



COUNTY OF SAN DIEGO

LAND USE AGENDA ITEM

BOARD OF SUPERVISORS

GREG COX
First District

DIANNE JACOB
Second District

PAM SLATER
Third District

RON ROBERTS
Fourth District

BILL HORN
Fifth District

DATE: August 8, 2001

TO: Board of Supervisors

SUBJECT: AUTHORIZATION TO EXECUTE AN AGREEMENT BETWEEN THE SAN DIEGO COUNTY WATER AUTHORITY AND COUNTY OF SAN DIEGO RELATING TO THE CONSTRUCTION, MONITORING AND MAINTENANCE OF WILDLIFE HABITAT AREAS (ESCONDIDO CREEK, MANCHESTER PROPERTY AND TIJUANA RIVER VALLEY)
(Districts: 1,3)

SUMMARY:

Overview

The recommended action will authorize the Clerk of the Board of Supervisors to execute an agreement between the County of San Diego and the County Water Authority (CWA) for the acquisition and long-term management of up to 41 acres of Escondido Creek properties near the community of Elfin Forest, for construction, maintenance and monitoring of wetland habitat within the San Elijo Lagoon Ecological Reserve (including the 18.9-acre Manchester Property which is currently owned by the City of Encinitas) and Tijuana River Valley Regional Park.

Recommendation(s)

CHIEF ADMINISTRATIVE OFFICER

1. Find in accordance with Sections 15304(d) and 15325 of the California Environmental Quality Act (CEQA) Guidelines that these actions are categorically exempt from CEQA.
2. Authorize the Clerk of the Board of Supervisors to execute, upon receipt and with the approval of County Counsel, an agreement between the County of San Diego and the County Water Authority (CWA) for the acquisition and long-term management of up to 41 acres of Escondido Creek Upland properties, and construction, maintenance and monitoring of wetland habitat within the San Elijo Lagoon Ecological Reserve (including the 18.9-acre Manchester Property), and Tijuana River Valley Regional Park.

SUBJECT: AUTHORIZATION TO EXECUTE AN AGREEMENT BETWEEN THE SAN DIEGO COUNTY WATER AUTHORITY AND COUNTY OF SAN DIEGO RELATING TO THE CONSTRUCTION, MONITORING AND MAINTENANCE OF WILDLIFE HABITAT AREAS (ESCONDIDO CREEK, MANCHESTER PROPERTY AND TIJUANA RIVER VALLEY)
(Districts: 1,3)

Fiscal Impact

Funds for the acquisition of the Escondido Creek Upland properties will be provided by the CWA. The long-term management of the property will be provided by the County as part of the Escondido Creek Preserve. Operations and maintenance will be conducted utilizing existing budgeted resources within the Parks and Recreation Department. There will be no cost to the General Fund resulting from this action.

Business Impact Statement

N/A

Advisory Board Statement

N/A

BACKGROUND:

The County Water Authority (CWA) proposes to construct and operate reservoir, pipeline and pump station facilities to store and distribute approximately 90,100 acre-feet of water as emergency supplemental water supplies. This project is referred to as the Emergency Storage Project (ESP). The construction and operation of the ESP will result in temporary and permanent loss of existing upland habitat as described in the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the ESP. The CWA is required to mitigate the temporary and permanent loss of existing upland habitat associated with the ESP by acquiring upland habitat within the Multiple Species Conservation Program (MSCP) planning area to satisfy the requirements of the Biological Opinion issued by the U.S. Fish and Wildlife Service (USFWS).

The ESP will impact habitat in the east County and in the Escondido Creek area. The County worked with the CWA to identify appropriate mitigation measures that would also support the MSCP and future planned habitat conservation efforts. The mitigation package for this project includes acquisition of land in the cities of Oceanside, Poway, and San Diego, along with the land acquisition in the Escondido Creek area. In addition, the mitigation package includes restoration and/or creation of wetland habitat in the Tijuana River Valley and Manchester properties. Purchase of credits in the mitigation banks at Daley Ranch, Escondido, and San Miguel are included in the ESP mitigation program, as well as wetlands creation and restoration which benefit degraded habitat in County ownership.

After purchasing the Escondido Creek Upland property, the CWA will deed the property to the County. The County will perform the long-term management activities including monitoring and reporting consistent with the requirements of the CWA's Biological Opinion and MSCP management guidelines.

