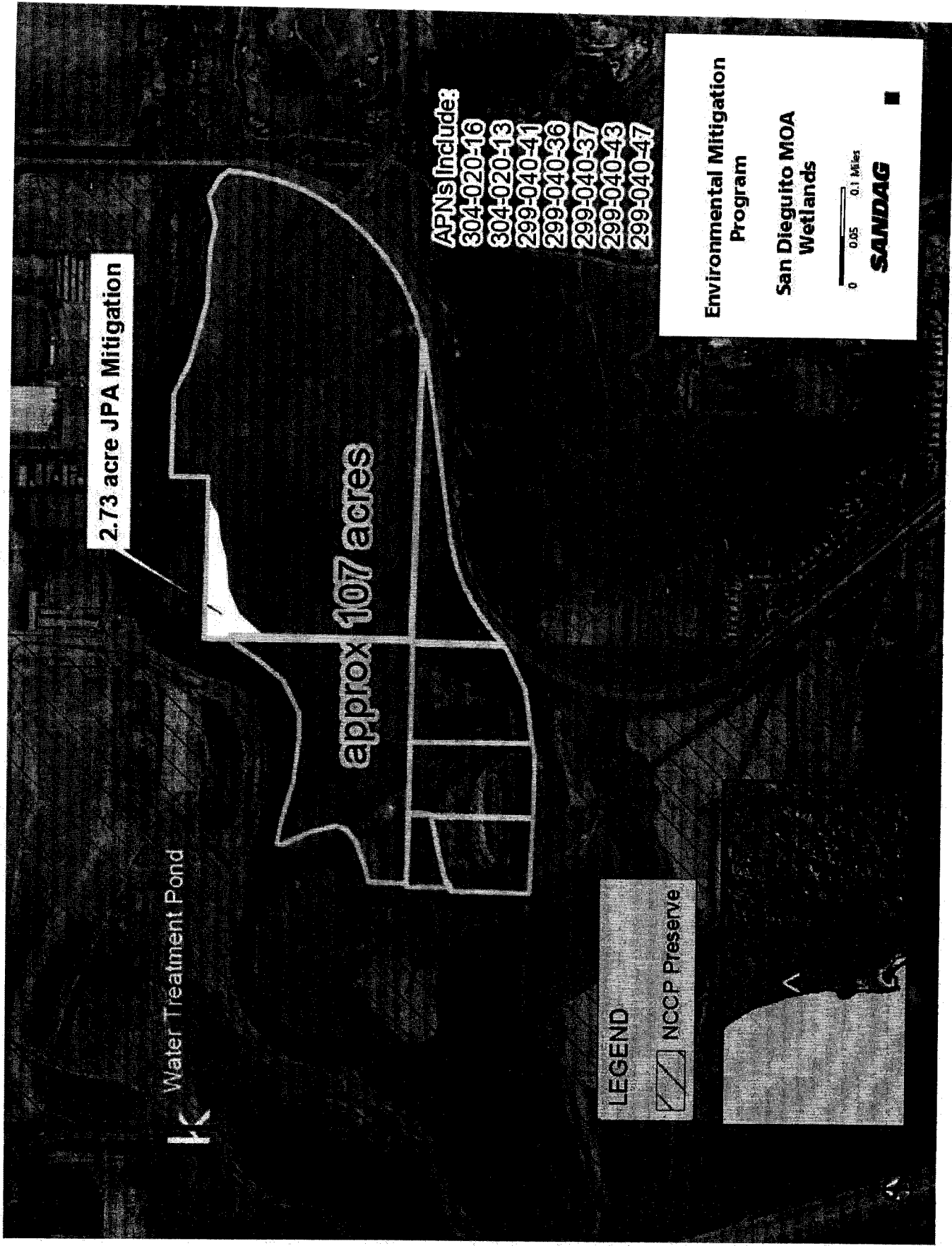


EXHIBIT B

015157 11-4278

11-SD-5/805

PM 29.6-35.0/27.3-28.9

EA 11-030100

Agreement No. 11-4278

San Dieguito River Park Mitigation

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO ON 12/5/01, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and

CITY OF SAN DIEGO, a municipal corporation of the State of California, referred to herein as "CITY".

SAN DIEGUITO RIVER PARK JOINT POWERS AUTHORITY, a local government agency created by the County of San Diego and the Cities of Del Mar, Escondido, Poway, San Diego and Solana Beach for the purpose of creating a greenway and natural open space park system in the San Dieguito River Valley, herein referred to as the "JPA".

RECITALS

1. STATE, CITY and JPA pursuant to Streets and Highways Code Section 114 are authorized to enter into a Cooperative Agreement for improvements to State highways within the City of San Diego.
2. On August 7, 1996, CITY acquired 105 acres of coastal property directly east of Interstate-5 in the City of San Diego for 6 million dollars, referred to herein as "ACQUISITION".
3. At the time CITY agreed to incorporate the ACQUISITION into San Dieguito River Valley Regional Open Space Park (PARK), JPA agreed to use best efforts to reimburse CITY for the cost of the ACQUISITION.

4. On July 2, 1990, unrelated to the ACQUISITION referenced above, STATE and CITY executed a Memorandum of Understanding whereby STATE agreed, "...to assure the transfer of \$2,000,000 to CITY, to be held in trust for the purpose of acquiring and/or restoring wetlands property within CITY's San Dieguito River Valley Regional Open Space Park..."
5. On July 9, 1991, STATE, CITY, and the San Diego Association of Governments (acting as the San Diego County Regional Transportation Commission, referred to herein as "SANDAG") entered into Cooperative Agreement No. 11-0444 (Document No. 7739) that provided for STATE and SANDAG to advance CITY the \$2,000,000 referenced in Recitals, Article (4) above.
6. On August 4, 1993, STATE, CITY, and SANDAG agreed to share responsibility for the \$2,000,000 referenced above. SANDAG's share would be \$1,050,000, CITY's share would be \$450,000 and STATE's share would now be \$500,000.
7. For the purpose of providing STATE a site to use in mitigating impacts of future STATE highway construction, JPA and CITY are willing to reserve 20 acres within the San Dieguito Park Master Plan and Wetland Restoration Project area, as mutually agreed upon by CITY, JPA and STATE, for STATE's use (MITIGATION SITE).
8. Transportation improvement projects within District 11 are anticipated to have direct and indirect environmental impacts affecting multiple species and habitats. Some of these impacts will need to be mitigated and this mitigation may have to be done off-site. Generally, off-site areas have been acquired on a case by case basis. This has resulted in high costs and delays in attempting to locate, verify and obtain approval and environmental clearance from various environmental resource agencies. Therefore, STATE is willing and desires to contribute \$500,000 to JPA for the right to use the MITIGATION SITE to mitigate future projects along the I-5 corridor.
9. The parties hereto intend to define herein the terms and conditions under which STATE's contribution is to be completed.

SECTION I

JPA AGREES:

1. To reserve for STATE a 20 acre portion of ACQUISITION or a 20 acre site within the JPA's ownership which is agreeable to STATE, equal to 20 acres, to be held for future mitigation as the MITIGATION SITE. JPA will maintain said property until restoration begins.

2. Upon completion of restoration work by STATE at the MITIGATION SITE in accordance with the terms and conditions of agreements/permits issued by environmental resource/control agencies, including satisfactory fulfillment of the success criteria, to accept full management and responsibility for the MITIGATION SITE including all costs thereof, and to relieve STATE of any further obligation to maintain or monitor the MITIGATION SITE.
3. To submit billing to STATE, in the amount of \$500,000 upon execution of this Agreement and allocation of funds by the California Transportation Commissions.
4. The JPA agrees to transfer the \$500,000 stated in paragraph 4 above to CITY within 30 days of receipt from the STATE. Monies will be placed in CITY's Habitat Acquisition Fund (Fund Number 10571) for the purpose of the acquisition of open space within CITY's Multiple Habitat Planning Area.
5. JPA acknowledges that CITY through payment for and incorporation of the ACQUISITION into PARK, CITY has fully satisfied its \$450,000 obligation referenced above in Recitals, Article (6).
6. To retain or cause to be retained for audit by STATE or other government auditors for a period of three (3) years from date of STATE's payment, all records and accounts relating to PROJECT.
7. JPA point of contact:

Dick Bobertz
 San Dieguito River Park
 18372 Sycamore Creek
 Escondido, CA 92025
 Telephone No. (858) 674-2270

SECTION II

CITY AGREES:

1. STATE's lump sum payment of \$500,000 to JPA referenced above in Section 1, Article (4) will satisfy any and all prior commitments incurred by STATE referenced above in Recitals, Article (8).
2. To incorporate the ACQUISITION into PARK.

3. CITY point of contact:

Keith Greer
City of San Diego
202 C Street, MS 5A
San Diego, CA 92101-3864
Telephone No. (619) 236-7258

SECTION III

STATE AGREES:

1. To deposit with JPA within 25 days of receipt of billing therefor (as referenced above in Section I, Article (3)), the amount of \$500,000, which figure represents the agreed lump sum total amount to reserve to STATE 20 acres within the JPA's ownership which is agreeable to STATE for the MITIGATION SITE and to be used by STATE as mitigation for future projects. STATE's contribution will not exceed \$500,000.
2. Restoration process as required for future projects will be at STATE's expense. STATE will maintain and monitor said restoration, in accordance with the environmental control or resource agency permit or agreement including satisfactory fulfillment of the success criteria. After conditions of permit have been met, maintenance and monitoring of the MITIGATION SITE shall revert back to the JPA.
3. The STATE and/or its contractor shall be given all rights of entry at no charge by the JPA.
4. STATE acknowledges that CITY has fully satisfied its \$450,000 obligation referenced above in Recitals, Article (6).
5. STATE point of contact:

Charles Stoll
Deputy District Director, Environmental
CALTRANS
P.O. Box 85406
San Diego, CA 92186-5406
Telephone No. (619) 688-6136

SECTION IVIT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of the resources by the Legislature and the allocation of resources by the California Transportation Commission.
2. STATE's lump sum payment of said \$500,000 to JPA will satisfy any and all prior commitments incurred by STATE referenced above in Recitals, Article (6), and will operate to relieve STATE of any future obligation to CITY and JPA related to obligation described above in Recitals, Article (6), other than the maintenance and monitoring of the MITIGATION SITE during restoration pursuant to Section III, Article 2.
3. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties to this Agreement or affect the legal liability of any party to the Agreement by imposing any standard of care with respect to the maintenance of State highways different from the standard of care imposed by law.
4. Neither STATE nor any officer thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY and JPA under or in connection with any work, authority, duties or obligations delegated to CITY and JPA under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY and JPA shall fully defend, indemnify and save harmless the State of California, all officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY and JPA under or in connection with any work, authority, duties or obligations delegated to CITY and JPA under this Agreement.
5. Neither CITY and JPA nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, STATE shall fully defend, indemnify and save harmless CITY and JPA from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority, duties or obligations delegated to STATE under this Agreement.
6. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

7. This Agreement shall terminate upon exhaustion of STATE's mitigation credits in the Mitigation Site pursuant to this Agreement and upon STATE's payment to JPA, pursuant to Section III, Article (1) of this Agreement.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY OF SAN DIEGO

JEFF MORALES
Director of Transportation

By: [Signature]
Deputy District Director
Program/Project Management

By: [Signature]
City Manager

Certified as to funds:

By: [Signature]
District Budget Manager BK 25

By: [Signature]
City Attorney

Approved as to form and procedure:

By: [Signature]
Attorney Department of Transportation

JOINT POWERS ASSOCIATION

Certified as to financial terms and conditions:

By: [Signature]
DICK BOBERTZ
Executive Director
San Dieguito River Park JPA

By: [Signature]
Accounting Administrator

EXHIBIT C

AGREEMENT NO.: 11-0387

MASTER AGREEMENT TRANSPORTATION SALES TAX HIGHWAY PROJECTS

This AGREEMENT, effective July 1, 1988, between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as STATE, and the San Diego Association of Governments (SANDAG), acting as the San Diego County Regional Transportation Commission, referred to herein as COMMISSION.

RECITALS

1. Senate Bill 361, Chapter 1579 of the Statutes of 1985, was passed by the legislature in September and signed by the Governor in October 1985. The legislation:
 - o Created the COMMISSION to administer sales tax revenues for transportation improvements if the voters approved a measure;
 - o Designated the SANDAG Board to act as the COMMISSION and to provide staff;
 - o Authorized the COMMISSION to determine the rate (up to 1%), purposes, and term (if any) of the tax to be included in the ballot measure and to have the County submit a measure to the voters;
 - o Authorized the COMMISSION to allocate revenues according to the terms of the ballot measure; and
 - o Authorized the COMMISSION to issue bonds payable from the proceeds of the tax.
2. Pursuant to Senate Bill 361, voters approved Proposition A (also referred to herein as Sales Tax) on November 3, 1987, establishing the San Diego Transportation Improvement Program Ordinance and Expenditure Plan (referred to herein as Ordinance). The Ordinance establishes a 1/2 percent transactions and use tax for a period not to exceed 20 years. One-third of the revenues are allocated for highway improvements, one-third for local street and road improvements, and one-third for transit improvements. It is estimated the Sales Tax will provide up to \$750 million (1987 dollars) for State highway improvements in accordance with the Ordinance.
3. The Ordinance provides that once any State highway facility or usable portion thereof is constructed to State standards, in conformance to Section 14529.12 of the Government Code, the State shall be responsible for the maintenance and operation thereof. To that extent the Ordinance makes the STATE a partner in development of highway projects. STATE, as experienced highway engineering experts, will recommend to the COMMISSION responsible courses of action that most effectively meet the mutual partnership expectations in the delivery of projects.

4. STATE and COMMISSION contemplate the development of the overall Sales Tax project as established in the Ordinance. The Ordinance project (referred to herein as project) consists of:

<u>Project</u>	<u>Miles</u>	<u>Estimated Cost (Millions of 1987 Dollars)</u>
o Route 52: Construct an initial 4-lane freeway from Santo Road in Tierrasanta to Route 67 in Santee.	8.6	\$240
o Route 54: Widen South Bay Freeway to 8 lanes including Route 125 interchange and connector to San Miguel Road.	5.0	\$90
o Route 56: Upgrade an initial city arterial to a 4-lane and 6-lane freeway between I-5 and I-15, with no Proposition A (Sales Tax) expenditures in a designated "future urbanizing" area.	9.0	\$65
o Route 56: Widen the Poway Road grade to 4 lanes from Espola Road to Route 67 in Poway. (Cost sharing project.)	2.7	\$10
o Route 76: Widen to 4 lanes from Frontier Drive in Oceanside to I-15.	14.8	\$100
o Route 78: Widen freeway to 6 lanes from I-5 in Oceanside to I-15 in Escondido.	16.5	\$40
o Route 78 Corridor Reserve: Reserve for highway-related interchange and arterial improvements and additional Route 78 widening.	—	\$40
o Route 125: Construct an 8-lane freeway between Routes 54 and 94 in the Lemon Grove/Spring Valley area.	3.5	\$90
o Route 125: Construct a 6-lane freeway from Fletcher Parkway in La Mesa to Route 52 in Santee.	3.8	\$135
o Project Reserve Fund: Route location, right-of-way protection, environmental fund.	—	\$25
TOTAL COST		\$835
Proposition A (Sales Tax) Funding:		\$750
Federal/State/Local/Private Funding:		\$85

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In addition, it is anticipated that there will be other projects on State highways funded in whole or part from the local agency one-third portion of Sales Tax revenues. These projects shall be included in the Ordinance and therefore are subject to the provisions of this agreement.

5. STATE and COMMISSION recognize that a new relationship between them exists as a result of the voters agreement to improve the State highway system, and they propose to proceed aggressively through a close working partnership to expedite completion of these improvements.
6. STATE and COMMISSION recognize the responsibilities imposed by the Ordinance and intend to cooperate fully in achieving its provisions.
7. It is the intent of the COMMISSION to have STATE perform work or oversee consultants conducting PROJECT DEVELOPMENT SERVICES. COMMISSION will advertise and award consultant contracts at STATE's request and make consultant payments on those portions of the project that STATE does not perform the work on.
8. It is understood that if STATE is unable to carry out the responsibilities agreed to herein, COMMISSION may carry out any and all of said responsibilities in accordance with Sections 14529.11 and 14529.12 of the Government Code and STATE shall provide notice as required by Section 14529.11(d) of the Government Code.

DEFINITIONS

The following definitions apply to these terms when used in this agreement:

1. **PROJECT PROGRAMMING SERVICES:** Developing the multi-year program of Sales Tax funded projects including the Program of Projects and the Five-Year Regional Transportation Improvement Program. These services include establishing project priorities, scheduling, phasing, and funding in accordance with Sections 5 and 6 of the Ordinance.
2. **PROJECT PRELIMINARY SERVICES:** Providing all engineering and environmental services necessary to obtain conceptual approval and environmental clearance for individual projects, which include, but are not limited to, developing surveys and maps, engineering studies and reports, and environmental investigations and documents as required. This includes activities leading to Route Adoption and Freeway Agreements.
3. **PROJECT DEVELOPMENT SERVICES:** Carrying out the individual project design activities, right-of-way activities including condemnation proceedings and utility relocation activities, contract advertisement and awards, construction administration, and consultant management services.
4. **PROJECT OVERSIGHT SERVICES:** Providing policy and procedural direction throughout the design, right-of-way acquisition and construction phases of an individual project. Includes reviews and giving directions and approvals to others who may be actually doing the work so that the STATE assures all work

done and products delivered are in conformance with state and federal standards (where appropriate) and established department practices. Oversight also includes preparing draft agreements, contracts and scopes of work and providing assistance to agents of the COMMISSION. Oversight does not include contract payments or PROJECT DEVELOPMENT SERVICES as defined above.

SECTION I

STATE AGREES:

1. To furnish all PROJECT PRELIMINARY SERVICES within a time frame established jointly with and at no cost to the COMMISSION.
2. To provide PROJECT DEVELOPMENT SERVICES except that at STATE's request, COMMISSION will provide contract advertisement and award for design and right-of-way activities and make contract payments.
3. To provide PROJECT OVERSIGHT SERVICES at no cost to the COMMISSION.
4. To seek funding in accordance with the availability of monies and the STATE priority setting process for the underfunded portion of the project, estimated at \$85 million in 1987 dollars.
5. To assume maintenance and operation of completed sales tax funded State highway projects or usable portions thereof as long as all work is done in conformance with provisions of Section 14529.11 and 14529.12 of the Government Code.
6. To pay COMMISSION for any environmental consultant services contracted for by the COMMISSION on selected projects or portions thereof as determined by STATE in consultation with the COMMISSION.
7. To make available any and all existing information and services in order to expedite the delivery of the project.

COMMISSION AGREES:

1. To be responsible for and prepare or cause to be prepared the PROJECT PROGRAMMING SERVICES in cooperation with the STATE.
2. To pay for all STATE-provided PROJECT DEVELOPMENT SERVICES in accordance with Section 14529.11 of the Government Code that are not funded with other local, state, and/or federal funds. These include the individual project design, engineering, right-of-way activities (exclusive of any hardship and protection acquisitions made by STATE other than pursuant to an agreement with the COMMISSION), and all construction activities, including construction contract administration and consultant management services.
3. To advertise and award consultant contracts at STATE's request and make consultant payments for environmental, design, and right-of-way activities on selected projects or portions thereof as determined by STATE in consultation with COMMISSION.

4. To pay for consultant services for design and right-of-way activities.
5. To pursue bonding and other financing options as appropriate to expedite the project.
6. To make available any and all existing information and services in order to expedite the delivery of the project.

IT IS MUTUALLY AGREED AS FOLLOWS:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature and the allocation of resources by the California Transportation Commission.
2. All obligations of the COMMISSION under the terms of this Agreement are subject to the annual appropriation and allocation of resources by COMMISSION.
3. All STATE costs that are reimbursable by COMMISSION shall include all costs as specified in Section 8752.1 of the State Administrative Manual.
4. That, should any portion of the project be financed with federal or State funds, applicable statutory requirements shall apply.
5. All individual projects will be incorporated into the Regional Transportation Improvement Program (RTIP) process and the State Transportation Improvement Program (STIP) as necessary.
 - a. Individual project priorities will be consistent with project phasing in the SANDAG Regional Transportation Plan.
 - b. All individual projects will be scoped, costed and scheduled in an engineering report jointly approved by the STATE and COMMISSION.
 - c. A proposed multi-year program will be prepared by STATE and submitted for consideration by COMMISSION, listing all individual Sales Tax projects recommended for inclusion in the RTIP. The adopted RTIP shall be the basis for submitting Sales Tax funded projects for inclusion in the State Transportation Improvement Program (STIP) as necessary.
 - d. STATE and COMMISSION shall establish a system of periodic reporting to COMMISSION and STATE of project status including expenditures on individual projects.
 - e. Changes in Sales Tax project scope, costs, and schedule will be reflected in periodic updates of COMMISSION's multi-year program and incorporated annually into the RTIP process.
 - f. Subject to updates and amendments, the RTIP will be used as a basis for determining when work on individual Sales Tax projects will be accomplished. STATE shall advise on scheduling of individual projects.

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6. A strategic plan for the Sales Tax funded project shall be developed jointly by the STATE and COMMISSION. The strategic plan shall be the long-range plan for development and financing of all the highway projects identified in the Ordinance and shall be incorporated in the Regional Transportation Plan. The strategic plan shall contain milestone schedules for environmental, design, right-of-way and construction activities.
7. Nothing in this Agreement shall preclude the STATE and/or COMMISSION from applying for and obtaining any local, state, and/or federal funds for any of the individual Sales Tax projects. Other funding sources may be pursued and expended for PROJECT DEVELOPMENT SERVICES.
8. All necessary rights, title, and interests will be acquired in the name of the STATE for projects or portions thereof. COMMISSION will pay all acquisition costs not otherwise provided with other local, state, and/or federal funds.
9. All right-of-way activities will be performed in accordance with the provision of the Federal and State Uniform Relocation Assistance and Real Property Acquisition Policies Acts (aka Public Law 91-846 and Government Code, Sections 7260-7276, inclusive), respectively, and be in conformance with Federal regulations relating thereto, and State's standard operating policies as set forth in State's Procedural Handbooks, and other applicable policy documents.
10. Sales Tax funded State highway projects shall meet established State engineering practices for design and construction. The STATE, as owner and operator of the system, will be responsible for determination of the final concept and location of Sales Tax projects. COMMISSION concurrence shall be required for the concept and location of any projects to be constructed with Sales Tax funds.
11. An engineering report will be used to obtain initial COMMISSION concurrence in writing on feasibility, concept, estimates, phasing, geometric patterns, limits, environmental considerations, and schedules. COMMISSION will inform STATE of desired individual project features. STATE will be responsible for preparing, or causing to be prepared, these engineering reports and any related documents required for environmental clearance. This will be done at STATE expense and within a time frame established jointly with COMMISSION. COMMISSION will participate as a member of the project development team from inception of the work. COMMISSION will provide to the STATE, at its expense, appropriate existing technical and financial information that will be needed in order to prepare these documents and may, at its option, provide other data to expedite preparation and approval. After initial approvals, changes in project scope that would result in changes in cost estimates or schedules must be agreed upon in writing by COMMISSION, STATE and, where appropriate, the Federal Highway Administration.
12. STATE will prepare environmental studies as lead agency and secure federal (NEPA) approval unless the STATE and COMMISSION jointly agree to obtain for non-federally funded individual projects (State) CEQA approval only. COMMISSION will act as a cooperating agency, and assist STATE by securing environmental consultants as provided in Item #3. under COMMISSION AGREES if requested by STATE at no cost to COMMISSION.

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13. All new Sales Tax funded individual highway projects which are also identified as bikeway facilities in SANDAG's Regional Transportation Plan shall include provisions for bicycle use. Separate procedures will be prepared covering this subject.
14. COMMISSION will concur in writing as to the individual project scope and costs after completion by the STATE of the environmental document. COMMISSION and STATE will concur in writing following completion of plans, specifications, and estimates.
15. The transfer of funds from the COMMISSION to STATE or from the STATE to COMMISSION shall be the subject of a separate agreement(s). Among other things, the agreement(s) shall establish the method of accounting, auditing and timing of all payments.
16. STATE will establish financial monitoring procedures that provide information on individual projects for PROJECT DEVELOPMENT SERVICES. Overall COMMISSION financial controls will be by route.
17. SANDAG may desire to transfer FAU funds to selected individual projects in exchange for Sales Tax funds. STATE and COMMISSION will approve such transfer provided the project is not delayed. STATE agrees to the transfer of FAU funds only if the statewide balance of FAU funds is not increased.
18. The COMMISSION staff or other authorized representatives of the COMMISSION shall have the right to review any and all books, accounts, financial, cost and accounting records, bills, and other records and documents of STATE concerning any of the services rendered the COMMISSION. STATE shall retain and make available for inspection by COMMISSION staff or other authorized representatives of COMMISSION for at least a three (3) year period after completion and acceptance of the project, all of the documents and records described above.
19. Ownership and title to all reports, documents, plans, specifications, and estimates produced from SERVICES shall be vested in the STATE, and no further agreement will be necessary to transfer ownership to the STATE, subject to COMMISSION's right to obtain, retain, and make use of (without additional charge) copies of any and all such reports, documents, plans, specifications, and estimates. STATE shall provide COMMISSION with two copies of all submitted and finally approved Initial Project Reports, Project Study Reports, Project Reports, environmental documents and similar engineering reports for all San Diego region State highway projects as part of the normal distribution process for such reports. COMMISSION will be provided with two copies of the STATE approved reduced final construction plans, specifications, and estimates for all projects financed with Sales Tax funds at the time they are made available for public bid.
20. Each individual project costing in excess of \$250,000 funded with Sales Tax revenues shall be clearly designated during its construction as being funded with Sales Tax revenues. STATE and the COMMISSION shall jointly develop appropriate signs which shall be funded as part of the construction project.

