

**CALIFORNIA WATER QUALITY CONTROL BOARD  
 SAN DIEGO REGION**

9174 Sky Park Court, Suite 100, San Diego, CA 92123-4353  
 Phone (858) 467-2952 · Fax (858) 571-6972  
[www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

**REVISED TENTATIVE ORDER NO. R9-2013-0007**

**WASTE DISCHARGE REQUIREMENTS  
 FOR  
 FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY  
 TESORO EXTENSION (SR 241) PROJECT  
 ORANGE COUNTY**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

**Table 1. Discharger Information**

<b>Discharger</b>	Foothill/Eastern Transportation Corridor Agency
<b>Name of Project</b>	Tesoro Extension (SR 241)
<b>Project Address</b>	125 Pacifica #120, Irvine, CA 92618
<b>CIWQS Party Number</b>	536510

Discharges by the Foothill/Eastern Transportation Corridor Agency from the discharge points identified below are subject to the waste discharge requirements set forth in this Order:

**Table 2: Discharge Location**

<b>Discharge Point</b>	<b>Discharge Description</b>	<b>Discharge Point Latitude</b>	<b>Discharge Point Longitude</b>	<b>Receiving Water</b>
1	Clean Fill	33.532853° N	-117.600563° W	Unnamed <u>waters of the State</u> tributary to Cañada Gobernadora Creek
2	Clean Fill	33.536310° N	-117.596573° W	Unnamed <u>waters of the State</u> tributary to Cañada Gobernadora Creek
3	Clean Fill	33.548477° N	-117.596190° W	Unnamed <u>waters of the State</u> tributary to Cañada Gobernadora Creek
4	Clean Fill	33.553264° N	-117.595168° W	Unnamed <u>waters of the State</u> tributary to Cañada Gobernadora Creek

**Table 2: Discharge Location Continued**

Discharge Point	Discharge Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
A2	Clean Fill	33.542563° N	-117.594252° W	Unnamed <u>waters of the State</u> tributary to Cañada Gobernadora Creek
A3	Clean Fill	33.544166° N	-117.594145° W	Unnamed <u>waters of the State</u> tributary to Cañada Gobernadora Creek
F	Clean Fill	33.539938° N	N -117.597137° W	Unnamed <u>waters of the State</u> tributary to Cañada Gobernadora Creek
G	Clean Fill	33.547330° N	-117.593120° W	Unnamed <u>waters of the State</u> tributary to Cañada Gobernadora Creek
H	Clean Fill	33.551465° N	-117.594385° W	Unnamed <u>waters of the State</u> tributary to Cañada Gobernadora Creek
J	Clean Fill	33.581497° N	-117.609899° W	Unnamed <u>waters of the State</u> tributary to Cañada Chiquita Creek
K	Clean Fill	33.581031° N	-117.608638° W	Unnamed <u>waters of the State</u> tributary to Cañada Chiquita Creek
L	Clean Fill	33.581565° N	-117.607591° W	Unnamed <u>waters of the State</u> tributary to Cañada Chiquita Creek
T5	Clean Fill	33.563031° N	-117.605581° W	Unnamed <u>waters of the State</u> tributary to Cañada Chiquita Creek
T6A	Clean Fill	33.565526° N	-117.608472° W	Unnamed <u>waters of the State</u> tributary to Cañada Chiquita Creek
T6E	Clean Fill	33.563933° N	-117.608397° W	Unnamed <u>waters of the State</u> tributary to Cañada Chiquita Creek
T7C	Clean Fill	33.568236° N	-117.611080° W	Unnamed <u>waters of the State</u> tributary to Cañada Chiquita Creek
T8	Clean Fill	33.577195° N	-117.609911° W	Unnamed <u>waters of the State</u> tributary to Cañada Chiquita Creek

**Table 2: Discharge Location Continued**

Discharge Point	Discharge Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
IW1 (wetland)	Clean Fill	33.574888° N	-117.612536° W	Isolated Wetland
T6W (wetland)	Clean Fill	33.562923° N	-117.608649° W	Wetland feature-unnamed <u>waters of the State</u> tributary to Cañada Chiquita Creek

**Table 3: Administrative Information**

This Order was adopted by the California Regional Water Quality Control Board, San Diego Region on:	March 13, 2013
This Order shall become effective on:	March 13, 2013

I, David W. Gibson, Executive Officer, do hereby certify that this order is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, San Diego Region, on March 13, 2013.

