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**Malibu Creek Ecosystem Restoration Study**  
**Los Angeles and Ventura Counties, California**  
**Appendix G**  
**Real Estate**



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**U.S. Army Corps of Engineers**  
**Los Angeles District**



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January 2017

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## 1.0 INTRODUCTION

This appendix is prepared in accordance with Engineering Regulation (ER) 405-1-12, 12-16, Real Estate Plan, and presents the real estate requirements for the Malibu Creek Ecosystem Restoration Study Tentatively Selected Plan (TSP), described below. The California Department of Parks and Recreation (CDPR) is the non-Federal sponsor for the study.

In this Real Estate Plan, an appendix to the Integrated Feasibility Report, the USACE must, for each project purpose and feature, fully describe the lands, easements, and rights-of-way, relocations, and disposal sites (LERRD) required for construction, operation, and maintenance of the project, including the acreage, estates, number of tracts/parcels, ownership, and estimated value. The Corps must include other relevant information on sponsor ownership of land, proposed non-standard estates, existing Federal projects and ownership, required relocations under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (P.L. 91-646, as amended) (“the Uniform Act”), presence of contaminants, and other issues as required by ER 405-1-12. This real estate plan is tentative in nature for planning purposes only and both the final real estate acquisition lines and the estimate of value are subject to change even after approval of the report.

### 1.1 Study Authority

The study is undertaken in partial response to the Resolution adopted by the House Committee on Public Works and Transportation, dated February 5, 1992. Federal interest in the study hinges upon restoration of the Malibu Creek ecosystem to benefit native fish and wildlife.

### 1.2 Planning Objectives/Project Purpose

The following planning objectives were developed for the study:

1. Establish a more natural sediment transport regime from the watershed to the Southern California shoreline in the vicinity of Malibu Creek within the next several decades.
2. Reestablish habitat connectivity along Malibu Creek and tributaries in the next several decades to restore migratory access to former upstream spawning areas for indigenous aquatic species and allow for safe passage for terrestrial species from the Pacific Ocean to the watershed and broader Santa Monica Mountains National Recreation Area.
3. Restore aquatic habitat of sufficient quality along Malibu Creek and tributaries to sustain or enhance indigenous populations of aquatic species within the next several decades.

Currently, habitat connectivity in lower Malibu Creek is blocked by Rindge Dam and several other barriers on the tributaries of Cold Creek and Las Virgenes Creek. Rindge Dam was built in 1926 by the Rindge family and was constructed to hold and supply water to the Rindge Family Ranch. The dam was decommissioned in 1967. In 1984, the State of California purchased 960 acres in Malibu Canyon, including Rindge Dam, which is now part of Malibu Creek State Park and managed by the non-Federal sponsor, the State of California

Department of Parks and Recreation. Over the years, approximately 780,000 cubic yards of sediment have filled the reservoir behind the dam. Rindge Dam is the most significant barrier to restoring habitat connectivity in lower Malibu Creek.

Habitat connectivity upstream of Rindge Dam is impeded by eight (8) barriers, which along with Rindge Dam are the focus of the study. Addressing Rindge Dam and the additional upstream barriers addresses the planning objectives.

### 1.3 Study Area and Project Location

The study area is located approximately 30 miles west of downtown Los Angeles, California. Approximately two-thirds of the Malibu Creek watershed is located within northwestern Los Angeles County and the remaining one-third is in southeastern Ventura County. The watershed footprint covers approximately 110 square miles of the Santa Monica Mountains and Simi Hills. A large portion of the Malibu Creek watershed is located in Malibu State Park, which is managed by the State of California Department of Parks and Recreation. The park boundary extends from Malibu Lagoon, along Malibu Creek and several tributaries to a large open space area in the middle of the watershed. Malibu Creek, from Malibu Dam to its mouth, is part of the Malibu Creek State Park. This reach is the focus of the restoration objectives investigated in this study. Rindge Dam is located approximately three (3) miles from the mouth of Malibu Creek, is the largest disruption to stream flow and aquatic/terrestrial habitat connectivity along the Malibu Creek watershed. Rindge Dam severely hinders the accessibility of approximately six (6) miles of good to excellent aquatic habitat. The dam is a concrete arch structure 108 feet in height with an arc length of 140 feet at its crest (excluding spillway & rock outcrop) and 80 feet at its base. No reservoir capacity exists behind Rindge Dam due to approximately 780,000 cubic yards of sediment impounded behind the dam. The impounded sediment has been classified into three (3) types:

- **Unit 1** - The top layer is composed of fluvial deposition which contains sand, gravel, cobbles and larger rocks. Unit 1 materials account for 277,000 cubic yards of impounded sediment (See Geotechnical Appendix for more details).
- **Unit 2** - The sand-dominant middle layer comprises approximately 273,000 cubic yards of the total volume of impounded sediment (See Geotechnical Appendix for more details).
- **Unit 3** – The bottom layer sediment is a silt-clay dominant layer, which accounts for 230,000 cubic yards of total impounded sediment (See Geotechnical Appendix for more details).
- 

While Rindge Dam (MC1) is the most significant barrier blocking habitat connectivity throughout the watershed, the study identifies eight (8) additional barriers (CC1, CC2, CC3, CC5, LV1, LV2, LV3, and LV4) in the form of dams, culverts, and stream crossings as interfering with habitat connectivity upstream of Rindge Dam along Cold Creek and Las Virgenes Creek.

The study area and project location also include placement locations for the mostly sands layer of impounded sediment, at either a shoreline or nearshore site along the coast as further described below.

## **1.4 NER & LIKELY LPP PLANS**

### **1.4.1 *NER Plan***

The PDT identified Alternative 2d1 as the NER Plan, and identified it as the Tentatively Selected Plan (TSP) in the absence of an approved Locally Preferred Plan (LPP). This plan includes the removal of the Rindge Dam arch concurrent with the removal of the estimated 780,000 cubic yards of impounded sediment, and the removal or modification of eight (8) upstream barriers on Cold Creek and Las Virgenes Creek tributaries to Malibu Creek, providing substantial ecosystem benefits and best meeting the planning objectives described above. The plan also includes placement of beach compatible sediment at the shoreline adjacent to the Malibu Pier Parking Lot, temporarily utilizing upland Site “F” for the mostly sands (Unit 2) layer before delivery to the shore and utilizing the Pier Parking Lot as a staging area for placement, and use of the Calabasas Landfill for disposal of the nearly two-thirds of the remaining amount of impounded sediment. The TSP is the plan addressed in detail in this Real Estate Plan. A full description of the TSP is included in the IFR in section 1.9.

### **1.4.2 *LPP Plan***

The Sponsor has indicated its intent to pursue Alternative 2b2 as a Locally Preferred Plan (LPP). The likely LPP is the same as the NER Plan in regards to actions described for the Rindge Dam arch and impounded sediment area. The strategy for modification and removal of the upstream barriers also remains the same. The differences include the method of transport and placement location of the mostly sands, with nearshore placement of the sands by barges, and adding the removal of the Rindge Dam spillway. The ecological outputs remain the same for this alternative when compared to the TSP, but the costs increase by about \$12,000,000. The likely LPP includes direct transport of the mostly sands layer removed from the Rindge Dam impounded sediment area up Malibu Canyon Road, U.S. Highway 101 and the Ventura Harbor about 41 miles away from the dam. Material would be offloaded from the trucks and placed on barges to be transported to the Malibu shoreline, to the east of the pier. Nearly two-thirds of the estimated impounded sediment would still be trucked about 7.4 miles each way from the impounded sediment site to the Calabasas landfill. The truck to barge approach does not require temporary use of upland storage Site F or the Malibu Pier parking lot. If this alternative were to be identified as the Recommended Plan in the Final IFR, this Real Estate Plan would address it in detail.