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21. Neither STATE, nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by COMMISSION under or in connection with any work, authority, or jurisdiction delegated to COMMISSION under this Agreement. It is also understood and agreed that pursuant to Government Code Section 895.4, COMMISSION shall fully indemnify, defend and hold STATE harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by COMMISSION under or in connection with any work, authority or jurisdiction delegated to COMMISSION under this Agreement.
22. Neither COMMISSION, nor any officer or employee thereof, is responsible for any damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority, or jurisdiction delegated to STATE under this Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, STATE shall fully indemnify, defend and hold COMMISSION harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement.
23. The STATE will cause the COMMISSION to be added as additional insured to any policy of insurance secured by the STATE or in which the STATE is named as additional insured, insuring the STATE from liability for any activities arising from projects involving the Sales Tax project. STATE shall provide evidence of insurance to COMMISSION.
24. The COMMISSION will cause the STATE to be added as additional insured to any policy of insurance secured by the COMMISSION or in which the COMMISSION is named an additional insured, insuring the COMMISSION from liability for any activities arising from projects involving the Sales Tax project. COMMISSION shall provide evidence of insurance to STATE.
25. The provisions of this Agreement may be modified, altered, or revised with the written consent of both parties.
26. Nothing in this Agreement shall preclude the COMMISSION from exercising its powers pursuant to California Public Utilities Code Section 132000 et seq.
27. The terms of this Agreement shall begin on July 1, 1988 and expire at the close of the fiscal year on June 30, 1989. This Agreement shall be renewed automatically for a period of one year each June 30th thereafter, until the conclusion of the Sales Tax project and upon final accounting, unless either party has, thirty (30) days prior to the expiration date, notified the other in writing of its intention not to renew this Agreement.

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STATE OF CALIFORNIA
Department of Transportation
Transportation District 11
W. R. DOTSON
District Director

By: W. R. Dotson

Approved as to form and procedure:

Robert D. Myers
Attorney

SAN DIEGO COUNTY REGIONAL
TRANSPORTATION COMMISSION

By: Lois Ewen
Lois Ewen, Chairperson

REVIEWED AND RECOMMENDED FOR
APPROVAL:

By: Kenneth E. Sulzer
Kenneth E. Sulzer
Executive Director

Approved as to form and procedure:

Heena D. Greenfield
Attorney

0502

Approved on July 22, 1988

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

ADOPTION OF THE FY'89 FINAL PROGRAM BUDGET
OF THE
SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

WHEREAS, Article 3, Section 132103(a) of the enabling legislation (SB 361 creating the San Diego County Regional Transportation Commission requires the adoption of an annual budget; and

WHEREAS, Article 3 further specifies that the joint powers agreement, bylaws, and all rules and regulations of the San Diego Association of Governments shall be the established rules for the proceedings and administration of the Commission; and

WHEREAS, the SANDAG joint powers agreement requires the adoption of an annual budget by June 1, of each fiscal year. Therefore, the Commission shall annually be required to adopt its budget by June 1; and

WHEREAS, it is necessary to authorize the Executive Director to reimburse the San Diego Association of Governments for necessary administrative expenditures made on behalf of the Commission including Board of Directors expenses, SANDAG staff services, and contractual services necessary to carry out the administrative responsibilities of the Commission; and

WHEREAS, the SANDAG Budget Review Committee has reviewed and recommends the approval of this proposed FY'89 Commission Program Budget;
NOW THEREFORE

BE IT RESOLVED by the Board of Directors of SANDAG acting as the San Diego County Regional Transportation Commission that the FY'89 Commission Program Budget, hereby incorporated by reference, is adopted in an amount estimated to be \$99,898,582 and that the SANDAG Auditor/Comptroller be and is hereby authorized to finalize the FY'89 appropriations based on actual revenues received pursuant to this budgetary authority, and the actual end-of-year carryover funds status as determined by him; and

BE IT FURTHER RESOLVED that the Executive Director of SANDAG is hereby authorized to enter into and/or continue agreements to provide services, supplies, and facilities necessary to administer the activities of the Commission and to reimburse SANDAG for all costs incurred in providing said administrative services; and

BE IT FURTHER RESOLVED that a copy of this resolution and FY'89 Commission Program Budget be filed with the Clerk of each SANDAG member agency.

ADOPTED AND PASSED this 27th day of May, 1988.



CHAIRMAN

ATTEST:



SECRETARY

EXHIBIT D

NOVEMBER 16, 1998
MEMORANDUM OF AGREEMENT BETWEEN

CITY OF SAN DIEGO,

SOUTHERN CALIFORNIA EDISON COMPANY,

AND

**SAN DIEGUITO REGIONAL RIVER VALLEY OPEN SPACE PARK JOINT
POWERS AUTHORITY**

RECITALS

1. Southern California Edison ("SCE") is required as a condition of Coastal Development Permit 6-81-330 to substantially restore or create 150 acres of coastal wetlands.
2. The California Coastal Commission has identified the San Dieguito River Valley as the best site to meet the full 150 acre condition of the Coastal Development Permit.
3. In order to fulfill its permit obligations, SCE desires to gain the rights to restore up to 30 acres of wetlands in the lower San Dieguito River Valley owned by the City of San Diego ("City"), as well as the rights to utilize additional property owned separately by the City and by the San Dieguito Regional River Valley Open Space Park Joint Powers Authority ("JPA") east of Interstate 5. Exhibit A to this Agreement is a map depicting the City-owned wetlands property (referred to herein as the "Easement Area") as well as the property east of Interstate 5 owned by the JPA and City that is the subject of this Agreement. SCE desires to place about

950,000 cubic yards of soil on City property east of Interstate 5, as set forth in this Agreement.

4. In furtherance of settling issues related to the lawsuit between the City and the San Dieguito Partnership ("Partnership"), the City desires to facilitate the sale of 54.1 acres of unimproved real property in the San Dieguito River Valley from the Partnership to SCE. The 54.1 acres, known as the Villages property, is shown in Exhibit A. To encourage the sale of the Villages property from the Partnership to SCE, the City is willing to sell SCE a Conservation Easement to the Easement Area under the terms and conditions set forth herein and subject to any applicable mitigation conditions set forth in the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) being prepared for the wetlands restoration project. The City is also willing to allow SCE to deposit soils excavated during SCE's wetlands restoration project in the San Dieguito River Valley on City-owned property under the terms set forth herein and subject to any conditions imposed by all necessary permitting authorities.
5. The JPA and SCE previously entered into a Memorandum of Agreement, effective August 14, 1991, whereby SCE committed to restore certain wetlands within the San Dieguito River Valley, including wetlands within property owned by the JPA, and the JPA agreed to assist with implementation of the wetlands restoration plan by, among other things,

making its property west of Interstate 5, commonly referred to as the "Airfield Property" available for restoration. The JPA now desires to further support the restoration project by making 107.3 acres of JPA property east of Interstate 5 available to SCE for wetlands restoration. The JPA further desires to support the restoration project by making its property available for soil disposal in a manner consistent with the approved wetlands restoration plan and by providing further assurances and assistance as set forth below. In exchange, SCE desires to provide the JPA with title to the Villages property upon successful completion of the wetlands restoration project, subject to the terms, conditions and contingencies set forth herein.

NOW, THEREFORE, in consideration of the above recitals, and the mutual promises contained herein, the City, the JPA, and SCE (collectively referred to as the "Parties") agree as follows:

I

SALE OF CONSERVATION EASEMENT FROM CITY TO SCE

1. Agreement:

The City agrees to sell and SCE agrees to buy a Conservation Easement to the Easement Area subject to the terms, conditions, and restrictions contained in this Agreement.

2. Purchase Price:

The purchase price for the Conservation Easement in the Easement Area shall be \$500,000.00 cash, payable no later than the execution of the Conservation Easement or June 15, 1999, whichever is earlier, subject to Section I.4 of this Agreement.

3. Terms and Conditions of the Easement:

SCE and the City shall execute the Conservation Easement, in essentially the form attached as Exhibit B to this Agreement, after the U.S. Fish and Wildlife Service adopts and the JPA certifies the EIR/EIS for the wetlands restoration project. Nothing in this Agreement shall prevent the City from imposing any additional conditions reasonably necessary to implement applicable mitigation requirements set forth in the EIR/EIS, and to achieve compliance with all applicable state and local regulations. SCE may choose not to execute the Conservation Easement if the imposed conditions are, in SCE's sole opinion, unreasonable or contrary to SCE's intended use of the Easement Area.

4. Alternative Compensation if SCE is Denied the Ability to Use the Villages as a Disposal Site:

SCE may be eligible for a refund from the City of its \$500,000.00 purchase price in the event that any of its applications to use portions of the Villages property for disposal of soils excavated during its wetlands restoration project are denied by any necessary permitting authorities, including the City of San Diego, the Army Corps of Engineers, the

California Coastal Commission, and/or the Regional Water Quality Control Board or the resulting permits are conditioned so that SCE reasonably believes the disposal of soil does not economically justify the purchase of the Villages property. If SCE determines that disposal on the Villages property is not economically feasible, it shall provide the City with a written description of the facts supporting the determination. SCE's determination of infeasibility shall be based upon consideration of whether disposal on the Villages property provides a reasonable return for the Villages purchase price and not upon a comparison of disposal costs on other properties. If any of such applications are denied and SCE elects to seek a refund, the City shall be required to refund the purchase price, with interest as provided in Section 1.4(e)(2)(v)(2), if all of the following conditions are met:

- (a) SCE notifies the City Manager in writing of its intent to seek a refund within forty five (45) days following the denial of an application to permit the disposal of dredged soils on the Villages site or any administrative appeal or review of that denial, whichever is later.
- (b) SCE deeds to the City and the City shall accept fee simple title to the portions of the Villages property identified in Exhibit A to this Agreement (the "Exchange Property"), free and clear of all liens and encumbrances not existing at the time SCE obtained

the Exchange Property, in accordance with the terms set forth herein. The Exchange Property is 15.4 acres, consisting of 7.6 acres of flood plain fringe property and 7.8 acres outside the flood plain fringe, and shall be deeded to the City as a legal lot. SCE agrees to take all necessary steps to transfer the Exchange Property as a legal lot.

- (c) SCE makes available to the City all documents in SCE's possession concerning the Exchange Property within thirty (30) days after it requests a refund of its purchase price, including without limitation, geology reports, soils reports, seismic reports, and/or biology reports, with the exception of documents protected by the attorney-client privilege.
- (d) SCE represents and warrants as of the date of the transfer of the Exchange Property all of the following:
 - (1) Possessory rights. There are no persons, firms, corporations, or other entities in occupancy, or with a possessory right to the Exchange Property, or any portion thereof, under or pursuant to any consensual arrangement with SCE. City acknowledges two existing leases for farming operations on the Exchange Property. Other than those pre-existing the SCE purchase of the Exchange Property, SCE shall further warrant that there are no possessory interests

to the Exchange Property which have been obtained by adverse possession, and that there are no easements, rights of way, encroachments, or profits affecting the Exchange Property.

(2) No Illegal Uses. Other than those pre-existing the SCE purchase of the Exchange Property, there are no conditions on the Exchange Property and no use has been or is being made, on the Exchange Property by SCE or others acting with its permission which condition or use constitutes a violation of any applicable laws.

(3) Hazardous Wastes. To the best of SCE's knowledge, neither SCE nor any third party has used, generated, manufactured, transported to or from the Exchange Property any hazardous materials, including without limitation, explosives, asbestos, radioactive materials, hazardous wastes, toxic substance, or related injurious materials, whether injurious by themselves or in combination with other elements, except flammable materials and chemicals used in agricultural operations. SCE shall further warrant and represent to the best of SCE's knowledge that there is no proceeding by any government body with respect to the presence of any hazardous material on the Property. For

purposes of this Agreement, hazardous material shall include, but not be limited to, substances defined as hazardous substances, hazardous materials, or toxic substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Title 42 United States Code §9601 et. seq., the Hazardous Material Transportation Act, Title 49 United States Code, §1801 et. seq., the Resource Conservation and Recovery Act, Title 42 United States Code §6901 et. seq., and any term identified as a hazardous waste in California Health and Safety Code §25117, or as a hazardous substance in Health and Safety Code §25316, or any of the regulations adopted under the aforementioned laws.

(4) No Litigation. To the best of SCE's knowledge, other than the case *San Dieguito Partnership v. City of San Diego*, San Diego Superior Court Case numbers 707254, 711525, and 718166, there are no judicial or administrative proceedings pending or threatened against or affecting the Exchange Property.

(5) Notice of Adverse Events.

(i) Other than the present Agreement, SCE has not entered into any written agreement with any

government authority or agency, federal, state or local, affecting the Exchange Property;

(ii) SCE has not received and failed to disclose to City any notice of any violation of any federal, state, or local law, statute, ordinance, regulation, or order affecting the Exchange Property; and

(iii) SCE is not aware of any patent or latent adverse condition of the soil, subsoil, or landfill on the Exchange Property.

(6) Capacity of SCE. SCE has the power and authority to transfer title of the Exchange Property to the City and SCE's representatives are duly authorized to execute and deliver the instruments necessary to perform SCE's obligations under this Agreement.

(c) Escrow and Title Insurance.

(1) Closing Date. The City shall not be obligated to refund the purchase price for the Conservation Easement until one hundred eighty (180) days after SCE's written notice described in section 1.4.(a) above. The closing date for the transfer of the Exchange Property to the City shall be the day before the City is required to refund the purchase price,

assuming all other conditions precedent to the refund are met ("Closing Date").

(2) Escrow.

(i) Not later than forty five (45) days prior to the Closing Date, SCE shall open an escrow for the transfer of the Exchange Property at a Title Company chosen by the City.

(ii) No later than fifteen (15) days following the opening of escrow, SCE and the City shall cause to be deposited in the escrow with the Title Company their written joint escrow instructions to close escrow in accordance with the terms of this Agreement.

(iii) At least one day prior to the Closing Date for escrow, SCE shall cause to be deposited in escrow a duly executed and acknowledged grant deed conveying the Exchange Property to the City. At least one day prior to the Closing Date for escrow, the City shall deposit or cause to be deposited the City's duly executed and acknowledged certificates of acceptance of the Exchange Property and the \$500,000.00, with interest and by wire transfer, to be refunded to SCE.

(iv) The following shall be pre-conditions to the close of escrow:

- (1) the Title Company shall be in a position to issue to the City an CTLA Owner's Policy for the Property in the amount of \$1,000,000.00 with the exceptions approved by the City and with such endorsements as may be reasonably required by the City;
- (2) SCE and the City shall deposit into escrow all documents and funds necessary to accomplish the closing of escrow;
- (3) the City Council shall have approved the Partnership's Villas Development Application;
- (4) SCE and the Partnership shall have executed a Purchase and Sale Agreement for the Villages; and
- (5) SCE shall have applied for and the City shall have approved a lot split separating the Exchange Property from the remainder of the Villages property, or take any other steps necessary to ensure the transfer of the Villages property as a legal lot.

(v) The Title Company shall close escrow by:

(1) recording the grant deed conveying the Exchange Property to the City and the City's certificates of acceptance;

(2) disbursing the \$500,000.00 to SCE with four percent (4%) interest accruing from the date SCE requests in writing a refund as provided in section 1.4(a), and any other closing costs; and

(3) issuing the title policy to the City.

(vi) Real property taxes and assessments, and all other items of income and expense, if any, shall be prorated as of the date the escrow is closed for the Exchange Property. The City shall pay all documentary and other transfer taxes imposed on account of the transfer of the Exchange Property to the City. Each party shall pay one-half of all title premiums and survey costs, if any, required for the title insurance policy to be issued and all other closing costs. Right to possession of the Exchange Property shall transfer to the City as of the close of escrow.

(vii) The City and SCE agree to reasonably supplement or revise their escrow instructions and to execute such

other documents as may be reasonably necessary to accomplish the exchange and transfer of property and closing of escrow.

5. Hold Harmless:

SCE shall hold harmless, indemnify, and defend the City and its members, directors, officers, agents, employees, contractors, and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, and judgments, including without limitation, reasonable attorneys fees, arising from hazardous material that SCE has caused to be present on the Exchange Property. For purposes of this Agreement, hazardous material shall include, but not be limited to, substances defined as hazardous substances, hazardous materials, or toxic substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Title 42 United States Code §9601 et. seq., the Hazardous Material Transportation Act, Title 49 United States Code, §1801 et. seq., the Resource Conservation and Recovery Act, Title 42 United States Code §6901 et. seq., and any term identified as a hazardous waste in California Health and Safety Code §25117, or as a hazardous substance in Health and Safety Code §25316, or any of the regulations adopted under the aforementioned laws.

II

INCLUSION OF ADDITIONAL JPA PROPERTY IN THE SCE RESTORATION PROJECT

1. Existing Agreements:

JPA and SCE previously entered into a Memorandum of Agreement, effective August 14, 1991 (hereafter "1991 MOA") which provided, among other things, that SCE was authorized to restore in a manner consistent with the EIR/EIS for the wetland restoration project the 89.3 acre parcel of JPA property, which is located south of the San Dieguito River and west of Interstate 5 as shown in Exhibit A to this Agreement and is commonly referred to as the "Airfield Property." SCE and the JPA entered into a second Memorandum of Agreement, effective May 4, 1995 (hereinafter the "1995 MOA") which established the process by which the SCE wetlands restoration project will be developed jointly by SCE and the JPA.

2. Agreement For Restoration of Additional JPA Property:

The JPA has since acquired an additional 107.3 acres of property within the San Dieguito River Valley which is located east of Interstate 5 as shown in Exhibit A to this Agreement (hereinafter referred to as the "Additional Property"). SCE wishes to include the Additional Property within SCE's wetlands restoration project and assist the JPA in restoring the property into functional coastal wetlands in order to comply with the

terms of Coastal Development Permit 6-81-330. JPA wishes to assist SCE with its restoration project by granting SCE the exclusive right to restore the Additional Property into coastal wetlands under the same terms and conditions set forth in the 1991 MOA and 1995 MOA between the JPA and SCE, as appropriate. Accordingly, SCE and the JPA agree as follows:

- (a) The JPA grants SCE the exclusive right to restore the Additional Property into coastal wetlands consistent with the Final Wetlands Restoration Plan to be approved by the California Coastal Commission. With respect to JPA property included within the Final Wetlands Restoration Plan approved by the California Coastal Commission and JPA property designated by SCE for restoration pursuant to the Consent Decree between SCE and Earth Island Institute, the exclusive right of restoration shall terminate upon compliance by SCE with the terms of the coastal development permit. With respect to JPA property that is not included within the approved Final Wetlands Restoration Plan or not designated for restoration pursuant to the Consent Decree between SCE and Earth Island Institute, as approved by the Federal District Court, SCE's exclusive right of restoration shall terminate at the time the Final Wetlands

Restoration Plan is approved, and thereafter, SCE and the JPA shall have equal right to restore such property with SCE's right of restoration terminating upon its compliance with the terms of the Coastal Development Permit for the Final Wetlands Restoration Plan. Termination shall not effect any other SCE obligations under this Agreement, the 1991 MOA or 1995 MOA.

- (b) The JPA agrees not to sell, lease, or otherwise encumber the Additional Property during the terms of the 1991 MOA and the 1995 MOA, unless written permission is given by SCE. Such written permission shall be given if the purpose of the encumbrance is consistent with the development of the San Dieguito River Valley into restored wetlands and is not inconsistent with the Final Wetlands Restoration Plan approved by the California Coastal Commission. JPA further agrees to manage the Additional Property to preclude any use inconsistent with the development and operation of the property as functional coastal wetlands.
- (c) Edison accepts the exclusive right to restore the Additional Property into coastal wetlands.
- (d) Restoration of the Additional Property shall conform with the terms of the 1991 MOA, 1995 MOA, and this Agreement.

Further, the Additional Property shall be included within the Wetlands Management provisions set forth in Section IV of the 1991 MOA.

3. Access:

The JPA authorizes SCE, its employees, agents, and consultants, to enter the Additional Property and proceed with site investigation, research, testing, and other related or necessary activities to carry out the terms, conditions, and intent of this Agreement, the 1991 MOA, and the 1995 MOA. Upon approval of the Final Wetlands Restoration Plan by all required permitting authorities, SCE, its employees, agents, and consultants, shall have the right to proceed with restoration, maintenance, monitoring and other related or necessary activities for the Additional Property. SCE shall indemnify, defend, and hold harmless the JPA and its officers, agents, and employees from and against any personal injury, property damage, mechanic lien, or other lien or claim of any kind, including attorneys fees and costs, which may arise as a result of the exercise of the access rights granted by this paragraph.

III

TRANSFER OF DEVELOPMENT RIGHTS

1. SCE's Horseworld Property:

(a) Transfer of Development Rights Agreement.

SCE is the owner of approximately 88 acres of real property located

in the lower San Dieguito River Valley, commonly referred to as Horseworld, which is more particularly shown in Exhibit A. 46.39 acres of the Horseworld site are located outside of the Flood Way zone, are zoned A-1-10, and have a potential to yield up to 11.59 dwelling units. SCE agrees to transfer all of these development rights from its Horseworld property to the 26.9 acre Villas property owned by the Partnership, which is more particularly identified in Exhibit A, if the City Council approves the Partnership's Villas development application prior to January 5, 1999.

(b) Timing of the Transfer of Dwelling Units From Horseworld.

SCE shall complete the transfer of development rights upon the recordation of a Planned Residential Development Permit ("PRD") approved by the San Diego City Council, authorizing the Partnership to develop up to 47 single family residences on the Villas property.

(c) JPA's Approval of the Transfer of Development Rights.

JPA anticipates acquiring fee simple title to the Horseworld property within 30 days of the Coastal Commission's approval of SCE's wetlands restoration project. JPA understands that SCE's transfer of all development rights to the Villas will leave the Horseworld property without any possible development rights. JPA desires to keep the Horseworld property undeveloped in perpetuity

and, therefore, consents to and endorses the transfer of the development units from the Horseworld property to the Villas property.

(d) Agreement to Cooperate in the Transfer.

JPA and SCE shall cooperate in the transfer of the development rights from Horseworld to the Villas and shall execute all necessary documents to effect the transfer, including, but not limited to, signing the PRD application submitted to the City on behalf of the Partnership and granting a Covenant of Easement to the City for the Horseworld property.

(e) Reservation of the City's Police Powers.

Nothing in this Agreement shall be construed to effect a waiver of the City Council's discretion to approve or deny the PRD application to be submitted by the Partnership for the Villas property. The agreements contained herein are agreements between SCE and the JPA to transfer development rights to allow a development application to be approved by the City Council without a phase shift vote of the electorate. The City Council retains its full legislative and quasi-judicial discretion to deny any PRD application which includes the Horseworld and/or the Villas property.

(f) Effect of the Denial of the Villas PRD application.

In the event the City Council denies the Villas PRD application, the obligation the JPA and SCE to transfer development rights shall become null and void and the development rights shall remain with the Horseworld property.

2. The San Dieguito Partnership's Villages Property:

(a) Transfer of Development Rights.

The Partnership is the owner of a 54.1 acre parcel located south of Via De La Valle and east of Interstate 5, commonly known as the Villages property, more particularly shown in Exhibit A. SCE desires to purchase the Villages to further the goals and objectives of its wetlands restoration project. City desires that SCE purchase the Villages property to assist in the settlement of the lawsuit between City and the Partnership. SCE has offered to purchase the Villages property for \$4.9 million subject to terms and conditions currently being negotiated between SCE and the Partnership. The Partnership is to transfer the development rights on 48.1 acres of the Villages property, approximately 12,025 dwelling units, to the Villas property, also owned by the Partnership, to allow a 47 unit residential project to be built on the Villas prior to SCE's planned purchase of the Villages property. The development rights to the 6 acre portion of the Villages

property shown in Exhibit A will not be transferred to the Villas property. As prospective owners of the Villages property, SCE, JPA, and City recognize that, except as provided in Section III.2.(e) of this Agreement, if and when SCE, JPA, and City acquire title to the Villages property, it will not include title to the development rights transferred to the Villas property.

(b) JPA and City Approval of the Transfer of Development Rights.

JPA anticipates acquiring fee simple title to all or part of the Villages property at the conclusion of SCE's wetlands restoration project. City may obtain fee simple title to some of the Villages property, as explained in Section I.4. of this Agreement. JPA and City consent to and endorse the transfer of development rights from the Villages property.

(c) Agreement to Support the Transfer.

JPA and SCE agree to support the Partnership's transfer of development rights from the Villages property to the Villas and shall execute all necessary documents to effect the transfer, including but not limited to signing the PRD application submitted to the City on behalf of the Partnership. JPA, City, and SCE acknowledge that the transfer of development rights may require SCE to grant a Covenant of Easement to the City for the part of the Villages property that is designated for wetlands restoration. The

Parties agree that signing the PRD does not commit SCE and JPA to transferring development units, but is merely an acknowledgment of the contractual obligation set forth in this Agreement.

(d) Reservation of the City's Police Powers.

Nothing in this Agreement shall be construed to effect a waiver of the City Council's discretion to approve or deny the PRD application to be submitted by the Partnership for the Villas property. The agreements contained herein are agreements between SCE and the JPA to transfer development rights to allow a development application to be approved by the City Council without a phase shift vote of the electorate. The City Council retains its full legislative and quasi-judicial discretion to deny any PRD application which includes the Villages and/or the Villas property.

(e) City's Obligation To Restore Development Rights to the Villages.