Tentative \_\_\_\_\_  
 David W. Gibson  
 Executive Officer

## TABLE OF CONTENTS

I.	PROJECT INFORMATION .....	<u>55</u>
II.	FINDINGS .....	<u>55</u>
III.	DISCHARGE PROHIBITIONS .....	<u>1010</u>
IV.	CONSTRUCTION BEST MANAGEMENT PRACTICES .....	<u>1110</u>
V.	POST- CONSTRUCTION BEST MANAGEMENT PRACTICES.....	<u>1212</u>
VI.	RECEIVING WATER LIMITATIONS .....	<u>1413</u>
VII.	COMPENSATORY MITIGATION.....	<u>1414</u>
VIII.	REPORTING REQUIREMENTS .....	<u>2018</u>
IX.	PROVISIONS .....	<u>2522</u>
X.	NOTIFICATIONS.....	<u>2826</u>

ATTACHMENT A: PROJECT SITE MAPS

ATTACHMENT B: INFORMATION SHEET

ATTACHMENT C: MITIGATION SITE MAPS

ATTACHMENT D: NON-FEDERAL WATERS OF THE STATE

ATTACHMENT E: TREATMENT CONTROL BEST MANAGEMENT PRACTICE  
PLAN

ATTACHMENT F: CHIQUITA CANYON PERIMETER CONSERVATION EASEMENT

Foothill/Eastern Transportation  
 Corridor Agency  
 Tesoro (SR 241) Extension  
 Revised Tentative Order No. R9-2013-0007

## I. PROJECT INFORMATION

The following Project is subject to waste discharge requirements as set forth in this Order:

**Table 4. Project Information**

<b>Discharger</b>	Foothill/Eastern Transportation Corridor Agency
<b>Name of Project</b>	Tesoro Extension (SR 241)
<b>Project Address</b>	Terminus at Oso Parkway to the future Cow Camp Road immediately north of SR-74 east of San Juan Capistrano, Orange County, CA
<b>Project Contact, Title, and Phone</b>	Valerie McFall, Director, Environmental Services (949) 754-3475
<b>Mailing Address</b>	125 Pacifica #120, Irvine, CA 92618
<b>Type of Project</b>	Transportation
<b>CIWQS Place Number</b>	785677
<b>WDID Number</b>	9000002505

## II. FINDINGS

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board) finds:

- A. **Report of Waste Discharge.** The Foothill/Eastern Transportation Corridor Agency (hereinafter Discharger or F/ETCA) is a Joint Powers Agency created by the California State Legislature to plan, finance, design, construct and operate a toll highway system in Orange County, California. The F/ETCA submitted a Report of Waste Discharge (ROWD) to construct the Tesoro Extension (SR 241) (Project), located in Orange County on August 10, 2012. Additional information to complete the ROWD application was received on October 4, 2012 and November 8, 2012. The ROWD was deemed complete on November 14, 2012. The Discharger proposes to discharge fill material to waters of the State associated with construction activity at the Project site.
- B. **Project Location.** The Project is an approximate 5.5 mile long extension of the existing State Route (SR) 241 from its current terminus at Oso Parkway to the future Cow Camp Road immediately north of SR-74 in Orange County. The Project is located within an area shown on the Cañada Gobernadora and San Clemente US Geological Survey 7.5-minute quadrangle maps. Attachment A of this Order provides the location of the Project and mitigation sites.
- C. **Receiving Waters.** The Project Study Area contains a total of 16.01 acres and 28,747 lineal feet of surface waters of the State and/or waters of the United States, of which a total of 14.35 acres constitute wetlands pursuant to federal Clean Water Act guidance in the United States Army Corps of Engineers (USACOE) Wetlands Delineation 1987 Manual and Supplements, and Title 33, Code of Federal Regulations, Part 328 (33 CFR 328). The receiving waters in

