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Orange County Public Works

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Tom Daly, Clerk-Recorder

AND WHEN RECORDED MAIL TO:
Orange County Public Works
300 North Flower Street
Santa Ana, California 92703
Attn: Eileen Takata

 NO FEE
2008000267132 12:17pm 06/04/08
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Space Above Line for Recorder's Use Only

Exempt per G.C. 6103
2-2-8

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this 24th day of April, 2008 by CITY OF COSTA MESA ("Grantor") in favor of ORANGE COUNTY FLOOD CONTROL DISTRICT ("Grantee") with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately 208 acres, in the County of Orange, State of California, commonly referred to as "Fairview Park." Fairview Park is legally described and depicted on Exhibit "A" attached hereto and incorporated herein by this reference. Grantor intends to grant a conservation easement over a 20.0269-acre portion of Fairview Park (the "Easement Area"). The Easement Area is legally described and depicted on Exhibit "B" attached hereto and incorporated herein by this reference.

B. The Easement Area possesses wildlife and habitat values of great importance to Grantee, the people of the State of California, and the United States.

C. Grantee is authorized to hold conservation easements pursuant to Civil Code Section 815.3. Specifically, Grantee is an entity identified in Civil Code Section 815.3 and otherwise authorized to acquire and hold title to real property.

D. The Easement Area provides, among other things, mitigation for certain impacts of the Santa Ana River Mainstem Project Reach 2 Channel Excavation (the "Project") undertaken by the United States Army Corps of Engineers ("USACE") and Grantee, pursuant to requirements of the following state and federal agency approvals, collectively referred as to the "Agency Agreements":

1. The Agreement Regarding Proposed Activities Subject to California Fish and Game Code Section 1601 and any amendments thereto, No. R5-2002-0305, issued by the California Department of Fish and Game ("CDFG"); and

2. Biological Opinion No. FWS-OR-1304.8 dated December 2003 issued by the United States Fish and Wildlife Service ("USFWS").



E. The Easement Area is and will remain in a Natural Condition as defined herein and is intended to be preserved in its natural, scenic, open condition to maintain its ecological, historical, visual and educational values (collectively, "**Conservation Values**").

F. In connection with the Project, it is expected that USACE will construct and Grantor will maintain, monitor, and rehabilitate the Easement Area in accordance with the Mitigation Plan defined below. In general, the Mitigation Plan provides that the Easement Area will be planted and seeded with native plant species to create and enhance riparian habitat (the "**Mitigated Areas**").

G. Grantee and the USACE have entered into a Local Cooperation Agreement dated December 13, 1989 (LCA) that sets forth the responsibilities of the USACE and the local sponsors regarding the Project. Grantee is one of the local sponsors and is responsible for maintenance in accordance with the Mitigation Plan arising from the Project. By entering into agreements with the Grantee that include the conveyance of this easement that restricts the use of the Easement Area for conservation purposes and obligates Grantor to maintain, operate and monitor the mitigation within the Easement Area, Grantee intends to satisfy certain of its obligations under the LCA related to maintenance of mitigation lands for the Project.

H. Grantor and Grantee will enter into a Cooperative Agreement to set forth their respective financial responsibilities for the Mitigated Areas.

I. Riparian habitat creation in Fairview Park is governed by the 1997 Fairview Park Master Plan, as amended ("**Master Plan**").

J. To ensure Project commitments and conservation measures are carried out, USACE is a third party beneficiary of this Conservation Easement.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

In consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to California law, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Easement Area of the nature and character and to the extent hereinafter set forth ("**Conservation Easement**"). This Conservation Easement shall run with the land and be binding on Grantor's heirs, successors, administrators, assigns, lessees, and other occupiers or users of the Easement Area or any portion of it.

1. **Purpose.**

(a) The Purpose of this Conservation Easement is to ensure the Easement Area will be preserved in a Natural Condition, defined herein, in perpetuity and to prevent any use of the Easement Area that will materially impair or interfere with the Conservation Values of the Easement Area (the "**Purpose**"). Grantor intends that this Conservation Easement will confine the use of the Easement Area to such activities, including without limitation, those involving the preservation and enhancement of native species and their habitat in a manner consistent with the habitat conservation purposes of this Conservation Easement.

(b) The term "Natural Condition," as referenced in the preceding paragraph and other portions of this Conservation Easement, shall mean the condition of the Easement Area, as it exists at the time this Conservation Easement is executed, as well as future enhancements or changes to the Easement Area that occur directly as a result of the following activities:

(1) Mitigation measures, including implementation, maintenance, and monitoring activities (collectively, "Compensatory Mitigation"), required by the Agency Agreements and as described in the Fairview Park Wetlands and Riparian Habitat plan dated March 2008 ("Mitigation Plan"), the cover page and Executive Summary of which are attached as Exhibit "C";

(2) In-perpetuity maintenance ("Long-Term Maintenance"), that occurs on the Easement Area as described in Section 16 herein; or

(3) Activities described in Section 4 and Section 6 herein.

(c) Grantor certifies to USACE and Grantee, that, to the Grantor's actual knowledge, there are no structures or improvements existing on the Easement Area at the time this grant is executed. Grantor further certifies to USACE and Grantee that to the Grantor's actual knowledge, there are no previously granted easements existing on the Easement Area that interfere or conflict with the Purpose of this Conservation Easement as evidenced by the Title Report attached as Exhibit "D." The current Natural Condition is evidenced in part by the depiction of the Easement Area attached as Exhibit "E," showing all relevant and plottable property lines, easements, dedications, improvements, boundaries and major, distinct natural features such as waters of the United States. Grantor has delivered further evidence of the Natural Condition to Grantee and USACE consisting of (1) an aerial photograph of the Easement Area at an appropriate scale taken as close in time as possible to the date this Conservation Easement is executed; (2) an overlay of the Easement Area boundaries on such aerial photograph; and (3) on-site photographs showing all man-made improvements or structures (if any) and the major, distinct natural features of the Easement Area.

(d) If a dispute arises with respect to the Natural Condition of the Easement Area, Grantor, Grantee or USACE as a third party beneficiary, or any designees or agents of Grantor, Grantee and USACE, shall not, upon reasonable notice to the other parties, be foreclosed from utilizing any and all other relevant documents, surveys, photographs or other evidence or information to assist in the resolution of the dispute.

(e) The term "Biological Monitor" shall mean a qualified individual with knowledge of aquatic resources in the Orange County area and expertise in the field of biology or a related field.

2. Grantee's Rights. To accomplish the Purpose of this Conservation Easement, Grantor, its successor and assign hereby grants and conveys the following rights to Grantee. These rights are also granted to the USACE or its designees as a third party beneficiary of this Conservation Easement:

(a) To preserve and protect the Conservation Values of the Easement Area;
and

(b) To enter upon the Easement Area at reasonable times, and with reasonable notice to the other parties, in order to (1) conduct the activities required under the Agency Agreements and any amendments thereto; (2) carry out the Mitigation Plan, including but not limited to the following activities: (i) remove trash and debris; (ii) excavate and regrade the surface as appropriate for detention and flow of water for riparian habitat; (iii) eradicate weeds and non-native plants using industry-standard methods, products and practices; (iv) install and maintain irrigation system; (v) prepare the site for native seeding and planting, including amending soils; (vi) install native seeds and container plants; and (vii) maintain, restore, and monitor the habitat until Year 1 Performance Criteria, as defined in the Mitigation Plan, are satisfied, completing the construction of the Mitigated Areas (“**Completion of Construction**”); and (3) to monitor the condition of the Easement Area and enforce the terms of this Conservation Easement; and

(c) To prevent any activity on or use of the Easement Area that is inconsistent with the Purpose of this Conservation Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any act, failure to act, or any use that is inconsistent with the Purpose of this Conservation Easement; and

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve, protect and sustain the biological resources and Conservation Values of the Easement Area shall remain a part of and be put to beneficial use upon the Easement Area, consistent with the Purpose of the Conservation Easement. Grantor shall not transfer, encumber, sell, lease, or otherwise separate the mineral, air or water rights for the Easement Area, or change the place or purpose of use of the water rights, without first obtaining the written consent of Grantee, which Grantee may withhold in its reasonable discretion. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of Grantor's right, title or interest in and to any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area including, without limitation: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; or (iv) any water from wells that are in existence or may be constructed in the future on the Easement Area; and

(e) All present and future development rights allocated, implied, reserved or inherent in the Easement Area; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Easement Area; and

(f) To enforce by any means then legally available, including, without limitation, injunctive relief, the terms and conditions of this Conservation Easement.

3. **Prohibited Uses.** Any activity on or use of the Easement Area inconsistent with the Purpose of this Conservation Easement and not reserved as a right of Grantor is prohibited. Without limiting the generality of the foregoing, the following uses by Grantor, Grantee, and their respective guests, agents, assigns, employees, representatives, successors, and third parties

are expressly prohibited on the Easement Area except as otherwise provided herein or unless specifically provided for in the Agency Agreements and any amendments thereto, the Mitigation Plan, and any easements and reservations of rights recorded in the chain of title to the Easement Area at the time of this conveyance (as set forth on Exhibit D hereto):

- (a) Unseasonable or supplemental watering except for habitat enhancement activities described in Section 6(b) or necessary for completing the Mitigation Plan;
- (b) Use of herbicides, pesticides, biocides, fertilizers, or other agricultural chemicals or weed abatement activities, except weed abatement activities necessary to control or remove invasive, exotic plant species or as allowed by the Mitigation Plan;
- (c) Use of off-road vehicles and use of any other motorized vehicles, except in the execution of management duties on the maintenance access roads depicted on Exhibit E;
- (d) Grazing or other agricultural activity of any kind;
- (e) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing, excluding passive use of designated trails reserved as a right of Grantor in Section 6(i);
- (f) Residential, commercial, retail, institutional, or industrial uses;
- (g) Any legal or *de facto* division, subdivision or portioning of the Easement Area;
- (h) Construction, reconstruction or placement of any building or other improvement, billboard, or sign except those signs specifically allowed under Subsection 6(d);
- (i) Dumping, depositing, or accumulating soil, trash, ashes, refuse, waste, bio-solids or any other material;
- (j) Planting, introduction or dispersal of non-native plant or animal species;
- (k) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Easement Area, except as allowed under Section 6(h), Section 6(i), or to complete the Mitigation Plan on the Property;
- (l) Altering the general topography of the Easement Area, including but not limited to building of roads, trails, and flood control work, except as allowed under Section 6(h), Section 6(i), or to complete the Mitigation Plan on the Easement Area;
- (m) Removing, destroying, or cutting of trees, shrubs or other vegetation, except for (1) emergency fire breaks as required by fire safety officials as set forth in Subsection 6(f), (2) prevention or treatment of disease, (3) control of invasive species, which threaten or may threaten the integrity of the habitat, (4) completing the required Mitigation Plan, or (5) activities described in Section 4, Section 6 and Section 16;

(n) **Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Easement Area, and activities or uses materially detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, except as required to complete the Mitigation Plan or to carry out activities described in Section 4, Section 6 and Section 16;**

(o) **Without the prior written consent of Grantee, which Grantee may withhold in its reasonable discretion, transferring, encumbering, selling, leasing, or otherwise separating the mineral rights or water rights for the Easement Area; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area;**

(p) **Creation of any encumbrance superior to this Conservation Easement, other than those encumbrances set forth in Exhibit D hereto, or the recording of any involuntary lien (which is not released within thirty days), or the granting of any lease, license or similar possessory interest in the Easement Area which will affect the Conservation Values of the Easement Area; and**

(q) **Fuel modification zones (defined as a strip of mowed land or the planting of vegetation possessing low combustibility for purposes of fire suppression).**

4. **Grantor's Duties. To accomplish the Purpose of this Conservation Easement as described in Section 1, Grantor, its successors and assigns shall:**

(a) **Undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Area. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Conservation Easement, including but not limited to Grantee's water rights; and**

(b) **Comply with the terms of this Conservation Easement and cooperate with Grantee in the protection of the Conservation Values; and**

(c) **Repair and restore damage to the Conservation Easement directly caused by Grantor, Grantor's guests, representatives, employees or agents, and third parties within Grantor's control provided, however, Grantor, its successors or assigns shall not engage in any repair or restoration work in the Easement Area without the consent of Grantee and USACE; and**

(d) **Undertake maintenance, monitoring, and reporting of Mitigated Areas pursuant to the Mitigation Plan upon Completion of Construction until issuance of final approval from the USACE confirming that Grantor has successfully completed maintenance and monitoring of Mitigated Areas pursuant to the Mitigation Plan; and**

(e) **Beginning in the third year from Completion of Construction of the Mitigated Areas, provide the water supply necessary to sustain the Mitigated Areas in perpetuity; and**

(f) Perform Long-Term Maintenance of the Easement Area as described in Section 16 herein; and conduct any other activities necessary for the maintenance and protection of this Conservation Easement in order to preserve wildlife and wetland/water quality values in perpetuity; and

(g) Obtain any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement conducted by Grantor, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

5. Grantee's Duties. To accomplish the Purpose of this Conservation Easement as described in Section 1, Grantee, its successors and assigns shall:

(a) Prevent any activity on or use of the Easement Area that is inconsistent with the Purpose of this Conservation Easement; and

(b) Perform annual compliance inspections of the Easement Area, and make inspection reports available to USACE, USFWS, and/or CDFG upon request; and

(c) Obtain any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement conducted by Grantee, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements; and

(d) Repair and restore damage to the Conservation Easement directly caused by Grantee, Grantee's guests, representatives, employees or agents, and third parties under the control of Grantee, provided, however, Grantee shall not engage in any repair or restoration work in the Easement Area without first obtaining the consent of Grantor and USACE; and

(e) Ensure that Grantor performs Long Term Maintenance as described in Section 16 herein. If Grantor fails to perform Long Term Maintenance, Grantee shall obtain Grantor's performance through an action to enforce the terms of this Easement or, instead, perform the Long Term Maintenance at its own expense, reserving the right to recoup its costs of Long Term Maintenance from Grantor; and

(f) Provide the water supply necessary to sustain the Mitigated Areas until the conclusion of the second year after Completion of Construction.

6. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Easement Area, including the right to engage in or to permit or invite others to engage in all uses of the Easement Area that are not expressly prohibited or limited by, and are consistent with, the Purpose of this Conservation Easement, including the following uses:

(a) Access. Reasonable access through the Easement Area to adjacent land over existing roads, or to perform obligations or other activities permitted by this Conservation

Easement or that are required under the Agency Agreements or the Mitigation Plan, or to mitigate emergency situations in order to protect public safety.

(b) Habitat Enhancement Activities. Enhancement of native plant communities, including the right to plant trees and shrubs of the same type as currently existing on the Easement Area, so long as such activities do not harm the habitat types identified in the Agency Agreements or Mitigation Plan. For purposes of preventing erosion and reestablishing native vegetation, the Grantor shall have the right to revegetate areas that may be damaged by the permitted activities under this Section 6, naturally occurring events or by the acts of persons wrongfully damaging the Natural Condition of the Easement Area. Prior to any habitat enhancement activities, the Grantor shall have its Biological Monitor submit detailed plans to the Grantee and USACE for review and written approval. Habitat enhancement activities shall not be in direct or potential conflict with the preservation of the Natural Condition of the Easement Area or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

(c) Vegetation, Debris, and Exotic Plant Species Removal. Removal or trimming of vegetation downed or damaged due to natural disaster, removal of man-made debris, removal of parasitic vegetation (as it relates to the health of the host plant) and non-native or exotic plant species. Vegetation, debris, and exotic plant species removal shall not be in direct or potential conflict with the preservation of the Natural Condition of the Easement Area or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

(d) Erection and Maintenance of Informative Signage. Erection and maintenance of signage and other notification features saying "Natural Area Open Space," "Protected Natural Area," or similar descriptions that inform persons of the nature and restrictions on the Easement Area. Prior to erection of such signage, the Grantor shall have its Biological Monitor submit detailed plans showing the location of such signs to the Grantee and USACE for review and approval. The erection and maintenance of informative signage shall not be in direct or potential conflict with the preservation of the Natural Condition of the Easement Area or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

(e) Development of Adjoining Property. (1) Notwithstanding anything set forth herein to the contrary, nothing in this Conservation Easement is intended nor shall be applied to in any way to limit Grantor or any of Grantor's successors and assigns from (i) constructing, placing, installing, and/or erecting any improvements upon the portions of Fairview Park not constituting the Easement Area, (ii) installing and/or maintaining the subsurface infrastructure improvements, utility lines, landscaping (including irrigation and runoff), landscape mitigation, and/or similar non-structural improvements within the Easement Area, and/or (iii) developing adjoining property for any purposes. (2) Any development or improvements by Grantor of or on adjoining property permitted by Subsection 6(e)(1) above (i) must comply with any local, state or federal permit requirements for such development or improvements and must not result in a violation of any local, state or federal permits applicable to the Easement Area, (ii) must not interfere with the use of the Easement Area by Grantee, and (iii) must not have a material impact on the Easement Area or result in a use of the Easement Area that is expressly prohibited by Section 3 above.

(f) Fire Protection. The right, in an emergency situation only to maintain firebreaks (defined as a strip of plowed or cleared land made to check the spread of a fire), trim or remove brush, and/or otherwise perform preventative measures required by the fire department to protect structures and other improvements from encroaching fire. All other brush management activities shall be limited to areas outside the Easement Area.

(g) Restoration. The right to restore the Easement Area in accordance with the Agency Agreements and the Mitigation Plan, including, but not limited to, the right to remove invasive species.

(h) Maintenance Access Paths. The right to construct, maintain, repair, utilize, remove, and replace decomposed granite maintenance access paths, two feet wide, within the Easement Area, located along each side of each riparian stream and around the perimeter of each pond, as noted in Exhibit E.

(i) Designated Passive Recreation Trails. The right to construct, maintain, repair, utilize, remove, and replace decomposed granite recreation trails, three feet wide, within the Easement Area, each of which is shown on Exhibit E.

7. Enforcement.

(a) Third Party Beneficiaries. Grantor, its successors and assigns, grant to USACE, the U.S. Department of Justice and the State Attorney General a discretionary right to enforce this Conservation Easement in a judicial or administrative action against any person(s) or other entity(ies) violating or attempting to violate this Conservation Easement; provided, however, that no violation of this Conservation Easement shall result in a forfeiture or reversion of title. USACE and the U.S. Department of Justice shall have the same rights, remedies, and limitations as Grantee under this Section 7. The rights under this Section are in addition to, and do not limit, rights conferred in Section 2 above, the rights of enforcement against Grantor and their successors or assigns under the Agency Approvals, or any rights of the various documents created thereunder or referred to therein. The term "Party" means Grantor or Grantee, as the case may be. The term "Agency" means USACE, U.S. Department of Justice, and the State Attorney General. Grantor, Grantee, and any third party beneficiary, when implementing any remedies under this Conservation Easement, shall provide timely written notice to each other of any actions taken under this Section, including, but not limited to copies of all notices of violation and related correspondence.