SCE intends to use some of the Villages property as a disposal site for soils excavated during the wetlands restoration project. SCE may need to apply for permits from the City, the California Coastal Commission, the State Regional Water Quality Board, and/or the Army Corps of Engineers to allow the Villages to be used for this purpose. SCE shall use its best efforts to obtain the necessary

permits for use of the Villages property for disposal of excavated soils. If SCE is denied a permit necessary to the disposal of soil on the Villages property or the resulting permits are conditioned so that SCE reasonably believes the disposal of soil does not economically justify the purchase of the Villages property, as provided in Section 1.4. above, then upon SCE's written request, the City shall transfer development rights to the Villages property equivalent to 12,025 dwelling units and shall execute any document necessary to effect the restoration of these units to the Villages property.

IV

SCE's DISPOSAL OF EXCAVATED SOILS ON CITY and JPA PROPERTY

1. **SCE's Disposal Goals:**

SCE desires to utilize certain property owned by the JPA east of Interstate 5, and certain property owned by the City, more particularly shown in Exhibit A, for soil disposal purposes. The City and the JPA are willing to make their property available under the terms and conditions specified herein and subject to all conditions reasonably imposed by any applicable permits, including but not limited to, a Resource Protection Ordinance ("RPO") permit or an Environmentally Sensitive Lands ("ESL") permit from the City.

2. Disposal on the City's 105 acres:

The City owns fee simple title to approximately 105 acres in the lower San Dieguito River Valley, more particularly shown in Exhibit A, referred to hereinafter as the City's 105 acres. The disposal of soils can only be authorized when and if an EIR/EIS for the wetlands restoration project is certified and all necessary permits are approved by the City and any other necessary permitting authorities. If SCE deposits soil on City property, the disposed soils shall be properly engineered, contoured, compacted, covered with topsoil, planted to prevent erosion, and graded to drain as required by the EIR/EIS currently being prepared for the project, unless the City agrees otherwise. SCE shall pay the City a disposal fee of \$250,000.00 by June 15, 1999, unless SCE has provided written notification to the City that SCE will not dispose of excavated soil on the 105 acres. If after payment of the \$250,000.00, SCE provides written notification to the City that SCE will not dispose of excavated soil on the 105 acres, then within 180 days of the notification City shall refund to SCE the \$250,000.00, plus four percent (4%) interest accruing from the date of that notification.

3. Disposal on the Ranch Property:

As part of a settlement of litigation between the City and the Partnership, the City's electorate is being asked to approve Proposition N which generally authorizes the exchange of certain City-owned property in

University City for the Partnership's Ranch property, more particularly shown in Exhibit A. If Proposition N is approved by the electorate, and the Partnership dismisses with prejudice San Diego Superior Court Case numbers 707254, 711525 and 718166, the City will be in a position to make the Ranch available for the disposal of excavated soils, if necessary, subject to the terms and conditions set forth herein and in all necessary permits, including but not limited to, a RPO permit or an ESL permit. At a minimum, if SCE deposits any soils on the Ranch, the disposed soils shall be properly engineered, contoured, compacted, covered with topsoil, planted to prevent erosion, and graded to drain as required by the EIR/EIS currently being prepared for the project, unless the City agrees otherwise. The disposal of soils on the Ranch can only be authorized at such time as the EIR/EIS for the wetlands project is certified and all necessary permits have been approved. SCE shall pay the City a disposal fee of \$250,000.00 by June 15, 1999, unless SCE has provided written notification to the City that SCE will not dispose of excavated soil on the Ranch property. If after payment of the \$250,000.00, SCE provides written notification to the City that SCE will not dispose of excavated soil on the Ranch property, then within 180 days of the notification City shall refund to SCE the \$250,000.00, plus four percent (4%) interest accruing from the date of that notification.

4. Disposal on the JPA Property:

The JPA will allow SCE to dispose of soils at no cost on JPA owned properties, including the Additional Property, the berms and least tern nesting sites, and any other JPA owned property identified for soil disposal in the EIR/EIS (collectively referred to as the "JPA Property") if necessary, subject to the terms and conditions set forth herein. SCE shall first seek to deposit soils on the Villages property as the preferred site and, thereafter, may dispose of soil on the other JPA Property as SCE sees fit, subject to obtaining all necessary permits. Disposal of soils on JPA Property shall be pursuant to the EIR/EIS for the Final Wetland Restoration Plan and this Agreement and shall not occur until all necessary permits have been obtained. As a minimum requirement, soils deposited on JPA Property shall be properly engineered, contoured, compacted, covered with topsoil, planted to prevent erosion and graded to drain.

5. Disposal on the Villages Property.

The JPA agrees to support and, to the extent required, authorize disposal of soils excavated during the wetlands restoration project on the Villages property. Disposal of soils on the Villages property shall be pursuant to the EIR/EIS for the Final Wetlands Restoration Plan and shall not occur until all necessary permits have been obtained. As a minimum requirement, soils deposited on the Villages property shall be properly

engineered, contoured, compacted, covered with top soil, planted to prevent erosion and graded to drain. Further, any soil deposited in the six (6) acre portion of the Villages property identified in Exhibit A for transfer to the JPA shall include non-expansive granular fill compacted to 90% relative density in the area planned for construction of the JPA Nature Center.

V

TRANSFER OF VILLAGES TO JPA

As consideration for the JPA's agreement to grant SCE the exclusive right to include the Additional Property within the restoration project, the right to use the JPA property for soil disposal, and the additional assurances and promises set forth herein, SCE agrees to transfer fee title to the entire Villages property or at minimum the six (6) acre parcel, as shown in Exhibit A, under the following terms and conditions.

1. **Transfer of Villages After Successful Completion of the Restoration**

Project:

Subject to the contingencies set forth herein, SCE shall transfer fee title to the Villages property to the JPA upon successful completion of the restoration project. For purposes of this Section, the restoration project shall be deemed successfully completed when it has satisfied the requirements and standards for the construction phase of the Final Wetlands Restoration Plan as approved by the California Coastal

Commission. Transfer of the Villages property to the JPA shall be free and clear of liens and encumbrances, other than those pre-existing the SCE purchase of the Villages and the Covenant of Easement described in Section III.2(c), and be accompanied by the same guarantees, warranties and assurances provided to SCE as part of its purchase of the property.

2. Right to Negotiate Use of Villages Property in Advance of Transfer:

Subject to the terms and conditions of this Agreement, including the provisions that provide for the possible transfer of a portion of the Villages property to the City and the transfer to the JPA of only six (6) acres discussed in Section V.3. below, the JPA shall have the right to negotiate with the 22nd District Agricultural Association ("District") regarding the right to use and/or the transfer of a portion of the Villages property in exchange for use of portions of the District's properties as part of the wetlands restoration project. Prior to the transfer of the Villages property to the JPA and subject to the terms and conditions of this Agreement, including the provisions that provide for the possible transfer of a portion of the Villages property to the City, SCE shall have the right to negotiate an agreement for the District's temporary use of the Villages property to accommodate implementation of the wetlands restoration project. Any agreement between the JPA or SCE and the District shall (i) be subject to the approval of the other Party, which approval shall not be unreasonably withheld, (ii) not grant any right

inconsistent with the Covenant of Easement described in Section III.2(c), and (iii) not purport to act as any governmental approval that may be required for District use of the Villages property.

3. Transfer of Six Acres if Soil Disposal Not Allowed:

In the event that SCE cannot obtain the permits necessary for disposal of dredged soil on the Villages property or the resulting permits are conditioned so that SCE reasonably believes the disposal of soil does not economically justify the purchase of the Villages property, JPA shall be granted fee title to only the six (6) acre portion on the Villages property shown in Exhibit A to this Agreement. If SCE determines that disposal on the Villages property is not economically feasible, it shall provide the JPA with a written description of the facts supporting the determination.

SCE's determination of infeasibility shall be based upon consideration of whether disposal on the Villages property provides a reasonable return for the Villages purchase price and not upon a comparison of disposal costs on other properties. Title to the six (6) acre parcel, which shall not include a 100 foot buffer surrounding any SCE restored wetlands and, after the disposal of excavated soil on the Villages property, shall be located outside the flood plain fringe, shall be transferred to the JPA concurrent with the transfer of the Village property parcel to the City. Transfer of the six (6) acre parcel shall be accompanied by the same guarantees, warranties and assurances provided to the City for its

portion of the Villages property. Further, SCE shall have applied for and obtained approval of a lot split separating the six (6) acre parcel from the remainder of the Villages property or take other steps necessary to ensure that the property deeded to the JPA is a separate, legal parcel.

4. Support of Villages as the Preferred Soil Disposal Alternative:

The JPA agrees that the Villages property is the preferred soil disposal location and shall cooperate in the attainment of approvals and permits as required.

VI

ADDITIONAL OBLIGATIONS OF THE PARTIES

1. JPA's Support of the Villas Application:

JPA understands that the proposed settlement agreement between the City and the Partnership involves an application to develop approximately 47 single-family homes on a portion of the Villas property.

If successfully implemented, this Agreement will result in the JPA acquiring title to the Villages property and will remove the threat of development of the Ranch by the Partnership. Therefore, this Agreement furthers the JPA's goals and objectives for the San Dieguito River Valley.

Accordingly, the JPA endorses and will publicly support the 47 unit Villas project at hearings before the Planning Commission, the City Council, and the Coastal Commission.

2. No Re-negotiation of the Existing MOA between the City and the JPA:

The JPA and the City entered into a Memorandum of Agreement on June 11, 1996 in which, among other things, the City offered its 105 acres for sale to the JPA at a price of \$6 million, and the JPA agreed to designate acquisition of the 105 acres as its top priority and to use its best efforts to acquire grants or other funding to acquire the 105 acres. Nothing in this Agreement is intended to modify the obligations of the JPA or the City as set forth in City-JPA MOA, which is attached as Exhibit C.

3. Defeat of Proposition N on November 3, 1998:

If Proposition N is defeated by the electorate on November 3, 1998, the JPA recognizes that the Partnership intends to submit a development application for the Ranch which may, among other things, seek approval of a cemetery use on the Ranch or a residential development. In making any recommendation on such an application, JPA agrees to restrict its comments to the consistency of the application with adopted JPA plans and goals, and the potential impacts to the San Dieguito River Park.

4. Waiver of City Permit Fees:

The City agrees to waive any fees required for the issuance of permits necessary to complete SCE's wetlands restoration project.

5. JPA and City Support of the Wetlands Restoration Project:

The City and the JPA agree to make staff members available at public hearings on the wetlands restoration project to explain how the project, if implemented in accordance with the EIR/EIS and all applicable permit conditions, will advance their respective interests. SCE shall provide the City and the JPA with reasonable notice of hearings which should be attended by staff from the City and the JPA.

6. JPA's Irrevocable Offer of Dedication:

In the event the JPA acquires fee title to the entire Villages property as set forth in Section V, the JPA shall provide the City with an irrevocable offer to dedicate, at no cost to the City, a sufficient amount of the Villages property to ensure the widening of Via de la Valle to four lanes. The JPA and the City anticipate that the JPA will need to dedicate enough of the Villages property to create two new west-bound traffic lanes. The actual property to be dedicated shall be determined by the City Engineer after the JPA acquires fee title to the Villages property.

VII

ENVIRONMENTAL REVIEW

The Parties recognize that no commitment to proceed with actual restoration of the San Dieguito River Valley coastal wetlands or any other project contemplated by this Agreement can proceed until compliance with the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA") is first achieved. Consequently, the Parties recognize that this Agreement does not represent a commitment to undertake any project subject to CEQA or NEPA in advance of CEQA or NEPA review.

VIII

GOOD FAITH OBLIGATIONS

The Parties agree to cooperate fully, reasonably, and in good faith in the implementation of this Agreement. The Parties also agree to execute any and all supplemental documents with reasonable terms and conditions, and to take all additional lawful and reasonable actions, which may be necessary or appropriate to give full force and effect to the basic terms and to fully implement the goals and intent of this Agreement.

IX

LEGAL CHALLENGES TO THIS SETTLEMENT AGREEMENT

The Parties have consulted with their respective attorneys and believe that all the actions called for in, or contemplated by, this Agreement may lawfully be undertaken. The Parties recognize, however, that legal challenges may be filed

to any of the actions undertaken pursuant to this Agreement. In the event that any such legal challenge is filed to any of the actions undertaken by any of the parties, each party shall defend itself at its own cost, and no party shall be required to defend or indemnify another with respect to the actions undertaken pursuant to this Agreement. The Parties agree to cooperate to the greatest extent possible in the defense of any legal challenge to the acts taken pursuant to this Agreement.

In the event that any legal challenge to any of the actions undertaken pursuant to or in implementation of this Agreement is successful, and any such challenged action is found or held to be unlawful or void, the Parties agree to consult with each other in good faith for a period of thirty days following the finality of any adverse judgment about other actions that may be agreed to between the Parties that may substitute for the action(s) held unlawful or void.

X

**NO RESTRICTION ON EXERCISE OF LEGISLATIVE
OR QUASI-JUDICIAL DISCRETION**

By entering into this Agreement, the City and JPA are not contracting away or otherwise limiting their legislative or quasi-judicial discretion, or committing to exercise its legislative or quasi-judicial discretion in any particular manner or to achieve any predetermined result. In particular, the City is not agreeing to approve the Villas project referenced herein or to grant SCE any permits required to implement its wetlands restoration project.

XI

COMPREHENSION AND DRAFTING OF AGREEMENT

The Parties represent that in entering into this Agreement, they have relied upon the legal advice of their attorneys, who are the attorneys of their own choice, and that the terms of the Agreement are fully understood and voluntarily accepted by them. All Parties have participated in the drafting of this Agreement, and the Parties agree that it shall be deemed that this Agreement was drafted by all Parties.

XII

GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

XIII

INCORPORATION OF EXHIBITS

The Exhibits referenced in this Agreement, specifically Exhibits A through C, shall be incorporated and become part of this Agreement.

XIV

NO ADMISSION OF LIABILITY

This Agreement is not an admission of liability by the City as to any of the issues raised in San Diego Superior Court case numbers 707254, 711525, and 718166. Nothing in this Agreement shall be deemed to be a waiver of the City's position or legal theories in the aforementioned cases.

XV

ENTIRE AGREEMENT AND SUCCESSORS AND ASSIGNS

This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

XVI

AUTHORIZATION

The Parties executing this Agreement warrant that they are fully authorized and empowered to do so. Each party warrants that it is fully authorized to perform the obligations required of it by the Agreement.

XVII

EFFECTIVENESS AND TERMINATION

This Agreement shall become effective when:

1. All parties have executed this Agreement; and
2. SCE and the Partnership execute a purchase agreement for the sale of the Villages property.

In the event the City Council denies the Villas application, this Agreement and all remaining obligations herein shall terminate and become null and void.

XVIII

SEVERABILITY

The obligations set forth in Sections I through V of this Agreement are not severable. If a court finally determines that any material portions Sections I through V of this Agreement are invalid or unenforceable then the remaining obligations of this Agreement shall not remain in full force and effect; unless the Parties agree within thirty (30) days upon a substitute section that is likely to survive a judicial challenge, as contemplated by Section IX. If, however, a court finally determines that any other section of this Agreement is unenforceable, then the remainder of this Agreement shall remain in full force and effect.

XIX

AMENDMENTS

This Agreement may be amended with the mutual consent of all Parties. All amendments to this Agreement must be in writing and executed by authorized representatives of each Party.

XX

COUNTERPARTS

The Agreement may be executed in several counterparts and when so executed by all Parties shall constitute one agreement, which shall be binding upon all Parties hereto, notwithstanding the fact that all the Parties signatures do not appear on the same page.

CITY OF SAN DIEGO

Approved as to form:
CASEY GWINN

By: _____
Penelope Culbreth-Graft
Assistant City Manager

By: _____
John P. Mullen
Deputy City Attorney

SAN DIEGUITO RIVER REGIONAL
OPEN SPACE PARK JOINT POWERS
AUTHORITY


WORDEN, WILLIAMS, RICHMOND,
BRECHTEL & GIBBS


By: _____
Dick Bobertz
Executive Director

By: _____
D. Wayne Brechtel
Attorneys for San Dieguito River
Regional Open Space Park Joint
Powers Authority

SOUTHERN CALIFORNIA EDISON
COMPANY

SOUTHERN CALIFORNIA EDISON
COMPANY

By:  _____
John Fielder
Vice-President
Southern California Edison
Company

By:  _____
Nino J. Mascolo
Attorney for Southern California
Edison Company

C:\WINDOWS\TEMP\SDMOAS.DOC

LIST OF EXHIBITS

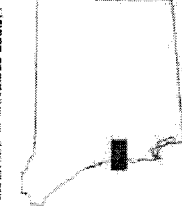
- Exhibit A:** Map of San Dieguito River Valley Showing Property Referenced
in the Memorandum of Agreement.
Exhibit B: Draft Conservation Easement from City to SCE.
Exhibit C: Memorandum of Agreement between City and JPA.

Exhibit A - Agreement between City of San Diego, SCE, and JPA

LEGEND

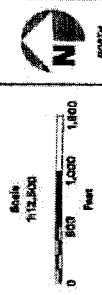
- City of San Diego Property that can be retained by SCE for "Utilities" ("Utilities area")
- City of San Diego Property that can be retained as "Wetlands"
- Villages Property (it shall be the responsibility of JPA for mapping purposes)
- Villages Property that may be transferred to City of San Diego ("Transferable property")
- Property Ownership Boundary
- Study Section Number
- Intersecting Highway
- Major Road
- Minor Road

INDEX MAP OF SAN DIEGO COUNTY

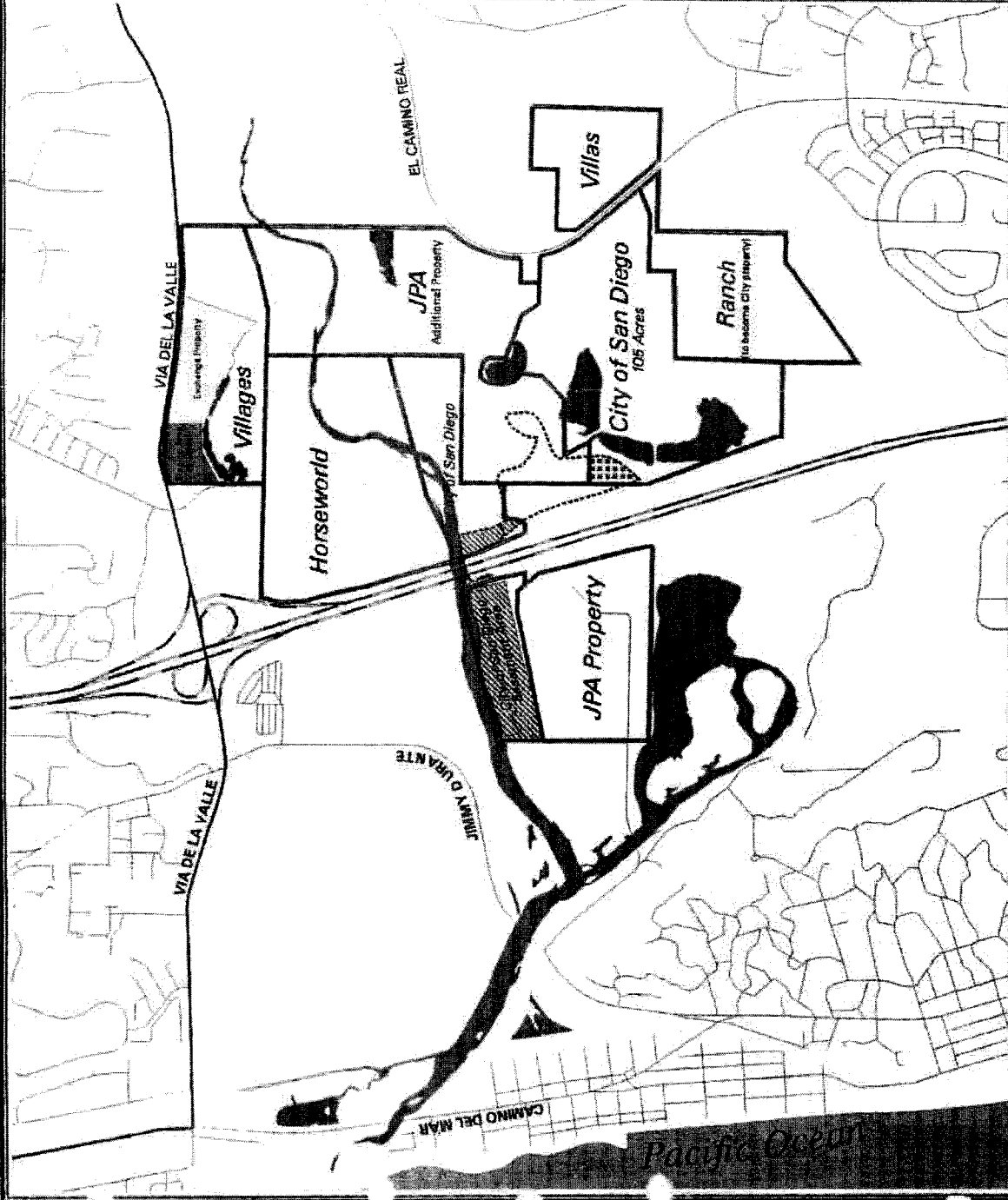


Map Prepared on: November 06, 1998
Map Created by: AUB
Map Published by: BCE
Map Version No.: 2

Property Designations



This document is prepared solely for informational purposes and does not constitute an offer of insurance or any other financial product. It is not intended to be used for any other purpose. The information contained herein is for informational purposes only and should not be used for any other purpose. The information contained herein is for informational purposes only and should not be used for any other purpose.



**DRAFT
Exhibit B**

RECORDING REQUESTED BY:)

Southern California Edison Company)

MAIL TO:)

Southern California Edison Company)

P.O. Box 800)

2244 Walnut Grove Avenue)

Rosemead, California 91770)

Attention: Manager, Environmental Affairs)

Space Above Line for Recorder's Use Only

**GRANT OF EASEMENT
[San Dieguito River Valley]**

The City of San Diego, a municipality of the State of California, hereinafter called "Grantor", for valuable consideration as evidenced in that November, 1998 Memorandum of Agreement between Grantor, the Southern California Edison Company, and the San Dieguito River Valley Open Space Park Joint Powers Authority ("JPA") grants and conveys to Southern California Edison Company, a California corporation, its successors and assigns, hereinafter called "Grantee", all those permanent and exclusive easements, as set forth below, in, over, under, and across that certain real property of Grantor, hereinafter referred to as the "Property" and described as follows:

DESCRIPTION AND MAP OF GRANTOR'S PROPERTY

- Describe property along San Dieguito River.
- Describe property for wetland restoration.

DESCRIPTION OF EASEMENTS

To dredge, excavate, and remove sand, soil, sediment, rocks, and any other material from the bed and banks of the San Dieguito River and the Property, and all other actions deemed necessary by Grantee to ensure the continuous tidal flow into the San Dieguito River Valley.

Sdesmt.doc

DRAFT
Exhibit B

To create, restore, manage, use, monitor, maintain, repair, enhance, protect, and replace wetlands, uplands, riparian, beach, sand dunes, and other habitat for the use, protection, and enhancement of wetland, fish, or wildlife resources in the Property or in the San Dieguito River Valley.

To ingress, egress, view, traverse, and study, including drilling soil and bedrock samples, in, over, or across the Property.

To assign, in whole or in part, to others the rights granted herein.

To construct roads or paths as shall be necessary and convenient to Grantee's exercise of the rights granted herein.

To clear and keep clear the Property from buildings, structures, equipment, brush, debris, and any other obstructions of any kind which in the opinion of Grantee may interfere with the Grantee's exercise of the rights herein granted.

To prevent any activity or use of the Property that is inconsistent with the purposes of this Grant of Easement.

To all air, mineral, oil, gas, and water rights to the extent necessary to protect and sustain the other rights granted under this Grant of Easement.

THIS EASEMENT is granted subject to the following covenants, conditions, and restrictions:

This Grant of Easement does not convey to Grantee any right to extract any oil, gas, or mineral within or under the Property unless necessary to prevent a release of such substance on the Property or interfering with the removal of material in connection with wetland restoration.

Any activity on or use of the Property inconsistent with the purposes of this Grant of Easement and not specifically reserved as a right by Grantor is prohibited.

Grantor shall deny requests for entry onto the Property by persons whose activities may be inconsistent or interfere with the purposes of this Easement.

It is further understood and agreed that no other easement or easements shall be granted on, under, or over the Property by Grantor to any person, firm, or corporation without the previous written consent of Grantee.

SCE agrees to defend, indemnify, protect, and hold the Grantor, its agents, officers, and employees harmless from and against any and all claims for damages or injuries to any person or property, including any injury to SCE's employees, invitees, guests, agents, or officers, which arise out of, or are in any manner connected with the work to be performed by SCE pursuant to its wetlands restoration project

DRAFT
Exhibit B

If that November, 1998 Memorandum of Agreement between Grantor, Grantee, and JPA terminates and Grantee does not proceed with restoration in the San Dieguito River Valley wetland restoration project and will not exercise the Easements herein, Grantee shall quitclaim this Grant of Easement to Grantor.

Any notice or request required or permitted under this Grant of Easement from one Party to the other shall be in writing and shall be deemed to have been delivered to either Party for all purposes if personally served or sent by registered or certified mail, postage prepaid to the person and address below:

Southern California Edison Company
Attn: Manager, Environmental Affairs
P.O. Box 800
2244 Walnut Grove Avenue
Rosemead, CA 91770

City of San Diego
Attn: City Manager
1200 Third Avenue
San Diego, CA 92101

The terms, covenants, and conditions of this Grant of Easement shall bind and inure to the benefit of the successors and assigns of Grantor and the successors and assigns of Grantee.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its officers thereunto duly authorized, this ____ day of _____, 19__.

City of San Diego

By: _____

City Manager

By: _____

Secretary

DRAFT
Exhibit B

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

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

WITNESS my hand and official seal.