the vicinity of the Project are Cañada Gobernadora Creek and Cañada Chiquita Creek. The Project area lies within the Mission Viejo Hydrologic Area. Individual hydrologic subareas (HSA) defined in the Mission Viejo Hydrologic area include Oso; Upper Trabuco; Middle Trabuco; Gobernadora; Upper San Juan; Middle San Juan; Lower San Juan; and Ortega. Lands within the Project watersheds are largely undeveloped, and the majority of the terrain is natively vegetated or used for rangeland or agricultural purposes.

- D. **Overall Project-DescriptionPurpose.** The purpose of the Project is to provide a transportation facility that will reduce existing and forecasted deficiencies and congestion on the I-5 freeway and the arterial network in southern Orange County. The Project will serve both local (existing and future) and intra- and inter-regional trips. F/ETCA is the Project sponsor overseeing construction and is also the California Environmental Quality Act (CEQA) lead agency for the proposed Project. Upon opening of the Tesoro Extension roadway, the California Department of Transportation (Caltrans) will assume ownership of the roadway facility and responsibility for roadway maintenance. F/ETCA will be the toll operator for the roadway and maintain tolling equipment.

The Project includes four general-purpose travel lanes, two in each direction. The center median from Oso Parkway to the Cow Camp Road will be revegetated with a native seed mix and will include drainage improvements, similar to the median along the existing SR-241. The median offers future opportunities for bus rapid transit, light rail, or additional lanes as traffic conditions warrant. Cow Camp Road will be constructed by Rancho Mission Viejo and the County of Orange prior to, or concurrent with, the construction of the Tesoro Extension Project. An interchange at "G" Street and SR-241 will be constructed 0.6 mile north of Cow Camp Road (See Project Site Maps, Attachment A). The footprint for the Tesoro Extension Project includes areas for grading, remedial grading, and construction disturbance areas. In addition to the paved road and associated bridges and interchanges, the construction area includes access roads, materials storage areas, areas for utility relocations, and areas for the construction of Best Management Practices (BMPs). The Project adds approximately 100 acres of impervious surface. More details about the Project and Project impacts are described in Attachments A–E of this Order.

- E. **Project Impacts.** The Project will result in the discharge of waste (fill) in a total of 0.64 acre of waters of the State, including 0.40 acre (5,297 linear feet) of permanent impacts and 0.24 acres (1,819 linear feet) of temporary impacts to jurisdictional waters in the Mission Viejo Hydrologic Area (901.20) in the San Juan Hydrologic Unit (901.00) (See Attachment B, Table 1).
- F. **Project Mitigation.** The Discharger submitted a compensatory mitigation plan, *Draft Habitat Mitigation and Monitoring Plan (HMMP) for the Tesoro Extension Project*, prepared by NewFields, in October of 2012. To compensate for unavoidable impacts to wetland and non-wetland waters of the State, the

Discharger proposes 20.31 acres (10,316 linear feet) of mitigation and an additional 13.55 acres of upland buffer restoration. The draft HMMP ~~contains a provides for implementation of~~ compensatory mitigation ~~plan~~ which offsets adverse water quality impacts attributed to the Project in a manner that protects and restores the abundance, types and conditions of aquatic resources and supports their beneficial uses. ~~The draft~~ A finalized version of the HMMP and any subsequent versions are is subject to the approval of ~~reviewed and approved by~~ the San Diego Water Board and must be implemented under the terms and conditions of this Order.