Table 1.4-1 LER REQUIRED FOR THE TSP

FEATURE/ REQUIREMENT	APN	TYPE OF INTEREST	AREA NEEDED FOR PROJECT (AC)	OWNER
Rindge Dam	Unavailable	Fee	38.00	State of California
Sheriff's Overlook	unavailable	Temp. Work Area Easement (Staging Area)	0.500	State of California
CC1	4456-008-901	Temp. Work Area Easement (Staging Area)	0.502	State of California
	4456-008-903	Fee	0.203	State of California
	4456-005-001	Fee	0.136	Private
	4456-005-014	Fee	0.068	Private
CC2	4456-003-013	Temp. Work Area Easement (Staging Area)	0.230	Private
	4456-003-027	Fee	0.170	Private
	4456-004-004	Fee	0.085	Private
CC3	4456-003-013	Temp. Work Area Easement (Staging Area)	0.230	Private
	4456-003-002	Fee	0.170	Private
	4456-003-027	Fee	0.085	Private
CC5	4455-036-900	Permanent Ecosystem Restoration Easement	0.140	L.A. County
LV1	Unavailable	Temp. Work Area Easement (Staging Area)	0.129	State of Calif.
	Unavailable	Fee	0.104	State of Calif.
	Unavailable	Fee	0.035	State of Calif.
LV2	2063-010-902	Temp. Work Area Easement (Staging Area)	0.230	State of California
		Fee	0.010	State of California
LV3 & LV4	2063-009-904	Temp. Work Area Easement (Staging Area)	0.502	City of Calabasas
	2063-009-903	Permanent Ecosystem Restoration Easement	1.543	City of Calabasas
	2063-034-900	Permanent Ecosystem Restoration Easement	3.792	City of Calabasas
	2064-004-075	Permanent Ecosystem Restoration Easement	1.093	City of Calabasas

Table 1.4-2 BEACH PLACEMENT

FEATURE/ REQUIREMENT	APN	TYPE OF INTEREST	AREA NEEDED FOR PROJECT (AC)	OWNER
Pier Parking Lot Staging Area	Unavailable	Temporary Construction Easement (Staging Area)	0.600	State of California
Placement of Sand at Shoreline Area	Unavailable	Temporary Construction Easement	1.1 (total for both LA County and CSLC)	L.A. County & Calif. State
Adjacent to Pier Parking Lot Area		Lease		Lands Commission
Site "F"	2063-011-901	Temp. Work Area Easement (Temporary Storage and Processing of Beach Compatible Material)	12.084	State of California

## 2.0 TSP FEATURES AND ASSOCIATED REAL ESTATE REQUIREMENTS

### 2.1 RINDGE DAM AND IMPOUNDED SEDIMENT REMOVAL

Under the TSP, Rindge Dam and the impounded sediment behind the dam will be removed and the site restored. Prior to construction at the dam, site preparation will include vegetation removal around the dam structure and in temporary construction/staging areas, the installation of a dewatering system, and the construction of two access ramps for hauling sediment and other disposable materials from the dam site. The dewatering system will include building a 5-foot coffer dam, water pumps, water wells, piping and a sump pond. Dewatering is needed due to regularly scheduled discharges from the Tapia Water Treatment Plant just upstream of Rindge Dam. The dewatering system will be located at the upstream end of the sediment excavation area to collect inflowing water. Dewatering pumps and piping will be installed through the impoundment area and will be left in place until the sediment has been completely removed. The Sponsor owns in fee all lands needed for temporary dewatering operations at the dam. The Sponsor and the Army Corps of Engineers will communicate with the Tapia Water Treatment Plant to ensure that scheduled discharges upstream of the dam do not substantially impact the construction schedule.

In addition to dewatering at the dam, the perimeter of the reservoir area, the delta, and upstream sites will be stripped of vegetation and debris (e.g. dead vegetation, boulders, and other obstructions to moving around the site) to allow site access. All areas which require stripping due to construction related activities at the dam are owned in fee by the sponsor.

The site access plan for Rindge Dam requires two ramps: one ramp for trucks heading to the landfill to the north and one ramp for trucks heading south to site "F" and the beach disposal site. The existing 12 foot southbound access ramp near Rindge Dam will be expanded to 15 feet and the grading will be reduced to 15% to allow truck/equipment access into the

sediment impoundment area. Construction on the existing southbound ramp will require the use of 55,000 CY of Unit 1 fill material. A 30-ft wide northbound ramp will be constructed to provide for two-way truck traffic and will have a maximum grade of 15%. The new ramp will require 41,000 cubic yards of fill material and will be 730 feet long. Staging for construction at the dam will occur at an area known as Sheriff's Overlook, located above the canyon along Malibu Canyon Road.

Areas disturbed as a result of project construction will be restored by replanting and re-vegetation of native plant species and will be operated and maintained by the sponsor. In summary, the LER required for the Rindge Dam site includes 38 acres in fee for construction, operation and maintenance of the project. In addition, the TSP includes interpretive signage, which is projected to be placed at the Sheriff's overlook site at an existing parking pullout location (also used for staging). The interpretive signage placement will require minimal land in fee (<0.01 acre) for operation and maintenance by the sponsor.

#### Upstream Barrier Removal/Modification

As described above, eight (8) upstream barriers would be removed or modified as part of the TSP. Site preparation for the construction associated with the 8 upstream barriers will be similar to that used at the Rindge Dam site. Vegetation clearance will be necessary prior to construction for all of the upstream barriers. Dewatering activities could be required, depending on water flows. For all of the upstream barriers except for LV2, Cold Creek and Las Virgenes Creek stream flows will be diverted during construction. Each of these upstream barriers, the ownership of the barriers, and their treatment for the project is described below.

1

Barrier Symbol	Barrier Name	Barrier Owner	Type of Interest Held by Barrier Owner	Barrier Description	LERRD Requirements	Proposed Restoration Summary
CC1	Pioma Culvert	Los Angeles County	Perpetual Easement	CC1, Pioma Culvert, is a wide corrugated metal pipe (CMP) arch culvert with a concrete invert. Pioma Rd. passes over the structure and provides access to homes throughout the hills.	Provide fee and relocate culvert/bridge—Anticipated replace with a 12 ft. long, 46 ft. wide pre-cast arch culvert with a soft bottom. Demo of existing culvert/invert.  <u>TWAE - 0.502 ac.</u> <u>Fee - 0.407 ac.</u>	Restore natural channel -- regrade creek bed to address the drop/restore habitat in place of concrete invert.
CC2	Malibu Meadows Road Crossing	Malibu Meadows Homeowner's Association	Perpetual Easement	CC2, Malibu Meadows Road Crossing, is a steel beam bridge with a wood deck. The bridge is part of Malibu Meadows Road which is a narrow two lane road that serves homes throughout the hills.	Acquisition of fee and to address impairment of access, provide bridge replacement.  <u>TWAE – 0.230 ac.</u> <u>Fee - 0.255 ac.</u>	Remove concrete slab impeding aquatic connectivity, regrade channel to address drop, and restore habitat.

<p><b>CC3</b></p>	<p><b>Crater Camp Road Crossing</b></p>	<p>Malibu Meadows Homeowner's Association</p>	<p>Perpetual Easement</p>	<p>CC3, Crater Camp Road Crossing, is steel beam bridge with a wood deck. The bridge is part of Crater Camp Road which is a narrow road that serves homes throughout the hills.</p>	<p>Acquisition of fee, and to address impairment of access, provide bridge replacement.</p> <p><u>TWAE – 0.230 ac.</u> <u>Fee - 0.255 ac.</u></p>	<p>Remove concrete invert impeding aquatic connectivity, regrade channel to address drop, and restore habitat.</p>
<p><b>CC5</b></p>	<p><b>Cold Canyon Road Culvert</b></p>	<p>Los Angeles County</p>	<p>Fee</p>	<p>CC5, Cold Canyon Road Culvert is a concrete culvert along Cold Creek underneath Cold Canyon Road. Cold Canyon Road is a two lane rural road that serves homes in the mountains.</p>	<p>Provide permanent easement to allow modification of culvert to construct low flow channel and right for sponsor to maintain in accordance with project.</p> <p><u>Permanent Ecosystem Restoration Easement – 0.140 ac.</u></p>	<p>Construct a low flow channel through the existing culvert</p>
<p><b>LV1</b></p>	<p><b>Crags Road Culvert Crossing</b></p>	<p>State of California</p>	<p>Fee</p>	<p>LV1, Crags Road Culvert is a concrete, double barrel culvert located along Las Virgenes Creek. It currently serves as a</p>	<p>Sponsor provides land in fee for project and performs relocation: replace crossing with a pre-manufactured 75 ft. long, 20 ft. wide clear span bridge. Relocation includes demo cost.</p> <p><u>TWAE – 0.129</u> <u>Fee - .139</u></p>	<p>Restore natural channel -- regrade creek bed/restore habitat in place by removing two corrugated metal pipes and bridge structure.</p>

				road crossing for maintenance vehicles and emergency access for Malibu State Park and fire trucks as well as for recreational users.		
LV2	White Oak Dam	State of California	Fee	LV2, White Oak Dam is small diversion dam that is 6 ft. high and spans 87 ft. across Las Virgenes Creek. It was originally built to collect water for agricultural use. Dam is no longer in use.	Provide land in fee to project. TWAE – 0.230 ac. Fee - 0.010 ac.	Remove the dam in stages and restore cleared areas once removal complete.
LV3	Lost Hills Road Culvert	Los Angeles County Fee Owner – City of Calabasas	Perpetual Easement	LV3, Los Hills Road Culvert is a concrete box culvert with four openings. Los Hills Road is a four lane road that passes over the culvert and through a densely	Provide permanent easement to allow modification of culvert to construct low flow channel and right for sponsor to maintain in accordance with project.  (acreage for LV3 & LV4 combined – refer to info. in LV4).	Construct a low flow channel through the existing culvert.