Signature: _____

MEMORANDUM OF AGREEMENT

BETWEEN

CITY OF SAN DIEGO

AND

SAN DIEGUITO RIVER VALLEY REGIONAL OPEN SPACE PARK

JOINT POWERS AUTHORITY

WHEREAS, the City of San Diego ("City") intends to acquire fee title to approximately 106 acres of land in the San Dieguito River Valley (the "Property"), as more particularly described in Exhibit "A" which is attached hereto, as part of a settlement of litigation to which the San Dieguito River Valley Regional Open Space Park Joint Powers Authority ("JPA") is not a party; and

WHEREAS, the City is willing to make any of the Property it acquires available for purchase by the JPA for a period of five (5) years from the date of this Agreement (the "Option Period") for inclusion in the Regional Park; and

WHEREAS, the JPA is willing to commit to using its best good faith efforts to acquire grant or other funding to buy the Property within the Option Period, and to making the acquisition of the Property its top priority; and

WHEREAS, the City recognizes that the JPA's ability to acquire grant or other funding to complete the purchase cannot be guaranteed; and

WHEREAS, the City is willing to hold any of the Property which it acquires in fee title as open space during the Option Period or any extension thereof; and

WHEREAS, the City is offering the Property to the JPA during the Option Period for the sum of \$6 million, or the City's actual cost of acquisition, whichever is less; and

WHEREAS, the City recognizes that the JPA may not be successful in obtaining grant or other funding to complete the purchase and that the JPA is not obligated to complete the purchase in the absence of funding; and

WHEREAS, the Property is on the JPA's acquisition priorities list and would be a desirable addition to the Regional Park; and

WHEREAS, an independent review of value has been conducted by a qualified appraiser who has determined and advised the JPA that the fair market value of the Property is not less than \$ 6 million; and

WHEREAS, the City and JPA desire to set out the terms and conditions of their agreement with respect to availability of the Property for acquisition by the JPA in this Memorandum of Agreement ("MOA");

NOW, THEREFORE, the City and JPA agree as follows:

1. RECITALS

The foregoing recitals are true and correct.

2. CITY OFFER OF PROPERTY TO JPA

The City offers the Property to the JPA during the Option Period at the price of \$6 million under the terms and conditions as set forth in this MOA.

3. JPA OBLIGATION TO SEEK FUNDING AND ACQUIRE THE PROPERTY

The JPA agrees to make the acquisition of the Property its top priority, based upon eligible and available funding. The JPA further agrees to use its best good faith efforts to acquire grant or other funding to acquire the Property.

4. TRANSFER OF TITLE

A. Contingent Upon Settlement of Litigation

The City has informed the JPA that, as part of its settlement of litigation with the San Dieguito Partnership, et al., the City intends to acquire fee title to the Property. The JPA is not a party to that litigation and has not participated in the negotiations for the settlement thereof, nor is the JPA a party to the settlement. The obligations set forth in this MOA on the part of the JPA are contingent upon the City's settlement of the litigation with the San Dieguito Partnership. If that settlement is not effected in any respect with regards to the transfer of the Property to the City, the JPA's obligations under this MOA are extinguished, unless otherwise agreed between the City and the JPA.

B. Transfer to Occur in Increments

The City may be acquiring fee title to the Property in increments. The City agrees to make so much of the Property as it acquires in increments available for purchase by the JPA as soon as City acquires fee title.

C. Title to Pass as Funding Becomes Available

The City shall transfer title to so much of the Property as it may acquire in increments to the JPA as soon as the JPA acquires the funding necessary to make the acquisition.

D. Condition of Title

Unless agreed otherwise by the City and the JPA in writing, title to the Property shall pass to the JPA in fee subject only to such encumbrances as are of record and which are approved by the JPA. This MOA is conditional upon the right of the JPA to review and accept the condition of title to the Property prior to its conveyance to the JPA in that, at the time of the execution of this MOA, the JPA has not had the opportunity to review the condition of title. City shall, as expeditiously as possible, provide the JPA with a title report for the Property showing its condition.

5. **EXTENSION OF OPTION PERIOD AND PURCHASE BY OTHER ENTITY**

If, at the end of the Option Period, the JPA has acquired at least 60 % of the total acreage of the Property acquired by the City, the City and JPA shall in good faith meet and confer on the possibility of an extension of the Option Period. In addition, at the end of the Option Period the City agrees to consider selling to any other entity proposed by the JPA, so much of the Property as the City has acquired but the JPA has been unable to acquire.

6. **PURCHASE IN INCREMENTS AND PRIORITY OF ACQUISITION**

It is the intention of the City and JPA that the JPA may acquire the Property in increments as funding becomes available. It is the further intention of the City and JPA that, insofar as practicable, the JPA may acquire the Property in roughly the same proportions as wetlands bears to uplands in the entire parcel (approximately 45%-55%, respectively). It is the further intention of the City and JPA that the upland area in the northerly and easterly portion of the parcel shall be the last to be acquired by the JPA. The reason for this priority of acquisition is that, in the event that the JPA cannot acquire as much of the Property as the City has acquired, the City wishes to retain its ability to market and sell the remainder of the Property to recover its investment therein. Accordingly, the City desires to retain until the last, those portions of the Property that are the most marketable. The City and JPA shall meet and confer in good faith on

the specifics of each incremental purchase as appropriate.

7. CITY TO PRESERVE AND PROTECT THE PROPERTY PRIOR TO ACQUISITION BY THE JPA

The City agrees to take such action as necessary to ensure that as much of the Property as City may acquire is preserved and protected as open space until such time as it is acquired by the JPA, recognizing that agriculture has occurred on the site in the past and portions of the Property are currently disturbed. It is further recognized that the JPA's interest in acquiring the Property is for park, open space, habitat and related purposes consistent with the JPA's San Dieguito River Valley Park Plans, and that in this regard it is important that the Property's usefulness for these purposes not be impaired. The JPA's obligations under this MOA are expressly contingent upon the City's ability to assure preservation of the Property it acquires from the date of acquisition to the date of transfer to the JPA.

8. NO JPA DEBT CREATED

The City recognizes that no debt on the part of the JPA or any of its members is created by this MOA. Rather, the JPA's obligation is limited to designating the acquisition of the Property its top priority, based upon eligible and available funding, and using its best, good-faith efforts to secure eligible funding to acquire the Property during the Option Period. If the JPA is unable to obtain some or all of the necessary funding to fully acquire as much of the Property as the City has acquired, it shall have no further financial obligation.

9. RIGHTS OF CITY IN THE EVENT PROPERTY NOT ACQUIRED

In the event that the JPA is unable to acquire some or all of the Property the City has acquired by the end of the Option Period or any extension thereof, the City retains its right to determine the appropriate use of the unacquired Property, or to sell or otherwise dispose of the unacquired Property as it deems proper. No restrictions are placed upon the City's right and authority to sell or otherwise dispose of the unacquired Property by this MOA, nor does this MOA give the JPA any special right to control or affect how the City may treat the unacquired Property.

10. RIGHTS OF JPA AS TO UNACQUIRED OR ADJACENT PROPERTY

The JPA retains its rights to review, comment upon, support, stay neutral, or oppose the planning and development activities that may occur on property immediately adjacent to the Property, or that may occur for the unacquired Property. Nothing in this MOA restricts the JPA's rights in that regard.

11. FURTHER DOCUMENTATION

A. Escrow

The City and JPA agree to take any further actions, and to execute any additional documents, as may reasonably be necessary or required to carry out the terms of this MOA. If either party so requests, an escrow shall be opened as to one or more of the incremental transfers of the Property contemplated by this MOA with the parties sharing the costs of escrow equally at an agreed upon escrow company.

B. Title Reports; Title Insurance

The City, at its cost, shall provide the JPA with an up-to-date title report on each increment of the Property at the time it is transferred to the JPA. The JPA may, at its cost, purchase such title insurance as it deems appropriate.

12. LIABILITY: INDEMNITY AND INSURANCE

A. Indemnification

The parties agree that landowners liability for the Property shall rest with which ever entity has title to the Property, or portion thereof, at the time of the incident giving rise to liability. The parties agree to defend, indemnify and hold harmless each other, their Council/Board members, officers, employees, or agents with respect to any claim, demand or litigation of any kind including, but not limited to, personal injury, death and property damage, arising out of or related to the Property or this MOA during the time that the City and JPA respectively hold title to the Property or portion thereof on which the incident giving rise to the claim or litigation occurs.

B. Insurance

During the Option Period or any extension thereof, the parties agree to either maintain liability insurance with respect to the Property, naming the other party as additional insured, or maintain a self-insured status as authorized by law.

13. DISPUTE RESOLUTION

In the event that any dispute should arise under this MOA the parties agree to engage in informal dispute resolution before invoking any other remedy. To this end, upon the written request of either party, the parties shall, within thirty (30) days of the date of mailing of a request for dispute resolution, meet and confer in good faith in an attempt to resolve any dispute that arises. Such informal dispute resolution may continue for so long as the parties agree, provided that neither party may file litigation nor invoke any other remedy either before at least one

informal dispute resolution session is held, or, if the other party refuses to participate in dispute resolution, before the expiration of thirty (30) days from the demand for dispute resolution. Participation in informal dispute resolution shall be confidential and informal and shall be without prejudice to either parties' right to pursue litigation or other remedies thereafter.

14. AMENDMENT

This MOA maybe amended at any time by an agreement in writing signed by the parties.

15. CONTACT PERSON; ADDRESS

The following persons are designated as the contact persons for the parties with respect to implementation of this MOA and for purposes of receiving all notices:

A. City of San Diego:

Robert J. Collins, Real Estates Assets Manager
202 C Street
San Diego, CA. 92101

Copy to:

Leslie J. Girard, Assistant City Attorney
202 C Street
San Diego, CA. 92101

B. JPA

Diane Coombs, Executive Director
San Dieguito River Valley Regional Open Space Park Joint Powers
Authority
1500 State Street, Suite 280
San Diego, CA. 92101

Copy to:

D. Dwight Worden, General Counsel
Law Offices of D. Dwight Worden
462 Stevens Avenue, Suite 102
Solana Beach, CA. 92075

16. EFFECTIVE DATE

This MOA will be effective upon full execution by all parties. This MOA may be executed in counterparts, an original to be retained by each party.

Dated March __, 1996

CITY OF SAN DIEGO

by 
Jack McGrory, City Manager

Dated March __, 1996

SAN DIEGUITO RIVER VALLEY REGIONAL
OPEN SPACE PARK JOINT POWERS
AUTHORITY

by _____
Diane Coombs, Executive Director

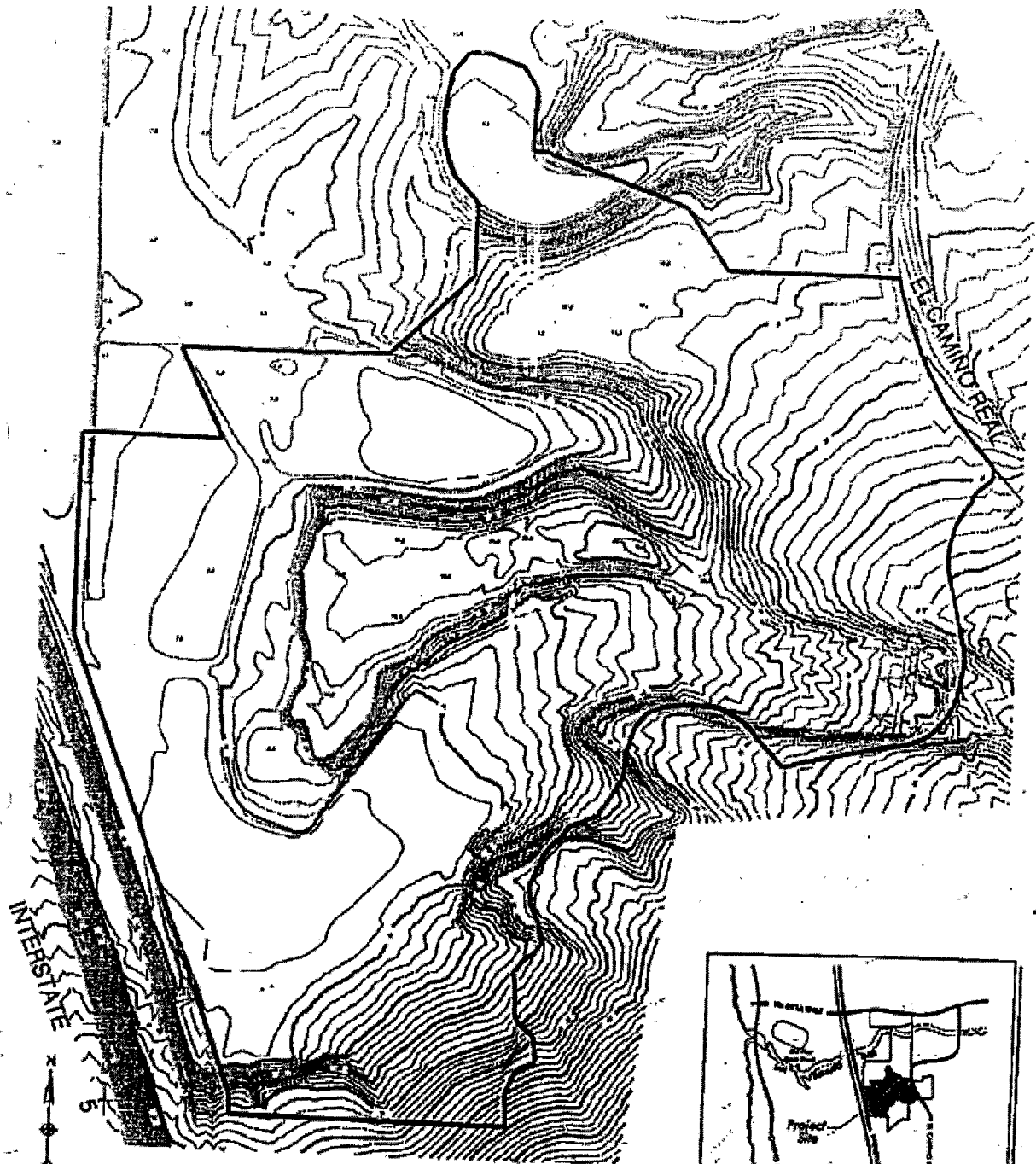
Approved as to form:
John W. Witt, City Attorney

by 
Leslie J. Girard, Assistant City Attorney

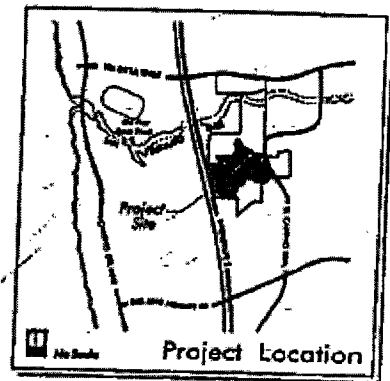
Law Offices of D. Dwight Worden

by _____
D. Dwight Worden, JPA General Counsel

EXHIBIT "A"



SCALE 1"= 400'
REVISED 7/10/96



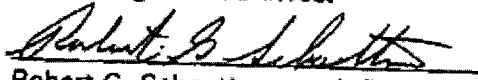
106 ACRE PARCEL

Parcels 5 and portions of Parcels 4, 6, 7, 8 and 9 of Parcel Map 16964, together with a portion of the South Half of the Northwest Quarter of the Southeast Quarter of Section 12, Township 14 South, Range 4 West, San Bernardino Meridian, all in the City of San Diego, County of San Diego, State of California and described in total as follows:

Beginning at the Southeast corner of said Parcel 9 of said Parcel Map 16964; thence along the Southerly boundary of said map North $88^{\circ}51'56''$ West 1317.42 feet to the TRUE POINT OF BEGINNING; thence continuing along said boundary North $88^{\circ}51'56''$ West 806.71 feet; thence North $01^{\circ}59'35''$ West 59.08 feet; thence continuing along said boundary and its Northwesterly prolongation North $20^{\circ}31'30''$ West 1412.38 feet; thence along the North South centerline North $00^{\circ}33'29''$ East 592.09 feet; thence; South $88^{\circ}45'00''$ East 411.46 feet; thence North $26^{\circ}03'50''$ West 290.76 feet; thence South $89^{\circ}23'00''$ East 600.00 feet; thence North $46^{\circ}35'20''$ East 333.98 feet; thence North $01^{\circ}13'00''$ East 212.00 feet; thence North $42^{\circ}33'42''$ West 109.95 feet; thence North $16^{\circ}38'40''$ West 108.81 feet; thence North $00^{\circ}27'30''$ East 80.00 feet; thence North $11^{\circ}04'40''$ East 113.95 feet; thence North $38^{\circ}59'58''$ East 75.43 feet; thence South $88^{\circ}28'02''$ East 65.26 feet; thence South $71^{\circ}21'10''$ East 105.00 feet; thence South $32^{\circ}33'08''$ East 73.42 feet; thence South $02^{\circ}20'47''$ West 182.10 feet; thence South $89^{\circ}32'30''$ East 36.00 feet to a point on the boundary of said Parcel 4, Parcel Map 16964; thence along said boundary South $69^{\circ}27'45''$ East 445.38 feet, South $31^{\circ}48'02''$ East 220.00 feet, and South $88^{\circ}47'00''$ East 500.00 feet to a point on the arc of a 1049.00 foot radius curve concave Easterly, a radial line to said point bears South $78^{\circ}18'41''$ West being also the Westerly Right-of-way of El Camino Real; thence Southerly along said curve and said Right-of-way through a central angle of $29^{\circ}04'15''$ an arc distance of 532.24 feet; thence tangent to said curve South $40^{\circ}45'32''$ East 84.34 feet; thence leaving said Right-of-way South $04^{\circ}14'29''$ West 35.35 feet; thence South $49^{\circ}14'28''$ West 40.68 feet to the beginning of a tangent 282.00 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of $03^{\circ}07'47''$ a distance of 15.40 feet to the beginning of a compound 50.00 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of $40^{\circ}29'48''$ a distance of 35.34 feet to the beginning of a non-tangent 255.00 foot radius curve concave Southeasterly a radial line to said point bears North $49^{\circ}25'19''$ West; thence Southwesterly along the arc of said curve through a central angle of $54^{\circ}04'21''$ a distance of 240.65 feet; thence South $13^{\circ}29'40''$ East; 187.09 feet to the beginning of a tangent 230.00 foot radius curve concave Westerly; thence Southerly along the arc of said curve through a central angle of $27^{\circ}09'45''$ a distance of 109.04 feet; thence South $13^{\circ}40'05''$ West 55.30 feet to the beginning of a tangent 190.00 foot radius curve concave Northwesterly; thence Southwesterly along the arc of said curve through a central angle of $65^{\circ}53'33''$ a distance of 218.51 feet; thence South $79^{\circ}33'38''$ West 225.32 feet; thence South

78°35'09" West 86.52 feet; thence South 73°45'05" West 53.94 feet; thence North 42°05'58" West 111.84 feet; thence North 39°34'15" West 57.39 feet; thence North 60°10'15" West 87.23 feet; thence North 86°39'51" West 87.72 feet; thence South 83°01'39" West 77.09 feet; thence South 69°25'57" West 43.59 feet; thence South 38°56'19" West 51.41 feet; thence South 22°02'31" West 40.85 feet; thence South 14°36'44" West 47.88 feet; thence South 03°27'58" West 66.60 feet; thence South 30°50'27" West 120.97 feet; thence South 30°50'28" West 14.63 feet; thence South 68°09'44" West 87.78 feet; thence South 29°43'47" West 32.48 feet; thence South 53°57'21" West 27.39 feet; thence South 41°58'11" West 54.19 feet; thence South 23°49'33" West 94.69 feet; thence South 05°00'36" East 57.63 feet; thence South 23°33'43" East 60.44 feet; thence South 06°20'11" East 36.48 feet; thence South 35°31'15" East 17.33 feet; thence South 33°40'26" West 39.94 feet; thence South 53°51'50" West 46.12 feet; thence South 37°10'04" West 36.66 feet; thence South 05°26'14" East 84.99 feet; thence South 07°35'24" West 30.48 feet; thence South 20°21'54" East 37.60 feet; thence South 52°43'00" East 58.20 feet; thence South 04°56'45" East 74.26 feet; thence South 82°49'15" West 62.43 feet; thence South 25°00'12" West 72.61 feet; thence South 03°43'55" East 95.98 feet to the TRUE POINT OF BEGINNING.

Containing 104.98 acres.


Robert G. Schoettmer L.S. 4324



W/121998.003

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



W16.3a

Filed: June 23, 2011
49th Day: October 11, 2011
180th Day: December 20, 2011
Staff: Gabriel Buhr - SD
Staff Report: August 24, 2011
Hearing Date: September 7 – 9, 2011

MATERIAL AMENDMENT
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-04-088-A10

Applicants: Southern California Edison (SCE)
San Dieguito River Park Joint Powers Authority (JPA)

Original Description: Implementation of the San Dieguito Wetland Restoration Plan, including creation and/or restoration of approximately 165 acres of wetland habitat, dredging of the lagoon mouth to maintain an open inlet, construction of least tern nesting sites, and construction of public access trails and treatment ponds.

Proposed Amendment: The amendment proposes to modify the location of wetland mitigation required in Special Condition #8 as mitigation for impacts associated with the Coast to Crest Trail and Freshwater Treatment Ponds. The amendment also proposes the addition of the Mesa Loop Trail to the Coastal Development Permit and Final Restoration Plan (FRP).

Site: Western end of San Dieguito River Valley from El Camino Real to Pacific Ocean, with portion of trail from east of San Andres Drive to Jimmy Durante Boulevard, Del Mar and San Diego (San Diego County)

Substantive File Documents: Cities of Del Mar and San Diego certified LCPs; *San Dieguito Wetlands Restoration Project Final Restoration Plan*, dated November 2005, received December 12, 2005, and revised pages iii, 2.16, 2.75, 2.93 (Figure 2.26), 4.1, 4.6 (Table 4.1), 4.8, 4.31, 4.50, 4.53, 4.71, 4.96, 5.2, 5.10, Appendix B cover sheet, and Appendix B Wetlands Impact Map dated 1/30/06, received 2/2006, and revised page 4.7 received 2/6/06; *Mitigation Plan for Impacts Associated with the Del Mar Segment of the Coast to Crest Trail*, dated April 13, 2007 (Revised-April 2011); SANDAG letter RE: *JPA Mitigation in San Dieguito River Valley*, dated August 17, 2011.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff recommends approval of the proposed amendment with special conditions addressing changes to the restoration modules needed to satisfy mitigation requirements associated with the original project, and the addition of the Mesa Loop Trail to the Final Restoration Plan. The wetland restoration project is a requirement of Southern California Edison's CDP #6-81-330 to mitigate the adverse impacts of the operation of the San Onofre Nuclear Generating Station Units 2 and 3 on the marine environment. A change in the previously described site conditions have warranted an alternative area be utilized as a portion of the mitigation required for the project. The ability to provide improved public access, and to satisfy the originally imposed mitigation wetland creation requirements are the primary issues raised by this proposal; these are resolved through the recommended modification to the pertinent special conditions. The site is an area of filled tidelands, and Chapter 3 of the Coastal Act is the legal standard of review.

Exhibits:

1. Regional Location Map
 2. San Dieguito Lagoon Map
 3. Restoration Site Plan
 4. Mesa Loop Trail Map and Grading Plan
 5. Mitigation Overview Map
 6. SANDAG agreement with JPA
 7. Special Conditions of the original permit (6-04-088) as amended
-

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 6-04-088 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. SPECIAL CONDITIONS

The permit is subject to the following conditions:

1. Modify Special Condition 6 (Final Coast to Crest Trail Plans) by adding new Special Condition #6, subsection m, as shown in bold and underline below:

6. Final Coast to Crest Trail Plans. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION OF THE TRAILS AND WITHIN 18 MONTHS OF COMMISSION ACTION ON THE PERMIT, the applicants shall submit final plans for construction of the coastal segment of the Coast to Crest Trail commencing at Jimmy Durante Blvd. and ending at the proposed weir or inland extent of the restoration work. Said plans shall be in substantial conformance with the trail alignment shown in the *Wetland Delineation for the Proposed San Dieguito River Park Coast to Crest Trail San Diego, California* prepared by Tierra Environmental Services, Inc. and revised July 14, 2005, and City of Del Mar Sheets 36–46 dated 6/17/05 and City of San Diego Sheets 73–89 dated 5/26/05, and shall include the following revisions. Upon written approval by the Executive Director of trail plans for segments 1 through 8, the JPA may

commence construction of segments 1 through 3 in accordance with the approved plans and written authorization by the Executive Director.

...

- m. The Mesa Loop Trail as originally described in the Final EIR/EIS for the San Dieguito Lagoon Restoration Project shall be included in the trail plans for the restoration project. The Mesa Loop Trail shall be pedestrian only, and located on top of the mesas formed by disposal sites DS33, DS34 and DS35, and shall be constructed and maintained consistent with the above requirements of this special condition (6).**

The applicants shall undertake development in accordance with the approved final trail plans. Any proposed changes to the approved final trail plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this coastal development permit pursuant to the Commission's regulations unless the Executive Director determines that the changes are minor and within the scope of the Commission's permit approval and no amendment is required.

2. Modify Special Condition 8 (Trail/Treatment Pond Wetland Mitigation Program) by adding the language shown in bold and underline below:

8. Trail/Treatment Pond Wetland Mitigation Program. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION OF SEGMENTS 4 THROUGH 8 OF THE TRAIL AND THE TREATMENT PONDS AND WITHIN 18 MONTHS OF COMMISSION ACTION ON THE PERMIT, the applicants shall submit for review and written approval of the Executive Director, a final wetland mitigation program for all wetland impacts associated with construction of the coastal segment of the Coast to Crest Trail and the freshwater runoff treatment ponds (TP41). The program shall be developed in consultation with the California Department of Fish & Game and U.S. Fish & Wildlife Service and at a minimum shall include:

...