(b) Notice of Violation. In the event that either Party or its employees, agents, contractors or invitees is in violation of the terms of this Conservation Easement or that a violation is threatened, the non-violating Party may demand the cure of such violation. In such a case, the non-violating Party shall issue a written notice to the violating Party (hereinafter "Notice of Violation") informing the violating Party of the actual or threatened violations and demanding cure of such violations. The Notice of Violation shall be sent to the other Party and Agency listed under Section 14 of this Conservation Easement.

(c) Time to Cure. The violating Party shall cure the noticed violation within thirty (30) days of receipt of said written Notice of Violation. If said cure reasonably requires more than thirty (30) days, the violating Party shall, within the thirty (30) day period, submit to

the non-violating Party for review and approval a plan and time schedule to diligently complete a cure. The violating Party shall complete such cure in accordance with the approved plan. If the violating Party disputes the notice of violation, it shall issue a written notice of such dispute (hereinafter "Notice of Dispute") to the appropriate Party within thirty (30) days of receipt of written notice of violation.

(d) Failure to Cure. If the violating Party fails to cure the violation within the time period(s) described in Subsection 7(c), above, or Subsection 7(e)(2), below, the non-violating Party may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by the violating Party with the terms of this Conservation Easement. In such action, the non-violating Party may:

(1) Recover any damages to which the non-violating party may be entitled for violation by the violating Party of the terms of this Conservation Easement or for any injury to the Conservation Values of the Easement Area. The non-violating Party shall first apply any damages recovered to the cost of undertaking any corrective action on the Easement Area. Prior to implementation of any remedial or restorative actions pursuant to this paragraph, USACE shall be consulted.

(2) Seek a temporary or permanent injunction against the violation without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(3) Obtain other equitable relief, including, but not limited to, the restoration of the Easement Area to the condition in which it existed prior to any such violation or injury.

(e) Notice of Dispute.

(1) If the violating Party provides the non-violating Party with a Notice of Dispute, as provided herein, the non-violating Party shall meet and confer with the violating Party at a mutually agreeable place and time, not to exceed thirty (30) days from the date that the non-violating Party receives the Notice of Dispute. The non-violating Party shall consider all relevant information concerning the disputed violation provided by the violating Party and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by the non-violating Party is appropriate in light of the violation.

(2) If, after reviewing the violating Party's Notice of Dispute, conferring with the violating Party, and considering all relevant information related to the violation, the non-violating Party determines that a violation has occurred, the non-violating Party shall give the violating party notice of such determination in writing. Upon receipt of such determination, the violating Party shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, the violating Party shall, within the fifteen (15) day period, submit to the non-violating Party for review and approval a plan and time schedule to diligently complete a cure. The violating Party shall complete such cure in accordance with the approved plan. Nothing herein shall be deemed or construed to be a waiver of the asserted violating Party's right to contend that its conduct or lack thereof does not constitute a violation of this Easement.

(f) Conflicting Notices of Violation.

(1) If any Party receives a Notice of Violation that is in material conflict with one or more prior written Notices of Violation that have not yet been cured by the Party (hereinafter "Active Notice(s) of Violation") such that the conflict makes it impossible for the Party to carry out the cure consistent with all prior Active Notices of Violation, the Party shall give written notice (hereinafter "Notice of Conflict") to the non-violating Party issuing the later, conflicting Notice(s) of Violation. The Party shall issue said Notice of Conflict to the appropriate non-violating Party within fifteen (15) days of the receipt of each such conflicting Notice of Violation. A valid Notice of Conflict shall describe the conflict with specificity, including a description of how the conflict makes compliance with all Active Notices of Violation impossible.

(2) Upon issuing a valid Notice of Conflict to the appropriate non-violating Party or Agency, as described above, the violating Party shall not be required to carry out the cure described in the conflicting Notice or Notices of Violation until such time as the non-violating Party and/or Agency responsible for said conflicting Notice(s) of Violation issue(s) a revised Notice of Violation that is consistent with prior Active Notices of Violation. Upon receipt of a revised, consistent Notice of Violation, the violating Party shall carry out the cure recommended in such notice within the time period(s) described in Subsection 7(c) above. Notwithstanding Subsection 7(g), failure to cure within said time period(s) shall entitle the non-violating Party and/or Agency to the remedies described in Subsection 7(d) and Subsection 7(h).

(3) The failure of the violating Party to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall result in a waiver of the violating Party's ability to claim a conflict.

(g) Immediate Action. In the event that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Easement Area, the Party seeking enforcement pursuant to Subsection 7(b) above may immediately pursue all available remedies, including injunctive relief, available pursuant to both this Conservation Easement and state and federal law after giving the violating Party at least twenty-four (24) hours' written notice before pursuing such remedies. So long as such twenty-four (24) hours' notice is given, the non-violating Party may immediately pursue all available remedies without waiting for the expiration of the time periods provided for cure or notice of dispute as described in Subsection 7(c). The written notice pursuant to this paragraph may be transmitted to the violating Party by facsimile and shall be copied to the other Party and Agency listed in Section 14 of this Conservation Easement. The rights of the non-violating Party under this paragraph apply equally to actual or threatened violations of the terms of this Conservation Easement. The violating Party agrees that the remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the non-violating Party shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which they may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Subsection 7(g) shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive.

(h) Costs of Enforcement. Any costs incurred by a Party or Agency in enforcing the terms of this Conservation Easement against another Party, including, but not limited to, costs of suit and attorneys' fees, and any costs of restoration necessitated by a Party's violation or negligence under the terms of this Conservation Easement shall be borne by the violating Party if any violation is proven.

(i) Enforcement Discretion. Enforcement of the terms of this Conservation Easement by a Party or Agency shall be at the discretion of the Party or Agency, and any forbearance by such Party or Agency to exercise its rights under this Conservation Easement in the event of any breach of any term of the Conservation Easement by a Party or any subsequent transferee shall not be deemed or construed to be a waiver by the non-violating Party of such terms or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the rights of the non-violating Party under this Conservation Easement. No delay or omission by the non-violating Party or Agency in the exercise of any right or remedy upon any breach by the violating Party shall impair such right or remedy or be construed as a waiver. Further, nothing in this Conservation Easement creates a non-discretionary duty upon the non-violating Party or Agency to enforce its provisions, nor shall deviation from these terms and procedures, or failure to enforce its provisions, give rise to a private right of action against the non-violating Party or Agency by any third parties.

(j) Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Easement Area resulting from:

- (1) Any natural cause beyond Grantor's control, including without limitation, fire not caused by Grantor, flood, storm, and earth movement;
- (2) Any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to persons and/or the Easement Area resulting from such causes;
- (3) Acts by Grantee or USACE, or their employees, directors, officers, agents, contractors, or representatives; or
- (4) Acts of third parties (including any governmental agencies) that are beyond Grantor's control.

Notwithstanding the foregoing, Grantor must obtain any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and undertake any activity or use in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

(k) Acts Beyond Grantee's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantor to bring any action against Grantee for any injury to or change in the Easement Area resulting from:

(1) Any natural cause beyond Grantee's control, including without limitation, fire not caused by Grantee, flood, storm, and earth movement;

(2) Any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to persons and/or the Easement Area resulting from such causes;

(3) Acts by Grantor or USACE, or their employees, directors, officers, agents, contractors, or representatives; or

(4) Acts of third parties (including any governmental agencies) that are beyond Grantee's control.

Notwithstanding the foregoing, Grantee must obtain any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and undertake any activity or use in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

8. Access. This Conservation Easement does not convey a general right of access to the public or a general right of access to the Easement Area. This Conservation Easement will allow for access to the Easement Area by the USACE and third-party easement holders of record at the time of this conveyance at locations designated in easements and reservations of rights recorded in the chain of title to the Easement Area at the time of this conveyance. Upon Completion of Construction of the Mitigated Areas, Grantor may allow passive use by the public of designated trails within the Easement Area, as described in Section 6(i) and depicted in Exhibit E, in accordance with the limitations and prohibitions of all other terms of this Easement.

9. Costs and Liabilities.

(a) Except as otherwise expressly provided herein, Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Area. Upon Completion of Construction, Grantor agrees that neither Grantee nor USACE shall have any duty or responsibility for the operation, upkeep, or maintenance of the Easement Area, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Easement Area, or provision of water, except that Grantee remains responsible for provision of water supply in accordance with Section 5(f). Grantor remains responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted

by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local, and administrative agency statutes, ordinances, rules, regulations, orders, and requirements.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify USACE and its respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any Easement Area, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area and (ii) the existence or administration of this Conservation Easement, provided however, that the indemnification in this Section 9(b)(1) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim to the extent arising from the negligence or willful misconduct of that Third-Party Beneficiary Indemnified Party or any of its employees, agents, contractors or subcontractors. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Subsection 9(b)(1) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or, at Grantor's sole option, Grantor may reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the U.S. Department of Justice in defending the action or proceeding.

(2) Grantor, its successors and assigns shall hold harmless and indemnify Grantee and its directors, officers, employees, contractors, and representatives (collectively "Indemnified Grantee Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgment, including without limitation, reasonable attorneys' fees, arising from or in any way connected with or resulting from any negligent act or omission of Grantor, its directors, officers, employees, volunteers, contractors, or representatives related to or occurring on or about the Easement Area, except to the extent caused by an act or omission of the Indemnified Grantee Parties.

(3) Grantee, its successors and assigns shall hold harmless and indemnify Grantor and its directors, officers, employees, contractors, and representatives (collectively "Indemnified Grantor Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgment, including without limitation, reasonable attorneys' fees, arising from or in any way connected with or resulting from any negligent act or omission of Grantee, its directors, officers, employees, volunteers, contractors, or representatives related to or occurring on or about the Easement Area, except to the extent caused by an act or omission of the Indemnified Grantor Parties. Grantor acknowledges that that Fairview Park is subject to periodic flooding and the Grantee's flood control improvements adjacent to Fairview Park are not intended to and are not designed to provide flood protection for Fairview Park. Grantee's indemnity obligations under this

Easement do not include any obligation to indemnify Grantor for any damages resulting to Fairview Park, or any damage to or destruction of improvements located on or under Fairview Park, caused by such periodic flooding.

(4) During the course of construction of the Mitigated Areas, Grantee or USACE shall require that its contractors take out and maintain in full force and effect liability insurance coverage relating to their activities pursuant to this Easement. Such liability insurance coverage shall be in a minimum amount of \$2 million and shall name the Grantor as an additional insured. Certificates of insurance shall be submitted to Grantor prior to commencement of construction showing that the contractor(s) has provided the required general liability insurance as well as coverage in the minimum amount of \$1 million automotive liability, and workers' compensation insurance as required by the State of California. The certificates shall provide that the coverage under such required policies may not be reduced or terminated except upon thirty (30) days' prior written notice thereof to Grantor. All required policies of insurance shall provide that any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by these required policies.

10. Taxes, No Liens. Grantor, its successors and assigns shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area by competent authority, including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee or the USACE with satisfactory evidence of payment upon request. Grantor, its successors and assigns shall keep Grantee's interest in the Easement Area free from any liens.

11. Condemnation. The Purpose of the Conservation Easement is presumed to be the best and most necessary public use as defined in Civil Procedure Code Section 1240.680 notwithstanding of Civil Procedure Code Sections 1240.690 and 1240.700. Nevertheless, if the Easement Area is taken, in whole or in part, by exercise of the power of eminent domain, Grantor and Grantee shall be entitled to compensation in accordance with applicable law.

12. Subsequent Transfers.

(a) By Grantee. This Conservation Easement is transferable by Grantee, but Grantee may assign its rights and delegate obligations under this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code Section 815.3 and Government Code Section 65965 (or any successor provision(s) then applicable) and only with the prior written approval of the Grantor and USACE. Approval of any assignment or transfer may be withheld in the reasonable discretion of USACE and/or Grantor if the transfer will result in a single owner holding both the Conservation Easement and fee title to the Easement Area and, upon such transfer, the doctrine of merger will apply to extinguish the Conservation Easement by operation of law, unless an alternate method or mechanism to achieve the Purpose of this Conservation Easement following such merger has been provided for. Grantee shall record the assignment in the county where the Easement Area is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of the Conservation Easement or limit its enforcement in any way.

(b) By Grantor.

(1) The covenants, conditions, and restrictions contained in this Conservation Easement are intended to and shall run with the land and bind all future owners of any interest in the Easement Area. Grantor, its successor or assign agrees to (i) incorporate by reference to the title of and the recording information for this Conservation Easement in any deed or other legal instrument by which each divests itself of any interest in all or a portion of the Easement Area, including, without limitation, a leasehold interest and (ii) give actual notice to any such transferee or lessee of the existence of this Conservation Easement. Grantor, its successor and assign agrees to give written notice to Grantee and USACE of the intent to transfer any interest at least forty-five (45) days prior to the date of such transfer. The failure of Grantor, its successor or assign to perform any act provided in this Section 12 shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

(2) From and after the date of any transfer of all or any portion of the Easement Area by Grantor and each transfer thereafter, (i) the transferee shall be deemed to have assumed all of the obligations of Grantor as to the portion transferred, as set forth in this Conservation Easement, (ii) the transferee shall be deemed to have accepted the restrictions contained herein as to the portion transferred, (iii) the transferor, as applicable, shall have no further obligations hereunder, and (iv) all references to Grantor in this Conservation Easement shall thereafter be deemed to refer to such transferee.

13. Additional Easements. Grantor, its successors and assigns shall not grant additional easements or other interests in the surface or subsurface of the Easement Area (other than a security interest that is subordinate to this Conservation Easement) without the prior written authorization of Grantee and USACE, which consent shall not be unreasonably withheld. It shall be reasonable for Grantee and USACE to withhold consent for the grant of additional easements or other interest in the Easement Area that are in direct or potential conflict with the Agency Agreements and the preservation of the Purpose and the Natural Condition of the Easement Area as defined in Section 1 of this Conservation Easement or will impair or otherwise interfere with the Conservation Values of the Easement Area. Grantor or its successors and assigns shall record any additional easements or other interests in the Easement Area approved by Grantee and USACE, in the official records of Orange County, California and shall provide a copy of the recorded document to Grantee and USACE.

14. Notices. All notices, demands, requests, consents, approvals, or communications from one party to another shall be personally delivered or sent by facsimile to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows, or at such other address as any Party may from time to time specify to the other parties in writing:

To Grantor: City of Costa Mesa
 Attn: Director of Public Services
 77 Fair Drive
 Costa Mesa, CA 92626

To Grantee: Orange County Flood Control District

Attention: Director of Public Works
300 N. Flower Street
Santa Ana, CA 92703

With a copy to:

District Counsel
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Room 1535
Los Angeles, California 90017-3401
FAX: 213-452-4217

The parties agree to accept facsimile signed documents and agree to rely upon such documents as if they bore original signatures. Each party agrees to provide to the other parties, within seventy-two (72) hours after transmission of such a facsimile, the original documents that bear the original signatures.

15. Amendment. Grantor and Grantee may amend this Conservation Easement only by mutual written agreement and with the written consent of the USACE. Any amendments shall be consistent with the Purpose of this Conservation Easement and shall not affect its perpetual duration. Grantor or its successors and assigns shall record any amendments to this Conservation Easement approved by the Grantee and USACE in the official records of Orange County, California and shall provide a copy of the recorded document to the Grantee and USACE.

16. Long-Term Maintenance.

(a) Grantor's Responsibilities for Maintenance and Management. Upon Grantor's receipt of USACE's confirmation of Grantee's attainment of Completion of Construction, Grantor, its successors and assigns shall be responsible for in-perpetuity, ongoing, long-term maintenance of the Easement Area. Such long-term maintenance shall consist of the following activities: (1) annual removal of trash or man-made debris; (2) annual maintenance of signage and other notification features installed pursuant to Subsection 6(d); (3) removing and controlling invasive and non-native weeds and exotic vegetation; and (4) providing water sufficient for the long-term survivability of the Mitigated Areas beginning in the third year after Completion of Construction, as required in Section 4(e). Parties agree that they will develop and periodically update specific operations and maintenance procedures necessary to ensure ongoing viability of the Mitigated Areas in accordance with the terms of this Conservation Easement and the Mitigation Plan.

(b) Restoration Responsibilities. Grantor, Grantee, their successors and assigns shall each individually be obligated to repair, remediate, or restore the Easement Area damaged by any activities for which it is responsible prohibited by Section 3 herein.

(c) Annual Reporting. Grantor, its successors and assigns shall prepare an annual monitoring and maintenance report documenting activities performed under Subsections 16(a)(1)-(3) above, and shall make such report available to the Grantee and USACE upon request or as required.

(d) Grantor Restoration. When Grantor undertakes its obligation to repair, remediate, or restore the Easement Area damaged by any activities for which Grantor is responsible prohibited by Section 3 herein, in accordance with Section 16(b), Grantor, its successors and assigns, shall retain, at Grantor's expense, a Biological Monitor to prepare a Restoration Plan and to oversee/monitor such restoration activities. Grantor shall have its Biological Monitor submit a draft Restoration Plan to Grantee and USACE for review and for USACE written approval prior to its implementation. Upon completion of restoration as specified in the approved Restoration Plan, Grantor shall have a Biological Monitor prepare a detailed monitoring report, and Grantor shall make the report available to Grantee and USACE within thirty (30) days of completion of restoration activities. Grantor, its successors or assigns and Biological Monitor shall sign the monitoring report, and the report shall document the Biological Monitor's name and affiliation, dates Biological Monitor was present on-site, activities observed and their location, Biological Monitor's observations regarding the adequacy of restoration performance by the Grantor, its successors or assigns, or its contractor in accordance with the approved Restoration Plan, corrections recommended and implemented.

(e) Grantee Restoration. When Grantee undertakes its obligation to repair, remediate, or restore the Easement Area damaged by any activities for which Grantee is responsible prohibited by Section 3 herein, in accordance with Section 16(b), Grantee, its successors and assigns, shall retain, at Grantee's expense, a Biological Monitor to prepare a Restoration Plan and to oversee/monitor such restoration activities. Grantee shall have its Biological Monitor submit a draft Restoration Plan to Grantor and USACE for review and for USACE written approval prior to its implementation. Upon completion of restoration as specified in the approved Restoration Plan, Grantee shall have a Biological Monitor prepare a detailed monitoring report, and Grantee shall make the report available to Grantor and USACE within thirty (30) days of completion of restoration activities. Grantee, its successors or assigns and Biological Monitor shall sign the monitoring report, and the report shall document the Biological Monitor's name and affiliation, dates Biological Monitor was present on-site, activities observed and their location, Biological Monitor's observations regarding the adequacy of restoration performance by the Grantee, its successors or assigns, or its contractor in accordance with the approved Restoration Plan, corrections recommended and implemented.

17. Recordation. Grantor shall promptly record this instrument in the official records of Orange County, California and immediately notify the Grantee and the USACE through the mailing of a conformed copy of the recorded easement.

18. Estoppel Certificate. Upon request, Grantee shall, within fifteen (15) days, execute and deliver to Grantor, its successors and assigns any document, including an estoppel certificate, which certifies compliance with any obligation of Grantor, its successors and assigns contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement as may be requested by Grantor, its successors and assigns.