				developed residential area.		
LV4	Meadow Creek Lane Crossing	Los Angeles County Fee Owner – City of Calabasas	Perpetual Easement	LV 4, Meadow Creek Lane Crossing, located 930 ft. upstream of LV3, is a concrete culvert with four openings. Meadow Creek Lane is a two lane road that passes over the culvert and it serves as one of two points of entry into a densely developed residential neighborhood.	Provide permanent easement to allow modification of culvert to construct low flow channel and right for sponsor to maintain in accordance with project.  <u>LV 3&amp;4</u> <u>TWAE – 0.502</u> <u>Permanent Ecosystem Restoration Easement – 6.428 ac.</u>	Construct a low flow channel through the existing culvert.

1

1 **2.2 DISPOSAL OF DAM MATERIAL AND UNITS 1 & 3 EXCAVATED SEDIMENT**  
 2 **TO LANDFILL**  
 3

4 Project assumptions include a least-cost disposal plan that includes disposal capacity for  
 5 the deconstructed dam and excavated sediment that is not beach-compatible being  
 6 provided by the contractor through use of commercial facilities (Calabasas Landfill, a  
 7 commercial disposal site operated by the Los Angeles County Sanitation District  
 8 (“LACSD”), 8 mi upstream of the Rindge Dam site. The PDT fully investigated several  
 9 other disposal sites that would have required acquisition of LER and all were eliminated  
 10 as infeasible or impracticable as described in the IFR. The cost for commercial disposal  
 11 facilities (estimated tipping fees) was captured in the cost appendix as a construction cost  
 12 item. Therefore, the only LER for disposal of impounded sediment is at the beach  
 13 placement site.

14  
 15 **2.3 BEACH PLACEMENT OF COMPATIBLE SEDIMENT**  
 16

17 The Unit 2 (sand dominant) materials will be placed at the beach. During the summer, the  
 18 mostly sands Unit 2 material will be temporarily placed at Upland Site “F” (owned by the  
 19 Sponsor). Upland Site F is 12.084 acres. During the non-peak season for beach and  
 20 general recreation use in Malibu (after Labor Day and before Memorial Day) the mostly  
 21 sands from the prior season of construction will be transported from Upland Site “F” to the  
 22 Malibu Pier parking lot, offloaded in the parking lot and placed along the shore in front of  
 23 the parking lot. Material excavated from the dam site during this time will be delivered  
 24 directly to the Malibu Pier parking lot. Malibu Pier parking lot is .600 acres. Use of the  
 25 entire parking lot is needed for about twelve months over a three year period.  
 26

27 The area for beach placement is approximately 1.1 acres. The beach placement site  
 28 adjacent to the Malibu Pier Parking Lot is anticipated to be mostly above the Mean High  
 29 Tide Line (MHTL) with a portion sloping below the MHTL. The land above the MHTL upon  
 30 which the sand dominant materials will be placed is owned by Los Angeles County (Malibu  
 31 Surfrider Beach). A temporary work area easement will be required for beach placement  
 32 on Los Angeles County property. Beach placement is anticipated to be limited to the area  
 33 above the Mean High Tide Line (MHTL). For the portion of the placement below the MHTL,  
 34 a short term lease will be required from the California State Lands Commission, which has  
 35 ownership jurisdiction from the MHTL waterward. A MHTL survey may be needed to  
 36 confirm placement location.  
 37

38 **2.4 Summary of LER requirements for the TSP**  
 39

40 **2.4.1 *Standard Estates***  
 41

42 The standard estate for ecosystem restoration is fee. Fee is anticipated to be provided for  
 43 all restoration sites except for restoration at upstream barriers CC5, LV3, and LV4. The  
 44 proposed non-standard estate for these areas is discussed below in section 4, Non-  
 45 Standard Estates.  
 46

47 The standard estate for staging areas is Standard Estate #15, Temporary Work Area  
 48 Easement.  
 49



1 Regarding the estate for the placement of sands at the beach site, LA County property  
 2 extends from the end of Parks property to the Mean High Tide Line of the Pacific Ocean.  
 3 The standard estate for this area is a Standard Estate #15. CSLC jurisdiction is below the  
 4 Mean High Tide Line. The estate for this area is a short-term lease.  
 5

### 6 ***Acreage***

7  
 8 Approximately 61.741 acres of LER will be required for the project.  
 9

### 10 Rindge Dam

11  
 12 The sponsor owns the 38.00 acres in fee needed for the restoration at the Rindge Dam  
 13 site, including removal of the Rindge Dam arch and the excavation of impounded sediment  
 14 behind the dam.  
 15

### 16 Sherriff's Overlook

17  
 18 The sponsor owns the .50 acres needed for a temporary work area easement for the  
 19 staging area.  
 20

### 21 Restoration at the Eight Upstream Barriers (CC1, CC2, CC3, CC5, LV1, LV2, LV3 & LV4)

22  
 23 Restoration at the 8 upstream barriers requires the following acreage (refer to table 1.4-1  
 24 for more detailed information):

25 Fee – 1.066 acres (sponsor owns .352 acres)

26 Temporary Work Area Easement – 1.823 acres (sponsor owns .861 acres)

27 Permanent Ecosystem Restoration Easement – 6.568 acres  
 28

### 29 Beach Placement

30  
 31 The areas needed for beach placement are comprised of:

32 Temporary Work Area Easements - 12.684 acres at the Pier Parking Lot (.60 acres)  
 33 and site "F" (12.084 acres).

34 Temporary Work Area Easement and Lease – 1.1 acres – This is a combined size  
 35 for the placement of sand at the shoreline area on land owned by L.A. County  
 36 (TWAE) and the California State Lands Commission (lease). The CSLC owns the  
 37 area beyond the MHTL.  
 38

## 39 **3.0 SPONSOR-OWNED REAL ESTATE**

### 40 **3.1 UPSTREAM AREA**

41  
 42  
 43 The Sponsor owns 52.397 acres of the LERRD required to execute the tentatively selected  
 44 plan. Thirty-eight (38) acres will be required in fee for construction, operation and  
 45 maintenance of the dam site restoration feature. Approximately 13.445 acres will be  
 46 required for staging and construction throughout the dam/sediment removal process. This  
 47 total includes site "F".  
 48

49 The sponsor also owns .352 acres of land, needed for the project, beneath the Craggs  
 50 Road Culvert (LV1), White Oak Dam (LV2), and part of the Piuma Culvert (CC1) land.

1  
2  
3 **3.2 DOWNSTREAM AREA**  
4

5 The Malibu Pier parking lot, also owned by the CDPR, will be used as a temporary staging  
6 area for twelve months over a 3-year period, excluding the non-peak season. The square  
7 footage of the parking lot is approximately 0.60 acres.

8  
9 **3.2.1 Summary**

10  
11 A summary of sponsor-owned LER is shown in the **Table 3.2-1** below. None of the lands  
12 identified in this section have been used, or credited to the sponsor in conjunction with  
13 another federal project.

14  
15 Table 3.2-1 Summary of Sponsor-owned LER

Feature or requirement	Interest	Acreage Needed
Rindge Dam (MC1)	Fee	38.00
Pioma Culvert (CC1)	TWAE	.502
	Fee	.203
Malibu Meadows Road (CC2)	-----	-----
Crater Camp (CC3)	-----	-----
Cold Canyon Road Culvert (CC5)	-----	-----
Crags Road Culvert (LV1)	TWAE	.129
	Fee	.139
White Oak Dam (LV2)	TWAE	.230
	Fee	.010
(LV3 (Lost Hills Road Culvert) & LV4 Meadow Creek Lane)	-----	-----
Sherriff's Overlook	TWAE	.500
Pier Parking Lot Staging Area	TWAE	.600
Site "F"	TWAE	12.084
<b>Total Project Acreage Owned by the Sponsor</b>		<b>52.397</b>

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#### 4.0 PROPOSED NON-STANDARD ESTATES

The standard estate for an ecosystem restoration project is fee simple. The USACE has assessed that there are instances where the project requirement is to modify a barrier for which the barrier owner is a public entity and holds either fee or easement. In these cases, fee may be difficult to acquire and an easement could satisfy the project needs. These sites are CC5, LV3, and LV4, as described above.