- h. Implementation of the approved mitigation program and recordation of the deed restrictions shall occur prior to or concurrent with construction of segments #4 through 8 of the trail, **except for 2.736 acres of required salt marsh mitigation that shall be created as a part of a larger planned restoration project for the former Boudreau property under development by SANDAG. If the off-site SANDAG restoration project is not installed and undergoing monitoring as required within this special condition by December 31, 2016, then the applicant shall be responsible for implementing the back-up mitigation plans included within the Mitigation Plan for Impacts Associated with the Del Mar Segment of the Coast to Crest Trail by December 31, 2017.**

The applicants shall undertake the required mitigation in accordance with the approved mitigation program. Any proposed changes to the approved mitigation program shall be reported to the Executive Director. No changes to the approved mitigation program shall occur without a Coastal Commission-approved amendment to this coastal development permit pursuant to the Commission's regulations unless the Executive Director determines that the changes are minor and within the scope of the Commission's permit approval and no amendment is required.

3. Prior Conditions of Approval

All terms and conditions of the original approval of Coastal Development Permit #6-04-88 as amended (Exhibit , not specifically modified herein, shall remain in full force and effect and apply to the subject amendment.

III. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

1. Amendment Project Description

The proposed amendment includes two unrelated modifications to the special conditions placed on the original permit (CDP #6-04-88).

The first proposed change is a request for the addition of the Mesa Loop Trail to the original permit and Final Restoration Plan. The proposed trail would consist of a 1.7 mile long, 6 foot wide pedestrian-only trail, consisting of a series of three connected loops to be located on the top of the mesas formed by three sediment disposal sites associated with the ongoing lagoon restoration (Exhibit 4). The proposed trail would also include a decomposed granite surfaced parking lot/staging area, with space for approximately 25 cars located at the trailhead and accessed by a new signal light and crosswalk to be installed by the City of San Diego at the intersection of El Camino Real and Sea County Lane. The trail would be posted with signage describing trail hours and identifying adjacent areas of sensitive habitat. Some strategically placed areas of lodgepole fencing would be installed to prevent access to the surrounding wetland and upland restoration areas.

The second component of this amendment relates to the location of the future creation of 2.736 acres of tidal or seasonal salt marsh as required by **Special Condition #8** of the original permit for mitigation from impacts associated with the construction of the Del Mar Segment of the Coast to Crest Trail and Freshwater Treatment Ponds. The JPA has submitted a Final Mitigation Plan for these impacts as required under **Special Condition #8**, however within the mitigation plan they have modified the location and timing for the required wetland mitigation. The proposed changes request that the 2.736 acres be integrated into a larger wetland creation plan currently under development by the San Diego Association of Governments (SANDAG), with agreement from the applicants, on a large

parcel (formerly referred to as the Boudreau property) located directly adjacent to the San Dieguito Lagoon Restoration site (Exhibit 5). The SANDAG plan could result in the creation of over 50 acres of tidally influenced salt marsh habitat that would be connected to the larger San Dieguito Lagoon system. In the event that the SANDAG project does not proceed, or is unable to achieve described performance criteria, the applicant has submitted a contingency plan identifying an alternative location where the required wetland mitigation could be created (Exhibit 5). If the Commission approves this amendment, it would constitute approval both of the preferred alternative of locating the 2.736 acres of restoration on the Boudreau property and approval of the back up location if the SANDAG restoration project is not installed and undergoing monitoring by December 31, 2006.

The lagoon and surrounding areas subject to this review are in an area of filled tidelands where the Coastal Commission retains coastal development permit authority permanently. Chapter 3 of the Coastal Act is the legal standard of review, but the LCPs for the Cities of Del Mar and San Diego are used as guidance, as the beach and lagoon adjoins both jurisdictions.

2. Description of Project Originally Approved and Subsequent Amendments

ORIGINAL PROJECT DESCRIPTION: The San Dieguito Wetland Restoration Plan was proposed primarily to meet the requirements of Coastal Development Permit #6-81-330 to mitigate adverse impacts to the marine environment occurring through operation of the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3. Southern California Edison (SCE), the principal owner of SONGS, was required to provide approximately 150 acres of new, or significantly restored, wetland habitat. Maintenance of the lagoon tidal inlet was considered a key component of the restoration plan and SCE was therefore granted 35 acres of wetland mitigation credit for agreeing to maintain the inlet in an open condition in perpetuity. Coastal Development Permit #6-04-88 for the construction of the wetland restoration project included these requirements. Additional components of the restoration project included the construction of three berms adjacent to the San Dieguito River to confine existing flows and maintain sediment transport to the ocean, bank protection for portions of the berms, culverts in the berms to help balance water levels and a weir to eliminate any backwater effect on the upstream river channel, the creation of four new nesting sites and rehabilitation of an existing site for the California Least Tern and Western Snowy Plover, the creation of treatment ponds to filter freshwater runoff and reduce freshwater flows into the restored tidal wetlands, the construction of a public access trail, including interpretive signage, and improvements to beach access, the upland and beach disposal of excavated material, and maintenance and monitoring programs. The San Dieguito Wetland Restoration Plan encompasses almost the entire San Dieguito River Valley west of El Camino Real, although SCE is only responsible for restoring a portion of that area. Other portions of the restoration plan will be implemented by the San Dieguito River Park Joint Powers Authority (JPA). It was originally approved by the Commission on October 12, 2005. Since that time, there have been several amendments as follows:

- 6-04-088-A1: Immaterial amendment to modify the language of Special Condition #4 related to the timing of berm construction. Approved August 10, 2006.
- 6-04-088-A2: Material amendment to remove approximately 4,000-5,000 cubic yards of material along an 800' long, 60' wide road and berm. Approved July 7, 2007.
- 6-04-088-A3: Withdrawn August 7, 2007.
- 6-04-088-A4: Material amendment for the replacement of restoration module W45 with restoration module W16, modification of the timing for the construction of public beach accessways, and modifications to the special condition regarding a riverbank revetment. Approved June 9, 2010.
- 6-04-088-A5: Immaterial amendment to modify the language of Special Condition #8 regarding coastal sage scrub mitigation for the trail and treatment ponds. Approved October 11, 2007.
- 6-04-088-A6: Immaterial amendment to allow the use of 40-foot long, 20-foot wide bridges to cross the drainage channels on both sides of I-5 for the continuation of the Coast-to-Crest Trail instead of the use of open bottom concrete culverts, resulting in a reduction of permanent wetland and upland impacts. Approved February 5, 2008.
- 6-04-088-A7: Immaterial amendment to establish a pedestrian-only trail along an existing slope stability bench on the engineered slope of Disposal Site 32 (DS32) located directly south of Via De La Valle. Approved October 9, 2009.
- 6-04-088-A8: Immaterial amendment to modify the location of coastal sage scrub mitigation sites required in Special Condition #8 as mitigation for impacts associated with the Coast to Crest Trail and Freshwater Treatment Ponds. Approved November 17, 2010.
- 6-04-088-A9: Immaterial amendment to modify the timing restriction placed upon the staging or storage of construction equipment on North Beach in association with dredging activities associated with the San Dieguito Wetland Restoration Project. Approved July 14, 2010.
- 6-04-088-A10: Material amendment submitted June 23, 2011, subject amendment request of this staff report.

3. Biological Resources/Water Quality.

The following Coastal Act policies related to biological resources and water quality are most applicable to the proposed development, and state, in part:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

... (6) Restoration purposes. ...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division. ...

Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Habitat

The original permit for the San Dieguito wetland restoration project (CDP #6-04-88) included special conditions that related to the location, construction and maintenance of the Del Mar Segment of the Coast to Crest Trail (**Special Condition #6**), freshwater runoff treatment ponds (**Special Condition #7**) and a mitigation program for impacts associated with the proposed trails and treatment ponds (**Special Condition #8**). The JPA has assumed responsibility for the requirements related to these developments within the larger restoration project. After several iterations, Coastal Commission staff ecologists and the JPA have worked cooperatively to produce a final mitigation plan that was recently submitted to the Commission attached to the subject permit amendment request.

The submitted mitigation plan requests that the outstanding creation of 2.736 wetland acres required to mitigate for the impacts from the construction of the trail and treatment ponds be included as a part of a larger restoration plan currently under development by SANDAG that would be located on the former Boudreau property. This property currently consists of former tidelands filled for agricultural uses and is vegetated with large amounts of non-native upland plant species. This off-site location is directly adjacent to the San Dieguito Wetlands restoration project that is the subject of the original permit (6-04-088), and could potentially result in the creation of over 50 acres of tidally influenced wetland habitat that would be connected to the rest of the San Dieguito Lagoon system (this proposed project would require its own separate coastal development review in the future). **Special Condition #8** identifies the former Boudreau property as a potential location for the required mitigation; however it also includes a timing condition that requires implementation of the approved mitigation plan prior to or concurrent with construction of the trail segments. The final trail segments have now been completed, and therefore, if the 2.736 acres are to be incorporated within the SANDAG plan currently under development, this would cause for construction of the required wetland creation to be delayed and would present a conflict with the special conditions of the permit as originally approved.

SANDAG has reached agreement with the JPA to incorporate the 2.736 acres into their restoration project plans (Exhibit 6), which would provide for a more comprehensively designed restoration project of the former Boudreau property that would likely result in increased benefits to the lagoon system and the restoration projects located within. The

potential benefits that would be provided to the lagoon system via the development of this more overarching and cooperatively planned restoration site would outweigh the need for immediate installation of the required JPA mitigation. In the case that the SANDAG restoration plan does not proceed as intended, the JPA has included a back-up location for the required 2.736 acres of wetland creation within the Mitigation Plan. This site would be located directly northwest of El Camino Real, where an existing box culvert drains Gonzalez Canyon into the San Dieguito Lagoon system, and would be restored as high/seasonal salt marsh. Commission staff ecologists have reviewed and agreed to the JPA Mitigation Plan and proposed back up location. **Special Condition #8** has been modified to identify this change of circumstances for the 2.736 acres and its incorporation into the SANDAG restoration project. Additionally **Special Condition #8** has been modified to include deadlines for when the applicant must initiate installation the back up restoration site if the proposed SANDAG project is either unsuccessful or abandoned. Such back up plan is included as part of this proposed amendment, so in the case that the proposed SANDAG project falls through, the contingency plan for the JPA's mitigation requirements is already in place and it need not seek another CDP amendment to implement it.

This amendment also proposes to include a new trail system within the uplands surrounding the lagoon. The Mesa Loop Trail would be located on the mesas created by three disposal sites (DS33, DS34, and DS35) created as a part of the larger restoration project. Currently the mesa tops are primarily barren and devoid of vegetation and therefore no impacts to sensitive native species or habitats are anticipated during construction; however, future restoration associated with the restoration project will result in vegetation with native plant species on the disposal sites. The trail and associated parking/staging area would be pervious and constructed of decomposed granite and aggregate. The trail would include some lodgepole fencing and signage strategically placed to keep trail users out of sensitive habitat restoration areas. **Special Condition #6** has been modified to identify the Mesa Loop Trail and to require that it conform with the original permit conditions ensuring that impacts to surrounding biological and hydrological resources would be avoided during trail construction and maintenance.

The Commission finds that only as conditioned as described above, can the proposed development be found consistent with Sections 30230, 30231, 30232, 30233 and 30240 of the Coastal Act which require biological resources and water quality be protected, and where possible, enhanced.

4. Public Access.

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3. The following Coastal Act policies addressing public access are most applicable to the proposed development, and state, in part:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...

The original permit (CDP #6-04-088) for the San Dieguito Lagoon restoration project included the installation of the Del Mar segment of the Coast to Crest Trail, located along the northern perimeter of the lagoon and river channel. **Special Condition #6** of the permit detailed the location of the trail and contained specific direction regarding trail construction and maintenance.

As a part of the subject amendment application, the JPA proposes to construct the Mesa Loop Trail as a new addition to the trail systems located with San Dieguito lagoon and its surrounding uplands. The trail would consist of a series of three interconnected loops located atop sediment disposal sites (DS33, DS34, and DS35) created with dredge spoils from the excavation of the lagoon restoration project. The trail would provide pedestrian only access to the mesas created at these disposal sites and offer enhanced views of the significant coastal views of eastern lagoon basins and river channel, and would in general create new public access opportunities to the upland perimeter of the lagoon system. A 25 space parking lot/staging area would also be constructed to provide access to the trail system from El Camino Real.

The Mesa Loop Trail is a component of the FEIR/EIS for the San Dieguito Wetland Restoration Project (SCH #98061010, dated September 2000); however, due to a lack of funding at the time, it was not included in the coastal development permit application when submitted to the Commission. **Special Condition #6** of the permit has been modified to identify the Mesa Loop Trail as an element of the original coastal development permit and requires that the trail be subject to all of the requirements placed on trail construction and maintenance incorporated in the original permit approval.

The addition of the Mesa Loop Trail, as conditioned, enhances public access, and the change in the location of 2.736 acres of wetland mitigation has no adverse impact on public access. Thus, as described above, can the proposed development be found consistent with Sections 30210, 30211 and 30213 of the Coastal Act which require public access and recreation opportunities be protected.

5. Visual Resources

Section 30251 of the Coastal Act addresses the preservation and enhancement of visual resources, and states, in part:

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. ...

The San Dieguito River Valley provides visual relief from the surrounding commercial and residential areas. Public views to, and throughout, the valley are significant resources requiring protection under the Coastal Act. The proposed Mesa Loop Trail would enhance visual access to the lagoon system and would not alter or disrupt the existing visual coastal resources afforded to the public at this location. . The proposed new location for 2.736 acres of wetland restoration will also enhance visual coastal resources in this area. Therefore, the Commission finds that the proposed amendment, as conditioned, is consistent with Section 30251 of the Coastal Act.

6. Local Coastal Program

The Cities of Del Mar and San Diego have fully certified Local Coastal Programs (LCPs) and issue their own coastal development permits (CDPs) throughout most of their coastal zone areas. However, the subject site is an area of filled tidelands within wetlands; this area remains under the Coastal Commission's jurisdiction, and Chapter 3 of the Coastal Act is the legal standard of review. Parts of the restoration project are located within the North City Land Use Plan Segment in the San Diego LCP within an area of deferred certification, with the rest located in the City of Del Mar's LCP jurisdiction. Both LCPs call for protection and enhancement of natural resource areas, and the overall restoration plan was found consistent with both LCPs. The proposed project serves to protect the resource value of the area, and is thus consistent with both LCPs. Therefore, the Commission finds that the proposal, as conditioned, will not prejudice either City's ability to continue implementation of its certified LCP.

7. Consistency with the California Environmental Quality Act (CEQA).

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits, or permit amendments, to be supported by a finding showing the permit or amendment, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