19. General Provisions.

(a) Controlling Law. The laws of the United States and the State of California shall govern the interpretation and performance of this Conservation Easement.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of and to effect the purposes of this Conservation Easement and the policy and purpose set forth in California Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(d) Entire Agreement. This instrument together with the attached exhibits and any documents referred to herein sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 15.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors and Assigns. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Easement Area. The covenants hereunder benefiting Grantee shall also benefit the USACE as a third party beneficiary.

(g) Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement shall terminate upon transfer of the party's interest in the Conservation Easement or Easement Area (respectively), except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) Exhibits. All Exhibits referred to in this Easement are attached and incorporated herein by reference.

(j) Subordination. No breach, enforcement or attempted enforcement of any of the terms, covenants, conditions or restrictions of this Conservation Easement will defeat or render invalid the lien of any mortgage or deed of trust securing a loan made in good faith and for value with respect to the Easement Area; provided, however, that all provisions of this Conservation Easement will be binding upon and effective against any subsequent owner of the Easement Area whose title to the Easement Area or any portion of such is acquired by foreclosure, trust deed sale, or otherwise. Grantor hereby represents to Grantee that, as of the date of this Conservation Easement, the Easement Area is not encumbered with any mortgage,

deed of trust or other monetary encumbrance except for liens for non-delinquent real property taxes and assessments.

(k) Extinguishment. If circumstances arise in the future that render the Purpose of the Conservation Easement impossible to accomplish, the Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(l) Warranty. Grantor represents and warrants that, except as disclosed in writing by Grantor to Grantee and USACE: (1) to the best of Grantor's knowledge there are no leases, licenses, or other agreements granting any person or persons the right to use or occupy the Easement Area or any portion thereof that have not been identified and referenced in this Conservation Easement; (2) to the best of Grantor's knowledge, and except as expressly disclosed in writing to Grantee by Grantor and USACE, (i) there are no apparent or latent defects in or on the Easement Area and (ii) Grantor is not aware of any failure of the Easement Area to be in full compliance with all federal, state, and local laws, regulations, and requirements applicable to the Easement Area; (3)) to the best of Grantor's knowledge there are no pending or, to the best of Grantor's knowledge, threatened litigation affecting, involving, or relating to the Easement Area or any portion thereof; (4) to the best of Grantor's knowledge there are no civil or criminal proceedings or investigations that have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Easement Area or its use, nor, to the best of Grantor's knowledge, do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders; and (5) Grantor is unaware of any matters, conditions, or factors that will materially impair the Conservation Values of the Easement Area or management of the Easement Area pursuant to Agency Agreements.

(m) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge of any release or threatened release of Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Easement Area, or transported to or from or affecting the Easement Area. Without limiting the obligations of Grantor under Section 9 herein, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee Indemnified Parties and the Third Party Beneficiary Indemnified Parties (defined in Section 9) against any and all Claims (defined in Section 9) arising from or connected with any Hazardous Materials present, alleged to be present, or otherwise associated with the Easement Area at any time, except that (i) this release and indemnification shall be inapplicable to the Grantee Indemnified Parties with respect to any Hazardous Materials placed, disposed or released by Grantee, its employees or agents and (ii) this release and indemnification shall be inapplicable to the Third Party Beneficiary Indemnified Parties with respect to any Hazardous Materials placed, disposed or released by third party beneficiaries, their employees or agents. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any Easement Area; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against the Grantee

and/or any of the Third Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee and/or the applicable third party beneficiary or beneficiaries, defend such action or proceeding by counsel reasonably acceptable to the Grantee and/or applicable Third Party Beneficiary Indemnified Party or Parties or reimburse the Grantee for reasonable attorneys fees and/or applicable third party beneficiary or beneficiaries for all charges incurred for the services of the United States Attorney General or County Counsel in defending the action or proceeding.

(2) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives Grantee and/or USACE any of the following:

(a) The obligations or liabilities of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.; hereinafter, "CERCLA"); or

(b) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or

(c) The obligations of a responsible person under any applicable Environmental Laws; or

(d) The right to investigate and remediate any Hazardous Materials associated with the Easement Area; or

(e) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Easement Area.

The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA; Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Conservation Easement.

The term "Environmental Laws" includes, without limitation, any federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee that Grantor's activities upon and use of the Easement Area will comply with all Environmental Laws.

CITY OF COSTA MESA

APPROVED AS TO FORM:

City Attorney

By: Jamie Hal Bulow

Date: 5-5-08

GRANTOR

CITY OF COSTA MESA

By: ORBEA *

Title: MAYOR

Date: 5/5/08

ATTEST:

City Clerk

By: Ki Alpa

* Pursuant to minute order dated September 18, 2007

ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF Orange

On May 5, 2008, before me Rosemary Dodson Notary Public,
(Here insert name and title of officer)

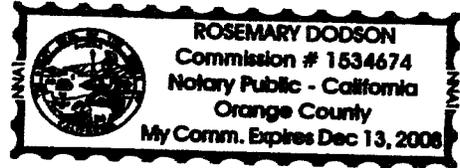
personally appeared Eric R. Bever

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Rosemary Dodson



CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, is hereby accepted by order of the Board of Supervisors of the County of Orange, California, acting as the governing board of the ORANGE COUNTY FLOOD CONTROL DISTRICT, and the ORANGE COUNTY FLOOD CONTROL DISTRICT consents to recordation thereof by its duly authorized officer.

ORANGE COUNTY FLOOD CONTROL DISTRICT

Dated: 6-3-08

By: *Bryan Speck* *
Director of OC Public Works
Orange County, CA

Approved as to Form
Office of the County Counsel
Orange County, California

By: *Punam Prahalad* Date: 5-1-08
Deputy

* Pursuant to minute order dated June 3, 2008.

ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF Orange

On June 3, 2008, before me Jack Stribling - Notary Public
(Here insert name and title of officer)

personally appeared Bryan G. Speegle

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

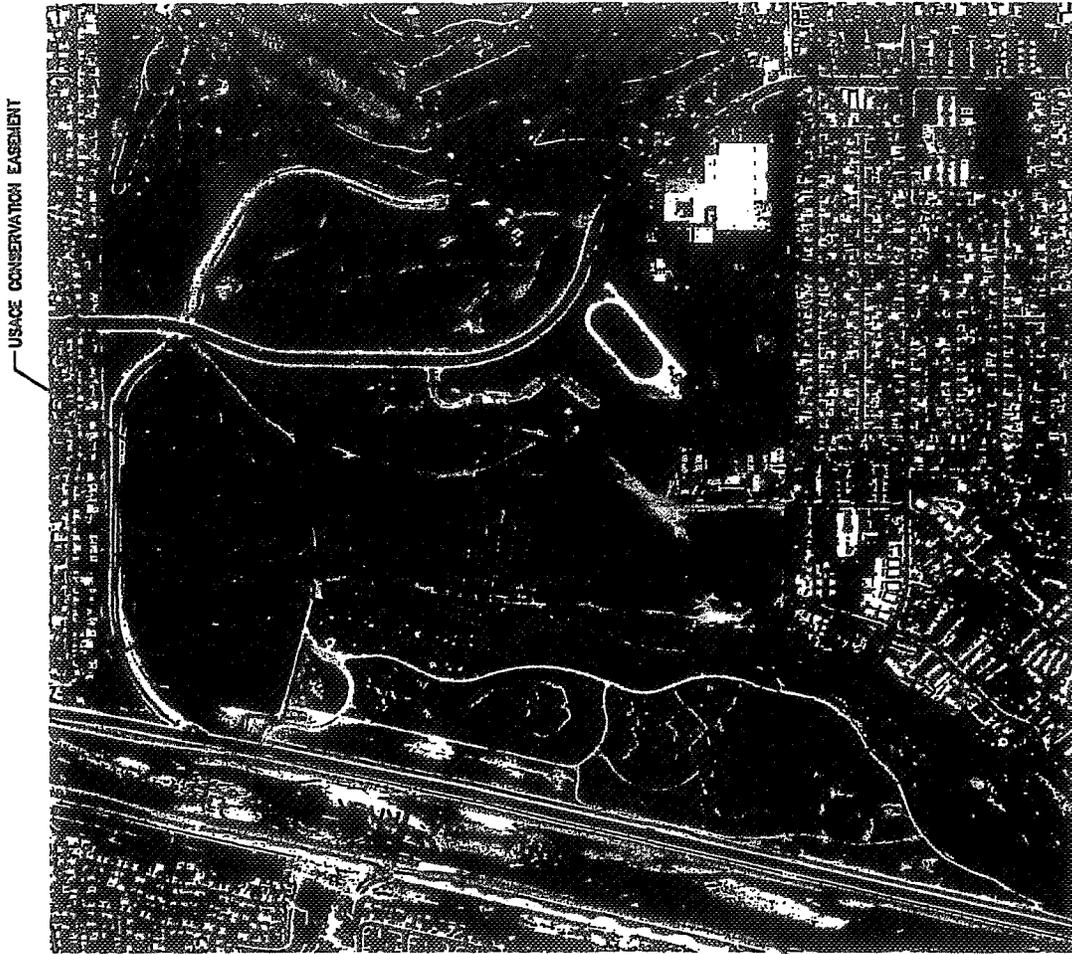
WITNESS my hand and official seal.

Signature Jack Stribling



EXHIBIT A

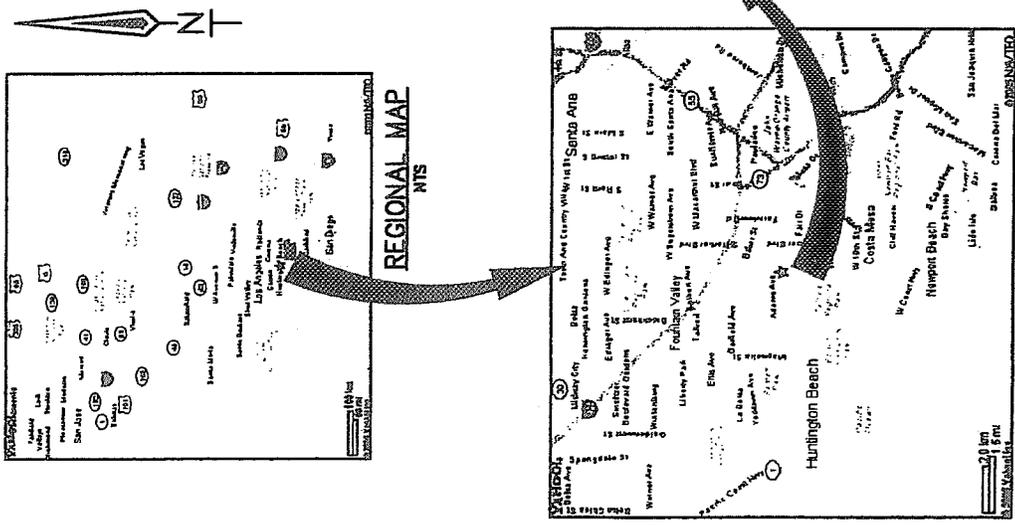
LOCATION MAP
FAIRVIEW PARK WETLANDS AND RIPARIAN HABITAT PROJECT
CITY OF COSTA MESA



SITE PLAN
1"=500'

SPECIAL NOTE:

THIS PROJECT SET OF PLANS WITH THE OUTLINE DESIGNATION IS FOR THE USACE CONTRACT WORK AND HAS BEEN SEPARATED FROM THE COMPLETE PROJECT PLANS FOR THE CITY OF COSTA MESA WHICH IS ALSO SHOWN IN THIS SET.



VICINITY MAP
NTS

(THOMAS GUIDE PAGE 859, F7 AND 67, AND PAGE 869, F1 AND F2)

EXHIBIT B

AN EASEMENT FOR U.S. ARMY CORPS OF ENGINEERS MITIGATION AREA OVER THAT PORTION OF PARCELS A,B, H-1 AND H-2 IN THE CITY OF COSTA MESA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 53 PAGES 34 AND 35 OF RECORD OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHERLY TERMINUS OF THE EASTERLY LINE OF SAID PARCEL H-2 SHOWN AS "N0°31'47"W 301.45'," SAID POINT ALSO BEING THE BEGINNING OF A CURVE ON THE CENTERLINE OF PLACENTIA AVENUE; THENCE SOUTH 78°24'07" WEST A DISTANCE OF 451.44 FEET TO THE "TRUE POINT OF BEGINNING"; THENCE SOUTH 21°53'42" EAST A DISTANCE OF 77.74 FEET; THENCE SOUTH 54°44'38" EAST A DISTANCE OF 25.61 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 40.00 FEET; THENCE SOUTHEASTERLY AND SOUTHWESTERLY 77.12 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 110°27'35"; THENCE SOUTH 55°42'57" WEST A DISTANCE OF 48.41 FEET; THENCE SOUTH 19°08'24" WEST A DISTANCE OF 87.83 FEET; THENCE SOUTH 37°37'20" WEST A DISTANCE OF 87.22 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 75.00 FEET; THENCE SOUTHWESTERLY AND WESTERLY 70.21 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 53°37'57"; THENCE NORTH 88°44'43" WEST A DISTANCE OF 170.48 FEET; THENCE SOUTH 76°11'43" WEST A DISTANCE OF 55.27 FEET; THENCE SOUTH 57°45'11" WEST A DISTANCE OF 872.16 FEET; THENCE NORTH 86°06'31" WEST A DISTANCE OF 52.88 FEET; THENCE NORTH 76°37'41" WEST A DISTANCE OF 62.12 FEET; THENCE NORTH 55°20'48" EAST A DISTANCE OF 12.80 FEET; THENCE NORTH 38°01'33" EAST A DISTANCE OF 116.37 FEET; THENCE NORTH 48°13'18" EAST A DISTANCE OF 46.62 FEET; THENCE NORTH 67°20'30" EAST A DISTANCE OF 46.19 FEET; THENCE NORTH 31°00'18" WEST A DISTANCE OF 919.93 FEET; THENCE NORTH 41°17'54" EAST A DISTANCE OF 54.16 FEET; THENCE NORTH 80°03'23" EAST A DISTANCE OF 85.87 FEET; THENCE NORTH 68°01'49" EAST A DISTANCE OF 39.25 FEET; THENCE NORTH 77°55'42" EAST A DISTANCE OF 45.50 FEET; THENCE SOUTH 86°30'04" EAST A DISTANCE OF 27.25 FEET; THENCE SOUTH 74°35'56" EAST A DISTANCE OF 28.93 FEET; THENCE SOUTH 58°16'04" EAST A DISTANCE OF 51.66 FEET; THENCE SOUTH 75°06'15" EAST A DISTANCE OF 19.79 FEET; THENCE SOUTH 7°50'52" WEST A DISTANCE OF 19.78 FEET; THENCE SOUTH 26°12'16" EAST A DISTANCE OF 43.64 FEET; THENCE SOUTH 56°37'53" EAST A DISTANCE OF 42.97 FEET; THENCE SOUTH 72°51'37" EAST A DISTANCE OF 62.99 FEET; THENCE SOUTH 89°47'35" EAST A DISTANCE OF 234.48 FEET; THENCE SOUTH 82°35'34" EAST A DISTANCE OF 100.90 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 46.87 FEET AND TO WHICH A RADIAL LINE BEARS NORTH 26°17'59" WEST; THENCE NORTHEASTERLY 59.18 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 72°39'01" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 40.13 FEET AND TO WHICH A RADIAL LINE BEARS NORTH 81°03'00" EAST; THENCE NORTHERLY 18.28 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°05'43" TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 35.11 FEET AND TO WHICH A RADIAL LINE BEARS NORTH 54°57'17" EAST; THENCE NORTHERLY 34.28 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 55°57'15" TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 19.75 FEET AND TO WHICH A RADIAL LINE BEARS NORTH 69°05'26" WEST; THENCE NORTHERLY 27.58 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 79°59'35" TO A NON-TANGENT LINE TO WHICH A RADIAL LINE BEARS NORTH 30°54'57" EAST;

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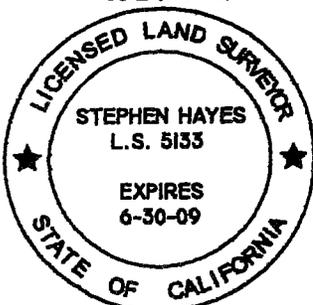
EXHIBIT B

THENCE NORTH 59°52'35" WEST A DISTANCE OF 50.41 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 9.00 FEET; THENCE NORTHWESTERLY AND NORTHEASTERLY 23.13 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 147°16'49"; THENCE NORTH 87°24'14" EAST A DISTANCE OF 161.55 FEET; THENCE SOUTH 89°28'51" EAST A DISTANCE OF 169.33 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 3.00 FEET; THENCE EASTERLY AND SOUTHWESTERLY 7.19 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 137°18'24"; THENCE SOUTH 47°49'33" WEST A DISTANCE OF 95.47 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 35.00 FEET; THENCE SOUTHWESTERLY AND SOUTHEASTERLY 81.92 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 134°05'58"; THENCE SOUTH 86°16'25" EAST A DISTANCE OF 116.52 FEET; THENCE SOUTH 79°37'11" EAST A DISTANCE OF 80.81 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 50.86 FEET AND TO WHICH A RADIAL LINE BEARS NORTH 15°29'18" EAST; THENCE SOUTHEASTERLY 29.49 FEET THROUGH A CENTRAL ANGLE OF 33°13'29" TO THE BEGINNING OF REVERSE CURVE CONCAVE TO NORTHEAST HAVING A RADIUS OF 103.67 FEET AND TO WHICH A RADIAL LINE BEARS NORTH 48°42'47" EAST; THENCE SOUTHEASTERLY 24.69 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°38'45" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 28.17 FEET AND TO WHICH A RADIAL LINE BEARS NORTH 35°04'02" EAST; THENCE EASTERLY 19.12 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 38°53'20" TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 2,872.90 FEET AND TO WHICH A RADIAL LINE BEARS NORTH 3°09'52" WEST TO SAID 2,872.90 FOOT RADIUS CURVE; THENCE EASTERLY 30.68 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE 0°39'26" TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO SOUTHWEST HAVING A RADIUS OF 33.36 FEET AND TO WHICH A RADIAL LINE BEARS NORTH 3°09'52" WEST TO SAID 33.36 FOOT RADIUS CURVE; THENCE SOUTHEASTERLY 8.04 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°48'01" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 28.78 FEET AND TO WHICH A RADIAL LINE BEARS NORTH 10°38'09" EAST; THENCE SOUTHEAST 13.85 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°37'22" TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 771.63 FEET AND TO WHICH A RADIAL LINE BEARS NORTH 40°15'31" EAST; THENCE SOUTHEASTERLY 20.37 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1°30'44" TO THE BEGINNING OF A COMPOUND CURVE HAVING A RADIUS OF 105.00 FEET AND TO WHICH A RADIAL LINE BEARS NORTH 38°44'47" EAST; THENCE SOUTHEASTERLY 127.79 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 69°43'46"; THENCE NORTH 59°01'01" EAST A DISTANCE OF 40.57 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 20.00 FEET; THENCE EASTERLY AND SOUTH EASTERLY 43.24 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 123°51'58"; THENCE SOUTH 2°52'59" WEST A DISTANCE OF 28.10 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED EASEMENT CONTAINING AN AREA OF 20.0269 ACRES

"SEE EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF"

"THIS DOCUMENT CONSISTING OF FOUR PAGES, (EXHIBITS "A" AND "B") WAS PREPARED BY ME OR UNDER MY SUPERVISION."