USACE has reviewed the standard estates provided in exhibit 5-29 to EC 405-1-11, which have been incorporated into ER 405-1-11, and determined that the standard estates provided, other than the fee simple estate, do not include sufficient rights to establish, operate and maintain an ecosystem restoration project. Therefore, a perpetual ecosystem restoration easement would be the most efficient means of satisfying the real estate requirements necessary to support the project at these barrier sites. Both the USACE and CDPR will coordinate with the fee owner and existing easement holder, where relevant, on specific perpetual ecosystem restoration easement language. Sample language is attached to this document as **Attachment A**. As required by ER 405-1-12, the specific language of the proposed perpetual ecosystem restoration easement, once fully negotiated, will be submitted for approval separate from this Real Estate Plan to HQUSACE through SPD.

A portion of the beach placement site would also require a non-standard estate. The beach placement site adjacent to the Malibu Pier Parking Lot is anticipated to be mostly above the Mean High Tide Line (MHTL) with a portion sloping below the MHTL. A MHTL survey may be needed to confirm placement location. Lands determined to be below the MHTL are sovereign lands of the State of California and are under the jurisdiction of the California State Lands Commission (CSLC). Los Angeles County has jurisdiction over portions of the beach placement site adjacent to the Malibu Pier Parking Lot above the MHTL. For the portion of the beach placement which is determined to be below the MHTL and under the jurisdiction of the CSLC we propose that the sponsor would acquire a lease for beach placement which would be considered a non-standard estate. A perpetual easement is the standard estate for beach nourishment; however, in this case the placement of sand will be a one-time placement that does not require routine maintenance. CSLC procedure for granting use of beach placement sites under its jurisdiction is to issue a "California Placement Lease." CSLC does not release template documents; however, we have located a standard CSLC lease issued for borrow and placement sites and is included as part of Attachment A. Such leases have been used successfully for other USACE projects in the region.

#### 5.0 EXISTING FEDERAL PROJECT(S)

There are no existing federal projects that are fully or partially within the LER required for the project.

#### 6.0 FEDERALLY-OWNED LAND

There are no federally owned lands included within the LER required for this project.

1 **7.0 EXTENT OF NAVIGATION SERVITUDE**

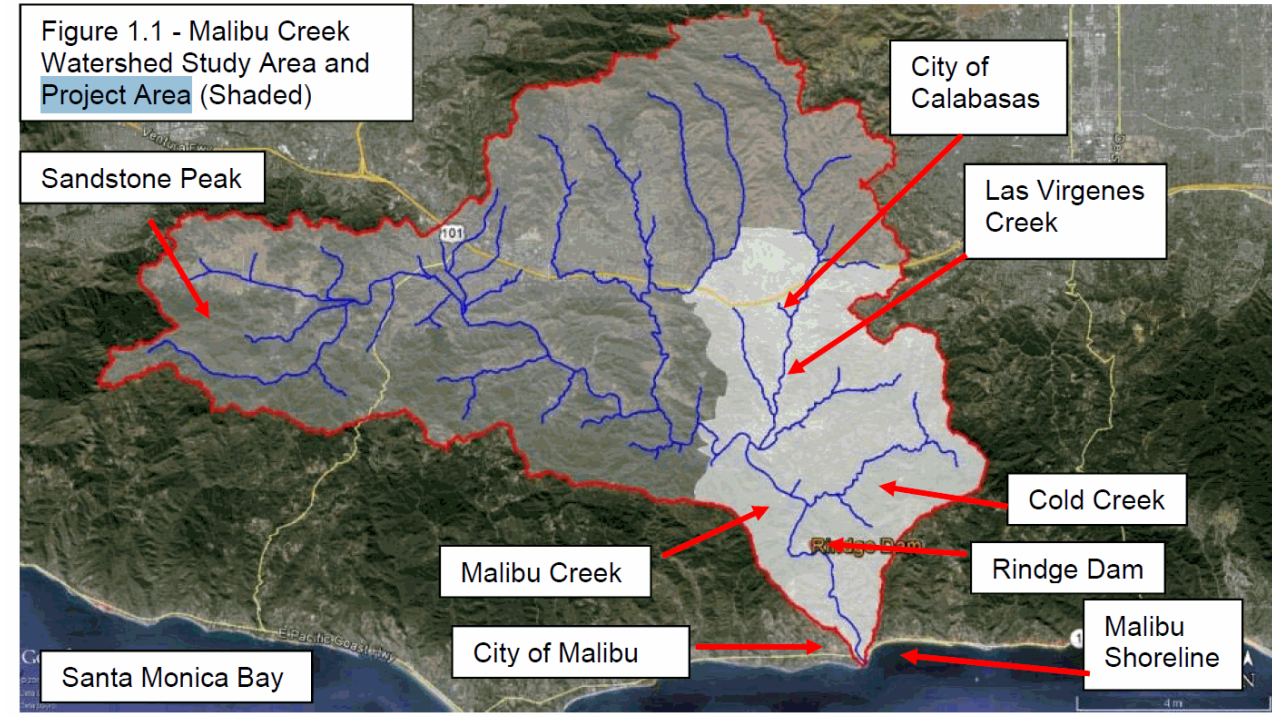
2

3 Exercise of Federal navigational servitude is not being invoked for this project.

4

5 **8.0 MAPS**

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10 **9.0 EXTENT OF ANY INDUCED FLOODING**

11

12 No flooding will be induced by the TSP. The TSP avoids causing changes to Malibu  
13 Creek's existing sedimentation regime and flood risk downstream of the dam. Due to the  
14 impoundment of sediment completely filling the Rindge Dam reservoir, storm waters flow  
15 unimpeded over the top of the dam. With the proposed removal of sediment and the dam  
16 structure, flood conditions downstream of Rindge Dam are expected to remain the same  
17 as without project conditions. Additional flood mitigation measures are not required.

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1 **10.0 BASELINE COST ESTIMATE**

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3 A preliminary cost estimate was developed for planning purposes for each alternative with  
4 oversight from the district appraiser.

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6 **Table 3.2-1 Preliminary Cost Estimate**

<b>NER Plan (TSP)</b>	<b>Value</b>
<b>Non-Federal Sponsor owned Lands, Easements &amp; Right-of-Way</b>	<b>\$736,325</b>
Contingency 25%	\$184,081
<b>TOTAL</b>	<b>\$920,406</b>
<b>Land, Easements &amp; Right-of-Way to be acquired by Non-Federal Sponsor</b>	<b>\$745,760</b>
Contingency 25%	\$186,440
<b>TOTAL</b>	<b>\$932,200</b>
Relocations Facility/Utility (incl. contingencies)*	\$5,875,270
Relocations PL 91-646	N/A
Non-Federal Administration Costs	\$300,000
<b>LERRD TOTAL</b>	<b>\$8,027,876</b>
Federal Administration Costs	\$50,000
<b>SUB-TOTAL</b>	<b>\$50,000</b>
Contingency 25%	\$12,500
<b>TOTAL</b>	<b>\$62,500</b>
<b>Total Real Estate Costs (rounded)</b>	<b>\$8,090,000</b> (rounded)

7  
8 Facility relocations 02 account currently includes the compensation for private roads as  
9 noted in Section 16 below.

10  
11 **11.0 PL 91-646 RELOCATION ASSISTANCE BENEFITS**

12  
13 Preliminary investigations indicate that there will be no persons, farms or businesses  
14 displaced during the acquisition of lands required for any of the proposed alternatives. If  
15 necessary, the sponsor will be required to certify compliance with the requirements of PL

1 91-646, including landowners being properly advised of their rights under the program and  
2 appropriate benefit determinations, if any.

3  
4 **12.0 DESCRIPTION OF PRESENT OR ANTICIPATED MINERAL ACTIVITY**

5  
6 There is no known present or anticipated mineral activity within the vicinity of the study  
7 area that may affect construction, operation, or maintenance of the Project.

8  
9 **13.0 ASSESSMENT OF NON-FEDERAL SPONSOR’S ACQUISITION ABILITY**

10  
11 The assessment of the Non-Federal Sponsor’s Acquisition Capabilities included as  
12 Attachment B.