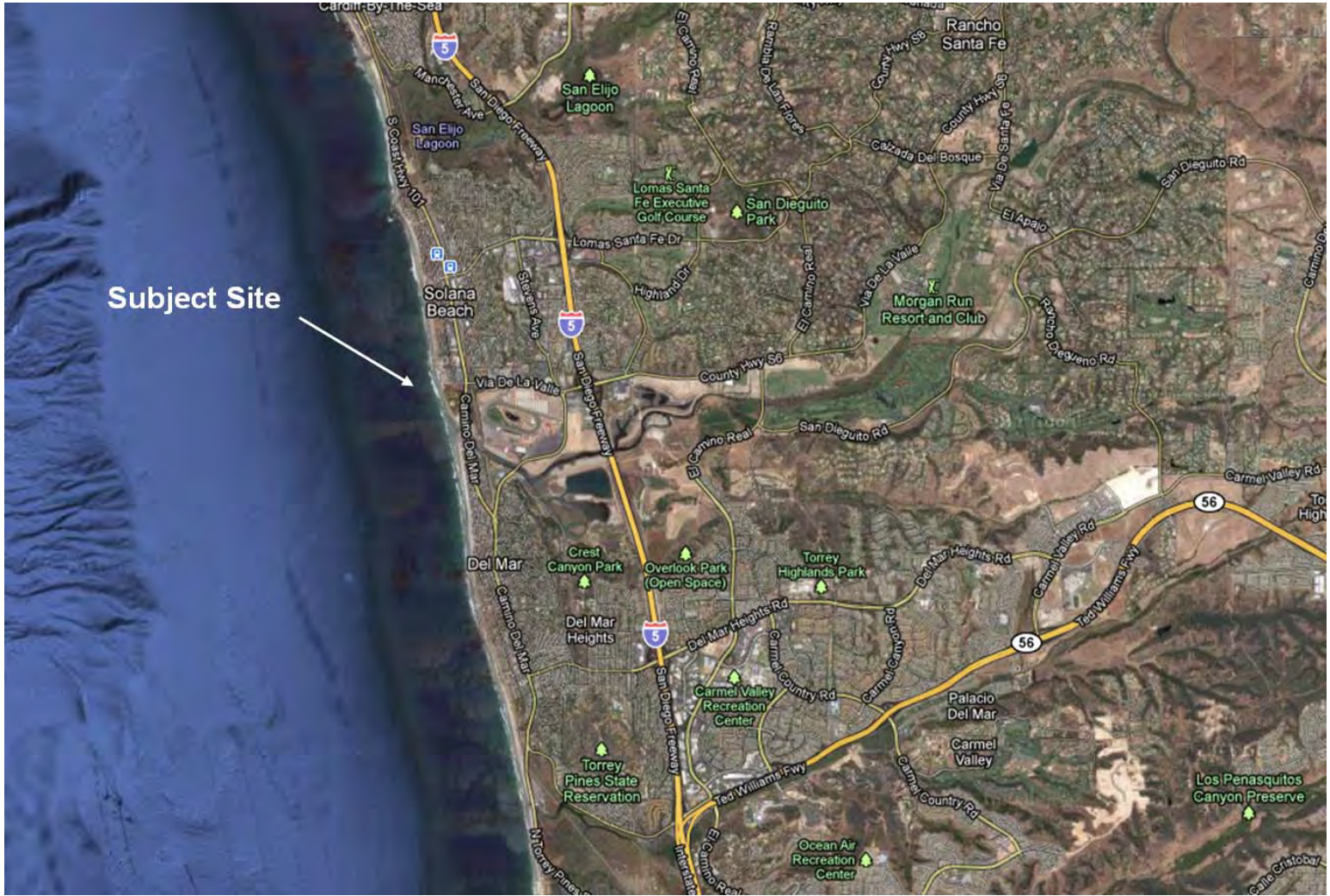


EXHIBIT NO. 1
APPLICATION NO.
6-04-088-A10
Regional Map

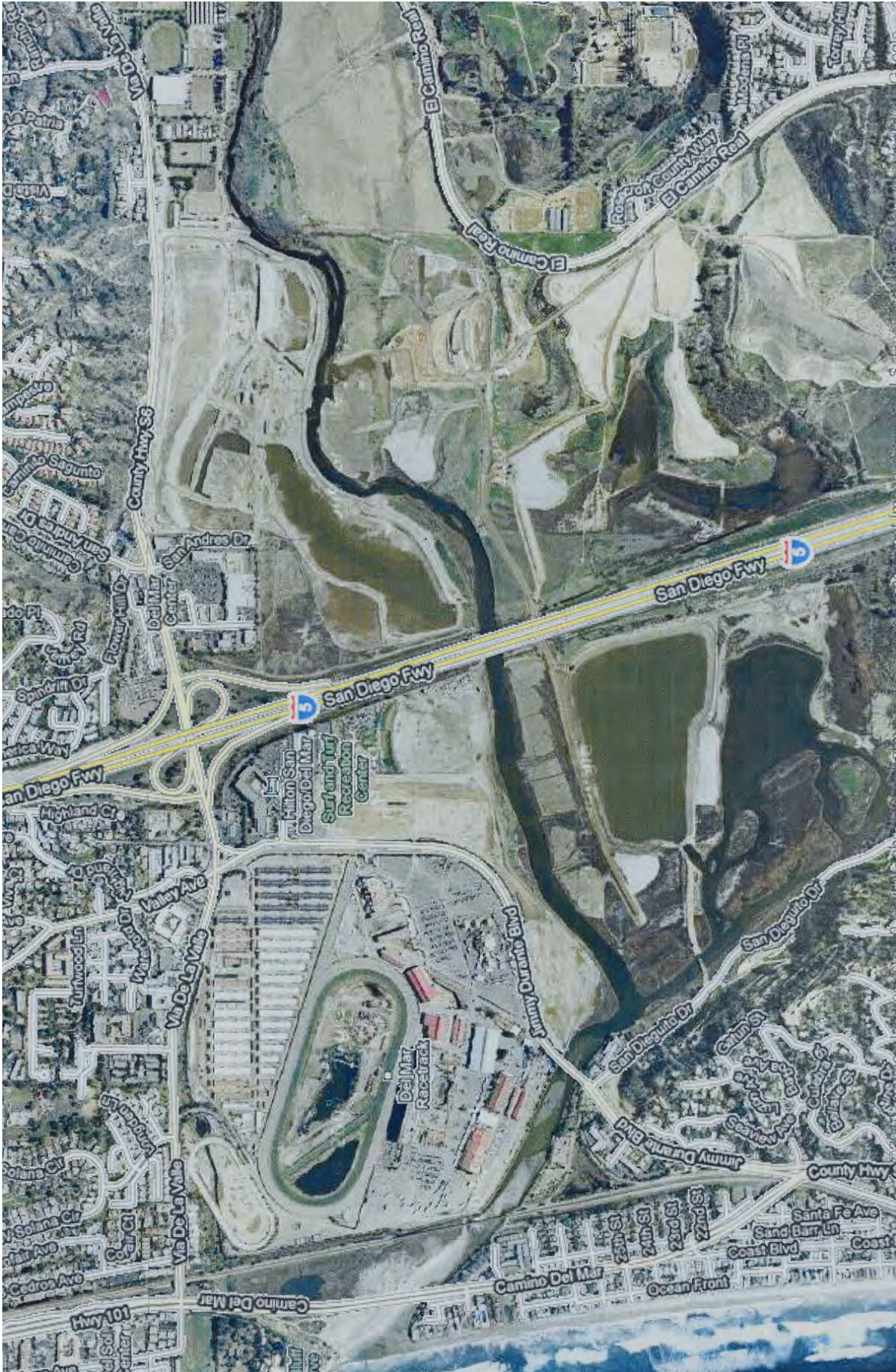


EXHIBIT NO. 2
APPLICATION NO.
6-04-088-A10

San Dieguito Lagoon Map

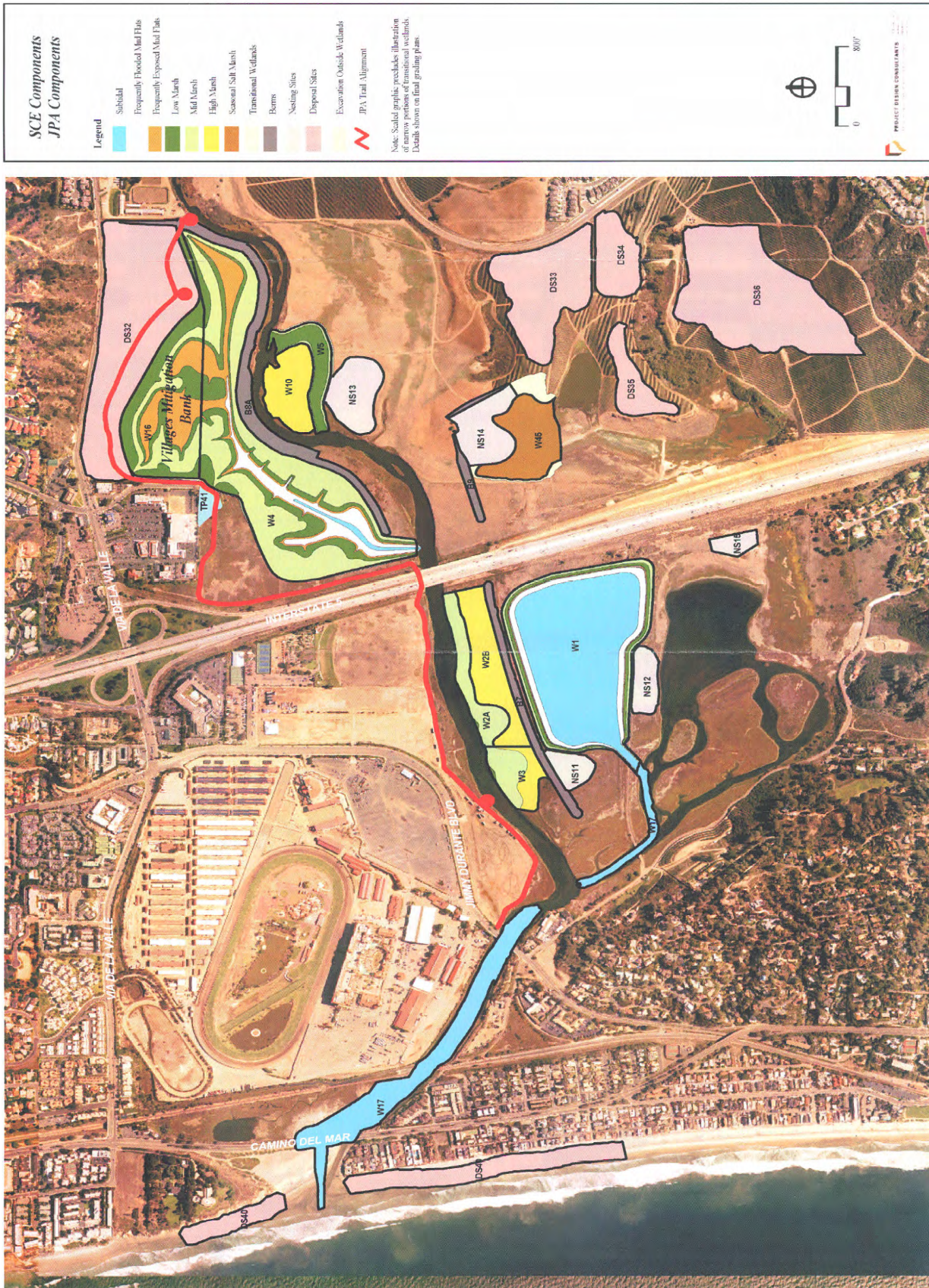


EXHIBIT NO. 3
 APPLICATION NO.
6-04-088-A10
 Restoration Site Plan

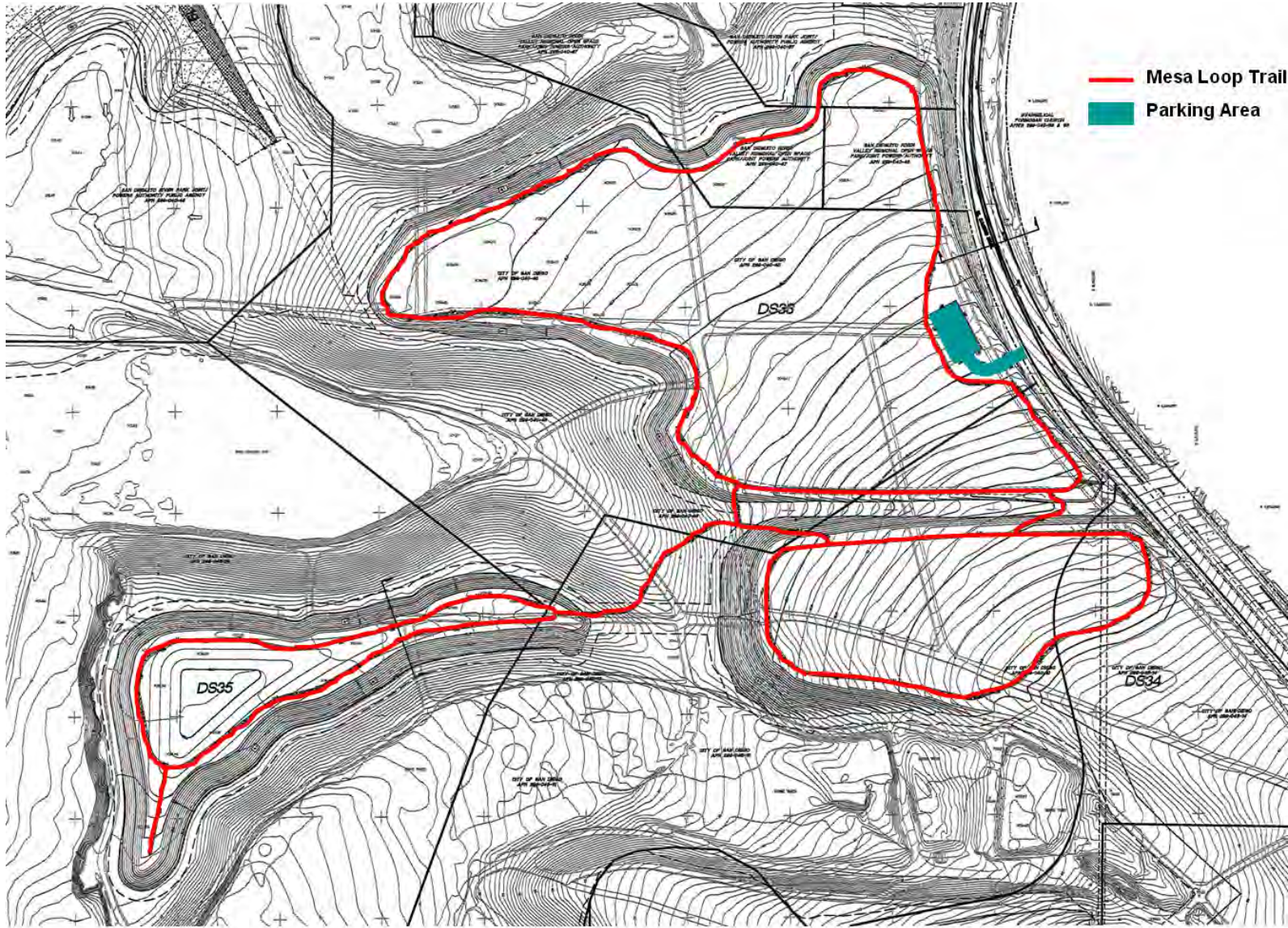


EXHIBIT NO. 4
APPLICATION NO.
6-04-088-A10
Mesa Loop Trail

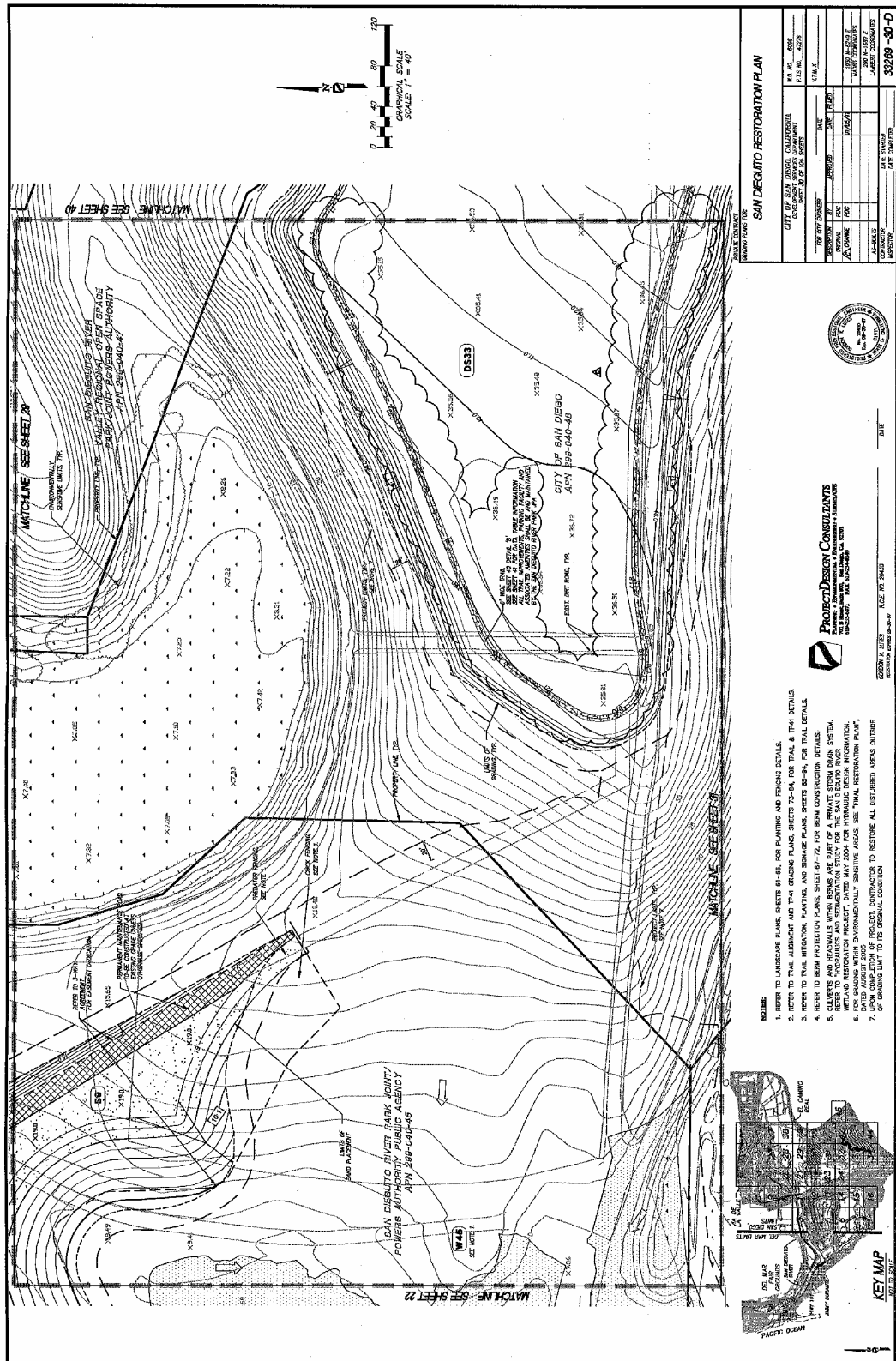


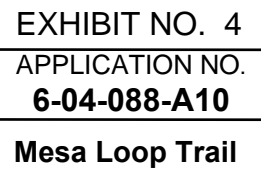
EXHIBIT NO. 4

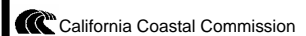
APPLICATION NO.

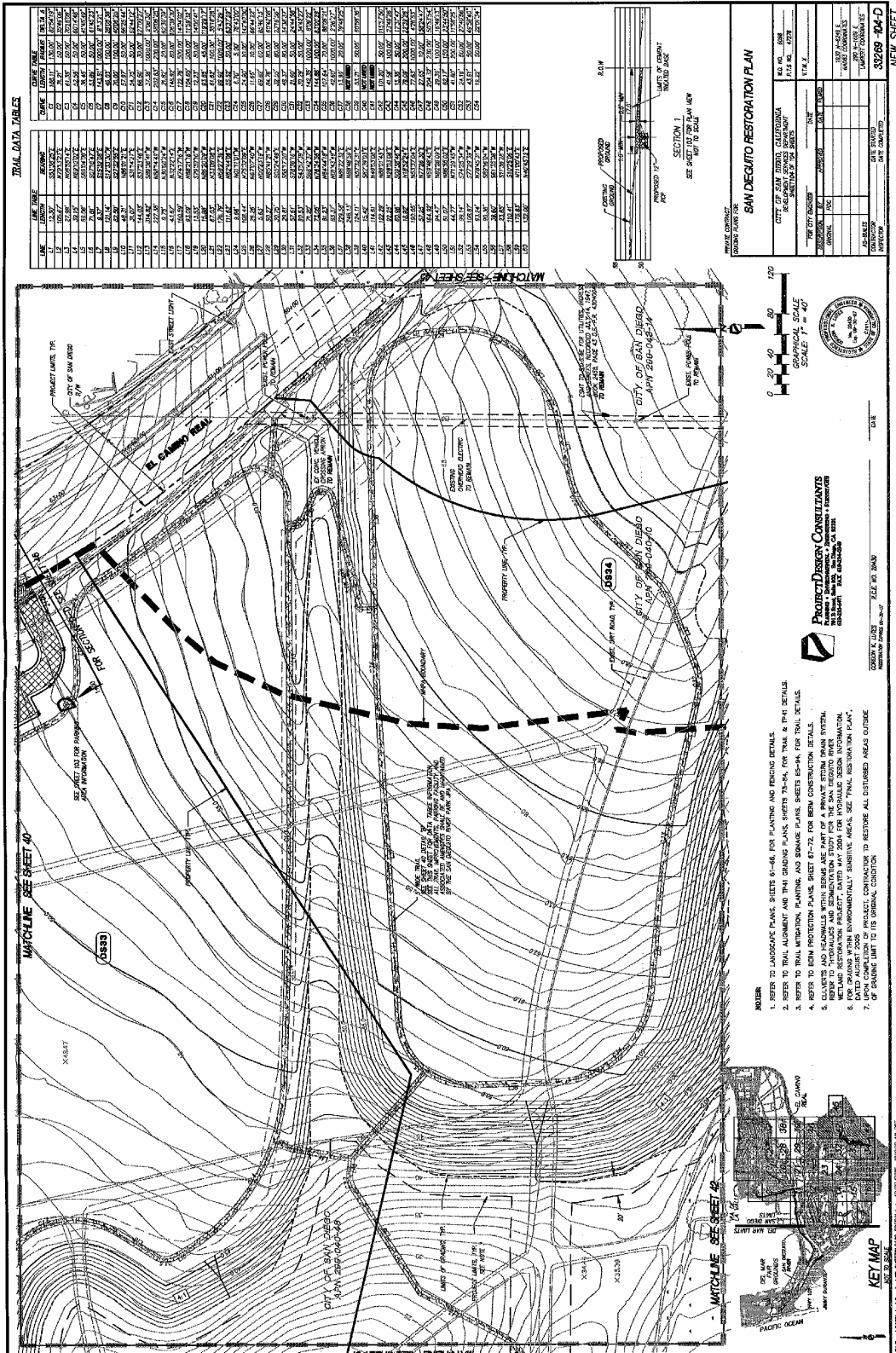
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Mesa Loop Trail









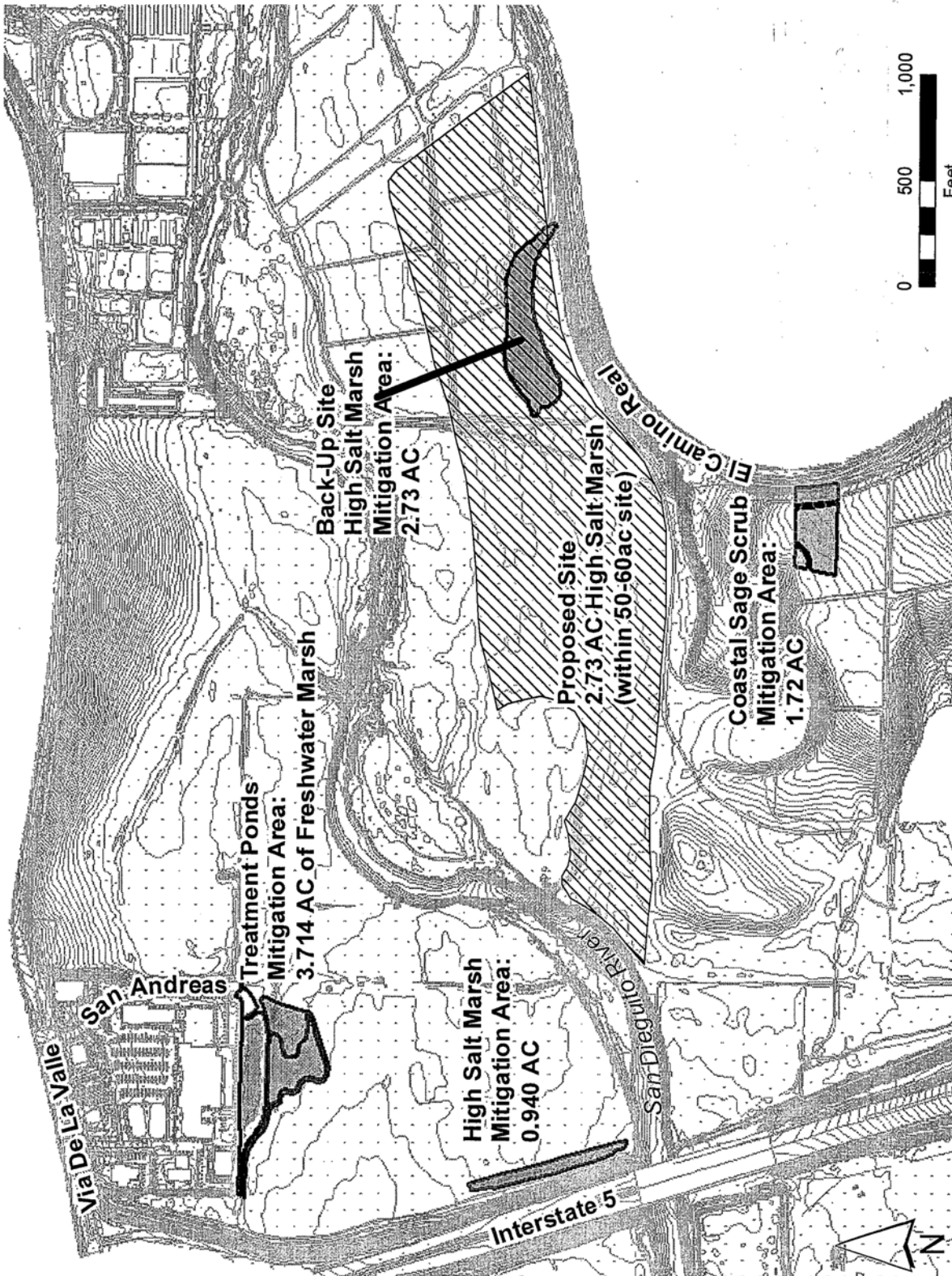


EXHIBIT NO. 5

APPLICATION NO.

6-04-088-A10

Mitigation Overview Map



401 B Street, Suite 800
San Diego, CA 92101-4231
(619) 699-1900
Fax (619) 699-1905
www.sandag.org

August 17, 2011

12002001

Gabriel Buhr
California Coastal Commission
7575 Metropolitan St.
Suite 103
San Diego, CA 92108-4402

Dear Gabe:

SUBJECT: JPA Mitigation in San Dieguito River Valley

I understand that the San Dieguito River Park Joint Powers Authority (JPA) is seeking the Commission's approval to amend Special Condition #8 of their CDP #6-04-88. The purpose of this letter is to confirm the JPA's explanation and to request approval of their request.

The amendment to the Special Conditions of approval would enable the JPA to integrate their remaining 2.736 acre mitigation requirement into a larger 50-acre tidal and seasonal salt marsh project that is being planned at the San Dieguito Lagoon by the San Diego Association of Governments (SANDAG) and Caltrans, under the terms of an MOA between SANDAG and the JPA.

The SANDAG project is currently in the feasibility analysis phase. We are preparing hydraulic models of the river and tidal analyses to ascertain the optimal size and configuration of new tidal wetlands that could be created on JPA property south of the river and east of the SCE project, that would not negatively impact the SCE project or exacerbate downstream impacts.

At a stakeholder meeting in March of this year, a number of the permitting agencies requested that the JPA's proposed 2.736 acre mitigation project (a condition of their CDP permit) should not be implemented as a stand-alone project, but instead should be incorporated into the larger SANDAG project. At the request of the permitting agencies, SANDAG has agreed to incorporate the JPA's project into the design. This will mean that if and when the project is implemented, the acreage necessary for the JPA to satisfy their 2.736 mitigation requirement per the Special Condition of CDP #6-04-88 will be included in the larger acreage that is restored.

If the SANDAG project is deemed feasible and it moves forward to implementation, then SANDAG and the JPA will amend their existing MOA to address any necessary compensation costs associated with the construction. If, on the other hand, the SANDAG project is deemed infeasible, then the JPA will

MEMBER AGENCIES

Cities of
Carlsbad
Chula Vista
Coronado
Del Mar
El Cajon
Encinitas
Escondido
Imperial Beach
La Mesa
Lemon Grove
National City
Oceanside
Poway
San Diego
San Marcos
Santee
Solana Beach
Vista
and
County of San Diego

ADVISORY MEMBERS

Imperial County
California Department
of Transportation
Metropolitan
Transit System
North County
Transit District
United States
Department of Defense
San Diego
Unified Port District
San Diego County
Water Authority
Southern California
Tribal Chairmen's Association
Mexico

EXHIBIT NO. 6

APPLICATION NO.

6-04-088-A10

SANDAG – JPA agreement

implement their 2.736 acre mitigation as a stand-alone project as described in their Wetland Mitigation Plan.

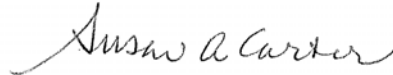
SANDAG has valued the cooperative efforts of the JPA in the larger lagoon restoration effort and believes the Commission staff also supports this larger comprehensive approach towards wetland creation.

By signing this letter, the authorized representatives of both SANDAG and the JPA acknowledge and agree that this letter accurately describes the agreement reached by their respective organizations to include JPA's 2.736 acre mitigation requirement into the SANDAG project if that project is deemed feasible.

Sincerely,



Keith Greer
SANDAG, Senior Regional Planner
Environmental Mitigation Program Manager



Susan Carter
JPA, Deputy Director

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SANDAG – JPA agreement

 California Coastal Commission

SPECIAL CONDITIONS OF ORIGINAL PERMIT 6-04-088 (AS AMENDED)

The permit is subject to the following conditions:

1. Final Wetland Restoration Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director a revised *San Dieguito Wetlands Restoration Project Final Restoration Plan* (FRP). The changes included in revised strike-out/underline version of the FRP (Appendix B), dated July 2005 and received September 6, 2005 (including text and exhibit changes), and the changes and additions shown in Appendix C, “San Dieguito Wetlands Restoration Project Final Restoration Plan Changes and Additions,” shall be fully incorporated into the revised FRP.

The revised FRP shall clearly identify the size and location of all areas of impact to existing wetland and coastal sage scrub habitat and the size and location of all proposed mitigation areas. In computing the mitigation required for project impacts, the following ratios shall apply to both the FRP and the “as built” restoration project:

- a. Temporary impacts on modules W1, W2a, W2b, W3, W4, W5, W16, W17, W45, and Trail shall be mitigated at a ratio of 1 to 1.
- b. Temporary impacts from construction of Ponds 1 and 2 on module TP41 shall be mitigated at a ratio of 1.5 to 1 and temporary impacts from construction of Ponds 3 and 4 on module TP41 shall be mitigated at a ratio of 1 to 1.
- c. Permanent impacts on modules B7, B8, DS32, and Road shall be mitigated at a ratio of 4 to 1.
- d. Permanent impacts on module TP41 for the construction of treatment pond berms shall be mitigated at a ratio of 1 to 1.
- e. Permanent impacts on the Trail module that are not in the existing roadbed shall be mitigated at a ratio of 4 to 1, and permanent impacts that are in the existing roadbed shall be mitigated at a ratio of 1 to 1.

Revisions to the creation and impact acreages shown in the FRP shall be based on the *Wetland Delineation for the Proposed San Dieguito River Park Coast to Crest Trail, San Diego, California* prepared by Tierra Environmental Services, Inc. and revised July 14, 2005, the *CCC Wetland Study in the Villages Mitigation Bank* prepared by WRA Environmental Consultants dated August 30, 2005, the letter dated September 6, 2005 from Project Design Consultants, and the mitigation ratios specified above. Any revisions or updates to these documents that the applicants may provide shall include the basis for such changes, and shall be submitted to the Executive Director for review and approval. If the revised FRP identifies greater impacts than are identified in the July 2005 FRP (received September 6, 2005), then the applicants shall increase the mitigation area in accordance with the above ratios.

Prior to the commencement of construction and again at the completion of construction, applicants shall submit to the Executive Director finalized plans and digital files.

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ArcView, ArcMap and Autocad) of project components (i.e., aerial maps, topographical maps, restoration modules, existing wetland areas, river berms, nesting sites, disposal sites, staging areas, access and haul roads, trails and associated components, and treatment ponds) that will allow for independent assessment of the accuracy of the “as built” plans to determine compliance with the requirements of CDP #6-81-330-A. The applicants shall document the physical and biological “as built” condition, including measurements of actual impacts to wetland habitat, within 30 days of completion of each construction area.

The applicants shall take maximum care to ensure that the project is built as described in the revised and approved FRP. However, if the “as built” plan for any construction area shows any greater impacts than are identified in the revised approved FRP, then within 90 days the applicants shall submit a plan for supplemental mitigation to the Executive Director for review and written approval. If the “as built” plans demonstrate that there are less actual impacts, then the applicants may request a permit amendment to reduce the mitigation acreage requirements.

The applicants shall undertake development in accordance with the approved Final Restoration Plan. Any proposed changes to the approved Plan shall be reported to the Executive Director. No changes to the approved Plan shall occur without a Coastal Commission-approved amendment to this coastal development permit pursuant to the Commission’s regulations unless the Executive Director determines that the changes are minor and within the scope of the Commission’s permit approval and no amendment is required. The applicants shall be required to provide additional appropriate mitigation, as determined by the Commission, if actual impacts to wetland habitat exceed those identified in the approved Plan.

2. Amendment to the SONGS Permit (CDP #6-81-330-A4). PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall obtain a Coastal Commission-approved amendment to Standard 1.3h of Condition A of the SONGS permit to allow minimal loss of existing wetlands authorized in this Permit.

3. Final Grading, Drainage and Erosion and Sediment Control Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final grading, drainage, erosion and sediment control plans for the San Dieguito Wetlands Restoration Project that have been approved by the City of Del Mar and the City of San Diego. Said plans shall be in substantial conformance with the two sets of plans submitted June 20, 2005, (City of Del Mar Sheets 1–25, dated 6/17/05, and City of San Diego Sheets 1–60, dated 5/26/05) and shall include the following:

- a. Final grading plan for Disposal Site DS32, public access trail, storm drain improvements and utility maintenance road, shown on City of San Diego Sheet 33269-17-D, approved by the City of San Diego Engineering Department. The revised final grading plan shall avoid, to the extent possible, impacts from placement of dredge spoils on DS32 to the existing wetlands delineated in the *CCC Wetland Study in the Villages Mitigation Bank by WRA Envir*

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Consultants dated 8/30/05. In the event restoration of the entire W16 to tidal marsh is not part of the final grading plans or is determined not to be implemented by SCE as part of the overall restoration project, a permit amendment is required to revise DS32 to avoid or reduce disposal of dredge spoils on the wetlands identified above and include appropriate mitigation.