SUBJECT: AUTHORIZATION TO EXECUTE AN AGREEMENT BETWEEN THE SAN DIEGO COUNTY WATER AUTHORITY AND COUNTY OF SAN DIEGO RELATING TO THE CONSTRUCTION, MONITORING AND MAINTENANCE OF WILDLIFE HABITAT AREAS (ESCONDIDO CREEK, MANCHESTER PROPERTY AND TIJUANA RIVER VALLEY)
(Districts: 1,3)

The 18.9-acre Manchester parcel currently owned by the City of Encinitas is anticipated to be sold to the County in the near future and will be included in the San Elijo Ecological Reserve. Until it is sold, the City of Encinitas has given right-of-entry for the purpose of wetlands creation, pending the acquisition of the property by the County (Attachment A).

Staff from the Department of Parks and Recreation and the CWA are working to draft an agreement that will include the following major provisions for the following properties:

Escondido Creek Uplands

- The CWA will purchase the property at no cost to the County.
- The CWA will transfer title of the property to the County.
- The County will prepare a long-term management plan and submit the plan to the USFWS and the California Department of Fish and Game (CDFG) for review and approval.
- The County will manage the land on a long-term basis for open space preservation and wildlife conservation.

Manchester Property and Tijuana River Valley

- The CWA shall design and construct wetlands at either or both sites at no cost to the County.
- The CWA will perform post construction monitoring until certain success criteria are met at no cost to the County.
- The County will preserve the property for open space and habitat conservation.

Property acquired will be owned, operated, and maintained by the County pursuant to the provisions of the agreement. Operations and maintenance of the property would be managed utilizing existing budgeted resources within the Department of Parks and Recreation. The recommended action will authorize the Clerk of the Board of Supervisors to execute the agreement, with the approval of County Counsel, once negotiations are complete.

Environmental

These actions will result in the acquisition of up to 41 acres of real property identified as the Escondido Creek Upland properties to preserve open space, habitat and cultural resources. These properties are within the future planning area of the North County MSCP and contain sensitive habitat and species, including the California Gnatcatcher (*Polioptila californica californica*).

In addition, these actions will provide for the creation of sensitive wetland habitat on two properties that are currently in a disturbed state, at no cost to the County. The primary site identified for wetland creation is the 18.9-acre Manchester parcel in the San Elijo Ecological Reserve. The second site is within the Tijuana River Valley Regional Park. The City of San Diego MSCP Subarea Plan for the Tijuana River Valley Regional Park identifies 300 acres

SUBJECT: AUTHORIZATION TO EXECUTE AN AGREEMENT BETWEEN THE SAN DIEGO COUNTY WATER AUTHORITY AND COUNTY OF SAN DIEGO RELATING TO THE CONSTRUCTION, MONITORING AND MAINTENANCE OF WILDLIFE HABITAT AREAS (ESCONDIDO CREEK, MANCHESTER PROPERTY AND TIJUANA RIVER VALLEY)
(Districts: 1,3)

available for habitat creation/restoration. Of that, over 50 acres are appropriate for wetland creation. The project site is a portion of these 50 acres and is immediately adjacent to an existing mitigation site along the Tijuana River.

The proposed acquisition and wetland creation will fulfill mitigation required by the Emergency Storage Project Environmental Impact Report/Environmental Impact Statement.

Alignment with the County of San Diego Strategic Plan

The proposed action is consistent with the Strategic intent of the Board of Supervisors “to preserve and enhance the environment of San Diego County” by acquiring and preserving gnatcatcher habitat along Escondido Creek and by restoring degraded habitat in the Tijuana River Valley and the Manchester Property.

Respectfully submitted,

ROBERT R. COPPER
Deputy Chief Administrative Officer

SUBJECT: AUTHORIZATION TO EXECUTE AN AGREEMENT BETWEEN THE SAN DIEGO COUNTY WATER AUTHORITY AND COUNTY OF SAN DIEGO RELATING TO THE CONSTRUCTION, MONITORING AND MAINTENANCE OF WILDLIFE HABITAT AREAS (ESCONDIDO CREEK, MANCHESTER PROPERTY AND TIJUANA RIVER VALLEY)
(Districts: 1,3)

AGENDA ITEM INFORMATION SHEET

CONCURRENCE(S)

COUNTY COUNSEL REVIEW	<input checked="" type="checkbox"/> Yes	
Written disclosure per County Charter §1000.1 required?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
GROUP/AGENCY FINANCE DIRECTOR	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> N/A
CHIEF FINANCIAL OFFICER	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> N/A
Requires Four Votes	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
GROUP/AGENCY INFORMATION TECHNOLOGY DIRECTOR	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> N/A
CHIEF TECHNOLOGY OFFICER	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> N/A
DEPARTMENT OF HUMAN RESOURCES	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> N/A

Other Concurrence(s): N/A

ORIGINATING DEPARTMENT: Department of Parks and Recreation

CONTACT PERSON(S):