13  
14 **14.0 ENACTMENT OF ZONING ORDINANCES**

15  
16 No enactments of zoning ordinances are being proposed in lieu of or to facilitate  
17 acquisition in connection with the project.

18  
19 **15.0 LAND ACQUISITION SCHEDULE AND MILESTONES**

20  
21 The NER plan includes the removal of Rindge Dam concurrent with the removal of  
22 impounded sediment, placement of impounded sediment along the Malibu shoreline,  
23 temporarily utilizing an upland storage area referred to as “Site F” for sands prior to  
24 delivery to the shore, use of the Calabasas Landfill for sediment not suitable for beach  
25 placement and the modification of eight partial aquatic habitat upstream barriers on Cold  
26 Creek and Las Virgenes Creek.

27  
28 Currently, the assumption is to acquire all lands, easements and rights of way associated  
29 with dam removal and beach placement 18 months prior to year 1. Acquisition of all lands,  
30 easements and rights of way associated with the modifications of the eight barriers will  
31 commence 18 months prior to year 2.

32  
33 **16.0 DESCRIPTION OF FACILITY/UTILITY RELOCATIONS**

34  
35 **16.1 Impacted Utilities**

36  
37 Preliminary investigations have identified 3 utility lines within the project area that are  
38 anticipated to require relocation.

39  
40 ***16.1.1 Upstream Barrier CC2 (Malibu Meadows Road Crossing)***

41  
42 High pressure gas line

43  
44 Owner – So. Calif. Gas Co.

45  
46 Overhead power line

47  
48 Owner – So. Calif. Edison

1  
2 **16.1.2 Upstream Barrier LV1 (Craggs Road)**

3  
4 Water Line

5  
6 Owner/Operator - Las Virgenes Municipal Water District

7  
8 In addition to the public utility lines identified above, one water line owned by a  
9 homeowners' association is anticipated to be impacted by the features at Upstream Barrier  
10 CC2. The sponsor would coordinate with the homeowners' association to address this  
11 water line as part of the relocation of the affected bridge, described below.

12  
13 **16.2 Impacted Facilities**

14  
15 Preliminary investigations have identified two public facilities within the project area  
16 associated with the modification/removal of upstream barriers CC1 & LV1 requiring  
17 relocation.

18  
19 **16.2.1 Upstream Barrier CC1 (Piuma Culvert)**

20  
21 CC1 is a 12-foot long, 46-foot wide corrugated metal pipe (CMP) arch culvert with a  
22 concrete invert. Piuma Culvert, and the road which runs atop it, are owned by the County  
23 of Los Angeles. Fee ownership of the land beneath Piuma Culvert belongs to the sponsor.  
24 The sponsor, as the fee owner of the land underneath the culvert, will modify the existing  
25 easement issued to the County of Los Angeles to accommodate the project. Piuma Road  
26 is a two lane rural road that passes over the culvert structure and provides access to  
27 homes throughout the hills. The existing CMP arch culvert, the concrete lining along the  
28 creek invert, and the stone head walls would be anticipated to be replaced by the sponsor  
29 with a 12-foot pre-cast arch culvert with new concrete footings and concrete head walls  
30 on both ends of the structure.

31  
32 **16.2.2 Upstream Barrier LV1 (Craggs Roads Culvert Crossing)**

33  
34 This is a 6-foot diameter, 31-foot long double barrel culvert road crossing. The culvert is  
35 owned by the County of Los Angeles. The sponsor, as the fee owner of the land  
36 underneath the culvert, will modify the existing easement issued to the County of Los  
37 Angeles to accommodate the project. It is anticipated that the existing concrete box  
38 culvert, concrete abutments, concrete apron, and the concrete wing walls will be removed  
39 and replaced by the sponsor with a pre-manufactured 75-foot long, 20-foot wide clear  
40 span bridge. The bridge will be used for emergency and maintenance vehicle access to  
41 Malibu Creek State Park.

42  
43 **16.2.3 Public Facilities**

44  
45 In addition to the two public facilities identified above, the removal/modification of two other  
46 upstream barriers affect private roads/bridges, at barriers CC2 and CC3. The lands will be  
47 required to be acquired in fee. The bridges at issue provide the only or main means of  
48 access to homes, and the removal of these bridges would appear to result insubstantial  
49 impairment or access. Although the bridges are not public facilities, after analyzing the  
50 estate itself and taking into account substantial impairment of access to the surrounding

1 neighborhoods, the appropriate measure of just compensation is providing a substitute  
2 facility to cure the road access issue. Therefore, the sponsor would be responsible to  
3 provide functionally equivalent access to address the impairment of access caused by  
4 removing these bridges. The costs associated with the replacement of these bridges have  
5 also been included in the relocation cost shown in the BCE above.

6  
7 ANY CONCLUSION OR CATEGORIZATION CONTAINED IN THIS REPORT THAT AN  
8 ITEM IS A UTILITY OR FACILITY RELOCATION TO BE PERFORMED BY THE NON-  
9 FEDERAL SPONSOR AS PART OF ITS LERRD RESPONSIBILITIES IS PRELIMINARY  
10 ONLY. THE GOVERNMENT WILL MAKE A FINAL A DETERMINATION OF THE  
11 RELOCATIONS NECESSARY FOR THE CONSTRUCTION, OPERATION, OR  
12 MAINTENANCE OF THE PROJECT AFTER FURTHER ANALYSIS AND COMPLETION  
13 AND APPROVAL OF FINAL ATTORNEY'S OPINIONS OF COMPENSABILITY FOR  
14 EACH OF THE IMPACTED UTILITIES AND FACILITIES.

## 15 16 **17.0 DISCUSSION OF KNOWN OR SUSPECTED PRESENCE OF** 17 **CONTAMINANTS**

18  
19 A preliminary geotechnical soils assessment was performed at the dam site and no  
20 evidence of Hazardous, Toxic, or Radioactive Waste (HTRW) was found. The results of  
21 geotechnical field investigations conducted in 2002 to characterize stored sediments in  
22 the reservoir basin behind the dam indicated the presence of a few regulated substances.  
23 However, the initial assessment concluded that concentration levels of these substances  
24 were within normal background levels. During the Preconstruction Engineering and  
25 Design (PED) Phase, a preliminary geotechnical soils assessment of the 8 upstream  
26 barrier sites for HTRW will be performed.

## 27 28 **18.0 SUPPORT/OPPOSITION FOR THE PROJECT**

29  
30 The project and its objectives have gained support from local residents and environmental  
31 groups with an interest in restoring connectivity for aquatic habitat in the Malibu Creek  
32 Watershed and include the Coastal Conservancy, Heal the Bay, Santa Monica Bay  
33 Restoration Commission, Los Angeles County Department of Beaches and Harbor, Los  
34 Angeles Regional Water Quality Control Board, and the Mountains Restoration Trust.  
35 Members of the Rindge family and friends have expressed concerns about potential loss  
36 of Rindge Dam and the significance of the structure in the early 20<sup>th</sup> century development  
37 of the area.

## 38 39 **19.0 LAND ACQUISITION BEFORE EXECUTION OF PROJECT** 40 **PARTNERSHIP AGREEMENT (PPA)**

41  
42 The Non-Federal Sponsor was sent notification in-writing of the risks involved with  
43 acquisition of real estate prior to the execution of the PPA. The notification is attached  
44 as Attachment C.



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**APPENDIX G  
REAL ESTATE  
MALIBU CREEK ECOSYSTEM RESTORATION FEASIBILITY STUDY**

Reviewed and approved by:

\_\_\_\_\_  
Cheryl Connett  
Chief, Asset Management Division  
Los Angeles District  
U.S. Army Corps of Engineers

Date

Prepared by:

\_\_\_\_\_  
John Sunshine  
Realty Specialist  
Asset Management Division  
Los Angeles District  
U.S. Army Corps of Engineers

Date

**ATTACHMENTS**

**Attachment A: Estates**

**Standard Estates**

TEMPORARY WORK AREA EASEMENT

A temporary easement and right-of-way in, on, over and across the land described in Exhibit C for a period not to exceed \_\_years, beginning with the date possession and use of the land is granted to {Name of Non-Federal Sponsor} for the use of this Grantee, its representatives, agents, and contractors as a work area including the right of access, ingress and egress, and including the right to borrow and deposit fill, spoil and waste material thereon, move store and remove equipment and supplies and erect and remove any temporary structures placed on the land; and to perform any other work necessary and incidental to the Malibu Creek Ecosystem Restoration Project; reserving however to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

**Non-Standard Estates**

PERPETUAL ECOSYSTEM RESTORATION EASEMENT (PERE)