- b. The revised final grading plan shall include structural BMPs on the two storm drain outlets to be constructed to move stormwater past the DS32 site, using Continuous Deflector Separation and sized to adequately capture pollutants conveyed from Via de la Valle prior to discharging into the proposed wetlands. Storm drain improvements adjacent to Via de la Valle and on DS32 shall be designed to provide a water source to the lower elevations of the fill slope, if possible. Riprap at the proposed discharge points shall be minimized and specifically described on the final grading plans.
- c. Sand excavated from restoration module W1 shall be placed on tern nesting sites NS11, NS12, NS13, NS14 and NS15 first. Channel sand may be used to construct the nesting sites only in the event sand from W1 is not sufficient in quantity or not suitable as determined by the project engineer in consultation with the USFWS. The applicant shall notify the Executive Director of this determination in writing prior to such use.
- d. Trail alignment and treatment ponds (TP41) shall be graded in accordance with the public access trail and treatment pond plans approved pursuant to Special Conditions #6 and #7.
- e. Reference to maintenance roads on City of San Diego Sheets 12-16, and 28-30, 39 as private shall be deleted.

The applicants shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this coastal development permit pursuant to the Commission's regulations unless the Executive Director determines that the changes are minor and within the scope of the Commission's permit approval and no amendment is required.

4. Berm and Slope Protection. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final plans for berm and slope protection for the San Dieguito Wetlands Restoration Project that have been approved by the City of Del Mar and the City of San Diego. Said plans shall be in substantial conformance with the two sets of plans submitted June 20, 2005, (City of Del Mar Sheets 33–35, dated 6/17/05, and City of San Diego Sheets 67–72, dated 5/26/05), and as further detailed in the submitted site plan received May 10, 2010 attached as Exhibit 8 to this staff report (6-04-088-A4) and shall include the following:

- a. Detailed plans shall address the transitional area between the adjacent s proposed berm protection and the revetment on the south side of the riv

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Jimmy Durante Boulevard. The rock shall be placed to minimize erosion and disruption of the adjacent slopes.

The applicants shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this coastal development permit pursuant to the Commission's regulations unless the Executive Director determines that the changes are minor and within the scope of the Commission's permit approval and no amendment is required.

5. Landscape Plans/Planting Program. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final planting plans for the San Dieguito Wetlands Restoration Project that have been approved by the City of Del Mar and City of San Diego. Said plans shall be in substantial conformance with the planting program identified in Section 4.3 of the FRP, the submittal *San Dieguito Lagoon Wetland Restoration Project Specifications for Wetland Mitigation and Restoration* prepared by Wetland Research Associates, Inc. and dated October 15, 2003 and Addendums (Memoranda) to this submittal dated October 15, 2004, and the two sets of plans submitted June 20, 2005, (City of Del Mar Sheets 27-30; and 40, dated 6/17/05, and City of San Diego Sheets 62-65, and 82-89 dated 5/26/05) and shall incorporate the following:

- a. The propagules (seeds or rhizomes or cuttings) for the containers and seed mixes shall be collected from coastal populations between the Palos Verde peninsula and the Mexican border. Seed mixes shall be certified as being "weed free" to insure the plants are appropriate and there are no unintended genetic consequences.
- b. The plant palette on the final plans shall include only native species. Native plants shall be established as soon as possible in order to reduce colonization by invasive species.
- c. Plant materials that may be impacted by the restoration and construction activities shall be salvaged and used in the restoration to the extent practicable.
- d. Revegetation of the freshwater treatment ponds shall occur within 90 days of completion of grading and infrastructure improvements. Planting shall be done in accordance with the mitigation program approved pursuant to Special Condition #8.
- e. Weed and invasive control in TP41 shall be implemented in accordance with the document titled *M41 Parcel – Treatment Marsh Descriptions* submitted 2/11/04; however, the final plans shall indicate invasive plant materials from the treatment ponds shall be removed annually.
- f. The slope (approximately 5.16 acres) of the W45 module, to be constructed, shall provide non-tidal wetlands to offset temporary and permanent impacts as

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with restoration activities, shall be covered with wetland topsoil and planted with pickleweed (*Salicornia virginica*). The remaining area of W45 (approximately 3.49 acres) shall be graded to elevations between 5 to 6 ft., NGVD, covered with wetland topsoil and planted with pickleweed or other appropriate seasonal saltmarsh species.

- g. Provisions for planting characteristic middle and upper salt marsh species other than *Salicornia virginica*, such as *Jaumea carnosa*, *Batis maritima*, *Distichlis spicata*, *Frankenia salina*, *Monanthochloa littoralis*, and *Salicornia subterminalis*.

The applicants shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this coastal development permit pursuant to the Commission's regulations unless the Executive Director determines that the changes are minor and within the scope of the Commission's permit approval and no amendment is required.

6. Final Coast to Crest Trail Plans. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION OF THE TRAILS AND WITHIN 18 MONTHS OF COMMISSION ACTION ON THE PERMIT, the applicants shall submit final plans for construction of the coastal segment of the Coast to Crest Trail commencing at Jimmy Durante Blvd. and ending at the proposed weir or inland extent of the restoration work. Said plans shall be in substantial conformance with the trail alignment shown in the *Wetland Delineation for the Proposed San Dieguito River Park Coast to Crest Trail San Diego, California* prepared by Tierra Environmental Services, Inc. and revised July 14, 2005, and City of Del Mar Sheets 36–46 dated 6/17/05 and City of San Diego Sheets 73–89 dated 5/26/05, and shall include the following revisions. Upon written approval by the Executive Director of trail plans for segments 1 through 8, the JPA may commence construction of segments 1 through 3 in accordance with the approved plans and written authorization by the Executive Director.

- a. The trail segment including the boardwalk (Segment 1a-1b) shall be designated pedestrian only.
- b. The trail segment extending from the boardwalk to the east side of I-5 under the underpass (Segments 2, 3, 4a-4c) shall be designated for pedestrian and bicycle use only.
- c. In Segment 5, a turn-around for equestrian users shall be located at the western terminus of the east-west portion of the trail and shall be designed to avoid impacts to wetland habitat from such equestrian use. Signs prohibiting equestrian users from proceeding south of the turnaround shall be placed at the turnaround. At such time as a feasible trail connection to the beach is identified, the applicants may request an amendment to this coastal development permit to review the potential for equestrian use on any trail segment west of the turnaround in Segment 5, excluding the boardwalk.

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- d. A note indicating the following: The boardwalk (Segment 1b) is an interim use in the approved alignment within non-vegetated wetlands in the South Overflow Lot until such time as the South Overflow Lot is restored to functional wetland habitat. The location of the boardwalk shall be addressed in the coastal development permit for the wetland restoration of the South Overflow Lot and the boardwalk may be relocated at that time.
- e. Construction of the trail improvements and signage installation shall avoid or minimize impacts to existing salt marsh, freshwater and brackish marsh and coastal sage scrub to the maximum extent possible.
- f. The plans shall indicate disturbance to all existing wetlands for construction of the approved trail as delineated in the *Wetland Delineation for the Proposed San Dieguito River Park Coast to Crest Trail, San Diego, California*, revised July 14, 2005 and the *CCC Wetland Study in the Villages Mitigation Bank* prepared by WRA Environmental Consultants dated August 30, 2005. Disturbance to no more than approximately 0.748 acres of existing delineated wetlands shall be permitted for construction of the trail as shown on Exhibit 13 (Tierra matrix).
- g. The plans shall indicate disturbance to all existing coastal sage scrub for construction of the approved trail as delineated in *Wetland Delineation for the Proposed San Dieguito River Park Coast-to-Crest Trail, San Diego, California*, revised July 14, 2005, as referenced and discussed in a letter report dated September 26, 2005 from Mr. Nordby to Ms. J. Loeffler.
- h. Mitigation for trail construction impacts to seasonal salt marsh, freshwater and brackish marsh and coastal sage scrub shall be provided in accordance with Special Condition #8.
- i. Trail surfacing plans shall include use of pervious surfacing materials as described in Section 4.6 of the approved Final Restoration Plan. Trail surfacing shall use only compacted decomposed granite or alternative pervious materials (see below), except for the open bottom concrete culverts for Sections 4a and 4c, the concrete in Section 1a and in Section 4b under I-5, and the concrete portion of trail adjacent to Treatment Pond 1 in Trail Section 6. Pervious material alternatives to decomposed granite that provide equivalent water quality protection are encouraged, subject to approval of the Executive Director. The trails shall include covered trash containers to minimize the impacts of littering.
- j. Maintenance and operation of the trails shall be the responsibility of the JPA in accordance with the Park Facility Management Plan described in Section 4.6.2.4 of the approved Final Restoration Plan. SCE shall be responsible for funding trail maintenance and operation tasks. The trail maintenance plan shall include the requirement to perform regular trail maintenance, including manure and trash removal from and around the trail. The maintenance program shall include a monitoring component that will determine when and how often trail maintenance should occur to ensure that the trash containers do not overflow and the

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trash nor manure migrates from the trail into the wetlands. Under no circumstances shall trail maintenance occur less than once every two weeks. All efforts should be made for at least weekly trail maintenance.

- k. Evidence of an approved Caltrans encroachment permit for construction of the trail and drainage crossings under I-5.
- l. Evidence of an approved agreement or easement with SBC for use of the utility maintenance road for a public access trail.

The applicants shall undertake development in accordance with the approved final trail plans. Any proposed changes to the approved final trail plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this coastal development permit pursuant to the Commission's regulations unless the Executive Director determines that the changes are minor and within the scope of the Commission's permit approval and no amendment is required.

7. Freshwater Runoff Treatment Ponds. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION OF THE FRESHWATER RUNOFF TREATMENT PONDS AND WITHIN 12 MONTHS OF THE COMMISSION'S APPROVAL OF THE FRP, the applicants shall submit final plans for the treatment ponds shown in TP41 to intercept and treat nuisance flows of polluted freshwater that originate in upstream areas of commercial and residential development and that currently flow untreated into the existing wetlands. Said plans shall be in substantial conformance with the document titled *M41 Parcel – Treatment Marsh Descriptions* submitted 2/11/04 and shall incorporate the following:

- a. Construction of the treatment ponds shall minimize impacts to existing seasonal salt marsh, freshwater and brackish marsh to the maximum extent possible while still allowing the treatment ponds to adequately function and reduce discharge of freshwater to the wetland restoration area.
- b. Identification of all impacts from construction of the approved treatment ponds to existing wetlands as delineated in the *Wetland Delineation for the Proposed San Dieguito River Park Coast to Crest Trail, San Diego, California* prepared by Tierra Environmental Services, Inc. and revised July 14, 2005. Disturbance to no more than approximately 4.4 acres of existing delineated wetlands shall be permitted for construction of the treatment ponds and pond berms as shown on Exhibit 13, Tierra Matrix.
- c. Mitigation for impacts to seasonal salt marsh, freshwater and brackish marsh shall be provided in accordance with Special Condition #8.
- d. Grading, erosion control and planting of the treatment ponds as restored freshwater marsh shall be done in accordance with plans submitted pursuant to Special Condition #5 and #8 and shall be the responsibility of the JPA.

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- e. Maintenance and monitoring of the treatment ponds shall be completed in accordance with the maintenance/monitoring plans approved pursuant to Special Condition #10.

The applicants shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this coastal development permit pursuant to the Commission's regulations unless the Executive Director determines that the changes are minor and within the scope of the Commission's permit approval and no amendment is required.

8. Trail/Treatment Pond Wetland Mitigation Program. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION OF SEGMENTS 4 THROUGH 8 OF THE TRAIL AND THE TREATMENT PONDS AND WITHIN 18 MONTHS OF COMMISSION ACTION ON THE PERMIT, the applicants shall submit for review and written approval of the Executive Director, a final wetland mitigation program for all wetland impacts associated with construction of the coastal segment of the Coast to Crest Trail and the freshwater runoff treatment ponds (TP41). The program shall be developed in consultation with the California Department of Fish & Game and U.S. Fish & Wildlife Service and at a minimum shall include:

- a. A detailed site plan of the wetland impact area that substantially conforms with the *Wetland Delineation for the Proposed San Dieguito River Park, Coast to Crest Trail, San Diego, California* prepared by Tierra Environmental Services, Inc. and revised July 14, 2005 and the *CCC Wetland Study in the Villages Mitigation Bank* prepared by WRA Environmental Consultants dated August 30, 2005. The final plan must delineate all impact areas (e.g., on a map that shows elevations, surrounding landforms, etc.), the types of impact (both permanent and temporary), and the exact acreage of each impact so identified.
- b. A detailed site plan of the coastal sage scrub impact area that substantially conforms to *Wetland Delineation for the Proposed San Dieguito River Park Coast-to-Crest Trail, San Diego, California* and revised July 14, 2005, as referenced and discussed in a letter report dated September 26, 2005 from Mr. Nordby to Ms. J. Loeffler. The final plan must delineate all impact areas (e.g., on a map that shows elevations, surrounding landforms, etc.), the types of impact (both permanent and temporary), and the exact acreage of each impact so identified.
- c. Provision for mitigating the impacts identified in (a) above through creation of a minimum 2.32 acres of salt marsh and 5.07 acres of freshwater marsh, or as the final acreage may be refined during Executive Director approval of the final plans, at the following ratios:
 - (1) Permanent impacts to tidal and seasonal salt marsh and freshwater marsh from construction of the drainage crossings, and trail const

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wetlands not within an existing roadbed shall be mitigated in-kind at a 4 to 1 ratio.

- (2) Permanent impacts for trail construction to seasonal salt marsh and disturbed freshwater/brackish marsh within an existing roadbed shall be mitigated in-kind at a 1 to 1 ratio.
 - (3) Temporary impacts (not including construction of berms) to seasonal salt marsh and freshwater and brackish marsh for construction of freshwater Ponds 1 and 2 in TP41 shall be mitigated in-kind at a 1.5 to 1 ratio. Mitigation may include freshwater marsh and salt marsh creation on-site or offsite, if necessary.
 - (4) Temporary impacts for construction of freshwater Ponds 3 and 4 in TP41 to disturbed freshwater/brackish marsh shall be mitigated in-kind at a 1 to 1 ratio, including freshwater marsh created in Ponds 3 and 4.
 - (5) Permanent impacts to seasonal salt marsh and freshwater and brackish marsh for construction of the treatment pond berms shall be mitigated in-kind at a 1 to 1 ratio. Mitigation may include seasonal salt marsh creation on the treatment pond berms.
 - (6) Mitigation for permanent impacts shall involve upland suitable for conversion to wetlands unless otherwise specified. Mitigation for temporary wetland impacts may involve substantial restoration of existing disturbed wetlands.
- d. Provision for mitigating the impacts identified in (b) above through the creation of 1.72 acres of coastal sage scrub within disposal site DS33. The creation of about 56 acres of coastal sage scrub overall, that was primarily proposed for erosion control on the various disposal sites within the project area, minus 1.72 acres of mitigation, remains in effect in accordance with the approved Final Restoration Plan.
- e. Identification of locations for the required mitigation for impacts from the trail and treatment ponds at one or more of the following mitigation sites:
- (1) Freshwater Treatment Ponds (TP41 on-site);
 - (2) Salt marsh mitigation site located east of and adjacent to I-5 and north of the river (on-site);
 - (3) Former Boudreau property (off-site) located west of El Camino Real and south of the river.
 - (4) Coastal sage scrub mitigation site at DS33.
- f. A mitigation program that shall include the following:



- (1) A description of the proposed restoration site.
- (2) A description of the proposed restoration, including, as appropriate, topography, hydrology, vegetation types, sensitive species, and wildlife usage.
- (3) A description of planned site preparation and invasive plant removal.
- (4) A restoration plan including the planting palette (seed mix and container plants), planting design, source of plant material, plant installation, erosion control, irrigation, and remediation.
- (5) A plan for documenting and reporting the physical and biological “as built” condition within 30 days of the restoration work, demonstrating the wetland mitigation sites have been established in accordance with the approved design and construction methods.
- (6) A plan for interim monitoring and maintenance including a schedule, interim performance standards, a description of field activities, the monitoring period, and provision for submission of annual reports of the monitoring results to the Executive Director for the duration of the required monitoring period beginning the first year after submission of the “as-built” report.
- (7) Final success criteria for each habitat type, including species diversity, total ground cover of vegetation, vegetative cover of dominant species and definition of dominants, hydrology, and, where appropriate, presence and abundance of sensitive species and wildlife usage.
- (8) The final design and construction methods that will be used to ensure the mitigation site(s) achieve the defined goals, objectives, and performance standards.
- (9) The method by which “success” will be judged, including type of comparison, identification and description of any reference sites that will be used, test of similarity; the field sampling design to be employed, specification of the maximum allowable difference between the restoration value and the reference value for each success criterion, a statistical power analysis to determine the necessary replication for the sampling design, and, a statement that final monitoring for success will occur after at least 3 years with no remediation or maintenance activities other than weeding.
- (10) Provision for submission of a final monitoring report to the Executive Director at the end of the final performance monitoring period, prepared by a qualified restoration ecologist. The report shall evaluate whether the restoration site conforms to the goals, objectives, and performance

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set forth in the approved final restoration program, and must address all the monitoring data collected over the monitoring period.

- (11) Provision for possible further action. If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved performance standards, the JPA shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved performance standards. The revised restoration program, if necessary, shall be processed as an amendment to the coastal development permit.
- g. Submittal of a deed restriction(s), in a form and content acceptable to the Executive Director, that the owner of the identified mitigation site(s) shall record against the mitigation sites, free of all prior liens and encumbrances, except for tax liens, and binding on the applicants' successors in interest and any subsequent purchasers of any portion of the real property. The applicants shall make any modifications to the proposed deed restriction(s) the Executive Director determines are necessary to comply with this Permit. Evidence that the deed restriction has been recorded shall be provided to the Executive Director within 30 days of final approval by the Executive Director. The deed restriction shall establish the authorized use of the mitigation area to be habitat restoration, habitat maintenance, open space, and habitat protection over the portion of the property comprising the mitigation area. The restriction shall:
- (1) Permit the applicants and their agents to enter the property when necessary to create and maintain habitat, re-vegetate portions of the area, and fence the newly created/re-vegetated area in order to protect such habitats.
 - (2) Restrict all development, vegetation clearance, fuel modification and grading within the approved mitigation sites, with the exception of TP41 Ponds 1 and 2 where maintenance is permitted in accordance with Special Condition # 10.
 - (3) Permit the Coastal Commission staff to enter and inspect for purposes of determining compliance with Coastal Development Permit No. 6-04-88.
- The deed restriction shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed and shall run with the land in favor of the People of the State of California, binding all successors and assigns.
- h. Implementation of the approved mitigation program and recordation of the deed restrictions shall occur prior to or concurrent with construction of segments #4 through 8 of the trail.

The applicants shall undertake the required mitigation in accordance with the mitigation program. Any proposed changes to the approved mitigation program

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reported to the Executive Director. No changes to the approved mitigation program shall occur without a Coastal Commission-approved amendment to this coastal development permit pursuant to the Commission's regulations unless the Executive Director determines that the changes are minor and within the scope of the Commission's permit approval and no amendment is required.

9. Independent Wetland Performance Monitoring Program. This special condition is a reiteration of the provisions of the SONGS permit requiring construction phase monitoring and post-restoration performance monitoring independent of SCE and is included here as a requirement of this Permit as well.

In accordance with the provisions of the SONGS permit (CDP 6-81-330-A), monitoring, management (including maintenance), and remediation shall be conducted over the full operating life of SONGS Units 2 and 3, as defined in Section 3 of Condition A therein. Pursuant to Condition D of the SONGS permit, an independent monitoring program carried out under the direction of the Executive Director and funded by SCE shall be conducted to measure the success of the wetland in achieving restoration goals specified in the Final Restoration Plan and performance standards specified in the SONGS permit. SCE shall be fully responsible for any failure to meet the goals and performance standards during the full operating life of SONGS Units 2 and 3. In accordance with provisions of the SONGS permit, upon the Executive Director's determination that the goals or standards are not achieved, the Executive Director shall prescribe remedial measures, after consultation with SCE, which shall be immediately implemented by SCE with Commission staff direction.

The independent wetland post-restoration monitoring shall be implemented in accordance with the monitoring plan prepared by Commission staff and contract scientists in consultation with SCE and appropriate wildlife agencies, and approved by the Executive Director. (See Section IV-D for discussion of independent monitoring plan. The Monitoring Plan is incorporated herein as Appendix D.

Independent monitoring shall be performed under the direction of the Executive Director during and immediately after each stage of construction of the wetland restoration project to ensure that the restoration work is conducted according to the approved plans. Such construction phase monitoring shall be performed in accordance with the biannual work program to be approved by the Commission pursuant to Condition D of the SONGS permit, and shall be coordinated with SCE. This independent construction phase monitoring is separate from the applicants' responsibilities to ensure that the restoration project is constructed according to approved plans (Special Condition #1), to conduct beach sand monitoring (Special Condition #25), or to fulfill monitoring requirements imposed by other permitting agencies, such as, but not limited to, biological and water quality monitoring.

10. Maintenance and Management. Maintenance and management of the restoration project components, excluding the five Least Tern Nesting sites, shall be the responsibility of SCE for a period of time equivalent to the full operating life of SONGS Units 2 and 3, as defined in Section 3 of Condition A of CDP #6-81-330-A, after which time SCE shall transfer maintenance and management responsibilities to the JPA in accordance

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terms of the 1991 Memorandum of Agreement between SCE and JPA as amended August 1, 2005, except for maintenance of the beach access, which shall remain SCE's responsibility. SCE may contract with JPA or another third party (e.g., San Diego County Parks and Recreation Department) to perform SCE's maintenance and management responsibilities prior to transfer to the JPA. Maintenance and management shall be performed as follows:

- a. Both wetland and upland areas of the restoration shall be maintained to control invasive plants and to assure that native plants become established.
- b. Inlet maintenance shall be performed in accordance with and as determined through the document titled *Restored San Dieguito Lagoon Inlet Channel Initial and Periodic Dredging*, dated December 10, 2004, and in accordance with Special Condition #23.
- c. River berms and slope protective works shall be inspected annually between August and November and after major storm events (greater than the 10 year flood with flows overtopping Lake Hodges Dam). After magnitude 5.5 or greater seismic events originating within a 20-mile radius of the project site, inspections shall be made by a hydrologist, restoration specialist and geotechnical engineer, and the results of their determination of any adverse effect shall be provided in writing to the Executive Director. If after inspection, it is apparent repair or maintenance is necessary, the applicants shall contact the Commission office to determine whether permits are necessary.
- d. The weir located between the Villages Parcel (DS32) and the Horse Park property shall be inspected annually between August and November and after major storm events (greater than the 10 year flood with flows overtopping Lake Hodges Dam) to identify any structural damage. If after inspection, it is apparent repair or maintenance is necessary, the applicants should contact the Commission office to determine whether permits are necessary. Sediment and debris shall be removed from the weir and culverts located in the river berms annually between August and November and after major storm events (greater than the 10 year flood with flows overtopping Lake Hodges Dam). Biofouling organisms (e.g., mussels) shall be removed from the weirs and culverts as needed.
- e. Active Freshwater runoff treatment ponds 1 and 2 (Northside) shall be maintained by the JPA for water quality treatment purposes by removing vegetation and accumulated sediment no more frequently than annually, but at a minimum of once every three years. Invasive plant material shall be removed annually. No plant material other than invasive species may be removed from the outside or tops of any banks around the ponds. No tree species may be removed unless they are non-native species. Material shall only be removed by hand or by a backhoe that will reach from the trail surface through the vegetation openings left along the trail edge.
- f. Passive Freshwater runoff treatment ponds 3 and 4 (Southside) shall be maintained and inspected annually to identify the sustainability and viability of a

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native species. Corrective action shall be conducted within 3 months of this inspection period. Corrective action includes the infill planting of approved species and removal of all non-native or invasive species.

- g. The maintenance of the Freshwater runoff treatment ponds and achievement of success criteria shall be substantially consistent with the document titled *M41 Parcel – Treatment Marsh Descriptions* submitted 2/11/04 and as revised in accordance with Special Conditions #5 and #8.
- h. Public access and education components of the restoration project, except for the improved beach access, shall be maintained and managed in accordance with Section 4.6.2.4 Public Access and Park Facility Management Plan in the FRP.
- i. The existing beach access trail south of the inlet shall be maintained by SCE in its current condition, at a minimum. The access ramp north of the inlet shall be maintained to provide ADA accessible public access from Camino del Mar to the beach at all times.

11. Permanent Maintenance Road. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, revised plans for the permanent maintenance road extending from Racetrack View Drive east toward I-5 shown on City of San Diego Sheets 7, 15 and 16 dated 5/26/05. The plans shall be in substantial conformance with the revised alignment shown on the plan dated 6/30/05 utilizing the existing road extending from Racetrack View Drive to the western property line of APN 300-490-17 in the Del Mar Estates subdivision. The revised plans shall incorporate the following:

- a. Year round public pedestrian use of the proposed maintenance road extending from Racetrack View Drive to the existing cul-de-sac as shown on the 6/30/05 plan. (Exhibit 16) A gate shall be installed at the DFG property boundary and access restricted north of the gate to authorized personnel only. The existing City of San Diego easement from the road to the cul-de-sac shall be open year around to public pedestrian use, except during rainy periods. Equestrian use and dog access shall be prohibited at all times.
- b. A mitigation plan in substantial conformance with the mitigation plan dated July 26, 2005 and prepared by Project Design Consultants for impacts to 500 sq. ft. of existing coastal sage scrub habitat that is part of mitigation required pursuant to CDP # 6-02-153 (Caltrans).
- c. Evidence that an amendment to the Caltrans permit No. 6-02-153 has been approved by the Commission and that the revised mitigation has been implemented in accordance with the approved plan.

The applicants shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission

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approved amendment to this coastal development permit pursuant to the Commission's regulations unless the Executive Director determines that the changes are minor and within the scope of the Commission's permit approval and no amendment is required.