Melissa Lowrey

Name

(858) 694-3038

Phone

(858) 495-5841

Fax

029

Mail Station

Mlowrepk@co.san-diego.ca.us

E-mail

Cory Linder

Name

(858) 694-3367

Phone

(858) 495-5841

Fax

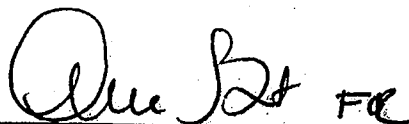
029

Mail Station

Clindepk@co.san-diego.ca.us

E-mail

AUTHORIZED REPRESENTATIVE:



SUSAN M. HECTOR, Ph.D., Director

SUBJECT: AUTHORIZATION TO EXECUTE AN AGREEMENT BETWEEN THE SAN DIEGO COUNTY WATER AUTHORITY AND COUNTY OF SAN DIEGO RELATING TO THE CONSTRUCTION, MONITORING AND MAINTENANCE OF WILDLIFE HABITAT AREAS (ESCONDIDO CREEK, MANCHESTER PROPERTY AND TIJUANA RIVER VALLEY)
(Districts: 1,3)

AGENDA ITEM INFORMATION SHEET

(continued)

PREVIOUS RELEVANT BOARD ACTIONS:

N/A

BOARD POLICIES APPLICABLE:

N/A

BOARD POLICY STATEMENTS:

N/A

CONTRACT NUMBER(S):

N/A



*City of
Encinitas*

May 30, 2001

Susan M. Hector
Department of Parks and Recreation
County of San Diego
5201 Ruffin Road, Suite P
San Diego, CA 92123

**Re: Permission for County Water Authority to Access
Manchester Property Owned by City of Encinitas**

Dear Susan:

The City of Encinitas agrees to let the County Water Authority on to the Manchester property for the purpose of wetlands creation, and to provide access for study and design, pending the acquisition of the property by the County of San Diego.

If you have any questions please call my office at (760) 633-2610.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Miller".

Kerry L. Miller
City Manager

**AGREEMENT BETWEEN SAN DIEGO COUNTY WATER AUTHORITY AND
COUNTY OF SAN DIEGO RELATING TO THE ACQUISITION OF ESCONDIDO
CREEK UPLANDS AND THE CONSTRUCTION, MONITORING AND
MAINTENANCE OF WETLAND HABITAT AREAS ON THE MANCHESTER AND
TIJUANA RIVER VALLEY PROPERTIES**

This AGREEMENT is made and entered into on August 8, 2001 2002, by and between the San Diego County Water Authority, a county water authority duly organized pursuant to the County Water Authority Act ("AUTHORITY"), and the County of San Diego, a political subdivision of the State of California ("COUNTY").

RECITALS

- A. The AUTHORITY has adopted, and periodically updates, a Capital Improvement Program ("CIP") for regional water storage and conveyance facilities to meet the mission of providing a safe and reliable supply of imported water its service area.
- B. As identified in the CIP, the AUTHORITY has approved a project to construct and operate reservoir, pipeline and pump station facilities to store and distribute approximately ninety thousand one hundred (90,100) acre-feet of water as emergency supplemental water supplies as part of the Emergency Storage Project ("ESP").
- C. The AUTHORITY'S construction and operation of the ESP will result in temporary and permanent loss of existing wetland and upland habitat as described in the Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") for the ESP and the ESP Mitigation Monitoring and Reporting Program ("MMRP").
- D. The AUTHORITY is required to mitigate the temporary and permanent loss of existing upland habitat associated with the ESP by acquiring 649 acres of upland habitat within the MSCP planning area to satisfy the requirements of the ESP Biological Opinion issued by the U.S. Fish and Wildlife Service ("USFWS") to the AUTHORITY with respect to the ESP.
- E. The AUTHORITY is required to mitigate the permanent loss of existing wetland habitat associated with the ESP by constructing 14.9 acres of wetland habitat to satisfy the requirements of the ESP U.S. Army Corps of Engineers ("Corps") 404 permit No. 95-20092-DZ ("Corps Permit") and the California Department of Fish and Game ("CDFG") ESP Streambed Alteration Agreement No. 5-361-96 ("CDFG Permit").
- F. Implementation of other AUTHORITY CIP components for water storage and conveyance facilities to serve the San Diego region is expected to result in additional permanent and temporary impacts to existing wetland habitat.
- G. The AUTHORITY anticipates that any permanent impacts to existing wetland habitat as a result of the CIP implementation will require mitigation consistent with the provisions of federal and state laws administered by the Corps and CDFG, respectively.

H. The AUTHORITY desires to construct and thereby create at least 40 acres of new wetland habitat, (15 for this project, 25 for banking) in advance of these future CIP impacts to existing wetlands in order to create a wetland mitigation bank for the purpose of providing advanced mitigation, or pre-mitigation, for future AUTHORITY CIP projects.