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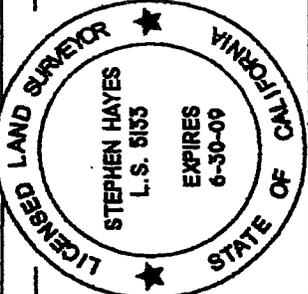
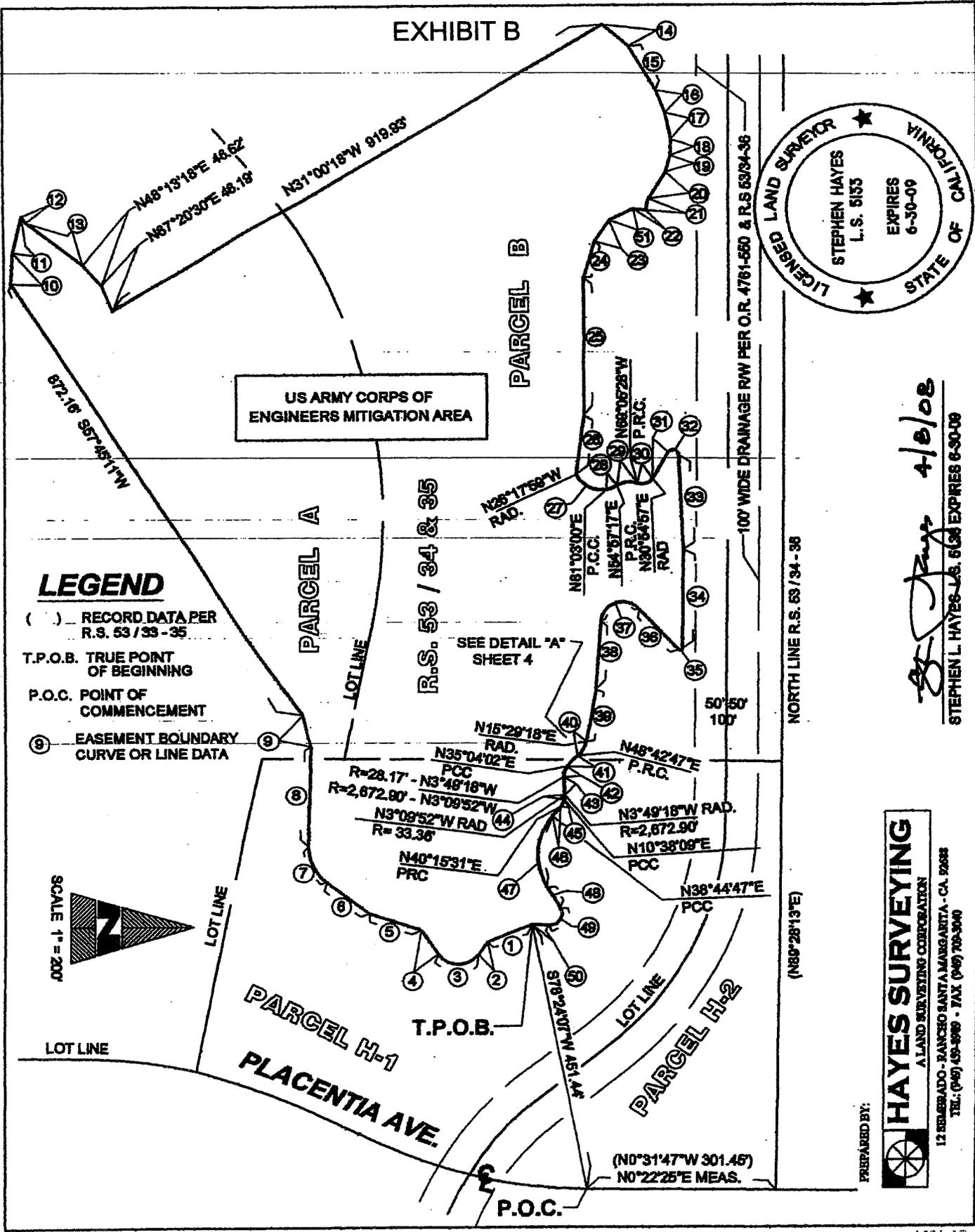
Stephen Hayes 4/8/08

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PREPARED BY:

LEGEND

- () RECORD DATA PER R.S. 53 / 33 - 35
- T.P.O.B. TRUE POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- ⊙ EASEMENT BOUNDARY CURVE OR LINE DATA

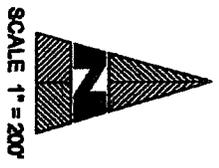


EXHIBIT B

- | | |
|--------------------------------------|---|
| ① S21°53'42"E - 77.74' | ②⑥ S82°35'34"E - 100.90' |
| ② S54°44'38"E - 25.81' | ②⑦ R=46.67', Δ= 72°39'01", L= 59.18' |
| ③ R=40.00', Δ= 110°27'35", L= 77.12' | ②⑧ R= 40.13', Δ= 26°05'43", L= 18.28' |
| ④ S55°42'57"W - 48.41' | ②⑨ R= 35.11', Δ= 55°57'15", L= 34.28' |
| ⑤ S19°08'24"W - 87.83' | ③⑩ R= 19.75', Δ= 79°59'35", L= 27.58' |
| ⑥ S37°37'20"W - 87.22' | ③① N59°52'35"W - 50.41' |
| ⑦ R=75.00', Δ=53°37'57", L= 70.21' | ③② R= 9.00', Δ= 147°16'49", L= 23.13' |
| ⑧ N88°44'43"W - 170.48' | ③③ N87°24'14"E - 161.55' |
| ⑨ S78°11'43"W - 55.27' | ③④ S89°20'51"E - 169.33' |
| ⑩ N86°08'31"W - 52.86' | ③⑤ R= 3.00', Δ= 137°16'24", L= 7.18' |
| ⑪ N78°37'41"W - 62.12' | ③⑥ S47°49'33"W - 95.47' |
| ⑫ N55°20'48"E - 12.80' | ③⑦ R= 35.00', Δ= 134°05'58", L= 81.92' |
| ⑬ N38°01'33"E - 116.37' | ③⑧ S88°16'25"E - 116.52' |
| ⑭ N41°17'54"E - 54.16' | ③⑨ S79°37'11"E - 90.81' |
| ⑮ N60°03'23"E - 85.57' | ④⑩ R= 50.86', Δ= 33°13'29", L= 29.49' |
| ⑯ N68°01'49"E - 39.25' | ④⑪ R= 103.67', Δ= 13°38'45", L= 24.89' |
| ⑰ N77°55'42"E - 45.50' | ④⑫ R= 28.17', Δ= 38°53'20", L= 18.12' |
| ⑱ S88°30'04"E - 27.25' | ④⑬ R= 2,672.90', Δ= 0°39'28", L= 30.66' |
| ⑲ S74°35'58"E - 28.93' | ④⑭ R=33.36', Δ= 13°48'01", L= 8.04' |
| ⑳ S58°18'04"E - 51.66' | ④⑮ R= 28.78', Δ= 29°37'22", L= 13.85' |
| ㉑ S75°08'15"E - 19.79' | ④⑯ R= 771.63', Δ= 1°30'44", L= 20.37' |
| ㉒ S7°50'52"W - 19.78' | ④⑰ R= 105.00', Δ= 69°43'46", L= 127.79' |
| ㉓ S58°37'53"E - 42.97' | ④⑱ N59°01'01"E - 40.57' |
| ㉔ S72°51'37" E - 82.99' | ④⑲ R= 20.00', Δ= 123°51'58", L= 43.24' |
| ㉕ S89°47'35"E - 234.48' | ⑤⑰ S2°52'59"W - 28.10' |
| | ⑤⑱ S26°12'16"E - 43.64' |

PREPARED BY:



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EXHIBIT C

FAIRVIEW PARK PHASE 1A
HABITAT MITIGATION AND MONITORING PLAN
FOR IMPACTS TO
WETLAND AND RIPARIAN HABITAT
FROM THE SANTA ANA RIVER MAINSTEM PROJECT
2004/2005 REACH 2 DREDGING

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

And the

ORANGE COUNTY FLOOD CONTROL DISTRICT
RIVERSIDE COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT
SAN BERNARDINO FLOOD CONTROL DISTRICT

In Cooperation With

CITY OF COSTA MESA

MARCH 2008

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HABITAT MITIGATION AND MONITORING PLAN SANTA ANA RIVER REACH 2

I. DESCRIPTION OF SANTA ANA RIVER REACH 2 PROJECT SITE

A. Responsible Parties

Construction of the Santa Ana River mainstem flood control project (SARP) is cost-shared between the federal government (the U.S. Army Corps of Engineers) and three local sponsors: Orange County Flood Control District, Riverside County Flood Control and Water Conservation District, and San Bernardino County Flood Control District. The Orange County Flood Control District will be responsible for future maintenance of the lower Santa Ana River below Weir Canyon Road, including the segment known as Reach 2.

B. Project Summary

In 2004 and 2005, the Corps completed a vegetation and sediment removal project in Reaches 1 and 2 of the Santa Ana River. Reach 2 of the Santa Ana River is located in Orange County and extends approximately 4,000 feet from the confluence of Fairview Channel (Station 150+32) upstream to Station 194 (upstream of Adams Ave.). Reach 1 extends downstream of Reach 2 to the Pacific Ocean. The Reaches 1 and 2 channel excavation and sediment disposal activities occurred in or near the cities of Huntington Beach, Costa Mesa, and Newport Beach. This project was considered a final "clean out" of the channel prior to its turnover to Orange County Flood Control District for future maintenance.

Reach 1 project impacts did not require supplemental mitigation. This mitigation and monitoring plan focuses specifically on Reach 2, and addresses that project's impacts.

The purpose of the project was to remove vegetation and excavate Reach 2 of the Santa Ana River to re-establish design grade. There was approximately 40,000 cubic yards of material above the design grade for Reach 2. Excavation required the use of a dredge and disposal equipment, bulldozers, scrapers, dumptrucks, and pick-up trucks. A berm was constructed across the river mouth and across the width of the channel a few hundred yards north of Pacific Coast Highway. This berm restricted tidal flow into the upper reach and allowed the contractor to dewater the river and use earth-movers to excavate the material. A hydraulic dredge was positioned between the sand-berms, floating in an enclosed basin. The material transported by the earth-movers was deposited into the water near the dredge. The dredge then pumped beach-compatible material into the nearshore disposal site in the Pacific Ocean. Other material was sorted and trucked off-site for use in construction.

Future Maintenance: As part of maintenance requirements for the channel design, an upper grade limit was established for the channel. Sediment would be allowed to accumulate to the upper grade limit line established in the Operations and Maintenance

EXHIBIT C

(O&M) Manual. Once sediment deposition exceeds this limit, the sediment must be removed to the design invert (4.5 to 7 feet above Mean Sea Level, in Reach 2) in order to maintain the design flood protection. The anticipated maintenance frequency for the lower reach is approximately once every 18 years, based on a long-term average. The actual frequency may vary, depending on storm events and other factors that affect deposition and scour. Frequent (possibly annual) vegetation removal will also be necessary to retain the channel's capacity to carry flood flows.

See the Corps' Supplemental Environmental Assessment dated January 2004 that was prepared for the Reach 2 channel excavation project for more information.

C. Project Impacts and Mitigation Requirement

Channel excavation activities resulted in the removal of all vegetation within Reach 2, and grading of unvegetated sandbars and mudflats. This affected approximately 11.07 acres of non-native vegetation (arundo, cocklebur, palm trees and other invasive species), 6.74 acres of riparian vegetation (including willows and mulefat), 11.93 acres of "mixed" habitat (non-native interspersed with riparian), 4 acres of wetland species (including cattails and sedges), and 7.45 acres of open water, mudflats, and bare sand. Because the area will remain soft-bottom, limited recovery will occur in-between maintenance episodes, although large shrubs and trees will not be permitted to establish due to flood control requirements. Native wetland vegetation such as cattails, sedges, and other non-woody plants will be allowed to re-establish as long as the channel's flood capacity is not diminished, although this vegetation will be mowed annually during its dormant season (August 15 to March 1) for flood control purposes. Routine maintenance will include the annual removal of any non-native, invasive vegetation (such as arundo and cocklebur) that establishes in the river channel after construction. This will protect and maximize the habitat value of the remaining native resources.

The Corps agreed to provide compensation for the permanent loss of riparian habitat (approximately 13 acres) and temporary impacts to 4 acres of wetland habitat. This compensation is in addition to the previous mitigation that has already been accomplished for the Santa Ana River Mainstem Project. The Corps has also agreed to implement measures to avoid or minimize impacts to nesting or foraging birds, including the least Bell's vireo. The compensation and avoidance plan as described in the January 2004 SEA consists of the following elements:

1. Seventeen acres of riparian habitat will be enhanced/restored through the removal of arundo and/or created at an appropriate location subject to approval by the California Department of Fish and Game (CDFG) and the U.S. Fish and Wildlife Service (USFWS). The first priority will be given to habitat creation or restoration in the immediate vicinity of the project area (i.e., Fairview Park), if feasible.
 - a) For any portion of mitigation that is accomplished through arundo removal, the Corps will contribute \$50,000 per acre to the Orange County Water District on behalf of the Santa Ana Watershed

EXHIBIT C

Association of Resource Conservation Districts (SAWA), to fund their ongoing, watershed-wide arundo removal program. Funds shall be transferred within one year of initiation of construction activities to remove the arundo and actively monitor and manage this acreage to ensure that it remains free of arundo. The specific areas from which arundo will be removed in association with the proposed project will be identified on well-labeled maps and submitted to FWS and CDFG for approval. The Corps will ensure that the arundo removal is completed as described. A report that addresses the following information will be submitted annually:

- i. Accomplishments during the previous year;
 - ii. Accomplishments anticipated for the upcoming year;
 - iii. Results of the monitoring and management;
 - iv. Updated mapping that delineates areas in the Santa Ana River watershed and/or action area from which arundo has been removed;
 - v. An itemized financial report.
- b) For the portion of the restoration that is completed through habitat creation, the restoration will be initiated within one year following initiation of project activities within the action area. A restoration plan, including precise restoration locations, methodology, and quantitative performance criteria, will be submitted to CDFG and FWS for approval before restoration is initiated. *(The requirement to initiate mitigation within one year was later extended to allow the City of Costa Mesa more time to obtain funding for other aspects of park restoration that will occur concurrently with or immediately following the Corps' riparian restoration/mitigation project.)*
2. Vegetation removal during construction and future maintenance will occur outside the period from March 1 to August 15, to avoid most of the nesting season.
 3. Between March 1 and August 15, there will be no construction-related activity (e.g., staging areas, hauling of material, access to the river channel) on the east bank of Reach 1 since riparian vegetation used by breeding vireos is just east of Reach 1.
 4. Between March 1 and August 15, equipment shall not encroach within 100 feet of the east levee between Stations 34.00 and 150.32 of Reach 1. This will create a minimum 300-foot buffer between all construction-related activity on the channel bottom and riparian vegetation (possible vireo nesting habitat) to the east, minimizing any construction-related noise impacts.
 5. Cattails, sedges, and other non-woody native wetland plants that establish in the channel after the initial construction and in-between maintenance episodes will be left in place as long as the channel's flood capacity is not diminished. Annual mowing of vegetation (if necessary) will be conducted between August 15 and March 1, which will avoid most of the nesting season for birds using this habitat.

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6. Routine maintenance will include the annual removal of any non-native, invasive vegetation that establishes in the river channel after construction.

II. GOALS OF COMPENSATORY RESTORATION PROJECT

A. Types and Areas of Habitat to be Restored

The Corps proposes to create 17 acres of riparian/wetland habitat within Fairview Park, to satisfy the project mitigation requirements documented in the January 2004 EA, the accompanying Biological Opinion from the USFWS, and Streambed Alteration Agreement #R5-2002-0305 (dated February 11, 2004) that was issued by the CDFG to the Orange County Flood Control District. See the title page and pages 3 through 5 of the attached Plan sheets, showing the location and features of the "Phase 1A" restoration site within Fairview Park. (The City plans to construct future phases of the project (Phases 1A (Option Items), 1B, 2 and 3) within and beyond the Corps' project footprint, which will include creation of meandering channels, treatment ponds, establishment of coastal sage scrub vegetation and construction of recreation facilities.) The Corps' restoration site is currently mostly bare (it was recently tilled), with some non-native vegetation. The site will be excavated, planted, hydroseeded and irrigated to establish 17 acres of riparian habitat, including willows, mulefat, cottonwood, and sycamores.

B. Success Criteria

As defined by the Streambed Alteration Agreement, all plantings shall have a minimum of 80% survival the first year and 100% survival thereafter and/or shall attain 75% canopy cover of woody species after 3 years and 90% canopy cover of woody species after 5 years for the life of the project.

If after 5 years, the site does not reach 90% canopy cover, but the resource agencies (USFWS and CDFG) agree that the willow riparian habitat does function as potential vireo habitat, the resource agencies can deem the site acceptable.

If the survival and cover requirements are not met within the specified time frames, replacement planting shall be done (by the Corps's contractor in the first year, or by the City of Costa Mesa thereafter) to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 5 years after planting.

In addition, the site shall contain no more than 5% cover of annual non-native vegetation and no invasive exotic species.

It is currently envisioned that the City will construct meandering channels through the riparian mitigation area, and a pond at the downstream end, as part of their ongoing and separate restoration efforts at Fairview Park. It is anticipated that the City will utilize the Corps' contractor to construct these features at the same time as the riparian habitat area is graded and planted. The City also plans to bring water from the Greenville Banning Channel into the mitigation site (as part of a later phase), where it would flow through the

EXHIBIT C

channels and eventually into a series of additional treatment ponds that the City also plans to build. Assuming that this occurs, then the sprinkler irrigation system that the Corps will construct shall be discontinued two years prior to the CDFG's final acceptance of the mitigation site. The site will then continue to receive water bypassed from the Greenville Banning Channel and/or a 6-inch reclaimed water line, and the sprinkler system will be retained as a backup in times of drought. However, if the City does not construct the channels and the Greenville Banning bypass system, then the mitigation site will continue to be watered by the sprinkler irrigation system in perpetuity.

III. IMPLEMENTATION PLAN

A. Responsible Parties

The Corps of Engineers and Orange County Flood Control District will be responsible for the construction and initial (one-year) maintenance of the 17-acre restoration project. After the first year's establishment period, the City of Costa Mesa will continue to maintain the site in perpetuity. If for some reason the City is not able to perform those duties, the Orange County Flood Control District will maintain the habitat. The Corps will continue to monitor the site until success criteria are met, and provide annual reports to the USFWS and CDFG.