A perpetual and assignable right, easement, and right-of-way in, on, over and across the land described in Appendix A attached hereto (Tract No(s). \_\_\_\_; hereinafter the “Easement Area”), to construct, operate, maintain, repair, rehabilitate, and replace aquatic ecosystem restoration features, and appurtenances thereto, including: [features], which structures are illustrated generally on Exhibits(s) \_\_attached hereto, to [do what], all for the purposes of providing for aquatic ecosystem restoration and protection in connection with the Malibu Creek Ecosystem Restoration Project, Los Angeles County, California, implemented under the authority of [insert authority once authorized] and otherwise conserving, restoring, and managing the use of natural resources; TOGETHER WITH the right to plant vegetation in the Easement Area and to trim, cut, fell, and remove therefrom all trees, underbrush, and other vegetation; to remove and dispose of any and all obstructions, structures, debris, or obstacles within the Easement Area; to excavate and place soil, stone, rock, and other materials within the Easement Area that may be required in connection with said features; to post signs and Easement Area boundary markers; and TOGETHER WITH the right to construct, install, maintain, repair, rehabilitate, and replace: [other features] all in the approximate locations as depicted on Exhibit \_\_ attached hereto; and TOGETHER WITH the right of ingress and egress over and across the Easement Area for the purpose of exercising the rights set forth herein; subject, however, to existing easements for [are there any existing easements].

The Grantor(s), (his) (her) (its) (their) (heirs), successors and assigns, reserves unto (itself) (themselves) all such other rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired. However, any activity on or use of the Easement Area inconsistent with the purposes of this easement is prohibited. Without limiting the generality of the foregoing, the following uses by Grantor(s), (his) (her)

1 (its) (their) (heirs), successors and assigns, agents or third parties are expressly prohibited  
2 in or on the Easement Area:

- 3 a) (a) constructing, locating, placing, or installing any building or structure of any  
4 kind, whether permanent or temporary, or any signage of any type including  
5 billboards;
- 6 b) (b) removal, destruction, cutting, or altering of trees, shrubs, or other vegetation  
7 by mechanical, chemical, manual or other means;
- 8 c) (c) filling, excavation, or other alteration to the surface or subsurface including,  
9 without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or  
10 sod;
- 11 d) (d) dumping or other disposal or storage of rubbish, garbage, debris, hazardous or  
12 other waste material; and
- 13 e) (e) agricultural use or activities including grazing or watering of livestock; except  
14 that watering of livestock may occur at constructed livestock stream crossings and  
15 off-stream oxbow areas that are depicted on Exhibit\_\_ attached hereto.

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Sample California Borrow and Placement Lease

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
California State Lands Commission  
Attn: Title Unit  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

**STATE OF CALIFORNIA**  
**OFFICIAL BUSINESS**  
Document entitled to free recordation  
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

County: Santa Barbara, Ventura

**LEASE PRC 8228.9**

This Lease consists of this summary and the following attached and incorporated parts:

- Section 1            Basic Provisions
- Section 2            Special Provisions Amending or Supplementing Section 1 or 4
- Section 3            Lease Area Description
- Section 4            General Provisions
- Exhibit A            Location Map

**SECTION 1**

**BASIC PROVISIONS**

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the CALIFORNIA STATE LANDS COMMISSION (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to the San Diego Association of Governments (SANDAG), hereinafter referred to as Lessee, those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

**MAILING ADDRESS:** 401 B Street, Suite 800  
San Diego, CA 92101

**LEASE TYPE:** General Lease - Public Agency Use

**LAND TYPE:** Tide and Submerged Sovereign Land

**LOCATION:** In the Pacific Ocean, at seven beach receiver sites and two offshore borrow sites as shown on Exhibit A – Location Map, and as described in Section 3 – Land Description:

- Receiver sites:
  - North Carlsbad
  - South Carlsbad North
  - Batiquitos

1

1. At least 30 days prior to the start of the initial beach replenishment activity performed at any of the seven un-granted sovereign lands receiver sites described in Lease Section 3, Lessee shall submit a mean high tide line survey for Lessor's review and approval. The following is required:
  - a. The survey must be based on the California Coordinate System 1983 and must include a control scheme showing found monuments and coordinates referencing the epoch date.
  - b. The survey must locate a minimum of two property monuments shown on an official record map.
  - c. The vertical datum must be shown on the map with the benchmark location and elevation.
  - d. The mean high tide elevation and tidal epoch must be noted on the survey and Lessor's staff must approve the elevation prior to the fieldwork.
  - e. Stations used to locate the mean high tide line must be at intervals of 50'±.
  - f. The survey must be performed by or under the supervision of a Licensed Land Surveyor.
  - g. Lessee will provide Lessor with a hardcopy map and Autocad drawing file within 30 days of completion of survey fieldwork.
  
2. Lessee will undertake the Regional Beach Sand Program II (RBSP II) pursuant to: 1) the Mitigation Monitoring Program contained in Final Environmental Impact Report (FEIR) SCH# 2010051063 prepared and adopted by Lessee on May 27, 2011; 2) the RBSP II Coastal Development Permit as authorized by the California Coastal Commission; and, 3) the requirements of all other agencies having approval authority over the RBSP II.
  
3. Lessee is authorized during the lease term to dredge up to a combined maximum of 1,635,000 cubic yards of sand from two offshore borrow sites identified in Exhibit A as SO-5 and SO-6 and as described in Lease Section 3, for placement at the following beach receiver sites up to the quantities indicated:
  - a. Oceanside- 420,000 cy;
  - b. North Carlsbad- 225,000 cy;
  - c. South Carlsbad North- 158,000 cy;
  - d. Batiquitos- 118,000 cy;
  - e. Leucadia- 117,000 cy;
  - f. Moonlight- 105,000 cy;
  - g. Cardiff- 101,000 cy;
  - h. Solana Beach- 146,000 cy; and
  - i. Torrey Pines- 245,000 cy.
  
4. Lessor acknowledges that the receiver sites identified variously in Paragraph 3 of this Section and in Exhibit A as Oceanside, Torrey Pines, and Imperial Beach are contained within lands granted respectively to the city of Oceanside pursuant to Chapter 846, Statutes of 1979 with minerals rights reserved; within lands granted to the city of San Diego pursuant to Chapter 688, Statutes of 1933 and as amended with no mineral rights reserved; and within lands originally granted to the city of Imperial Beach pursuant to Chapter 330, Statutes of 1961 with mineral rights reserved, and subsequently transferred to the San Diego Unified Port District pursuant to Chapter 168, Statutes of 1990 with mineral rights reserved, and are not included in the Lease Premises subject to this Lease.

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5. Lessor acknowledges that the borrow site identified in Exhibit A as site MB-1 is contained within lands granted to the city of San Diego pursuant to Chapter 688, Statutes of 1933 and as amended with no mineral rights reserved and is not included in the Lease Premises subject to this Lease.
6. At least 30 days prior to the start of beach replenishment activities as described herein, Lessee shall provide Lessor with:
  - a. Copies of all final permits and approvals from all other agencies with jurisdiction over the RBSP II;
  - b. The name and telephone number of the Lessee's representative responsible for maintaining the beach replenishment database for all sites within the Lease Premises;
  - c. Written notification to Lessor, and all other regulatory agencies having approval authority for the RBSP II; and
  - d. All copies of public notification that are issued prior to the commencement of beach replenishment activities.
7. Prior to the start of beach replenishment activities as described herein, Lessee shall provide Lessor with the name, address, telephone number and contractor's license number of the contractor(s) selected to implement the beach replenishment program. Should Lessee change contractors, Lessee shall provide Lessor with all pertinent information, as described above.
8. Lessee shall provide any subsequent pre-project biological survey information not included in the FEIR for each beach replenishment site prior to commencement of beach replenishment activities within the Lease Premises. Lessee shall provide to Lessor copies of all mitigation monitoring compliance reports for replenishment activities within the Lease Premises.
9. Lessee agrees that printed material, such as handouts and signs or other types of printed notices installed to provide notification of the public use and benefit of the project as set forth herein shall contain and reasonably display a statement acknowledging the California State Lands Commission as having contributed lands for the project. The statement may read as follows: "A portion of the land required for the Regional Beach Sand Program II was contributed by the California State Lands Commission."
10. Lessee acknowledges and agrees:
  - a. The sites may be subject to hazards from natural geophysical phenomena including, but not limited to, waves, storm waves, tsunamis, earthquakes, flooding and erosion.
  - b. To assume the risks of injury and damage to Lessee, its agents, employees, contractors, permittees, invitees and guests and the Leased Lands from such hazards in connection with the development and use of the Leased Lands subject to any Coastal Development Permit.
  - c. To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees for injury and/or damage from such hazards to Lessee, its agents, employees, contractors, permittees, invitees and guests.
  - d. To indemnify, hold harmless and, at the option of Lessor, defend the State of California, its agencies, officers, agents, and employees, against and for any and all liability, claims, demands, damages, injuries, or costs of any kind and from any cause (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any alleged or actual injury, damage or claim due to site hazards or connected in any

way with respect to the approval of any Coastal Development Permit involving the Leased Lands, except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