I. The AUTHORITY is in the process of preparing a Natural Communities Conservation Plan (NCCP) and is seeking written approval from the Corps and CDFG to establish a wetland mitigation bank for the purposes stated in Recital H, above.

J. On October 22, 1997, the COUNTY Board of Supervisors adopted the Multiple Species Conservation Program, County of San Diego Subarea Plan ("MSCP") to provide a comprehensive, long-term habitat conservation plan that addresses the needs of multiple species and the preservation of natural vegetation communities in San Diego County. The property, hereinafter referred to as the Escondido Creek Uplands, has been identified by the AUTHORITY and COUNTY as a site within the proposed North County MSCP planning area suitable for upland habitat preservation and enhancement. Acquisition, preservation and management of the Escondido Creek Uplands pursuant to this AGREEMENT would benefit the AUTHORITY, COUNTY, and the region by providing conservation consistent with the proposed North County MSCP and the EIR/EIS for the ESP.

K. The COUNTY is willing to assume responsibility for ownership of Escondido Creek Uplands and for funding the long-term management and monitoring efforts at Escondido Creek Uplands because of the regional benefits associated with implementation of its proposed North County MSCP.

L. On September 12, 2001, the COUNTY Board of Supervisors approved and authorized funds for the purchase of an 18.9-acre parcel adjacent to San Elijo Lagoon in the City of Encinitas (and currently owned by the City of Encinitas) for open space preservation and lagoon protection. The property, hereinafter referred to as the Manchester Property, has been identified by COUNTY and AUTHORITY as a site suitable for wetland creation, restoration and enhancement. Acquisition, preservation, creation and restoration of the Manchester Property pursuant to this AGREEMENT would benefit the AUTHORITY, COUNTY, and the region by providing conservation consistent with the proposed North County MSCP and EIR/EIS for the ESP.

M. The COUNTY presently owns numerous parcels in the Tijuana River Valley, hereinafter referred to as the Tijuana River Valley Property, that have been identified by COUNTY and AUTHORITY as a site suitable for wetland restoration and enhancement. Restoration and enhancement of the Tijuana River Valley Property pursuant to this AGREEMENT would benefit the AUTHORITY, COUNTY, and the region by providing conservation consistent with the MSCP and EIR/EIS for the ESP.

TERMS OF AGREEMENT

Now, therefore, the parties agree as follows:

1. The following properties as shown on the regional map attached as Exhibit A are the subject of this agreement.

- a. Escondido Creek Uplands: The real property referred to herein as the Escondido Creek Uplands Property is listed below and shown on Exhibit B and described on Exhibit C attached hereto. Alternative properties in Escondido Creek with equivalent habitat values and acceptable to both parties may be substituted.

Assessor Parcel Numbers: 264-03-139, 264-03-140, 264-03-210

- b. Manchester: The real property referred to herein as the Manchester Property is listed below and shown on Exhibit D attached hereto.

Assessor Parcel Numbers: 262-073-03, 262-073-25

- c. Tijuana River Valley: The 32 acres of real property referred to herein as the Tijuana River Valley Property consists of portions of one or more of the parcels listed below and shown on Exhibit E attached hereto, or any other parcel(s) suitable for wetland creation and acceptable to both parties.

Assessor Parcel Numbers: 636-020-20, 636-020-48, 636-021-05, 637-010-72, 637-010-173, 664-010-57, 664-010-54, 662-020-05, 662-020-06, 663-011-12.

2. AUTHORITY Rights and Obligations.

Escondido Creek Uplands:

a. AUTHORITY shall negotiate with the property owners the price, terms and conditions for the purchase of Escondido Creek Uplands Property.

b. If AUTHORITY approves the price, terms and conditions, the AUTHORITY, at its sole expense, shall acquire Escondido Creek Uplands Property so long as the AUTHORITY: (i) receives 37 acres of credit from the USFWS for satisfaction of the upland habitat mitigation and preservation obligations of the ESP permits and environmental documents described above; or (ii) if the AUTHORITY receives some, but less than 37 acres of credit for satisfaction of the requirements of the ESP permits and environmental documents, AUTHORITY may use Escondido Creek Uplands Property for other mitigation purposes.

c. Pursuant to purchase agreement with the property owners consistent with this AGREEMENT, the AUTHORITY shall deposit the necessary funds into an escrow account for the acquisition of Escondido Creek Uplands Property. In addition to any other terms and conditions that may be negotiated with the sellers, the following condition shall be met to the satisfaction of the AUTHORITY prior to the close of escrow: The AUTHORITY shall obtain a written statement from USFWS that (i) the purchase of Escondido Creek Uplands Property will satisfy, in part, the criteria of item 2.1 of the terms and conditions of the ESP Biological Opinion regarding native upland habitat values; (ii) the designation of the COUNTY as the land manager is acceptable; and (iii) the ownership of the Escondido Creek Uplands Property by the COUNTY is acceptable.