12. Beach Access Trail Plans. NO LATER THAN TWELVE (12) MONTHS AFTER THE COMMENCEMENT OF INLET DREDGING, the applicants shall submit to the Executive Director for review and written approval, final public access trail plans, approved by the City of Del Mar, for the beach access trails that include the following:

- a. The applicant shall take no action that will result in closure or removal of the existing path from Camino Del Mar to the beach south of the river mouth for pedestrian access.
- b. Plans for an accessible path and/or ramp from Camino Del Mar (north of bridge) to the beach north of the river mouth to provide continual coastal access that is otherwise interrupted by the mouth opening. The foundation of the access ramp at beach level shall be located as far landward as possible and shall be designed to not require protection from storm waves at any time.
- c. The relocated storm drain inlet, if necessary, shall be designed so the discharge point and any required riprap are located inland of the toe of the existing slope.
- d. Signage to be located on the beach and on the street, north and south of the inlet, to direct the public to the alternative access opportunities.
- e. The plans shall indicate installation of the public access paths addressed in (b) above and (g) below shall occur in order to provide alternative public access to either side of the river mouth. Construction of the final public accessways shall begin no later than 60 days (unless extended due to restrictions on summer beach construction) from the Executive Director's written approval of the submitted plans for such accessways and construction shall be in full compliance with the construction related special conditions of this permit, and be completed in a reasonable amount of time.
- f. Maintenance of the beach access trails shall be the responsibility of SCE.
- g. Plans for accessway and parking improvements at 29th Street (south of bridge) to include a handicap parking stall, marked diagonal parking for a minimum of nine vehicles, a travel path to the existing sea wall, a viewing platform, and an improved stairway leading to the beach sand. The foundation of the access stairway at beach level shall be located as far landward as possible and shall be designed to not require additional protection from storm waves at any time.

The applicants shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to this coastal development permit pursuant to the Commission's regulations.

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regulations unless the Executive Director determines that the changes are minor and within the scope of the Commission's permit approval and no amendment is required.

13. Water and Sediment Quality. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicants shall submit to the Executive Director for review (1) any modifications to the August 2, 2004 Storm Water Pollution Prevention Plan (SWPPP) and (2) a copy of the comprehensive water quality monitoring plan required by the San Diego Regional Water Quality Control Board (SDRWQCB) in the Waste Discharge Requirements for this project (Order No. R9-2005-0213). Copies of the monthly water quality monitoring reports, required by Order No. R9-2005-0213 during dredging operations, shall be submitted to the Executive Director at the same time that they are submitted to the SDRWQCB.

14. Other Permits. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicants shall provide to the Executive Director copies of all required state or federal discretionary permits for the development authorized by CDP #6-04-88 including, but not necessarily limited to, the Army Corps of Engineers Permits and Regional Water Quality Control Board approval, except that removal of trees and/or shrubs in upland areas where grading will occur for the project as described in the revised Final Restoration Plan approved pursuant to Special Condition #1 may occur at any time after the CDP issued, if such vegetation removal is in compliance with the provisions of Special Condition #19. Before commencing any removal of trees and/or shrubs, the applicants must submit for the review and approval of the Executive Director a plan identifying the areas where the activity will occur and methods that will be used. Any mitigation measures or other changes to the project required through said permits shall be reported to the Executive Director. Such changes shall not be incorporated into the project until the applicants obtain an amendment to this permit, unless the Executive Director determines that no amendment is legally required. In addition, the applicants shall demonstrate to the satisfaction of the Executive Director that the City of San Diego, the City of Del Mar and all resource agencies have approved the grading plans for that portion of the project located within their respective jurisdictions and for any associated infrastructure and improvements, including (but not limited to) the existing sewer force main crossing the San Dieguito River from the 22nd District Agricultural Association (22nd DAA).

15. Least Tern Nesting Sites. Construction of the four new Least Tern nesting sites shown in the Final Restoration Plan as NS11, NS12, NS13 and NS14 shall not commence until an amendment to the 22nd District Agricultural Association's CDP No. 6-84-525 requiring the 22nd DAA's maintenance and monitoring of these least tern nesting sites has been approved by the Coastal Commission, the 22nd DAA has accepted the terms of said amendment, and the amendment has been issued.

PRIOR TO THE COMMENCEMENT OF REHABILITATING the existing Least Tern nesting site shown in the Final Restoration Plan as NS15, the applicants shall provide evidence of the California Department of Fish and Game's commitment to maintain and monitor the refurbished site in perpetuity.

16. Access to California Department of Fish and Game San Dieguito River Park Ecological Reserve. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicants shall obtain access authorization or a temporary construction easement from the California Department of Fish and Game.

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Department of Fish and Game to perform work within the San Dieguito Lagoon Ecological Reserve. The applicants shall coordinate all work within the Reserve with the Ecological Reserve Manager.

17. Property Use Agreements and Easements. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT the applicants shall submit to the Executive Director, for review and written acceptance, copies of the signed and approved three-way agreement between JPA, SCE and 22nd District Agricultural Association dated September 21, 2005. The Grant of Easement for the San Dieguito River Mouth, Public Trail (referred to in the three-way agreement as the Restoration Easement) shall be submitted in a form and content acceptable to the Executive Director and suitable for recordation, within twelve months of permit issuance and prior to commencement of the inlet dredging or trail construction. The Grant of Easement for the Least Tern Nesting Habitat Sites (referred to in the three-way agreement as the Habitat Easement) shall be submitted in a form and content acceptable to the Executive Director and suitable for recordation, within twelve months of permit issuance and prior to commencement of construction of the least tern islands. Evidence of recordation of the approved documents shall be submitted within 30 days of Executive Director approval of the documents for recording.

The three property use agreements (1) Memorandum of Agreement between the San Dieguito River Valley Regional Open Space Park Joint Powers Authority and the Southern California Edison Company, dated August 14, 1991, and First Amendment to Memorandum of Agreement between the San Dieguito River Valley Regional Open Space Park Joint Powers Authority and Southern California Edison, dated August 1, 2005; (2) November 16, 1998 Memorandum of Agreement between City of San Diego, Southern California Edison Company, and San Dieguito Regional River Valley Open Space Park Joint Powers Authority; and (3) Agreement between the 22nd District Agricultural Association, Southern California Edison Company, and San Dieguito River Park Joint Powers Authority, dated September 21, 2005 and all grants of easement executed in compliance with those agreements are incorporated into this CDP by reference. Change in use, boundaries or zoning of any properties within the restoration project requiring revision of these agreements and/or easements will require an amendment to the CDP.

18. Contractor's Acknowledgement. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicants shall submit a signed statement from the project contractor indicating that the contractor has received a copy of the coastal development permit and special conditions and is aware of all permit conditions.

19. Timing of Construction/Seasonal and Habitat Restrictions. PRIOR TO COMMENCEMENT OF CONSTRUCTION AND WITHIN 12 MONTHS OF COMMISSION ACTION ON THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a final construction plan and schedule, which shall be incorporated into construction bid documents. The project must comply with the following restrictions, which shall be specified in the schedule:


- a. Construction activities shall not occur in areas where breeding is occurring by raptors, migratory birds and threatened and endangered bird species.

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restriction can be met by either avoiding known breeding periods, or by conducting pre-construction surveys to demonstrate that breeding is not occurring. Threatened or endangered species include: Belding's Savannah Sparrow, Western Snowy Plover, California Least Tern, Least Bell's Vireo, and Light Footed Clapper Rail. The months and areas of restriction shall be in substantial conformance with the two sets of plans submitted June 20, 2005 (City of Del Mar Sheets 26-27, dated 6/17/05, and City of San Diego Sheets 61-62, dated 5/26/05).

- b. Regardless of season, construction shall not occur in designated areas of restriction within minimum distances of occupied nests of bird species specified in (a) above. The minimum distance for Belding's Savannah Sparrow and Least Bell's Vireo is 150 feet, the minimum distance for migratory birds is 200 feet, and the minimum distance for raptors is 500 feet. Further, the U.S. Fish and Wildlife Service shall be consulted for advice on geographic restrictions of construction if nests of Snowy Plovers, California Least Terns, Least Bell's Vireo or Light Footed Clapper Rails are encountered in the project area. This guidance shall be followed regardless of whether the nests are encountered in or out of the seasonal restrictions specified in (a) above.
- c. Construction shall, if possible, avoid areas containing threatened and endangered or otherwise rare plant species including but not limited to the Southern tarplant, Red sand verbena, Coulter's goldfields, Del Mar Mesa sand aster, Lewis's evening primrose, and Woolly seablite. Construction fencing shall be placed outside of and around these restricted areas and signs indicating sensitivity shall be placed every 100' along the perimeter of the restricted areas. If avoidance is not possible, whole plants and seeds of sensitive species shall be salvaged and transplanted to areas specified in the plans submitted June 20, 2005 (City of Del Mar Sheets 26-27, dated 6/17/05 and City of San Diego Sheets 61-63, dated 5/26/05).
- d. Prior to disposing materials on beach areas during February through August, the applicants shall consult with the California Department of Fish and Game for the expected spawning and hatching periods of the California grunion, and shall provide monitors on the beach during the time of the predicted run. If no grunion are observed, disposal activities can take place until the next predicted run. If grunion are observed, there can be no activities until the next predicted run, at which time the monitoring shall be repeated.
- e. No construction work may occur on sandy beach during the summer months (Memorial Day weekend to Labor Day) of any year. During approved construction periods, any equipment used on the beach shall be removed from the beach at the end of each work day.

20. Staging Areas/Access Corridors. PRIOR TO THE ISSUANCE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Director for review and written approval, detailed plans incorporated into the co

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bid documents for the location of access corridors to the construction sites and staging areas. Use of sandy beach and public parking areas, including on-street parking for the interim storage of materials and equipment shall not be permitted except as provided in Special Condition #22. Access corridors and staging areas shall be located in a manner that has the least impact on public access via the maintenance of existing public parking areas and traffic flow on coastal access routes (Camino Del Mar, Via de la Valle, Jimmy Durante Blvd. and El Camino Real). If more than one staging site is utilized, the plans shall indicate which sites are connected with which portions of the overall development, and each individual site shall be removed and/or restored immediately following completion of its portion of the overall development.

21. Construction Materials. Disturbance to sand and intertidal areas shall be minimized. Beach sand excavated shall be re-deposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or construction material. The applicants shall remove from the beach and inlet area any and all debris that result from the construction period.

22. North Beach Staging Plan and Beach Access During Construction. PRIOR TO USE OF THE NORTH BEACH STAGING AREA OR COMMENCEMENT OF BEACH RESTORATION ACTIVITIES, the applicants shall provide the Executive Director and the City of Del Mar with detailed plans for the staging of equipment on the North Beach area. This will include the specific months of the year the North Beach area will be used as well as a detailed outline of the proposed staging boundary. No staging or equipment storage shall occur on North Beach from June 1 to Labor Day, without prior approval from the City of Del Mar. The staging plans shall include necessary measures, including barricades and security, to ensure public safety during and after construction hours. Staging areas shall also avoid impacts to any existing wetlands. The project contractor shall bear the responsibility for maintaining the security of the worksite at all times during the construction phase. The contractor shall provide details for safety measures during sand placement on the beach, including lifeguard access, pedestrian traffic, vehicular turn-around locations, flagging requirements, and hours of operation subject to review and approval by the Planning, Public Works, Engineering, and Community Services Departments of the City of Del Mar. Pedestrian and lifeguard beach access shall be maintained during construction as required by the Community Services Department of the City of Del Mar.

23. Inlet Dredging Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a dredging construction phase impact and mitigation plan, that has been approved by the City of Del Mar. The plans shall include construction schedules, number and type of truck/equipment traffic, type of dredge to be used, and material storage and haul route information. The plan shall specify the anticipated timeframe for the inlet opening and frequency for maintenance openings, and shall include the following specifications for inlet location:

- a. The initial inlet dredging shall be as shown on the approved drawing. The inlet channel shall be located a minimum distance of 50 feet from the

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revetment to the south of the channel. At the time the inlet is dredged for the initial opening, any beach depressions from the pre-existing inlet channel shall be filled to a level approximating the adjacent undisturbed beach levels.

- b. In the event the inlet is closed at the time of any subsequent maintenance activities, re-opening shall occur such that the south edge of the inlet channel is located a minimum of 40 feet from the rip-rap and the first priority for dredged sand shall be to restore usable beach area.
- c. In the event the inlet is open at the time of any subsequent maintenance activities, dredging may occur in the inlet as it then exists and any widening shall occur on the channel side closest to mid-point of the lagoon entrance (between the bluffs to the north and the revetment to the south).

The applicants shall undertake inlet dredging in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this coastal development permit pursuant to the Commission's regulations unless the Executive Director determines that the changes are minor and within the scope of the Commission's permit approval and no amendment is required.

24. Beach Nourishment/Dredge Disposal Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, beach nourishment/dredge disposal plans to insure that only beach quality material shall be used for beach nourishment. During the initial inlet dredging, all beach quality sand dredged from west of Jimmy Durante Bridge shall be placed on the beach, except as noted below for potential use on the least tern nesting sites. In all subsequent inlet maintenance dredging, all beach quality sand shall be placed directly on the beach adjacent to the location of the San Dieguito River inlet. The final beach nourishment/dredge disposal plans shall include the following:

- a. Dredge Plan: The applicants shall provide information for each dredging episode that shall include:
 - (1) Map of all dredging areas and sample locations;
 - (2) All testing results;
 - (3) A proposed placement plan;
 - (4) Estimate of the volume of beach quality material to be dredged;
 - (5) Estimate of the volume of unacceptable beach material to be dredged and plans for disposal; and
 - (6) Schedule for dredging, placement and disposal if needed.

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- b. Test Samples: Prior to the initial restoration project, the applicants shall take and test a minimum of ten samples from the channel excavation sites. All samples shall be taken to a depth equal to or in excess of the design excavation depth.
- c. Silt and Clay Limitations: The applicants shall insure that sand comprises at least 90% of the nourishment material and that the nourishment material contains less than 5% clay and less than 10% silt and clay combined, with sand, silt and clay defined by the Unified Soil Classification.
- d. Removal of Large Debris: Prior to placement on the beach, the applicants shall sift all sand excavated from the lagoon area east of the NCTD Railroad Bridge to insure that it is free of stones, organics debris, or lumps exceeding 1 inch in greatest dimension. The applicants shall be responsible for disposal of all unacceptable material in compliance with all applicable federal, state and local laws.
- e. Sand Transport: To the maximum extent feasible, all sand shall be transported via pump or conveyor to minimize the potential impacts of heavy construction traffic on the surrounding community and infrastructure.
- f. Odor from Dredged Sand: If there are public complaints about the odor of the beach quality sand, sand placement on the beach shall stop and the remaining excavated or dredged sand shall be stored near the dredge site until the odor subsides.
- g. Appearance: To the maximum extent feasible dredged sand shall match the color of existing beach sand to avoid public concerns about the safety or cleanliness of the sand placed on the beach.
- h. Tern Islands: If it is determined by the project engineer in consultation with the USFWS that the volume of “airfield” (W1) sand is inadequate for least tern nesting site construction, the applicants may use sand dredged from the area west of Jimmy Durante Bridge to construct the least tern nesting sites and shall notify the Executive Director, in writing, of such determination prior to use of such sand.

The applicants shall undertake beach nourishment and dredge disposal in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this coastal development permit pursuant to the Commission’s regulations unless the Executive Director determines that the changes are minor and within the scope of the Commission’s permit approval and no amendment is required.

25. Beach Monitoring. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a beach monitoring program that will consist of beach profiles

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channel cross-sections, data analysis and reporting. The beach monitoring program shall be designed to guide and direct placement of dredged beach quality sand and to identify unanticipated changes to the shoreline condition. The monitoring program shall outline the procedure for the necessary surveys, report preparation and submittal, and the skills and qualifications for all personnel. The monitoring program shall record detailed project information regarding the initial placement of sand and subsequent maintenance projects, including, but not limited to, the dates of placement, quantity of sand, locations from which sand was dredged, method of transportation and placement, locations of sand placement, weather conditions, river conditions, and any formal complaints regarding the sand placement activities. The monitoring program shall also establish an independent Coastal Processes Technical Panel that would be able to assist in a rapid response to unforeseeable adverse beach changes. The beach monitoring program shall include the following:

- a. Beach Surveys: Beach surveys shall be performed at 4 historic profile locations, DM-0590, DM-0580, DM-SD0595 and SD-0600 (called SIO1, SIO2, SIO5, and SIO6 by the City of Del Mar in its permit) and at 3 new profile locations approximately 500 feet, 1,000 feet, and 1,500 feet south of DM-0590 (SIO1). Profiles shall be referenced to the City of Del Mar's Shoreline Protection Area Line (SPA Line) or, for sites that do not have an SPA reference line, to a fixed and identified feature. The profile locations 500 feet and 1,000 south of DM-0590 (SIO1) are in the approximate locations of the profiles identified by Dr. Stone as being RE-13 and RE-18, respectively. Profile locations may be adjusted slightly to establish required profiles in locations for which historic survey information is available. Full profile beach surveys shall be performed in the spring and fall for the 4 historic profile locations (DM-0590, DM-0580, SD-0595, and SD0600) and the survey location approximately 1,000 feet south of DM-0590. The full profile surveys shall be referenced to the SPA Line (or equivalent) and shall survey to the depth of closure ("depth of closure" is the depth beyond which there are no changes in bottom profile due to seasonal variation in wave conditions). Wading depth surveys shall be performed quarterly (every three months) for all profiles, shall be referenced to the SPA Line (or equivalent) and shall survey to at least -6' NGVD. Wading depth profiles shall also be performed before and after artificial inlet maintenance and following large storms or floods. Information from full profile surveys can substitute for wading depth surveys where available; wading depth surveys shall not be a substitute for required full profile surveys. Surveys shall be conducted by a licensed engineer or surveyor, using the methods from the SANDAG Regional Beach Monitoring Program (SANDAG 2003) or from Elwany et al. (Elwany 2003) or other professional accepted methods. To the extent practicable, these survey requirements shall be met by using available local, regional, state or federal survey efforts, and shall be supplemented as needed by project specific surveys to provide for the required information.
- b. Analyses: Beach survey data shall be analyzed to provide information on beach width for each profile line (from the SPA line or other fixed reference seaward to 0' NGVD), beach sand volume for each profile line (cubic yards per foot from the SPA line or other fixed reference seaward to 0' NGVD or to closure).

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beach slope (from the SPA line or other fixed reference seaward to 0' NGVD or to closure) for the surveyed area following each survey. In addition to quantitative information, the analysis shall provide: 1) time series plots of beach width and beach sand volume at each profile location; 2) time series plot of overall sand volume; and 3) time series plots of differences between beach width and sand volume between DM-0580 (SIO2) and all other surveyed profile sites and between DM-0590 (SIO1) and SD-0595 (SIO5).

The analysis shall be used to determine the fate and transport of any sand placed on the beach for nourishment or as a result of inlet dredging, and shall make recommendations for placement locations for beach compatible sand that will be excavated by upcoming dredging episodes. In addition, the analysis shall determine whether observed beach parameters (beach width, beach sand volume, beach profile) are within values measured during the historical monitoring period from January 1978 to the date at which inlet maintenance begins. Specifically, the analyses will determine whether:

- (1) The beach width at DM-0590 (SIO1) is at or less than 32.4 feet (the lowest historically observed minimum)
- (2) The beach width at DM-0590 (SIO1) is at or less than 90 feet and there is more than an 180-foot difference in beach widths measured at DM-0590 and DM-0580 (SIO1 and SIO2); or
- (3) The beach width at SD-0595 (SIO5) is at or less than 74 feet (the lowest historically observed minimum).

- c. Reporting: The Beach Monitoring Program shall provide for prompt reporting of survey data, within 2 weeks following any survey with exceptions noted below, through print and electronic outlets. At a minimum, survey data and analysis shall be provided to the Executive Director, members of the Technical Panel, the City of Del Mar, State Lands Commission and US Army Corps of Engineers, and made available to the public at Del Mar City Hall and Del Mar Library and through the internet. The annual report and/or any report for surveys taken prior to a dredge cycle shall be submitted within 30 days of the survey and shall discuss and provide information on (1) surveyed beach conditions and beach changes, (2) placement of any material removed from the inlet (e.g. volume and placement location), (3) information on other nourishment efforts that might influence the survey results, (4) fate and transport of all placed material; (5) results of descriptive statistics and analyses performed on the data, as detailed in Analyses, above; (6) channel conditions and channel changes as recorded by the channel transects; and (7) recommendations for placement of dredge material for the following dredge cycle(s). Every survey report shall include a determination of whether survey results indicate that beach parameter measurements are outside of values recorded during historical surveys pre-dating permanent inlet maintenance (width, volume or profile) identified in (b) above. The first annual report submitted within one year after issuance of the permit) shall include a

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analysis of all available historic shoreline information (surveys and aerial photographs), as well as the data and analysis from the first year of monitoring. If surveys or analyses indicate that changes to the beach area differ from the pre-project conditions, the applicant shall notify the Executive Director and the CPT Panel in a timely manner and not wait for the following annual report.

- d. CPT (Coastal Processes Technical) Panel: The Beach Monitoring Program shall establish the process for creation of a CPT Panel that shall be kept up to date on all beach survey results and that shall be available throughout the life of the project, to provide technical review and expert opinion on any beach conditions that are determined by the Executive Director to be abnormal. At a minimum, the Executive Director shall convene the CPT Panel within 2 weeks of any survey report that finds that any of the following triggers have been met:
- (1) The beach width at DM-0590 (SIO1) is at or less than 32.4 feet (the lowest historically observed minimum) for six months or three consecutive surveys (whichever is the shorter amount of time); or
 - (2) The beach width at DM-0590 (SIO1) is at or less than 90 feet and there is more than an 180-foot difference in beach widths measured at DM-0590 and DM-0580 (SIO1 and SIO2) for two consecutive surveys (180 feet is the maximum historically observed difference); or
 - (3) The beach width at SD-0595 (SIO5) is at or less than 74 feet (the lowest historically observed minimum) for six months or three consecutive surveys (whichever is the shorter amount of time).

The CPT Panel shall be composed of coastal professionals who are familiar with local coastal conditions and have expertise in the areas of coastal engineering, oceanography, coastal geology, littoral sediment transport, lagoon and inlet hydrodynamics, or other applicable areas. Within six months of issuance of the permit, the applicants shall provide the Executive Director with a list of 10 experts to be considered for service on the CPT Panel. All recommended panelists must have documented expertise in the required knowledge areas, through educational achievements, academic degrees, or published peer-reviewed papers. In addition, panelists shall be independent of both the applicants and Save The Beach and shall not have received any funding from either group, within the past two years, for any work relating to San Dieguito Lagoon or Del Mar Beach. When experts retire from the panel, the applicants shall immediately provide the remaining panel with a list of 4 potential new panelists (with documented expertise), and the remaining panel members shall determine who will best complement the existing panel expertise. The shoreline monitors shall provide input to the panel and attend the panel meetings but shall not be panel members. The applicants shall be responsible for all panel expenses, including the panelists' travel, per diem and salaries, salaries for support staff to record meetings, prepare reports, and costs for meeting space, conference calls and communication requirements.

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The Executive Director, or designee, shall be the permanent chair of the panel and shall serve as a panel member; a minimum of five additional experts shall serve on the Panel. The Executive Director shall select panel members from the list of experts after consultation with the City of Del Mar, the City of Solana Beach, the SANDAG Shoreline Preservation Committee, Executive Director of State Lands Commission, Executive Director of California Department of Parks and Recreation, the Del Mar Sandy Lane HOA, and the Surfrider Foundation.

The panel will be given full access to all project design materials, historic shoreline information, monitoring reports and other relevant information. The panel shall meet once following the first beach survey and a minimum of twice per year thereafter, and additionally as necessary following shoreline changes that exceed triggers in Condition 25b. Within 3 months of being convened as a result of shoreline changes, the CPT Panel shall provide to the Executive Director a written report that outlines the reason or reasons for the panel being convened; likely range of causes; measures, if any, that should be taken to correct the immediate shoreline erosion problem, such as beach or dune nourishment, sand by-passing, etc.; recommendation for additional monitoring or studies needed to determine the success of the interim corrective actions; recommendations for modified “triggers” to better respond to identified shoreline changes; and, recommendations for follow-up panel meetings. SCE shall be responsible for taking all necessary steps and for obtaining all necessary authorizations to implement the recommendations of the CPT Panel.

- e. Reduction in Monitoring: The beach sand monitoring and placement of dredge material on the beach shall continue for the life of the project. If, after 15 years of monitoring, there is no evidence of any adverse project impacts on the beach, the applicants may request a permit amendment to reduce the monitoring to occur only pre- and post-excavation for inlet openings, to provide only wading depth profiles adjacent to the inlet, to reduce reporting to an annual letter report or electronic notice, and to dismiss the CPT Panel.

26. Waiver of Liability. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

27. Villages Mitigation Bank. The wetland restoration as proposed on module W16 is approved in this Permit, and shall be used to replace mitigation requirements formerly intended to be fulfilled by module W45. Any remaining acreage not used to satisfy the mitigation requirements of this permit may be available as a part of a Villages Mitigation Bank should the applicant formally submit such a mitigation bank request in the future. However, the proposal to operate W16 as the Villages Wetlands Mitigation Bank fully described in the *Villages Wetlands Mitigation Bank, Bank Enabling It*

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prepared by SCE (January 2005), is not approved as part of this CDP application, nor is any mitigation credit that may accrue as a result of restoration of W16 approved at this time. To the extent that the Commission approves a final grading plan (pursuant to Special Condition #3) that includes excess acreage of restored wetlands on module W16 that is not required to comply with CDP No. 6-81-330-A, such excess acreage may be available in the future to satisfy some other wetland mitigation requirement if the use of module W16 as mitigation is authorized pursuant to a future coastal development permit. If module W16 is not fully restored concurrent with the disposal of excavated materials from the restoration project onto Disposal Site 32, an amendment to this CDP is required to revise the restoration plan to avoid or reduce disposal on existing wetlands in DS32.

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