11. Any vehicles, equipment, or machinery to be used on the Lease Premises are limited to those which are directly required to perform the authorized use and shall not include any vehicles, equipment, or machinery that may cause damage to the Lease Premises or lands subject to Lessor's jurisdiction.
12. All vehicles, equipment, machinery, tools or other property taken onto or placed within the Lease Premises or lands subject to Lessor's jurisdiction shall remain the property of the Lessee and/or its authorized contractors (collectively, Lessee). Such property shall be promptly and properly removed by Lessee, at its sole risk and expense.
13. Lessor does not accept any responsibility for any damages to any property, including any vehicles, equipment, machinery, or tools within the Lease Premises or lands subject to Lessor's jurisdiction.
14. No vehicle or equipment refueling, maintenance, or repairs will be permitted within the Lease Premises or lands subject to Lessor's jurisdiction.
15. All waste material and debris created by Lessee shall be entirely removed from the Lease Premises and lands subject to Lessor's jurisdiction.
16. The State of California's sovereign ownership claim of the lands underlying the Pacific Ocean extends to the ordinary high water mark. The description in Section 3 contained herein is not to be deemed an admission by Lessor or Lessee as to the boundary between private, City-owned and State-owned lands.
17. Lease Section 4, Paragraph 4(a) LAND USE - General, is modified as follows: 'Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease.' The remainder of Paragraph 4(a) is deleted in its entirety.

In the event of any conflict between the provisions of Section 2 and Section 4 of this Lease, the provisions of Section 2 shall prevail.

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**SECTION 3**  
**LAND DESCRIPTION**

**WP 8228**

Nine (9) parcels of tide and submerged lands lying in the bed of the Pacific Ocean, San Diego County, State of California, being more particularly described as follows:

**Parcel 1 (Solana Beach North Borrow Site)**

BEGINNING at a point have coordinates CCS83 (Zone 6) N(y)=1947283.6 feet, E(x)=6241714.7 feet (Latitude=N 33°00'20.34", Longitude=W 117°17'37.13") thence in a clockwise direction through the following three (3) points:

- (1) N(y)=1947689.1 feet, E(x)=6243778.4 feet;
- (2) N(y)=1947345.0 feet, E(x)=6243858.0 feet;
- (3) N(y)=1945892.0 feet, E(x)=6242048.1 feet;

thence continuing to the POINT OF BEGINNING.

**Parcel 2 (Solana Beach South Borrow Site)**

BEGINNING at a point have coordinates CCS83 (Zone 6) N(y)=1936384.3 feet, E(x)=6244600.2 feet (Latitude=N 32°58'32.77", Longitude=W 117°17'01.98") thence in a clockwise direction through the following three (3) points:

- (1) N(y)=1936605.4 feet, E(x)=6245958.6 feet;
- (2) N(y)=1932664.2 feet, E(x)=6246719.2 feet;
- (3) N(y)=1932481.2 feet, E(x)=6245418.8 feet;

thence continuing to the POINT OF BEGINNING.

**Parcel 3 (North Carlsbad Receiver Site)**

BEGINNING at a point have coordinates CCS83 (Zone 6) N(y)=2005260.7 feet, E(x)=6222393.7 feet (Latitude=N 33°09'51.97", Longitude=W 117°21'31.24") thence in a clockwise direction through the following three (3) points:

- (1) N(y)=2002278.2 feet, E(x)=6224282.6 feet;
- (2) N(y)=2002357.2 feet, E(x)=6223927.4 feet;
- (3) N(y)=2004941.6 feet, E(x)=6222286.3 feet;

thence continuing to the POINT OF BEGINNING.

**Parcel 4 (South Carlsbad North Receiver Site)**

BEGINNING at a point have coordinates CCS83 (Zone 6) N(y)=1990842.0 feet, E(x)=6230872.5 feet (Latitude=N 33°07'30.20", Longitude=W 117°19'49.74") thence in a clockwise direction through the following five (5) points:

- (1) N(y)=1989668.9 feet, E(x)=6231555.5 feet;
- (2) N(y)=1987738.9 feet, E(x)=6232359.9 feet;
- (3) N(y)=1987806.6 feet, E(x)=6232015.5 feet;
- (4) N(y)=1989546.3 feet, E(x)=6231281.4 feet;
- (5) N(y)=1990539.7 feet, E(x)=6230696.4 feet;

thence continuing to the POINT OF BEGINNING.

**Parcel 5 (Batiqitos Receiver Site)**

BEGINNING at a point have coordinates CCS83 (Zone 6) N(y)=1976298.1 feet, E(x)=6236242.9 feet (Latitude=N 33°05'06.85", Longitude=W 117°18'44.86") thence in a clockwise direction through the following three (3) points:

- (1) N(y)=1974105.4 feet, E(x)=6236643.3 feet;
- (2) N(y)=1974346.2 feet, E(x)=6236308.2 feet;
- (3) N(y)=1975976.3 feet, E(x)=6236019.8 feet;

thence continuing to the POINT OF BEGINNING.

**Parcel 6 (Leucadia Receiver Site)**

BEGINNING at a point have coordinates CCS83 (Zone 6) N(y)=1971855.0 feet, E(x)=6237303.0 feet (Latitude=N 33°04'23.00", Longitude=W 117°18'31.87") thence in a clockwise direction through the following three (3) points:

- (1) N(y)=1969265.8 feet, E(x)=6238182.5 feet;
- (2) N(y)=1969393.0 feet, E(x)=6237885.8 feet;
- (3) N(y)=1971621.8 feet, E(x)=6237134.7 feet;

thence continuing to the POINT OF BEGINNING.

**Parcel 7 (Moonlight Receiver Site)**

BEGINNING at a point have coordinates CCS83 (Zone 6) N(y)=1963036.8 feet, E(x)=6240296.7 feet (Latitude=N 33°02'56.05", Longitude=W 117°17'55.64") thence in a clockwise direction through the following three (3) points:

- (1) N(y)=1962080.9 feet, E(x)=6240580.8 feet;
- (2) N(y)=1962211.1 feet, E(x)=6240243.5 feet;
- (3) N(y)=1962767.1 feet, E(x)=6240083.8 feet;

thence continuing to the POINT OF BEGINNING.

**Parcel 8 (Cardiff Receiver Site)**

BEGINNING at a point have coordinates CCS83 (Zone 6) N(y)=1949803.2 feet, E(x)=6245856.3 feet (Latitude=N 33°00'45.67", Longitude=W 117°16'48.80") thence in a clockwise direction through the following four (4) points:

- (1) N(y)=1949545.8 feet, E(x)=6245959.3 feet;
- (2) N(y)=1948664.4 feet, E(x)=6246155.3 feet;
- (3) N(y)=1948770.8 feet, E(x)=6245767.1 feet;
- (4) N(y)=1949533.0 feet, E(x)=6245568.2 feet;

thence continuing to the POINT OF BEGINNING.

**Parcel 9 (Solana Beach Receiver Site)**

BEGINNING at a point have coordinates CCS83 (Zone 6) N(y)=1943184.7 feet, E(x)=6247270.5 feet (Latitude=N 32°59'40.33", Longitude=W 117°16'31.42") thence in a clockwise direction through the following three (3) points:

- (1) N(y)=1938062.2 feet, E(x)=6248111.2 feet;
- (2) N(y)=1938191.1 feet, E(x)=6247891.9 feet;
- (3) N(y)=1942890.2 feet, E(x)=6247118.7 feet;

thence continuing to the POINT OF BEGINNING.

EXCEPTING THEREFROM any lands lying landward of the Ordinary High Water Mark of said ocean.