d. Upon close of escrow and in accordance with paragraph c., above, the property shall be conveyed to the COUNTY free and clear of all liens and encumbrances, except for existing recorded access and utility easements, unless approved by the COUNTY in writing before close of escrow.

e. The AUTHORITY shall have the right, but not the obligation, to audit any books, records, receipts, purchase orders, settlements and other documentation and supporting information relating to the COUNTY'S obligations under this AGREEMENT. Any such audit(s) shall be undertaken by an employee of the AUTHORITY or its contracted representative(s) from a Certified Public Accounting firm at reasonable business hours and in conformance with legally accepted auditing standards.

f. Promptly upon receipt, the AUTHORITY shall provide to the COUNTY a copy of the written statement from USFWS referenced in paragraph c., above. The AUTHORITY shall also provide to the COUNTY, upon request, all correspondence between the AUTHORITY and any third party relating to the acquisition of the Escondido Creek Uplands property.

Manchester and Tijuana River Valley Properties:

g. The AUTHORITY, at its sole expense, shall design and construct wetlands at either or both the Manchester Property and the Tijuana River Valley Property in accordance with requirements of the Corps Permit and CDFG Permit. Before commencing construction, AUTHORITY shall submit the design and construction plans to the COUNTY for review and comment. AUTHORITY shall not commence construction until the COUNTY completes their review of the AUTHORITY'S design and construction plans. The COUNTY'S review shall be performed within the AUTHORITY'S established project schedule and shall not be unreasonably delayed.

h. The AUTHORITY shall provide and pay for all post-construction monitoring at the constructed wetlands until the AUTHORITY provides the COUNTY with a

written statement from the Corps and CDFG that the success criteria as defined by the Corps Permit and CDFG Permit have been satisfied.

i. Any wetland mitigation credit from the AUTHORITY'S activities at Manchester Property and Tijuana River Valley Property pursuant to this AGREEMENT shall accrue to the benefit of the AUTHORITY.

j. The AUTHORITY shall cooperate and provide all information and documents requested if the COUNTY undertakes an audit.

k. The AUTHORITY acknowledges that the COUNTY does not currently own the Manchester Property, but is in the process of acquiring title from the City of Encinitas. The AUTHORITY also acknowledges that the COUNTY may grant a new sewer easement running north/south across the Manchester Property to provide public sewer service to the proposed Encinitas Country Day School (approved by the City of Encinitas) on the property immediately north of the Manchester Property. Despite the best efforts of the City to locate the easement elsewhere, the easement may cross the area on the Manchester Property where the AUTHORITY proposes to construct wetlands. The AUTHORITY has no objections to the granting of this new sewer easement across the proposed wetland area provided the easement does not affect the amount of the wetlands mitigation credit or, if there is an affect, the COUNTY makes substitute mitigation land available at some other location acceptable to AUTHORITY.

l. The following provisions shall apply to the AUTHORITY'S construction of wetlands on the Manchester Property. Construction is defined as the time period commencing with AUTHORITY'S issuance of a notice to proceed to the construction contractor and ending with the AUTHORITY'S issuance of a notice of completion after wetlands have been constructed by the construction contractor. AUTHORITY may issue notice of completion only after wetlands have been fully constructed.

During the AUTHORITY'S construction of wetlands on the Manchester Property, the AUTHORITY shall be solely responsible for fully complying with all Environmental Laws, as defined in Exhibit F attached hereto, regarding hazardous materials, regardless of whether or not the obligation to comply is on the land owner. The term "hazardous materials" as used in this Agreement is defined in Exhibit F.

If the AUTHORITY or its employees, agents or contractors spills, leaks or discharges any hazardous material on the Manchester Property, the AUTHORITY shall immediately make all repairs necessary to prevent further spills, leaks or discharges and shall immediately clean up and promptly dispose of any hazardous material, including any contaminated soil. If the AUTHORITY fails to make the required repairs, to clean up the spill or to properly dispose of any hazardous material, COUNTY may, after written notice to AUTHORITY, take all steps

COUNTY deems necessary to make the necessary repairs, to clean up the spill, and to dispose of any hazardous material, including any contaminated soil. The AUTHORITY shall reimburse the COUNTY for the cost of all repairs and clean up work that the COUNTY does. The AUTHORITY shall reimburse the COUNTY for this expense within 30 days of receiving a bill for this work from the COUNTY.