B. Implementation Schedule

The Corps plans to award a contract for construction and one-year maintenance of the 17 acre restoration project in July 2008. It is anticipated that construction would commence in August 2008. The initial excavation, planting and hydroseeding, and construction of an irrigation system, should be completed by February 2009. The construction contractor will also be responsible for a one-year maintenance period, which would end on approximately February 2010. At that point, the City of Costa Mesa would continue ongoing maintenance of the site, in perpetuity. The Corps will continue to monitor the site for approximately 5 years after construction, or until success criteria are met.

C. Site Preparation

For more information, see the attached Plan sheets from the contractor's Plans and Specifications for the Fairview Park Wetlands and Riparian Habitat Project. In summary, site preparation shall consist of clearing existing vegetation, debris and obstructions; removal and storage of topsoil; establishment of erosion control features; rough grading the site for structures and paths; excavation; filling and compaction; trenching and backfilling for utilities (including irrigation lines); replacing topsoil, preparing planting holes and finish grading to ready the site for planting. A fence will be installed adjacent to existing walking trails that abut the site to minimize public access.

EXHIBIT C

D. Planting Plan

For more information, see the attached Plan sheets from the contractor's Plans and Specifications for the Fairview Park Wetlands and Riparian Habitat Project. In summary, a combination of hydroseeding, pole cuttings and potted plants shall be used to establish 17 acres of riparian/wetland habitat within the mitigation/restoration area. Pages L-COE-1, 3, 4, 5, and 6 of the attached Plan sheets show the proposed planting scheme. Plantings within the restoration site will include 5-gallon containers (California sycamores, coast live oaks, western cottonwoods and Mexican elderberry), as well as a wide diversity of mulefat scrub and willow scrub plants in 1-gallon containers, cuttings, and seed mixes. The specific plant palettes, including the total seed and plant quantities, are included in pages L-COE-9 and 10 of the attached Plan sheets. Planting methodologies are demonstrated on page LD-COE-1.

E. Irrigation Plan

See the Plans and Specifications for the Fairview Park Habitat Restoration Project that were previously provided for more information. In summary, reclaimed water will be brought to the site through a 6" line, which will connect to a series of 4" surface irrigation lines that will branch into three separately controlled irrigation areas. Aerial sprayers will be used in each of the irrigation areas to ensure the seed mix and newly planted materials are kept moist during the establishment period. It is anticipated that the sprayers will be used every day for approximately 30 days, and then the watering schedule will be reduced until the vegetation is fully established. It is expected that if the City constructs the meandering channels and the Greenville Banning bypass, then within three years the water within the channels should be sufficient to support the habitat in normal conditions, and the irrigation lines would only be used if there is a drought or as a temporary back-up.

Source of Water and Reliability of Water Source: The initial source of water is an existing 6-inch reclaimed water line that possesses more than sufficient pressure and an essentially unlimited supply of water for the establishment period. It is the same supply that is used for the Talbert Nature Preserve and the Headlands Mitigation site. The County of Orange and the local water district have approved of its use and concurred on its availability and pressure. This source will remain as a backup system, if and when the 10-inch line from the Greenville Banning Channel is installed.

IV. MAINTENANCE AND MONITORING PLAN

A. Maintenance and Monitoring Activities During First Year Establishment Period

Maintenance: The contractor hired to construct the project will be responsible for weeding the site, removing trash, replacing dead or damaged container plants, ensuring successful establishment of the hydroseeded areas, keeping the irrigation system in good working order, maintaining erosion control features, and maintaining the fence.

EXHIBIT C

Monitoring: The contractor will assign a restoration ecologist to monitor the site. The ecologist will oversee all aspects of the work; document and report on the progress of the developing plant communities to the Corps; make recommendations to achieve the performance standards; and prescribe remedial measures, if necessary. The site will be monitored monthly, at a minimum. The post-installation monitoring program will be as follows:

1. Monitoring for survival, appearance, function, wildlife usage, and general compliance with the Plans and Specifications will be completed monthly.
2. In the spring, a survey will be conducted and data collected on survival, appearance, and function of the plant community.
3. As part of the monthly inspections and annual surveys, the Restoration Ecologist will record in a field memorandum general ecological observations and make maintenance recommendations.

In addition to the Contractor's monitoring program, the Corps will monitor the site and conduct qualitative and quantitative surveys. Transects will be established to record information such as survival, plant diversity, height class, canopy, and percent ground cover, to determine if success criteria are being met.

B. Maintenance and Monitoring Activities During Subsequent Years

Maintenance: After the initial establishment period, the City will continue maintaining the site. It is anticipated that minimal effort will be required, especially once success criteria have been met and the habitat has matured. The City will continue to remove non-native vegetation and trash, and maintain facilities such as the irrigation system and fencing.

Monitoring: The Corps will continue monitoring the site as described above (conducting qualitative and quantitative surveys), until success criteria have been met.

C. Responsible Parties

The Corps of Engineers and Orange County Flood Control District will be responsible for the construction and initial (one-year) maintenance of the 17-acre restoration project. After the first year's establishment period, the City of Costa Mesa will continue to maintain the site in perpetuity. If for some reason the City is not able to perform those duties, the Orange County Flood Control District will maintain the habitat. The Corps will continue to monitor the site until success criteria are met, and provide annual reports to the USFWS and CDFG.

D. Annual Reports

The Corps will provide annual reports to the USFWS and CDFG that include a qualitative and quantitative assessment of the site, including photo documentation; observance of any problems that need correction (such as non-native plant infestations, or damage caused by public intrusion); corrective actions to be taken; transects to document

EXHIBIT C

such features as percent cover of native and non-native vegetation, habitat structure and species diversity; and a comparison to past years' performance. Reporting shall be continued until success criteria are met.

V. COMPLETION OF COMPENSATORY MITIGATION

A. Notification of Completion

When the Corp ascertains through annual monitoring that success criteria have been met, notification will be made to the USFWS and CDFG, with a request for their concurrence. Although the site will continue to be maintained in perpetuity, annual monitoring and reporting by the Corps will no longer continue at that point.

B. Agency Confirmation

The USFWS and CDFG will be asked to confirm or concur with the Corps' determination that success criteria have been met. Upon receipt of their confirmation, the Corps will no longer monitor the site on a regular basis, or send annual reports to the agencies. Maintenance of the site, however, will continue in perpetuity.

EXHIBIT C
ATTACHMENT 1

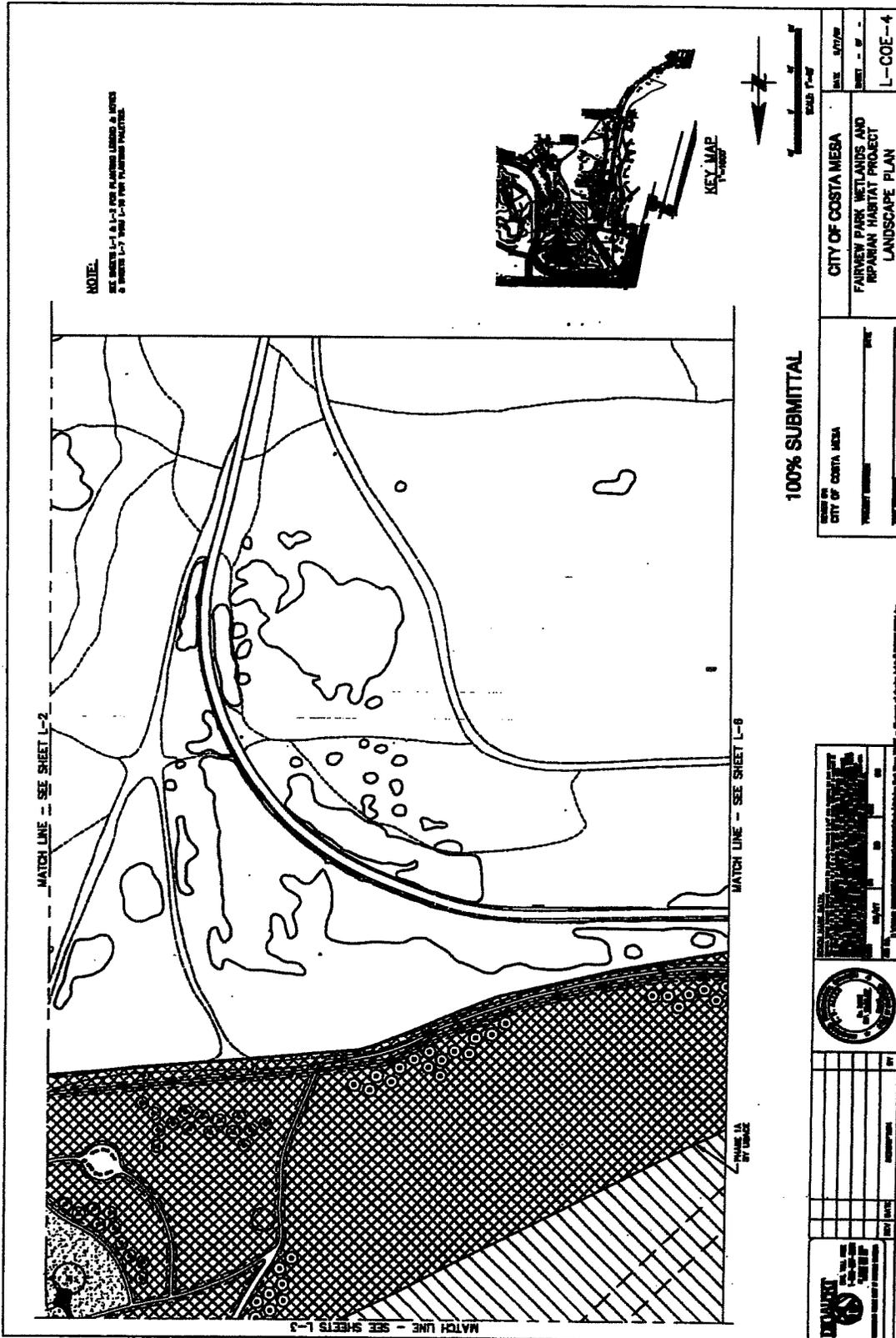


EXHIBIT C
ATTACHMENT 1

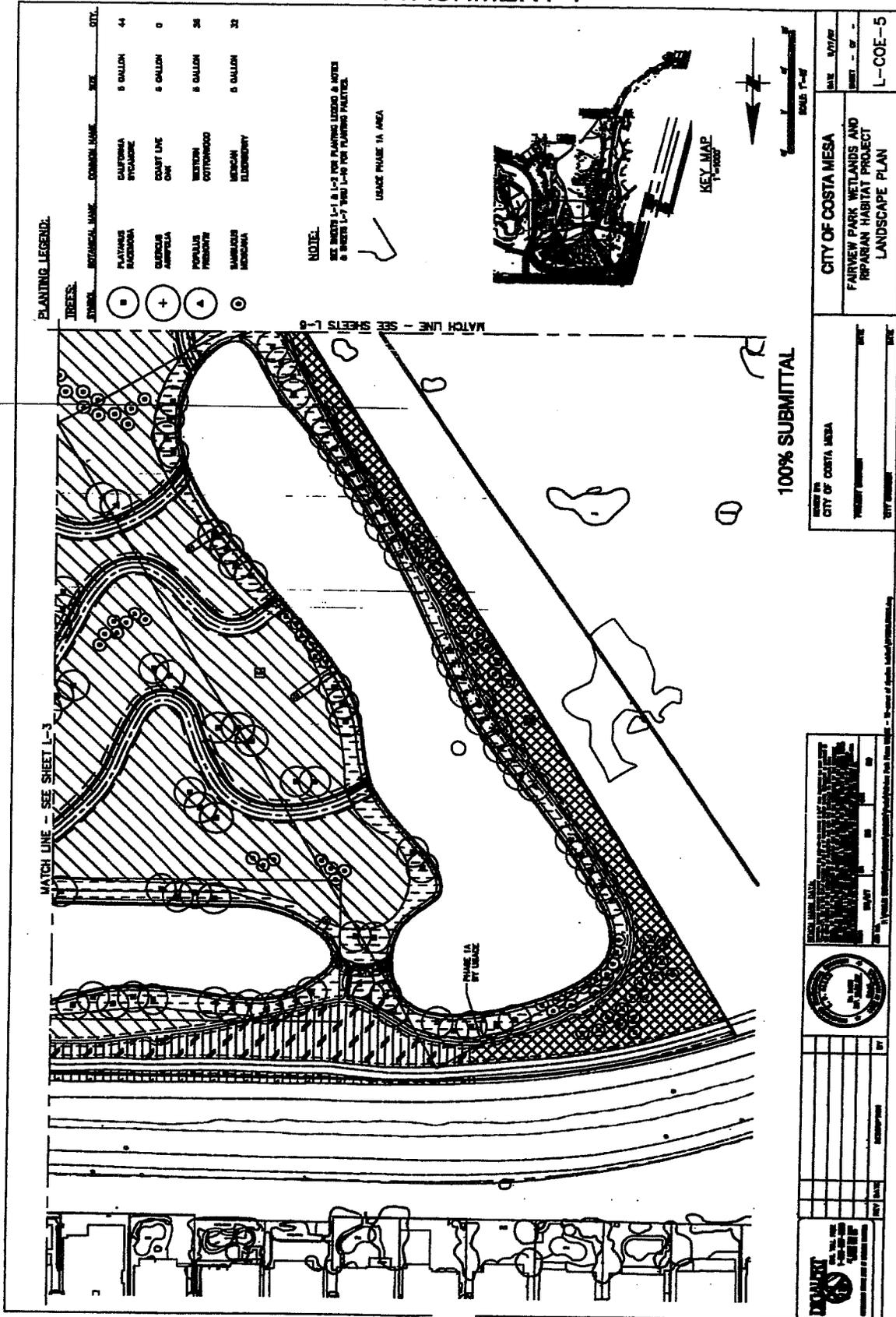


EXHIBIT C
ATTACHMENT 1

MULEFAT SCRUB PLANT PALETTE

TOTAL AREA - 45000 SF.

CONTAINER NAME	# OF CONTAINERS	TOTAL NUMBER FOR LAYOUT	TOTAL NUMBER FOR CONTAINER AREA
BUCKWHEAT	3	3	300
COYOTE BUSH	1	1	100
MULEFAT	41	41	4100
CACTUS	2	2	200
... (other plants)

1. CALLIUM CONTAINERS & CUTTINGS AS SHOWN IN TYPICAL LAYOUT BELOW.

2. CALLIUM CONTAINERS & CUTTINGS AS SHOWN IN TYPICAL LAYOUT BELOW.

3. THE USE OF THE SPECIES IS BASED ON MATURE PLANT SPECIES.

4. THE MULEFAT SCRUB BED WILL BE APPLIED TO THE PLANTING AREA AT A RATE OF 1000 LBS PER ACRE.

5. REFER TO PLANTING SPECIFICATIONS FOR METHOD OF APPLICATION.

NATIVE GRASSLAND PLANT PALETTE

TOTAL AREA - 45000 SF.

CONTAINER NAME	# OF CONTAINERS	TOTAL NUMBER FOR LAYOUT	TOTAL NUMBER FOR CONTAINER AREA
... (native grasses)

MULEFAT SCRUB SEED MIX.

CONTAINER NAME	# OF CONTAINERS	TOTAL NUMBER FOR LAYOUT	TOTAL NUMBER FOR CONTAINER AREA
... (seed mix plants)

TYPICAL LAYOUT FOR 1 GAL. CONTAINER PLANTS & CUTTINGS.

NOTES:

- THIS TYPICAL LAYOUT (PAGE 1 & 2) WILL BE REPEATED THROUGHOUT THE AREA...
- THE USE OF THE SPECIES IS BASED ON MATURE PLANT SPECIES...
- THE MULEFAT SCRUB BED WILL BE APPLIED TO THE PLANTING AREA AT A RATE OF 1000 LBS PER ACRE...
- REFER TO PLANTING SPECIFICATIONS FOR METHOD OF APPLICATION.

100% SUBMITTAL

CITY OF COSTA MESA	DATE: 03/20/08
Fairview Park Wetlands and Riparian Habitat Project	PROJECT: 08-001
LANDSCAPE PLAN	SCALE: L-COE-9

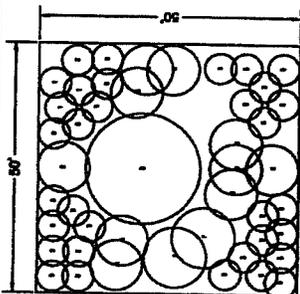
EXHIBIT C
ATTACHMENT 1

WILLOW SCRUB PLANT PALETTE
TOTAL AREA - 28,346 SQ. FT.

1. WILLOW SCRUB PLANT PALETTE AS SHOWN IN TYPICAL LAYOUT BELOW

WILLOW SCRUB PLANT PALETTE	COMMON NAME	# OF PLANTS PER PALETTE	TOTAL NUMBER OF PLANTS PER LAYOUT	TOTAL NUMBER OF PLANTS PER ENTIRE AREA
1	WILLOW SCRUB	1	1	75
2	WILLOW SCRUB	1	1	75
3	WILLOW SCRUB	1	1	75
4	WILLOW SCRUB	1	1	75
5	WILLOW SCRUB	1	1	75
6	WILLOW SCRUB	1	1	75
7	WILLOW SCRUB	1	1	75
8	WILLOW SCRUB	1	1	75
9	WILLOW SCRUB	1	1	75
10	WILLOW SCRUB	1	1	75
11	WILLOW SCRUB	1	1	75
12	WILLOW SCRUB	1	1	75
13	WILLOW SCRUB	1	1	75
14	WILLOW SCRUB	1	1	75
15	WILLOW SCRUB	1	1	75
16	WILLOW SCRUB	1	1	75
17	WILLOW SCRUB	1	1	75
18	WILLOW SCRUB	1	1	75
19	WILLOW SCRUB	1	1	75
20	WILLOW SCRUB	1	1	75
21	WILLOW SCRUB	1	1	75
22	WILLOW SCRUB	1	1	75
23	WILLOW SCRUB	1	1	75
24	WILLOW SCRUB	1	1	75
25	WILLOW SCRUB	1	1	75
26	WILLOW SCRUB	1	1	75
27	WILLOW SCRUB	1	1	75
28	WILLOW SCRUB	1	1	75
29	WILLOW SCRUB	1	1	75
30	WILLOW SCRUB	1	1	75
31	WILLOW SCRUB	1	1	75
32	WILLOW SCRUB	1	1	75
33	WILLOW SCRUB	1	1	75
34	WILLOW SCRUB	1	1	75
35	WILLOW SCRUB	1	1	75
36	WILLOW SCRUB	1	1	75
37	WILLOW SCRUB	1	1	75
38	WILLOW SCRUB	1	1	75
39	WILLOW SCRUB	1	1	75
40	WILLOW SCRUB	1	1	75
41	WILLOW SCRUB	1	1	75
42	WILLOW SCRUB	1	1	75
43	WILLOW SCRUB	1	1	75
44	WILLOW SCRUB	1	1	75
45	WILLOW SCRUB	1	1	75
46	WILLOW SCRUB	1	1	75
47	WILLOW SCRUB	1	1	75
48	WILLOW SCRUB	1	1	75
49	WILLOW SCRUB	1	1	75
50	WILLOW SCRUB	1	1	75
51	WILLOW SCRUB	1	1	75
52	WILLOW SCRUB	1	1	75
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56	WILLOW SCRUB	1	1	75
57	WILLOW SCRUB	1	1	75
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61	WILLOW SCRUB	1	1	75
62	WILLOW SCRUB	1	1	75
63	WILLOW SCRUB	1	1	75
64	WILLOW SCRUB	1	1	75
65	WILLOW SCRUB	1	1	75
66	WILLOW SCRUB	1	1	75
67	WILLOW SCRUB	1	1	75
68	WILLOW SCRUB	1	1	75
69	WILLOW SCRUB	1	1	75
70	WILLOW SCRUB	1	1	75

TYPICAL LAYOUT FOR 1 GAL. CONTAINER PLANTS & CUTTINGS.