**END OF DESCRIPTION**

PREPARED 5/24/11 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



## SECTION 4

## GENERAL PROVISIONS

1. **GENERAL**  
These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.
2. **CONSIDERATION**
  - (a) **Categories**
    - (1) **Rental**  
Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay, or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.
    - (2) **Non-Monetary Consideration**  
If the consideration to Lessor for this Lease is the public use, benefit, health, or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.
  - (b) **Modification**  
Lessor may modify the method, amount, or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.
  - (c) **Penalty and Interest**  
Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.
3. **BOUNDARIES**  
This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.
4. **LAND USE**
  - (a) **General**  
Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements and within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.
  - (b) **Continuous Use**  
Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.
  - (c) **Repairs and Maintenance**  
Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.
  - (d) **Additions, Alterations, and Removal**
    - (1) **Additions** - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.
    - (2) **Alteration or Removal** - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.
  - (e) **Conservation**  
Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.
  - (f) **Toxics**  
Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances, or materials.
  - (g) **Enjoyment**  
Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use

and enjoyment of the Lease Premises as provided under this Lease.

(h) **Discrimination**

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) **Residential Use**

No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins, or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

5. **RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY**

(a) **Reservations**

(1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.

(3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) **Encumbrances**

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances, and claims and is made without warranty by Lessor of title, condition, or fitness of the land for the stated or intended purpose.

6. **RULES, REGULATIONS, AND TAXES**

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtains and maintains all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

7. **INDEMNITY**

(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

(b) Lessee shall notify Lessor immediately in case of any accident, injury, or casualty on the Lease Premises.

8. **INSURANCE**

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.

(b) The insurance policy or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the

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policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

**9. SURETY BOND**

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants, and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

**10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING**

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee;

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands, it shall be appurtenant to adjoining littoral or riparian land and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give prior written notice to Lessor;

(2) Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party, or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee, or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrance or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of

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or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7,9,11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

**11. DEFAULT AND REMEDIES**

**(a) Default**

The occurrence of any one or more of the following events shall immediately and without further notice constitute a default or breach of the Lease by Lessee:

- (1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease;
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;
- (3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements;
- (5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;
- (6) Lessee's Failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or

- (7) Lessee's failure to comply with applicable provisions of federal, state or local laws or ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.

(b) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

**(c) Remedies**

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises;
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice, Lessee shall immediately surrender possession of the Lease Premises to Lessor;
- (3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises; and/or
- (4) Exercise any other right or remedy which Lessor may have at law or equity.

**12. RESTORATION OF LEASE PREMISES**

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.



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(c) All plans for and subsequent removal and restoration shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.

(e) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

13. QUITCLAIM

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

14. HOLDING-OVER

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty-five percent (25%).

15. ADDITIONAL PROVISIONS

(a) Waiver

(1) No term, covenant, or condition of this Lease and no default or breach of any such term, covenant or condition shall be deemed to have been waived, by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of any other default or breach of any term, covenant or condition of this Lease.

(b) Time

Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) Notice

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) Consent

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes

This Lease may be terminated and its term, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties.

(f) Successors

The terms, covenants and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) Joint and Several Obligation

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) Captions

The captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

(i) Severability

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

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STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE NO. PRC 8228.9

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE:

SAN DIEGO ASSOCIATION OF GOVERNMENTS

Gary L Gallegos  
EXECUTIVE DIRECTOR

8 - 22 - 2011

LESSOR:

STATE OF CALIFORNIA STATE LANDS COMMISSION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ACKNOWLEDGMENT(S)

This Lease was authorized by the California State Lands Commission on

\_\_\_\_\_  
(Month Day Year)

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Attachment B

Non-Federal Sponsor’s Acquisition Capability

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**APPENDIX 12-E**  
**ASSESSMENT OF NON-FEDERAL SPONSOR'S**  
**REAL ESTATE ACQUISITION CAPABILITY**

I. Legal Authority:

- a. Does the Sponsor have legal authority to acquire and hold title to real property for project purposes? *Yes*
- b. Does the Sponsor have the power of eminent domain for this project? *Yes, although the use of eminent domain is not anticipated or planned.*
- c. Does the Sponsor have "quick take" authority for this project? *No*
- d. Are *any* of the lands/interests in land required for the project located outside the Sponsor's political boundary? *Yes* The lands/interests in land not owned by the Sponsor are located outside of the Sponsor's jurisdiction.
- e. Are *any* of the lands/interests in land required for the project owned by an entity whose property the Sponsor cannot condemn? *No, however the use of the sponsor's condemnation authority is not anticipated or planned.*

II. Human Resource Requirements:

- a. Will the Sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91-646, as amended? *Yes*
- b. If the answer to II.a. is "yes", has a reasonable plan been developed to provide such training? *No; a plan will be developed prior to the Final IFR and training would be provided during PED.*
- c. Does the Sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? *Yes*
- d. Is the Sponsor's projected in-house staffing level sufficient considering its other workload, if any, and the project schedule? *Yes*
- e. Can the Sponsor obtain contractor support, if required in a timely fashion? *Yes*
- f. Will the Sponsor likely request U.S. Army Corps of Engineers assistance in acquiring real estate? *No*

III. Other Project Variables:

- a. Will the Sponsor's staff be located within reasonable proximity to the project site? *Yes*
- b. Has the Sponsor approved the project/real estate schedule/milestones? *Yes*

**APPENDIX 12-E**

IV. Overall Assessment:

- a. Has the Sponsor performed satisfactorily on other U.S. Army Corps of Engineers projects? *Not Applicable*
  
- b. With regard to this project, the sponsor is anticipated to be: ***Highly Capable***/fully capable/moderately capable/marginally capable/insufficiently capable. (If Sponsor is believed to be “insufficiently capable”, provide explanation)

V. Coordination:

- a. Has this assessment been coordinated with the Sponsor? **Yes**
- b. Does the Sponsor concur with this assessment? **Yes** (If “no”, provide explanation)

Prepared by (in coordination with Sponsor):

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John Sunshine  
Realty Specialist

Reviewed by:

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Lisa Sandoval  
Chief, Civil Works Branch

Reviewed and approved by:

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Cheryl Connett  
Chief, Asset Management Division

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Attachment C

Risk of Early Acquisition Letter to Sponsor



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**DEPARTMENT OF THE ARMY**  
LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
915 WILSHIRE BLVD., SUITE 930  
LOS ANGELES, CALIFORNIA 90017

January 17, 2017

Asset Management Division  
Civil Works Branch

Jamie King  
Environmental Scientist  
California Department of Parks and Recreation  
1925 Las Virgenes Road  
Calabasas, CA 91302-1909

Subject: Risks Associated with Acquisition of Real Estate Interests Prior to Execution of the PPA

Dear Ms. King,

The intent of this letter is to formally advise the California Department of Parks and Recreation (CDPR) as the non-Federal sponsor for the proposed project, of the risk associated with land acquisition prior to execution of the Project Partnership Agreement (PPA) or prior to the Government’s formal notice to proceed with acquisition. If a non-federal sponsor deems it necessary to commence acquisition prior to an executed PPA for whatever reason, the non-federal sponsor assumes full and sole responsibility for any and all costs, responsibility, or liability arising out of the acquisition effort.

Generally, these risks include, but may not be limited to, the following:

- (1) Congress may not appropriate funds to construct the proposed project;
- (2) The proposed project may otherwise not be funded or approved for construction;
- (3) A PPA mutually agreeable to the non-Federal sponsor and the Government may not be executed and implemented;
- (4) The non-Federal sponsor may incur liability and expense by virtue of its ownership of contaminated lands, or interests therein, whether such liability should arise out of local, state, or Federal laws or regulations including liability arising out of CERCLA, as amended;
- (5) The non-Federal sponsor may acquire interests or estates that are later determined by the Government to be inappropriate, insufficient, or otherwise not required for the project;
- (6) The non-Federal sponsor may initially acquire insufficient or excessive real property acreage which may result in additional negotiations and/or benefit payments under P.L. 91-646 as well as the payment of additional fair value to affected landowners which could have been avoided by delaying acquisition until after PPA execution and the Government’s notice to commence acquisition and performance of LERRD; and

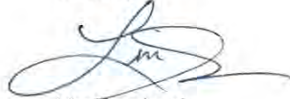
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(7) The non-Federal sponsor may incur costs or expenses in connection with its decision to acquire or perform LERRD in advance of the executed PPA and the Government's notice to proceed which may not be creditable under the provisions of Public Law 99-662 or the PPA.

We appreciate the participation of the California Department of Parks and Recreation in this project. Should you have questions or concerns pertaining to this letter please feel free to contact Mr. John Sunshine at 213-452-3132 or [john.w.sunshine@usace.army.mil](mailto:john.w.sunshine@usace.army.mil)

Sincerely,



Lisa Sandoval  
Chief, Civil Works Branch

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