If the AUTHORITY or its employees, agents or contractors stores, handles, spills, leaks or discharges any hazardous material on the Manchester Property, the AUTHORITY shall be solely responsible for paying all fines, damages and penalties imposed by any governmental agency regarding the storage, processing, handling, disposing, spilling, leaking or discharging of the hazardous substance.

During the AUTHORITY'S construction of wetlands on the Manchester Property, the AUTHORITY shall indemnify, defend, reimburse and hold harmless COUNTY, its employees, officers and agents from any and all liability, claims, damages or injuries to any person, including injury to the COUNTY or any of COUNTY'S employees, officers, agents, representatives, guests, licensees, invitees, patrons, or of any other person whomsoever, and all expenses of investigating and defending against same, arising from, or alleged to have arisen from, or in connection with the presence of hazardous materials upon, about or beneath this Property or migrating to or from this Property or arising in any manner whatsoever out of the AUTHORITY'S violation of any governmental regulation pertaining to hazardous materials which condition exists after the execution of this Agreement.

Before commencing construction of wetlands, the AUTHORITY shall provide at least three days' written notice to the COUNTY.

m. The following provisions shall apply to the AUTHORITY'S construction of wetlands on the Tijuana River Valley Property. Construction is defined as the time period commencing with AUTHORITY'S issuance of a notice to proceed to the construction contractor and ending with the AUTHORITY'S issuance of a notice of completion after wetlands have been constructed by the construction contractor. AUTHORITY may issue notice of completion only after wetlands have been fully constructed.

During the AUTHORITY'S construction of wetlands on the Tijuana River Valley Property, the AUTHORITY shall be solely responsible for fully complying with all Environmental Laws regarding the spilling, leaking, discharging, storing or handling of hazardous materials on the Tijuana River Valley Property by the AUTHORITY or its employees, agents or contractors.

If the AUTHORITY or its employees, agents or contractors spills, leaks or discharges any hazardous material on the Tijuana River Valley Property, the AUTHORITY shall immediately make all repairs necessary to prevent further

AUTHORITY fails to make the required repairs, to clean up the spill or to properly dispose of any hazardous material, COUNTY may, after written notice to AUTHORITY, take all steps COUNTY deems necessary to make the necessary repairs, to clean up the spill and to dispose of any hazardous material, including any contaminated soil. The AUTHORITY shall reimburse the COUNTY the cost of all repairs and cleanup work that the COUNTY does. The AUTHORITY shall reimburse the COUNTY for this expense within 30 days of receiving a bill for this work from the COUNTY.

If the AUTHORITY or its employees, agents or contractors stores, handles, spills, leaks or discharges any hazardous material on the Tijuana River Valley Property, the AUTHORITY shall be solely responsible for paying all fines, damages and penalties imposed by any governmental agency regarding the storage, processing, handling, disposing, spilling, leaking or discharging of the hazardous material.

During the AUTHORITY'S construction of wetlands on the Tijuana River Valley Property, the AUTHORITY shall defend, indemnify, reimburse and hold harmless COUNTY, its employees, officers and agents from any and all liability, claims, damages or injuries to any person, including injury to the COUNTY or any of COUNTY'S employees, officers, agents, representatives, guests, licensees, invitees, patrons or any other person, and all expenses of investigating and defending against same, arising from or alleged to have arisen from or in connection with the spilling, leaking, discharging, storing or handling of hazardous materials on the Tijuana River Valley Property by the AUTHORITY or its employees, agents or contractors.

The AUTHORITY shall prepare a Phase I Assessment for the particular parcel in the Tijuana River Valley Property on which the AUTHORITY proposes to construct wetlands. The AUTHORITY shall provide a copy of the Phase I Assessment to the COUNTY. The COUNTY shall evaluate the Phase I Assessment and determine whether a Phase II Assessment on that parcel is warranted. If the COUNTY determines that a Phase II Assessment is not warranted, the AUTHORITY may proceed pursuant to Section 2.g., above. If the COUNTY determines that a Phase II Assessment is warranted and if the AUTHORITY decides not to prepare a Phase II Assessment, the AUTHORITY shall not construct wetlands on that parcel. The AUTHORITY may select another parcel from the Tijuana River Valley Property and shall prepare a Phase I Assessment on that parcel as described above.

If the AUTHORITY prepares a Phase II Assessment on the parcel, the AUTHORITY shall provide a copy of the Phase II Assessment to the COUNTY when completed. If the Phase II Assessment shows the potential presence of hazardous materials, the AUTHORITY shall restore the parcel to its pre-Phase II Assessment condition and shall report the results of the Phase II Assessment to the County Department of Environmental Health. The COUNTY shall be

responsible for managing and disposing of any hazardous materials that were extracted from the ground during the Phase II Assessment.