NOTES:

1. THE TYPICAL LAYOUT (AS SHOWN) WILL BE REPRODUCED THROUGHOUT THE AREA WITHIN THE CITY OF COSTA MESA TO MAINTAIN CONSISTENT QUANTITIES WITHIN THE DESIGNATED PLANTING AREA.
2. THE COMPOSITION OF THE TYPICAL PLANT LAYOUT WILL BE ADJUSTED IN THE FIELD ACCORDING TO THE SIZE AND COMPOSITION OF THE PLANTING AREA.
3. THE SIZE OF THE SPECIES IS BASED ON MARKET PLANT SPECIES.
4. THE PLANTING SPECIES LIST WILL BE APPLIED TO THE PLANTING AREA AT A RATE OF 10% PER SPECIES.
5. REFER TO PLANTING SPECIFICATIONS FOR METHOD OF APPLICATION.

WILLOW SCRUB SEED MIX.

WILLOW SCRUB SEED MIX	COMMON NAME	# PER TON	# SEEDS PER LB	SEEDS PER ACRE
1	WILLOW SCRUB	100	100	100
2	WILLOW SCRUB	100	100	100
3	WILLOW SCRUB	100	100	100
4	WILLOW SCRUB	100	100	100
5	WILLOW SCRUB	100	100	100
6	WILLOW SCRUB	100	100	100
7	WILLOW SCRUB	100	100	100
8	WILLOW SCRUB	100	100	100
9	WILLOW SCRUB	100	100	100
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66	WILLOW SCRUB	100	100	100
67	WILLOW SCRUB	100	100	100
68	WILLOW SCRUB	100	100	100
69	WILLOW SCRUB	100	100	100
70	WILLOW SCRUB	100	100	100

100% SUBMITTAL

	CITY OF COSTA MESA PROJECT NUMBER: _____ DATE: _____ CITY NUMBER: _____	CITY OF COSTA MESA FAIRVIEW PARK WETLANDS AND RIPARIAN HABITAT PROJECT LANDSCAPE PLAN	DATE: 5/17/17 SHEET: 10 OF 10 L-COE-10
	100% SUBMITTAL		

EXHIBIT C
ATTACHMENT 1

<ol style="list-style-type: none"> 1. CHAIRS CLOSED AT 3" 2. 1/2" PLANKS OVER CHAIRS 3. 2" SAND OVER PLANKS 4. 1/2" 1" C. SANDWICH OVER WOODS 5. SANDWICH WITH FERTILIZED SOIL 6. NETS OVER TO HOLD CHAIRS TOGETHER 7. ATTACH SANDWICH CLOTH SECURELY TO OUTSIDE OF CHAIR 8. ONE SANDWICH CLOTH PLACED ON THE INSIDE OF CHAIR <p>1/8" 1" C. SANDWICH</p>	<p>ACORN PLANTING</p>	<ol style="list-style-type: none"> 1. 10" LAYER OF SAND, 1/2" FERTILIZED SOIL OVER SAND 2. 1/2" SANDWICH OVER SAND 3. 2" SAND OVER SANDWICH 4. FRESH GRADE 5. SANDWICH 6. NATIVE SUBSTRANCE <p>1/8" 1" C. SANDWICH</p>	<p>TREE PLANTING</p>	<p>3</p>
<ol style="list-style-type: none"> 1. 3" WATERS BARR 2. FRESH GRADE 3. MASH LAYER OF 1/2" ALL NON-TEXT JAGGED SANDWICH OVER SAND 4. SANDWICH WITH FERTILIZER AS SPECIFIED 5. FRESH GRADE 6. 3" THICK COTTONWOOD BERRY 7. 1 1/2" THICK COTTONWOOD BERRY 	<p>SHRUB PLANTING</p>	<ol style="list-style-type: none"> 1. REMOVE PLANTING AND EXPOSE ROOTS TO AIR 2. REMOVE PLANTING AND EXPOSE ROOTS TO AIR 3. 1/2" SANDWICH OVER SAND 4. FRESH GRADE 5. SANDWICH 6. NATIVE SUBSTRANCE 7. 1/2" SANDWICH OVER SAND <p>1/8" 1" C. SANDWICH</p>	<p>ROOT BARRIER</p>	<p>5</p>
<ol style="list-style-type: none"> 1. 10" LAYER OF SAND, 1/2" FERTILIZED SOIL OVER SAND 2. 1/2" SANDWICH OVER SAND 3. 2" SAND OVER SANDWICH 4. FRESH GRADE 5. SANDWICH 6. NATIVE SUBSTRANCE 7. 1/2" SANDWICH OVER SAND 	<p>MULEFAT & WILLOW CUTTING</p>	<ol style="list-style-type: none"> 1. LOCALLY OBTAINED BIRCH MULLEFAT OR MULLEFAT CUTTING WITH 1/2" SANDWICH OVER SAND 2. FRESH GRADE 3. SANDWICH OVER SANDWICH 4. 1/2" SANDWICH OVER SAND 5. 1/2" SANDWICH OVER SAND 6. 1/2" SANDWICH OVER SAND 7. 1/2" SANDWICH OVER SAND 	<p>100% SUBMITTAL</p>	<p>6</p>



TICOR TITLE COMPANY
OF CALIFORNIA

18302 Irvine Blvd, Suite 100
Tustin, CA 92780
(714) 289-3300

Issuing Agent for Ticor Title Insurance Company

TITLE OFFICER: Cindy Fern
TITLE OFFICER EMAIL: cfern@ticortitle.com

TITLE OFFICER PHONE: (714) 289-3306
TITLE OFFICER FAX: (714) 289-7105

TO: CITY OF COSTA MESA
77 FAIR DRIVE
COSTA MESA, CA 92626

ATTN: BRAD EDWARDS / BART MEJIA
YOUR REF: FAIRVIEW PARK
ORDER NO.: 897941-12

PROPERTY ADDRESS: FAIRVIEW PARK, COSTA MESA, CA

SUPPLEMENTAL REPORT DATED AS OF: **May 02, 2008**
ORIGINAL PRELIMINARY REPORT DATED: **April 03, 2008**

SUPPLEMENTAL REPORT

The above numbered report (including any Supplements or Amendments thereto) is hereby modified and/or supplemented in order to reflect the following additional items relating to the issuance of a Policy of Title Insurance as follows:

PLEASE BE ADVISED THAT ITEMS 8, 14, 19, 20 AND 21 ARE HEREBY ELIMINATED FROM THE PRELIMINARY TITLE REPORT. THESE ITEMS DO NOT AFFECT THE SUBJECT PROPERTY.

Sincerely,

Cindy Fern
Title Officer



TICOR TITLE COMPANY
OF CALIFORNIA

18302 Irvine Blvd, Suite 100
Tustin, CA 92780
(714) 289-3300

TRANSMITTAL

TITLE OFFICER: Cindy Fern
ORDER NO.: 897941-12
DATE: May 5, 2008 9:52 AM

PHONE: (714) 289-3306
EMAIL: cfem@ticortitle.com
FAX: (714) 289-7105

Attn:
Your Ref:

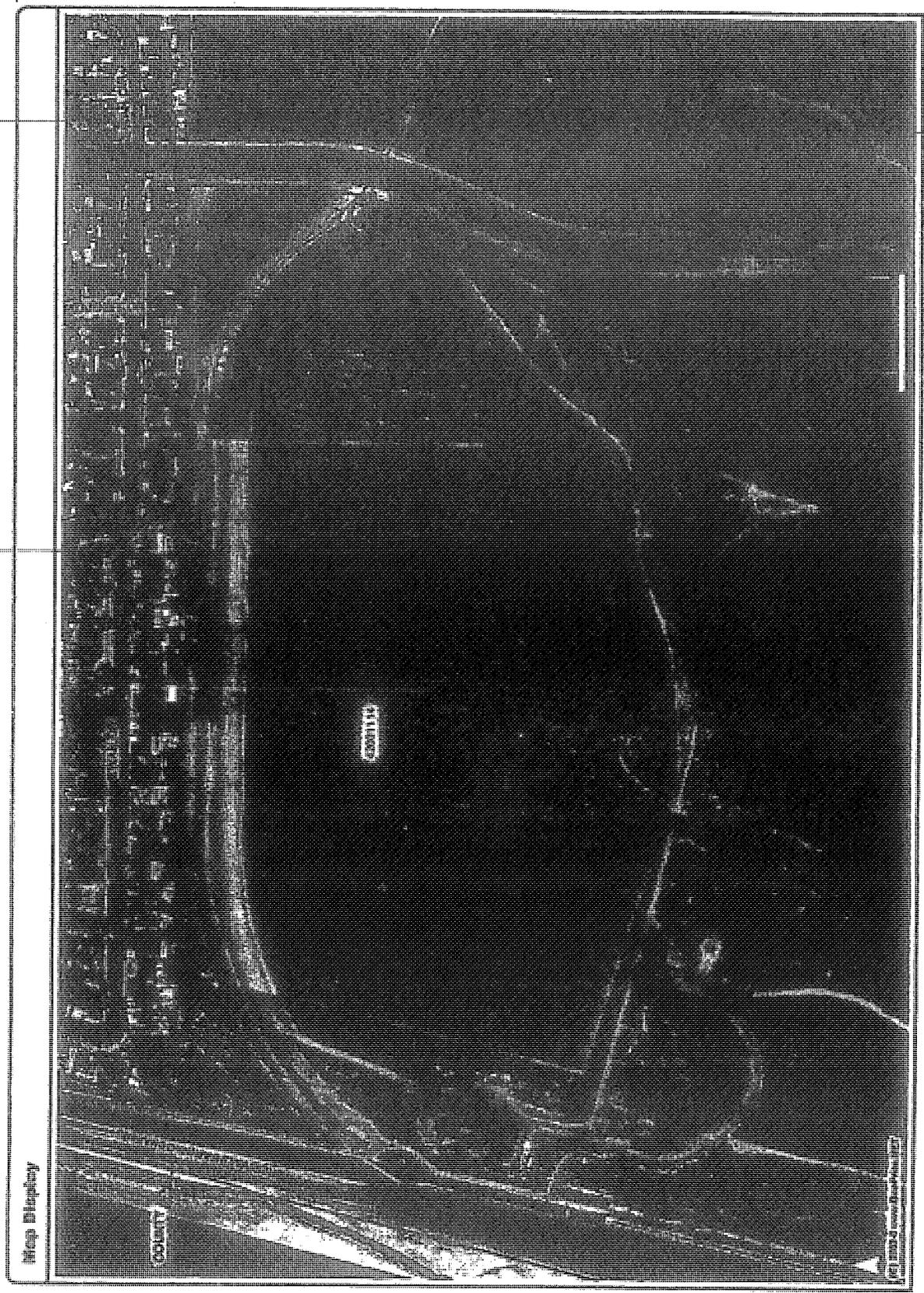
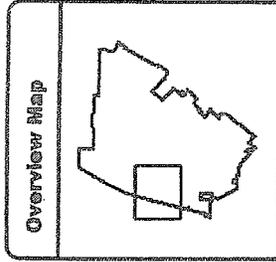
PROPERTY ADDRESS: FAIRVIEW PARK, COSTA MESA, CA
BORROWER:

Enclosed please find .

Thank you - we appreciate your business!

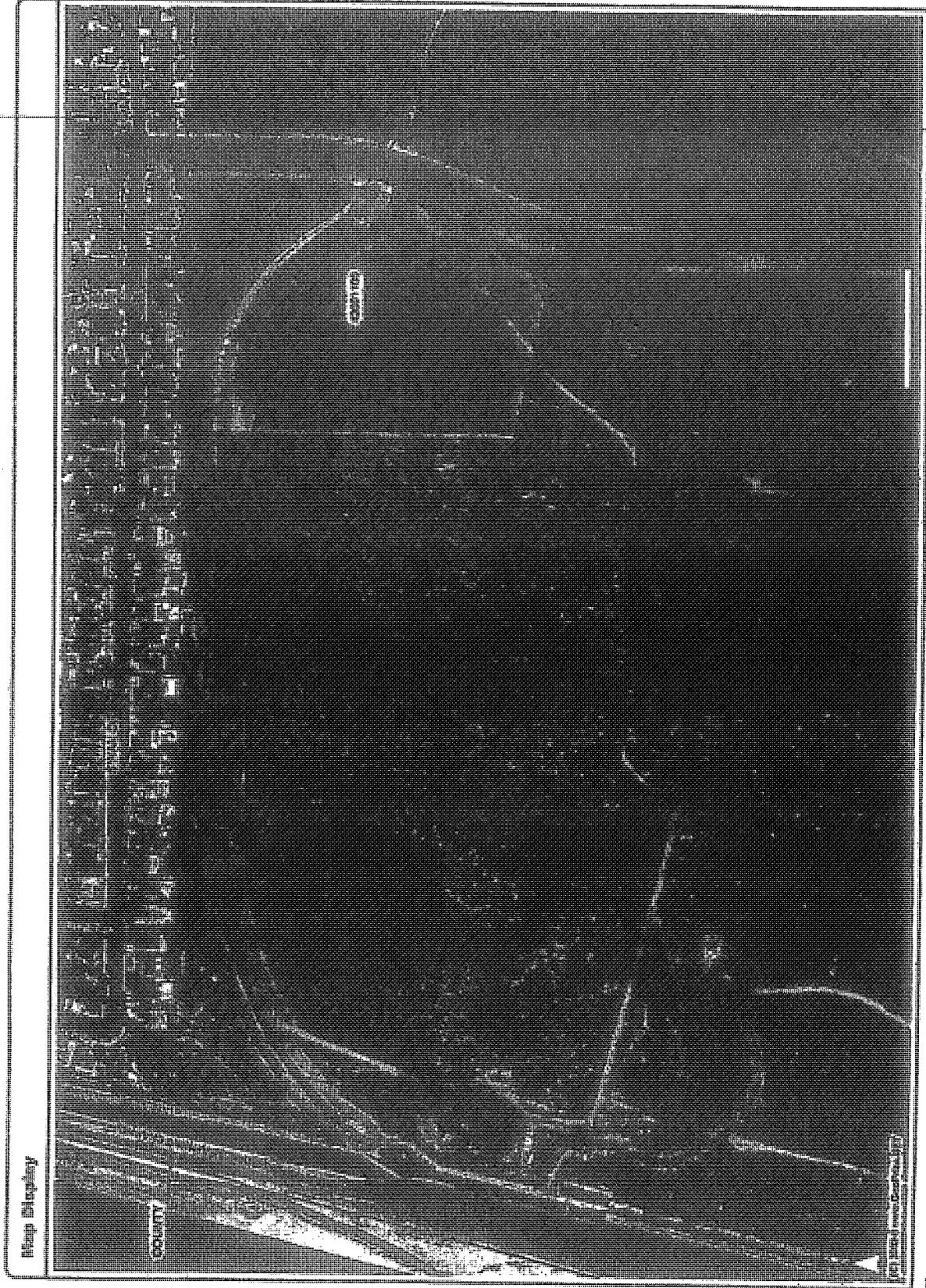
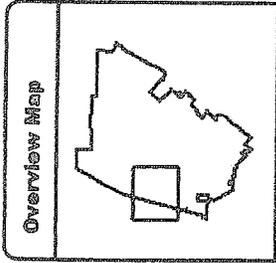
City of Costa Mesa

CITY OF COSTA MESA - [Created: 4/16/2008 3:19:27 PM] [Scale: 250.43] [Page: 11 of 17] [Landscape]



Legend

Address Points	Freeway
Road	Collector
Freeway	Major
Highway Blvd	Primary
SECONDARY	Waterway Lines
Hydrology Channels	Street Names
Street Centerlines	Parcel Lines
CITY Boundary	Water Ways
Level 3 Ortho Photo	Parcel
ROW Polygons	city
Coast	



Legend

	Address Points
	Freeway
	Roads
	Collector
	Freeway
	Major
	Nonexp 8/100
	Primary
	SECONDARY
	Waterway Lines
	Hydrology Channels
	Street Names
	Street Centerlines
	Parcel Lines
	City Boundary
	Water Ways
	Level3 Ortho Photo
	Parcels
	ROW Polygons
	city
	Coast



TICOR TITLE COMPANY
OF CALIFORNIA

18302 Irvine Blvd, Suite 100
Tustin, CA 92780
(714) 289-3300

Issuing Policies of Ticor Title Insurance Company

ORDER NO.: 897941- 12

CITY OF COSTA MESA
77 FAIR D
COSTA MESA, CA 92626
ATTN: BRAD EDWARDS

Title Officer: **Cindy Fern**
Title Officer Phone: **(714) 289-3306**
Title Officer Fax: **(714) 289-7105**
Title Officer Email: **cfem@ticortitle.com**

YOUR REF: FAIRVIEW PARK
PROPERTY: FAIRVIEW PARK, COSTA MESA, CA

REISSUED PRELIMINARY REPORT

In response to the application for a policy of title insurance referenced herein, Ticor Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of Ticor Title Insurance Company, a California Corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.

Ticor Title Company

BY


Authorized Signatory

Ticor Title Insurance Company

BY

ATTEST


President


Secretary



REISSUED PRELIMINARY REPORT

EFFECTIVE DATE: April 03, 2008, 7:30am

The form of policy or policies of title insurance contemplated by this report is:

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:
A FEE as to Parcel 1 AND 3;
AN EASEMENT more fully described below as to Parcel 3

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS **VESTED IN:**
CITY OF COSTA MESA, A MUNICIPALITY

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF LOT A OF THE BANNING TRACT, IN THE RANCHO SANTIAGO DE SANTA ANA, AS SHOWN ON A MAP OF SAID TRACT FILED IN ACTION NO. 6385, IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, BEING AN ACTION FOR PARTITION, ENTITLED HANCOCK BANNING AND OTHERS VS. MARY H. BANNING AND ALSO THAT PORTION OF LOTS 3, 4 AND 5 OF THE J.A. DAY TRACT, RECORDED IN BOOK 4 PAGE 50 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND MORE PARTICULARLY SHOWN ON A MAP FILED IN BOOK 53 PAGES 34 TO 36 OF RECORD OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF FAIRVIEW FARMS, AS SHOWN ON A MAP RECORDED IN BOOK 8 PAGE 71 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY AND THE CENTER LINE OF PLACENTIA AVENUE, AS SAID CENTER LINE IS SHOWN ON THE MAP OF TRACT NO. 2215 RECORDED IN BOOK 106 PAGE 34, MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY; THENCE ALONG THE NORTHERLY LINE OF SAID FAIRVIEW FARMS, SOUTH 89° 27' 30" WEST 2640.02 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 32' 30" WEST 660.00 FEET; THENCE NORTH 89° 27' 30" EAST 660.14 FEET; THENCE NORTH 0° 32' 30" WEST 209.11 FEET; THENCE NORTH 51° 50' 47" EAST 662.84 FEET; THENCE NORTH 37° 15' 16" EAST 30.00 FEET TO A POINT ON A CURVE, CONCAVE NORTHEASTERLY SAID POINT BEING ON THE CENTERLINE OF PLACENTIA AVENUE, HAVING A RADIUS OF 800.00 FEET; A RADIAL LINE FROM SAID POINT BEARS NORTH 37° 15' 16" EAST; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 52° 31' 27", AN ARC DISTANCE OF 733.38 FEET; THENCE NORTH 0° 13' 17" WEST 426.91 FEET TO THE NORTHWEST CORNER OF PARCEL "F" AS SHOWN ON SAID RECORD OF SURVEY; THENCE SOUTH 68° 48' 33" EAST 997.43 FEET ALONG THE NORTHERLY BOUNDARY OF SAID PARCEL "F" TO THE SOUTHEASTERLY CORNER OF PARCEL "E" AS SHOWN ON SAID RECORD OF SURVEY; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL "E", NORTH 0° 12' 30" WEST 98.24 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 550.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 22° 30' 00", AN ARC DISTANCE OF 215.98 FEET; THENCE NORTH 22° 17' 30" EAST 317.12 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 350.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 78° 13' 11" AN ARC DISTANCE OF 477.82 FEET TO A POINT; A RADIAL LINE FROM SAID POINT BEARS SOUTH 34° 04' 19" WEST; THENCE NORTH 0° 12' 30" WEST 890.81 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT A OF THE BANNING TRACT; THENCE ALONG THE NORTHERLY LINE OF SAID LOT A, SOUTH 89° 28' 13" WEST 3164.10 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT EASTERLY 455.00 FEET MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF THE SANTA ANA RIVER CHANNEL, AS SAID CENTER LINE IS SHOWN ON A MAP FILED IN BOOK 12 PAGE 25 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ORANGE, STATE OF CALIFORNIA; THENCE SOUTH 13° 24' 49" WEST ALONG SAID PARALLEL LINE, 4034.61 FEET TO THE NORTHERLY LINE OF SAID FAIRVIEW FARMS; THENCE NORTH 89° 27' 30" EAST 2260.02 FEET ALONG THE NORTHERLY LINE OF SAID FAIRVIEW FARMS TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM PARCEL H-1 AS SHOWN ON A MAP FILED IN BOOK 53 PAGES 34 TO 36 OF RECORD OF SURVEY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN INSTRUMENTS OF RECORD.

TOGETHER WITH ALL OF GRANTOR'S RIGHT, TITLE AND INTEREST IN AND TO SUCH EASEMENT OR EASEMENTS AS ARE SHOWN ON RECORD OF SURVEY MAP FILED IN BOOK 53 PAGES 35 AND 36 OF RECORD OF SURVEY AND ACQUIRED BY GRANTOR UNDER THAT CERTAIN AGREEMENT RECORDED IN BOOK 4152 PAGE 223, OFFICIAL RECORDS AND DEED RECORDED IN BOOK 6799 PAGE 513, OFFICIAL RECORDS AS IT AFFECTS SUBJECT PROPERTY.

THIS CONVEYANCE IS SUBJECT TO THE EXPRESS CONDITION SUBSEQUENT THAT THE REAL PROPERTY CONVEYED SHALL BE USED ONLY FOR PARK AND RECREATION PURPOSES FOR A PERIOD OF 25 YEARS. SHOULD SAID EXPRESS CONDITION BE VIOLATED, THE STATE OF CALIFORNIA SHALL HAVE THE RIGHT TO RE-

LEGAL DESCRIPTION

EXHIBIT "A" (CONTINUED)

ENTER AND TAKE POSSESSION OF THE REAL PROPERTY, AND UPON SUCH RE-ENTRY, TITLE THERETO SHALL THEREUPON REVERT TO THE STATE OF CALIFORNIA.

EXCEPTING THEREFROM THAT CERTAIN PARCEL OF LAND BEING DESIGNATED AS COUNTY TAX ASSESSOR'S PARCEL NO. 420-011-09, 420-011-11, 420-011-15, 420-011-16, 420-012-001, AND 420-012-002, BEING A PORTION OF THE PROPERTY DESCRIBED AS FOLLOWS: LOT A OF THE BANNING TRACT.

THE AFOREMENTIONED LEGAL DESCRIPTION IS IN LIKELY VIOLATION OF THE STATE OF CALIFORNIA SUBDIVISION MAP ACT, AND SAID LEGAL DESCRIPTION CANNOT BE USED, COPIES OR REPRESENTED WITHIN THE PUBLIC RECORD.

PARCEL 2:

THAT PORTION OF LOT A OF THE BANNING TRACT, IN THE CITY OF COSTA MESA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP OF SAID TRACT FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING FOR PARTITION AND BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES MORE PARTICULARLY DESIGNATED AS PARCEL H-1 ON A MAP FILED IN BOOK 53 PAGES 34 TO 36 OF RECORD OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ORANGE COUNTY, CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL H-1 THE FOLLOWING COURSES:

NORTH 79° 29' 00" WEST, 540.24 FEET; THENCE NORTH 0° 24' 54" WEST, 740.07 FEET TO A POINT ON THE CENTERLINE OF THAT CERTAIN EASEMENT DESCRIBED AND DELINEATED IN BOOK 4761 PAGE 550 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID CENTERLINE AND CONTINUING NORTH 89° 35' 23" EAST, 97.28 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE SOUTHEASTERLY 447.40 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 51° 16' 07"; THENCE TANGENT TO SAID CURVE SOUTH 39° 08' 30" EAST, 134.28 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE SOUTHEASTERLY 171.06 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 19° 36' 06" 800.00 FEET A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS NORTH 76° 37' 28" WEST; THENCE LEAVING THE CENTERLINE OF SAID EASEMENT DESCRIBED IN BOOK 4761 PAGE 550 OF OFFICIAL RECORDS AND CONTINUING ALONG THE BOUNDARY OF SAID PARCEL H-1, THE FOLLOWING COURSES:

SOUTHERLY 157.19 FEET ALONG SAID CURVE OF 800.00 FOOT RADIUS, THROUGH A CENTRAL ANGLE OF 11° 15' 29"; THENCE SOUTH 24° 38' 01" WEST, 145.87 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 800.00 FEET; THENCE SOUTHERLY 167.10 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11° 58' 04" TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES, LYING BELOW A DEPTH OF 500 FEET, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN INSTRUMENTS OF RECORD.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR STREET AND HIGHWAY PURPOSES OVER THE FOLLOWING DESCRIBED PROPERTY:

THAT PORTION OF LOT "A" OF THE BANNING TRACT, AS SHOWN ON A MAP OF SAID TRACT FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING FOR PARTITION AND BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES AND MORE PARTICULARLY DESIGNATED ON A MAP FILED IN BOOK 53 PAGES 34 TO 36 OF RECORD OF SURVEY OF SAID COUNTY OF ORANGE, SITUATED WITHIN A 60 FOOT STRIP OF LAND LYING 30 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF SAID LOT "A" AND THE EASTERLY LINE OF PARCEL H-2, ALL AS SHOWN ON SAID RECORD OF SURVEY; THENCE SOUTH 0° 31' 47" EAST, 301.45 FEET TO

LEGAL DESCRIPTION

EXHIBIT "A" (CONTINUED)

THE BEGINNING OF A CURVE, CONCAVE WESTERLY AND HAVING A RADIUS OF 800 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH AN ANGLE OF 25° 09' 48", A DISTANCE OF 351.34 FEET; THENCE SOUTH 24° 38' 01" WEST, 145.87 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 800 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH AN ANGLE OF 24° 51' 18", A DISTANCE OF 347.04 FEET THENCE SOUTH 0° 13' 17" EAST, 436.80 FEET.

THE SIDE LINES OF SAID STRIP SHALL BE LENGTHENED OR SHORTENED TO TERMINATE IN SAID NORTH LINE OF LOT "A", AND IN THE SOUTHERLY LINE, AND ITS WESTERLY PROLONGATION OF PARCEL "E" AS SAID SOUTHERLY LINE IS SHOWN ON SAID RECORD OF SURVEY.

EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN PARCEL 2

EXCEPTING THEREFROM THAT CERTAIN PARCEL OF LAND BEING DESIGNATED AS COUNTY TAX ASSESSOR'S PARCEL NO. 420-011-10, BEING A PORTION OF THE PROPERTY DESCRIBED AS FOLLOWS: LOT A OF THE BANNING TRACT.

THE AFOREMENTIONED LEGAL DESCRIPTION IS IN LIKELY VIOLATION OF THE STATE OF CALIFORNIA SUBDIVISION MAP ACT, AND SAID LEGAL DESCRIPTION CANNOT BE USED, COPIED OR REPRESENTED WITHIN THE PUBLIC RECORD.

AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

- A. **Property Taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2008-2009.
- B. **Property Taxes**, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2007-2008 Assessor's Parcel Number 420 011 09.

Code Area: 15182
1st Installment: \$54.16 PAID
2nd Installment: \$54.16 PAID
Land: \$684,375.00
Improvements: \$0.00
Exemption: \$0.00 HOMEOWNERS

- C. **Property Taxes**, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2007-2008, Assessor's Parcel Number 420-012-02.

Code Area: 15082
1st Installment: \$2,295.04 PAID \$229.50
2nd Installment: \$2,295.04 OPEN \$252.50
Land: \$14,960,821.00
Improvements: \$
Exemption: \$

- D. THE FOLLOWING APN# HAVE NOT TAXES DUE FOR THE FISCAL YEAR OF 2006-2007;
420-011-10, 420-011-11, 420-011-14, 420-011-15, 420-012-01, 420-012-03

- E. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation Code of the State of California.

1. AN EASEMENT FOR DRAINAGE DITCH OR PIPE LINE IN, ON AND UNDER A 30 FOOT STRIP OF LAND, AS DESCRIBED IN THE DEED TO TALBERT DRAINAGE DISTRICT RECORDED SEPTEMBER 27, 1938 IN BOOK 956 PAGE 591 OF OFFICIAL RECORDS AND AS PLOTTED ON A MAP FILED IN BOOK 53 PAGES 35 AND 36 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

2. AN EASEMENT OVER A STRIP OF LAND 12 FEET WIDE FOR ADAMS AVENUE STORM DRAIN FROM ADAMS AVENUE TO THE FAIRVIEW (D-4) CHANNEL, AS DESCRIBED IN THE DEED TO THE CITY OF COSTA MESA, RECORDED DECEMBER 6, 1962 IN BOOK 6350 PAGE 60, OFFICIAL RECORDS.

- 3. **An easement** for the purpose shown below and rights incidental thereto as set forth in a document

Purpose: UNDERGROUND STORM DRAIN SYSTEM AND INCIDENTAL PURPOSES
Recorded: APRIL 5, 1963 IN BOOK 6497 PAGE 931 OF OFFICIAL RECORDS
Affects: A STRIP OF LAND 50 FEET WIDE

- 4. **An easement** for the purpose shown below and rights incidental thereto as set forth in a document

Purpose: PIPELINE(S)
Recorded: JANUARY 22, 1964 IN BOOK 7060 PAGE 198 OF OFFICIAL RECORDS
Affects: A 10 FOOT STRIP OF LAND

And Recorded: MAY 26, 1964 IN BOOK 7060 PAGE 308 OF OFFICIAL RECORDS.

5. ~~AN EASEMENT FOR STREET AND HIGHWAY PURPOSES AS CONDEMNED BY FINAL ORDER OF CONDEMNATION ENTERED SEPTEMBER 22, 1964 IN ACTION ENTITLED COSTA MESA UNION SCHOOL DISTRICT OF ORANGE COUNTY, CALIFORNIA VERSUS JOSEPH B. BANNING AND OTHERS, CASE NO. 107103 SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR ORANGE COUNTY, A CERTIFIED COPY OF WHICH ORDER WAS RECORDED SEPTEMBER 22, 1964 IN BOOK 7229 PAGE 427, OFFICIAL RECORDS AND AS DESCRIBED IN DEEDS TO THE CITY OF COSTA MESA, RECORDED DECEMBER 16, 1964 IN BOOK 7347 PAGES 880 AND 883 OF OFFICIAL RECORDS, MARCH 17, 1965 IN BOOK 7449 PAGE 229, OFFICIAL RECORDS, APRIL 7, 1965 IN BOOK 7474 PAGE 831, OFFICIAL RECORDS, APRIL 17, 1968 IN BOOK 8575 PAGE 832, OFFICIAL RECORDS, APRIL 23, 1968 IN BOOK 8580 PAGE 819, OFFICIAL RECORDS MAY 20, 1970 IN BOOK 9294, PAGE 113 OF OFFICIAL RECORDS.~~
6. AN EASEMENT TO CONSTRUCT, USE, MAINTAIN, ALTER, ADD TO, REPAIR AND REPLACE A CITY STREET, AS CONVEYED TO THE CITY OF COSTA MESA BY AN INSTRUMENT RECORDED OCTOBER 4, 1971 IN BOOK 9830 PAGE 314, OFFICIAL RECORDS, UPON THE TERMS, COVENANTS AND CONDITIONS CONTAINED THEREIN. REFERENCE IS MADE TO SAID DOCUMENT FOR FULL PARTICULARS.
7. AN UNRECORDED LEASE DATED DECEMBER 1, 1970 EXECUTED BY STATE OF CALIFORNIA, DEPARTMENT OF GENERAL SERVICES, AS LESSOR AND ARCHAEOLOGICAL RESEARCH INC., AS LESSEE, UPON THE TERMS, CONDITIONS AND COVENANTS THEREIN CONTAINED, AS DISCLOSED BY AN INSPECTION OF SAID LAND. REFERENCE IS MADE TO SAID LEASE FOR FULL PARTICULARS.
8. A RIGHT OF WAY, IF ANY, FOR DITCH OF TALBERT DRAINAGE DISTRICT, AS RECITED IN DEED FROM JAMES A. DAY TO J. KUJAWSKY, RECORDED DECEMBER 27, 1906 IN BOOK 139 PAGE 260, OF DEEDS AND AS PLOTTED ON MAP FILED IN BOOK 53 PAGE 36 OF RECORD OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
9. A NON-EXCLUSIVE RIGHT OF WAY AND EASEMENT OVER A 10-FOOT STRIP, AS DESCRIBED IN THE DEED TO THE IRVINE COMPANY, A CORPORATION RECORDED APRIL 24, 1941 IN BOOK 1089 PAGE 405 OF OFFICIAL RECORDS AND AS PLOTTED ON THE MAP FILED IN BOOK 53 PAGE 36 OF RECORD OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
10. AN EASEMENT 30 FEET WIDE FOR INGRESS AND EGRESS, PIPES, POLES AND UTILITIES AS RESERVED IN THE FINAL ORDER AND DECREE OF CONDEMNATION ENTERED AUGUST 29, 1950 IN ACTION ENTITLED "STATE OF CALIFORNIA VS. GEORGE H. CAPRON AND OTHERS", CASE NO. 52195, SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR ORANGE COUNTY, A CERTIFIED COPY OF SUCH ORDER WAS RECORDED AUGUST 29, 1950 IN BOOK 2063 PAGE 534, OFFICIAL RECORDS AND AS SUCH EASEMENTS ARE SHOWN UPON THE MAP LAST HEREINABOVE MENTIONED AND UPON MAP FILED IN BOOK 60 PAGE 156 OF RECORD OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
11. THE RIGHT OF UNITED CALIFORNIA BANK AND OTHERS TO CONSTRUCT DERRICKS, PUMPS, OIL STORAGE TANKS, PIPELINE(S), POWER LINES AND SUCH OTHER EQUIPMENT, STRUCTURES AND UTILITIES ON EACH OF SAID DRILLING SITES AS MAY BE NECESSARY OR CONVENIENT TO THE PURPOSES OF EXPLORING FOR, DRILLING FOR, AND CARRYING ON OPERATIONS FOR THE EXPLORATION, DISCOVERY AND PRODUCTION OF MINERALS, INCLUDING OIL AND GAS AND OTHER HYDROCARBONS, THE STATE OF CALIFORNIA TO HAVE THE RIGHT TO ENTER UPON SAID EASEMENTS AT SUCH TIME AS MAY BE CONVENIENT FOR ANY PURPOSE THAT WILL NOT INTERFERE WITH THE EXERCISE OF ANY OF THE RIGHTS OF SAID PARTIES (SUCCESSORS TO MARY BANNING NORRIS) AS RESERVED AND PROVIDED IN THE FINAL ORDER OF CONDEMNATION RECORDED AUGUST 29, 1950 IN BOOK 2063 PAGE 534, OFFICIAL RECORDS.

12. ~~THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN NEWPORT DRAINAGE DISTRICT, TALBERT DRAINAGE DISTRICT, AND ORANGE COUNTY FLOOD CONTROL DISTRICT, RELATING TO THE MAINTENANCE, OPERATION, ETC., OF DRAINAGE DITCHES AND UNDERGROUND PIPELINE(S) FOR DRAINAGE OVER A PORTION OF SAID LAND, RECORDED DECEMBER 31, 1957 IN BOOK 4152 PAGE 223, OFFICIAL RECORDS.~~

NOTE 1: RECORDED NOVEMBER 12, 1963 IN BOOK 6799 PAGE 513, OFFICIAL RECORDS IS A QUITCLAIM DEED FROM ORANGE COUNTY FLOOD CONTROL DISTRICT TO THE STATE OF CALIFORNIA FOR CERTAIN RIGHTS CREATED UNDER THE ABOVE AGREEMENT.

NOTE 2: RECORDED APRIL 3, 1973 IN BOOK 10625 PAGE 278, OFFICIAL RECORDS IS A DEED FROM THE STATE OF CALIFORNIA TO THE OFFICIAL RECORDS HARBORS, BEACHES AND PARKS DISTRICT FOR CERTAIN RIGHTS CREATED UNDER THE ABOVE AGREEMENT.