If after preparing a Phase II Assessment on a parcel the AUTHORITY wants to proceed with constructing wetlands on that parcel, the AUTHORITY shall first request and obtain the COUNTY'S written approval to proceed based on the Phase II Assessment.

If, based on the results of the Phase II Assessment, the COUNTY denies the AUTHORITY'S request to proceed with constructing wetlands on the parcel, the AUTHORITY may either: (i) select another parcel from the Tijuana River Valley Property and undertake the Phase I and Phase II Assessment process described above, or (ii) proceed with construction upon three days' written notice to the COUNTY. If the AUTHORITY decides to proceed with wetlands construction on the parcel despite COUNTY'S denial, the AUTHORITY shall be solely responsible for the management and disposal of all hazardous materials uncovered or discovered on the parcel.

If the COUNTY does not require a Phase II Assessment, or if based on the results of the Phase II Assessment the COUNTY approves the AUTHORITY'S request to proceed with constructing wetlands on the parcel, the AUTHORITY shall provide at least three days' written notice to the COUNTY before commencing construction. If during construction of the wetlands, the AUTHORITY uncovers or discovers hazardous materials, the AUTHORITY shall immediately cease construction, promptly notify the COUNTY and secure the site. If, after consultation with the COUNTY, the AUTHORITY desires to proceed with construction, the AUTHORITY shall be responsible for management and disposal of all hazardous materials uncovered or discovered on the parcel. If, after consultation with the COUNTY, the AUTHORITY does not proceed with construction, the AUTHORITY shall restore the site as directed by the COUNTY, and the COUNTY shall manage and dispose of any hazardous materials that require disposal. The AUTHORITY may then select another parcel from the Tijuana River Valley Property and undertake the Phase I and Phase II Assessment process described above.

If under any circumstances the AUTHORITY proceeds with wetlands construction and discovers or uncovers hazardous materials, but continues to construct the wetlands, the following defense and indemnity provision shall apply during construction:

The AUTHORITY shall indemnify, defend, reimburse and hold harmless COUNTY, its employees, officers and agents from any and all liability, claims, damages or injuries to any person, including injury to the COUNTY or any of COUNTY'S employees, officers, agents, representatives, guests, licensees, invitees, patrons, or of any other person whomsoever, and all expenses of investigating and defending against same, arising from, or alleged to have arisen

from, or in connection with the presence of hazardous materials upon, about or beneath this Tijuana River Valley Property or migrating to or from this Property or arising in any manner whatsoever out of the AUTHORITY'S violation of any governmental regulation pertaining to hazardous materials which condition exists after the execution of this Agreement.

The AUTHORITY shall pay the entire cost for all Phase I and Phase II Assessments.

If during construction the AUTHORITY uncovers non-hazardous materials that must be disposed of to construct viable wetlands, the AUTHORITY shall promptly notify the COUNTY, and the COUNTY shall dispose of the materials.

3. COUNTY Rights and Obligations.

Escondido Creek Uplands:

a. At the close of escrow, COUNTY shall take fee title to the Escondido Creek Uplands property subject to such easements or other title restrictions established pursuant to Section 2.d., above, and shall be the land manager for Escondido Creek Uplands property.

b. The COUNTY shall hold Escondido Creek Uplands property solely for purposes of maintaining it as a permanent open space and wildlife conservation area including passive recreation consistent with the Long-term Management Plan. If necessary to satisfy the AUTHORITY'S mitigation obligation for ESP and if directed to do so by the AUTHORITY, the COUNTY shall grant to the AUTHORITY, the CDFG, the USFWS or any combination of these agencies, an easement to preserve Escondido Creek Uplands property in perpetuity as an open space and wildlife conservation area. With the prior written approval of the AUTHORITY, the COUNTY may grant such other easements as may be required for access, utilities and other purposes necessary to implement the Long-term Management Plan or for open space and wildlife conservation purposes. AUTHORITY shall not unreasonably withhold its approval. Except as specified above, the COUNTY shall maintain title to Escondido Creek Uplands property free and clear of all encumbrances and liens, except for existing access and utility easements.

c. The COUNTY shall meet all requirements of the USFWS to manage and maintain Escondido Creek Uplands property as an open space and wildlife conservation area for the purpose of providing 37 acres of credit to the AUTHORITY for ESP mitigation as required by the ESP Biological Opinion. In so doing, the COUNTY shall provide for the preservation of sensitive biological resources in perpetuity. The COUNTY shall perform all long-term management and maintenance of Escondido Creek Uplands property to the reasonable satisfaction of the USFWS and CDFG. The COUNTY shall develop a Long-term

satisfaction of the USFWS and CDFG. The COUNTY shall develop a Long-term Management Plan for the Escondido Creek Uplands property. The COUNTY shall submit the Long-term Management Plan to the USFWS and the CDFG for review and approval. In accordance with the ESP Biological Opinion, the AUTHORITY shall obtain written approval from USFWS of the Long-term Management Plan. The COUNTY is responsible for preparing the draft Long-term Management Plan within six months subsequent to receipt of title to the property. The COUNTY shall provide the draft Long-term Management Plan to the AUTHORITY for review and comment prior to submission to the USFWS and CDFG.