13. AN EASEMENT FOR STORM DRAIN AND INCIDENTAL PURPOSES AS DESCRIBED IN THE DEED TO THE CITY OF COSTA MESA, RECORDED JUNE 17, 1959 IN BOOK 4761 PAGE 550 OFFICIAL RECORDS AND AS PLOTTED ON A MAP FILED IN BOOK 53 PAGES 35 AND 36 OF RECORD OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

~~BY AN AGREEMENT AND GRANT OF EASEMENT, DATED JANUARY 3, 1961, RIGHTS OF THE CITY OF COSTA MESA THEREUNDER REFERRED TO IN SAID AGREEMENT AS "PROJECT D-4" PASSED TO ORANGE COUNTY FLOOD CONTROL DISTRICT; SAID GRANT WAS RECORDED FEBRUARY 3, 1961 IN BOOK 5618 PAGE 338, OFFICIAL RECORDS.~~

14. AN EASEMENT 16 FEET WIDE, IN FAVOR OF SOUTHERN COUNTIES GAS COMPANY AND A 60 FOOT RESERVATION AS SHOWN ON A MAP FILED IN BOOK 53 PAGE 36 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

15. THE EXPRESS CONDITION THAT SAID LAND SHALL BE USED ONLY FOR PARK AND RECREATION PURPOSES FOR A PERIOD OF 25 YEARS, AS CONTAINED IN THE DEED FROM THE STATE OF CALIFORNIA TO ORANGE COUNTY HARBORS, BEACHES AND PARKS DISTRICT RECORDED APRIL 3, 1973 IN BOOK 10625 PAGE 278, OFFICIAL RECORDS.

SAID DEED FURTHER RECITES: "SHOULD SAID EXPRESS CONDITIONS BE VIOLATED, THE STATE OF CALIFORNIA SHALL HAVE THE RIGHT TO RE-ENTER AND TAKE POSSESSION OF THE REAL PROPERTY AND UPON SUCH RE-ENTRY TITLE THEREOF SHALL THEREUPON REVERT TO THE STATE OF CALIFORNIA".

16. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document;

Granted to: COSTA MESA COUNTY WATER DISTRICT AND THE CITY OF HUNTINGTON BEACH, A MUNICIPAL CORPORATION
Purpose: PIPELINE(S)
Recorded: JANUARY 22, 1964 IN BOOK 6894 PAGE 198 OF OFFICIAL RECORDS
Affects: THAT PORTION OF SAID LAND AS DESCRIBED THEREIN

17. **Water rights, claims or title to water**, whether or not disclosed by the Public Records.

18. **A deed of trust** to secure an indebtedness in the amount shown below, and any other obligations secured thereby

Amount: \$3,467,500.00
Dated: 04/02/1973
Trustor: ORANGE COUNTY HARBORS, BEACHES AND PARKS DISTRICT
Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY
Beneficiary: THE STATE OF CALIFORNIA, ACTING THROUGH ITS DIRECTOR, DEPARTMENT OF GENERAL SERVICES
Recorded: APRIL 3, 1973 IN BOOK 10625 PAGE 282 OF OFFICIAL RECORDS
Affects: The herein described land and other land.

19. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document;

Granted to: MESA CONSOLIDATED WATER DISTRICT
Purpose: PIPELINE(S)
Recorded: SEPTEMBER 1, 1989 AS INSTRUMENT NO. 89-471556 OF OFFICIAL RECORDS
Affects: THAT PORTION OF SAID LAND AS DESCRIBED THEREIN

20. **A document** entitled EASEMENT DEED AND AGREEMENT, dated 07/20/1993, executed by THE CITY OF COSTA MESA AND THE COUNTY OF ORANGE, subject to all the terms, provisions and conditions therein contained, recorded JULY 21, 1993 AS INSTRUMENT NO. 0484755 OF OFFICIAL RECORDS.

Reference is hereby made to said document for full particulars.

21. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document;

Granted to: THE COSTA MESA SANITARY DISTRICT
Purpose: SEWER
Recorded: AUGUST 18, 1999 AS INSTRUMENT NO. 19990602863 OF OFFICIAL RECORDS
Affects: THAT PORTION OF SAID LAND AS DESCRIBED THEREIN

22. **Information in possession** of the Company indicates that a division of land, as defined in Government Code Section 66424, is contemplated in the current transaction involving the Land described in this report. Such contemplated division of land would appear to fall within the purview of the Subdivision Map Act (commencing with Government Code Section 66410), and as a prerequisite to the issuance of any title assurance under this application, at least one of the following requirements must be accomplished to this Company's satisfaction:

- (a) That a Final (Tract) Map has been recorded in compliance with the Subdivision Map Act and related ordinances;
- (b) That a Parcel Map has been recorded in compliance with the Subdivision Map Act and related ordinances;
- (c) That a Certificate of Compliance as provided for in the Subdivision Map Act has been recorded, or will be recorded through this application.
- (d) Other evidence, satisfactory to this Company, indicating compliance or nonviolation must be furnished.

END OF ITEMS

NOTES

1. **NOTE:** The policy of title insurance will include an arbitration provision. The Company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.
2. **NOTE:** Amended Civil Code Section 2941, which becomes effective on January 1, 2002, sets the fee for the processing and recordation of the reconveyance of each Deed of Trust being paid off through this transaction at \$45.00. The reconveyance fee **must** be clearly set forth in the Beneficiary's Payoff Demand Statement ("Demand"). In addition, an assignment or authorized release of that fee, from the Beneficiary to the Trustee of record, must be included. An example of the required language is as follows:

"The Beneficiary identified above hereby assigns, releases or transfers to the Trustee of record, the sum of \$45.00, included herein as 'Reconveyance Fees', for the processing and recordation of the Reconveyance of the Deed of Trust securing the indebtedness covered hereby, and the escrow company or title company processing this pay-off is authorized to deduct the Reconveyance Fee from this Demand and forward said fee to the Trustee of record or the successor Trustee under the Trust Deed to be paid off in full."

In the event that the reconveyance fee and the assignment, release or transfer thereof are **not** included within the demand statement, then Ticor Title Company may decline to process the reconveyance and will be forced to return all documentation directly to the Beneficiary for compliance with the requirements of the revised statute.
3. If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.
4. There are NO deeds affecting said land recorded within twenty-four (24) months of the date of this report.
5. The charge for a policy of title insurance, when issued through this title order, will be based on the Basic (not Short-Term) Title Insurance Rate.
6. The current owner does **NOT** qualify for the \$20.00 discount pursuant to the coordinated stipulated judgments entered in actions filed by both the Attorney General and private class action plaintiffs for the herein described property

NOTES (CONTINUED)

WIRE INSTRUCTIONS - EFFECTIVE JUNE 1, 2003

When funds are wired to Ticor Title Company, please use the instructions below:

Comerica Bank 9920 La Cienega Blvd. 11 th Floor Inglewood, CA 90301	ABA (routing number) 121 137 522 Account No: 1891609099 Account Name: Ticor Title Company Trust Account
Please credit Ticor Title Company - Title Unit 12 and reference our title order number to avoid return of funds	

Funds received by Ticor Title Company via wire transfer may be disbursed upon receipt. Funds received by this Company via cashier's check or teller's check may be disbursed on the next business day after the day of deposit. **If escrow funds (including shortage checks) are disbursed to this company other than by wire transfer, cashier's check or teller's check, disbursement and/or closing will be delayed 3 to 7 business days.** Questions concerning deposit and/or disbursement of escrow and sub-escrow funds and recording should be directed to your title officer, escrow officer or loan payoff officer.

Outgoing wire transfers will not be authorized until we have confirmation of our recording and one (1) of the following:

- A. We have received confirmation of the respective incoming wire.
- B. Collection of a deposited check.

PAYOFF INFORMATION

NOTE: This company **DOES** require current beneficiary demands prior to closing. If the demand is expired and a current demand cannot be obtained, our requirements will be as follows:

If this Company accepts a verbal update on the demand, we may hold an amount equal to one monthly mortgage payment. This hold will be over and above the verbal hold the lender may have stipulated.

If this Company cannot obtain a verbal update on the demand, we will either pay off of the expired demand, or wait for the amended demand, at the discretion of the escrow.

NOTE: On any open Line-of-Credit or Equity Credit Line loans: Ticor Title Company will require the borrower to turn in any unused checks to the lender and do whatever is necessary to have the lender freeze or terminate the account, otherwise their demand makes us responsible for any checks or cash withdrawals that are outstanding and we will be forced to hold the difference between the principal and the maximum that can be borrowed until the lender has received our payoff check and the account is zeroed.

END OF NOTES

Cindy Fern/JK

Ticor Title Company
Fidelity National Financial Group of Companies' Privacy Statement (Rev. July 1, 2001)

We recognize and respect the privacy expectations of today's consumers and the requirements of applicable federal and state privacy laws. We believe that making you aware of how we use your non-public personal information ("Personal Information"), and to whom it is disclosed, will form the basis for a relationship of trust between us and the public that we serve. This Privacy Statement provides that explanation. We reserve the right to change this Privacy Statement from time to time consistent with applicable privacy laws.

In the course of our business, we may collect Personal Information about you from the following sources:

- From applications or other forms we receive from you or your authorized representative;
- From your transactions with, or from the services being performed by, us, our affiliates, or others;
- From our internet web sites;
- From the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others; and
- From consumer or other reporting agencies.

Our Policies Regarding the Protection of the Confidentiality and Security of Your Personal Information

We maintain physical, electronic and procedural safeguards to protect your Personal Information from unauthorized access or intrusion. We limit access to the Personal Information only to those employees who need such access in connection with providing products or services to you or for other legitimate business purposes.

Our Policies and Practices Regarding the Sharing of Your Personal Information

We may share your Personal Information with our affiliates, such as insurance companies, agents, and other real estate settlement service providers. We also may disclose your Personal Information:

- to agents, brokers or representatives to provide you with services you have requested;
- to third-party contractors or service providers who provide services or perform marketing or other functions on our behalf; and
- to others with whom we enter into joint marketing agreements for products or services that we believe you may find of interest.

In addition, we will disclose your Personal Information when you direct or give us permission, when we are required by law to do so, or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

One of the important responsibilities of some of our affiliated companies is to record documents in the public domain. Such documents may contain your Personal Information.

Right to Access Your Personal Information and Ability to Correct Errors or Request Changes or Deletion

Certain states afford you the right to access your Personal Information and, under certain circumstances, to find out to whom your Personal Information has been disclosed. Also, certain states afford you the right to request correction, amendment or deletion of you Personal Information. We reserve the right, where permitted by law, to charge a reasonable fee to cover the costs incurred in responding to such requests.

All requests must be made in writing to the following address:

Ticor Title Company Privacy Compliance Officer
Fidelity National Financial, Inc.
601 Riverside Avenue
Jacksonville, FL 32204.

Multiple Products or Services

If we provide you with more than one financial product or service, you may receive more than one privacy notice from us. We apologize for any inconvenience this may cause you.

Notice

You may be entitled to receive a \$20.00 discount on escrow services if you purchased, sold or refinanced residential property in California between May 19, 1995 and November 1, 2002. If you had more than one qualifying transaction, you may be entitled to multiple discounts.

If your previous transaction involved the same property that is the subject of your current transaction, you do not have to do anything; the Company will provide the discount, provided you are paying for escrow or title services in this transaction.

If your previous transaction involved property different from the property that is the subject of your current transaction, you must inform the Company of the earlier transaction, provide the address of the property involved in the previous transaction, and the date or approximate date that the escrow closed to be eligible for the discount.

Unless you inform the Company of the prior transaction on property that is not the subject of this transaction, the Company has no obligation to conduct an investigation to determine if you qualify for a discount. If you provide the Company information concerning a prior transaction, the Company is required to determine if you qualify for a discount.

Request for \$20.00 Discount – CA Settlement

Use one form for each qualifying property.

To:	Ticor Title Company, 18302 Irvine Blvd, Suite 100, Tustin, CA 92780
Date:	
From: (name)	
Current Address:	
	I believe that I am qualified for the \$20.00 discount pursuant to the coordinated stipulated judgments entered in actions filed by both the Attorney General and private class action plaintiffs. I have not previously received a cash payment or a discount from another Company on the property described below. Signed: _____ Date: _____
Address of qualifying property:	
Approximate date of transaction:	

THIS SECTION IS FOR COMPANY USE ONLY.

- The above referenced party is entitled to receive a \$20.00 discount on escrow services or title insurance pursuant to the coordinated stipulated judgments entered in actions filed by both the Attorney General and private class action plaintiffs.

OR

- The above referenced party does NOT qualify for the \$20.00 discount pursuant to the coordinated stipulated judgments entered in actions filed by both the Attorney General and private class action plaintiffs for the following reason:
 - The party has previously received credit for the transaction described above.
 - The transaction described above did not occur in the time period allowed by the stipulated judgments — May 19, 1995 to November 1, 2002.

Fax this response to:

Escrow No:	
Escrow Officer:	
Fax Number:	

ATTACHMENT ONE

AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

- land use
- improvements on the land
- land division
- environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at policy date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:

- a notice of exercising the right appears in the public records on the Policy Date
- the taking happened prior to the Policy Date and is binding on you if you bought the land without knowledge of the taking

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and the expenses resulting from:

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any easements or liens not shown by the public records. This does not limit the lien coverage in Item 8 of Covered Title Risks.

3. Title Risks:

- that are created, allowed, or agreed to by you
- that are known to you, but not to us, on the Policy Date — unless they appeared in the public records
- that result in no loss to you
- that first affect your title after the Policy Date — this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:

- to any land outside the area specifically described and referred to in Item 3 of Schedule A
- or
- in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

3. Any facts about the land which a correct survey would disclose and which are not shown by the public records. This does not limit the forced removal coverage in Item 12 of Covered Title Risks.

4. Any water rights or claims or title to water in or under the land, whether or not shown by the public records.

**ATTACHMENT ONE
(CONTINUED)**

**CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY – 1990
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**SCHEDULE B, PART I
EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

**ATTACHMENT ONE
(CONTINUED)**

**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)
WITH A.L.T.A. ENDORSEMENT-FORM 1 COVERAGE
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or
- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**ATTACHMENT ONE
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records;
(b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

**ATTACHMENT ONE
(CONTINUED)**

**AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92)
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy, or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**ATTACHMENT ONE
(CONTINUED)**

**2006 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;

- (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
 5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records;
- (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

**ATTACHMENT ONE
(CONTINUED)**

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
 - a. building
 - b. zoning
 - c. Land use
 - d. improvements on Land
 - e. Land division
 - f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.

This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
 - a. notice of exercising the right appears in the Public Records at the Policy Date; or

- b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.

4. Risks:

- a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
- b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
- c. that result in no loss to You; or
- d. that first occur after the Policy Date – this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.

5. Failure to pay value for Your Title.

6. Lack of a right:

- a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
- b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16 and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 14:	1.00% of Policy Amount or \$2,500.00 (whichever is less)	\$10,000.00
Covered Risk 15:	1.00% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 16:	1.00% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 18:	1.00% of Policy Amount or \$2,500.00 (whichever is less)	\$ 5,000.00

**ATTACHMENT ONE
(CONTINUED)**

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvements now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or
- (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.
7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:
 - (a) The time of the advance; or
 - (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.
9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.



TICOR TITLE COMPANY
OF CALIFORNIA

18302 Irvine Blvd, Suite 100
Tustin, CA 92780
(714) 289-3300

TRANSMITTAL

TITLE OFFICER: Cindy Fern
ORDER NO.: 897941-12
DATE: April 21, 2008 3:02 PM

PHONE: (714) 289-3306
EMAIL: cfern@ticortitle.com
FAX: (714) 289-7105

Attn:
Your Ref:

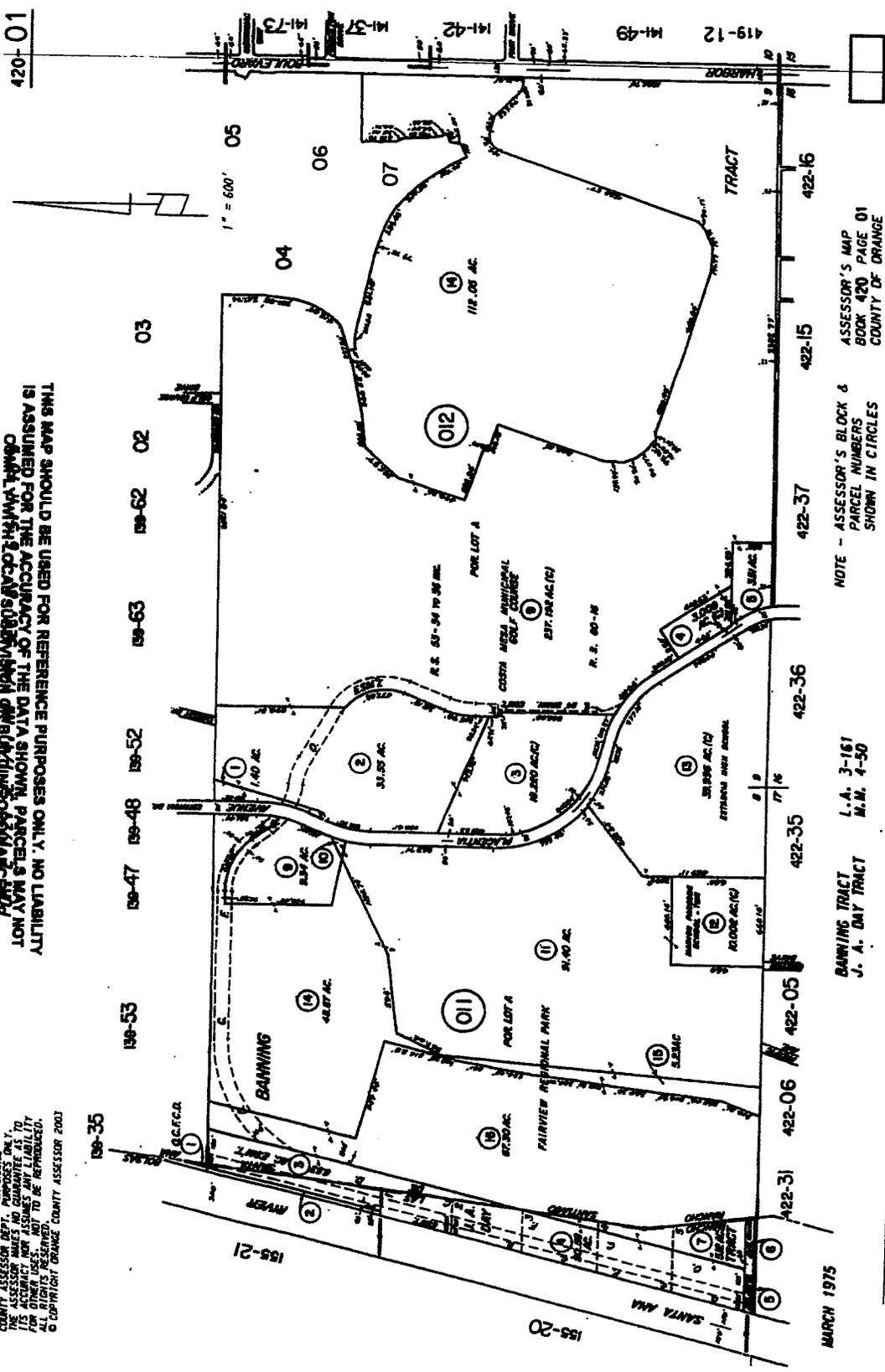
PROPERTY ADDRESS: FAIRVIEW PARK, COSTA MESA, CA
BORROWER:

Enclosed please find your Preliminary Report.

Thank you - we appreciate your business!

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NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

BANNING TRACT J. A. DAY TRACT L.A. 3-161 N.M. 4-50

MARCH 1975

EXHIBIT E