d. The COUNTY may transfer the obligations of land manager for Escondido Creek Uplands property to another entity subject to the prior written approval of the AUTHORITY and USFWS. AUTHORITY shall not unreasonably withhold its approval.

e. The COUNTY shall not use Escondido Creek Uplands property for any purpose other than that stated in this AGREEMENT except with the prior written authorization of the AUTHORITY. AUTHORITY shall not unreasonably withhold its approval.

f. The COUNTY shall cooperate and provide all information and documents requested if the AUTHORITY undertakes an audit pursuant to section 2.e., above.

g. The COUNTY shall have full and sole responsibility for the management, maintenance and use of Escondido Creek Uplands property consistent with the terms of this AGREEMENT and the Long-term Management Plan.

Manchester and Tijuana River Valley Properties:

h. COUNTY will provide AUTHORITY the right to access and construct a total of 40 acres suitable for wetlands creation as defined in the ESP Biological Opinion and subject to the approval of the ACOE and CDFG. COUNTY will make a good faith effort to ensure that 32 acres is located within the Tijuana River Valley, and 8 acres is on a contiguous site at the Manchester Property (or some other location acceptable to the AUTHORITY north of Interstate 8). Until the 40 acres of COUNTY owned wetlands identified in this agreement are deemed to be suitable for the AUTHORITY'S wetland mitigation program, the AUTHORITY shall have first right of refusal on alternative COUNTY parkland north of Interstate 8 on which wetland restoration/creation sites are available.

i. The COUNTY shall maintain and hold fee title to the Tijuana River Valley Property on which the AUTHORITY constructs wetlands under this Agreement and restrict the use of this property through an appropriate restriction, dedication, open space or conservation easement, or other easement or condition of title as may be necessary to preserve the property for permanent open space and habitat

conservation in accordance with this AGREEMENT. If necessary to satisfy the AUTHORITY'S mitigation obligation for ESP and if directed to do so by the AUTHORITY, the COUNTY shall grant to the AUTHORITY, the CDFG, the USFWS or any combination of these agencies, an easement to preserve Tijuana River Valley Property.

j. The COUNTY, at its sole expense, shall make a good-faith effort to obtain fee title to the Manchester property from the City of Encinitas. Once acquired, the COUNTY shall hold fee title to the Manchester Property and restrict the use of the property through an appropriate restriction, dedication, open space or conservation easement, or other easement, or condition of title as may be necessary to preserve the property for permanent open space and habitat conservation in accordance with this AGREEMENT. The COUNTY may grant a new sewer easement across the Manchester Property to provide public sewer service to the proposed Encinitas Country Day School (approved by the City of Encinitas) on the property immediately north of the Manchester Property. Despite the best efforts of the City to locate the easement elsewhere, the easement may cross the area on the Manchester Property where the AUTHORITY proposes to construct wetlands. The AUTHORITY has no objections to the granting of this new sewer easement, across the proposed wetland area provided the easement does not affect the amount of the wetlands mitigation credit or, if there is an effect, the COUNTY makes substitute mitigation land available at some other location acceptable to the AUTHORITY. If necessary to satisfy the AUTHORITY'S mitigation obligation for ESP and if directed to do so by the AUTHORITY, the COUNTY shall grant to the AUTHORITY, the CDFG, the USFWS or any combination of these agencies, an easement to preserve the Manchester property.

k. The parties agree that in the event the COUNTY does not obtain fee title to the Manchester Property, then COUNTY will provide AUTHORITY access to an alternate 8-acre wetland creation site(s), acceptable to both parties and the Corps and CDFG. County will make a good faith effort to provide an alternate wetland site located north of Interstate 8. Until the 40 acres of COUNTY owned wetlands identified in this agreement are deemed to be suitable for the AUTHORITY'S wetland mitigation program, the AUTHORITY shall have first right of refusal on alternative COUNTY parkland north of Interstate 8 on which wetland restoration/creation sites are available.

l. The COUNTY shall also provide to the AUTHORITY, upon request, all correspondence between the COUNTY and any third party relating to the acquisition of the Manchester Property.

Escondido Creek Uplands, Manchester and Tijuana River Valley Properties:

The COUNTY shall have the right, but not the obligation, to audit any books, records, receipts, purchase orders, settlements and other documentation and