**G. Project Runoff Management Plan.** The Discharger submitted a post construction storm runoff management plan (RMP), *Runoff Management Plan, 241 Tesoro Extension Project*, prepared by Saddleback Constructors dated February 14, 2012. The RMP provides for the prevention of adverse impacts to aquatic resources through Best Management Practices (BMPs) and incorporation of various project design features for erosion control and water quality treatment. The Discharger reports that the BMPs are in conformance with applicable requirements set forth in the Caltrans statewide storm water NPDES Permit, Order No. 2012-0011-DWQ, NPDES No. CAS000003. The Discharger further reports that most of the BMPs are designed with a safety factor such that they will function in conditions beyond those specified in the Caltrans NPDES Permit. This Order requires that post construction BMPs and project design features provide for the capture and treatment of the 85th percentile, 24-hour storm event from 100 percent of the added impervious surfaces and compliance with the South Orange County Hydromodification Plan (HMP) and the draft Model Water Quality Management Plan (Model WQMP) for South Orange County.

**G.H. Regulatory Authority and Reason for Action.** By letter dated November 5, 2012, the U.S. Army Corps of Engineers (USACOE) determined that the proposed Project activities will not occur within waters of the United States and therefore the Project is not subject to USACOE jurisdiction under Section 404 of the Clean Water Act (CWA) and a Section 404 permit is not required for the Project. However, surface waters affected by the Project are waters of the State, as defined by section 13050 of the Water Code which include all water bodies, including wetlands and ephemeral, intermittent and perennial stream channels, in all flow conditions, including effluent dominated and seasonally dry. Waste discharges to these waters are subject to State regulation under division 7 of the Water Code (commencing with section 13000).

This Order is issued pursuant to Water Code section 13263, and establishes waste discharge requirements for the discharge of fill material, including structural material and/or earthen wastes from Project construction activities, to waters of the State. The waste discharge requirements of this Order are necessary to adequately address potential and anticipated impacts to waters of the State, and to ensure compliance with applicable water quality control plans and polices. ~~This Order may also serve as a CWA Section 401 water quality certification should the USACOE non-jurisdictional determination be reversed for~~

~~the Project.~~

**H.I. Statement of Basis.** The San Diego Water Board developed the requirements in this Order based on information submitted as part of the ROWD and other available information. The Information Sheet in Attachment B of this Order contains background information and the supporting rationale for the requirements of this Order and is hereby incorporated into this Order and constitutes part of the Findings for this Order.

**H.J. Water Quality Control Plan.** The San Diego Water Board adopted a Water Quality Control Plan for the San Diego Region-Basin (hereinafter Basin Plan) on September 8, 1994 that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for Cañada Gobernadora Creek, Cañada Chiquita Creek, and other receiving waters addressed through the Plan. Subsequent revisions to the Basin Plan have also been adopted by the San Diego Water Board and approved by the State Water Resources Control Board (State Water Board). Beneficial uses applicable to the unnamed tributaries of Cañada Gobernadora and Cañada Chiquita Creeks specified in the Basin Plan are as follows:

Table 1. Basin Plan Beneficial Uses of Cañada Gobernadora and Cañada Chiquita Creeks

Discharge Points	Receiving Water Name	Beneficial Use(s) (check these)
1, 2, 3, 4, A <sub>2</sub> , A <sub>3</sub> , F, G, H	Unnamed tributaries to Cañada Gobernadora Creek	Municipal and Domestic Supply; Industrial service supply; agricultural supply; contact water recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; and wildlife habitat.
J, K, L, T5, T6A, T6E, T7C, T8, IW1, T6W	Unnamed tributaries to Cañada Chiquita Creek	Municipal and Domestic Supply; Industrial service supply; agricultural supply; contact water recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; and wildlife habitat.

Together with an anti-degradation policy, the Basin Plan beneficial uses and water quality objectives serve as water quality standards under the Clean Water Act. This Order specifies waste discharge requirements that are necessary to adequately address effects on, and threats to, applicable water quality standards resulting from discharges attributed to the Project. Through compliance with the waste discharge requirements of this Order, the Project will not result in State water quality standards being ~~exceeded~~violated.

**J.K. Anti-Degradation Policy.** The State Water Resources Control Board established California's anti-degradation policy in State Water Board Resolution No. 68-16 (Policy) which requires that existing quality of waters be maintained unless degradation is justified based on specific findings. Minimal water quality degradation may be allowed under the Policy only if any change in water quality is consistent with the maximum benefit to the people of the State; the degradation will not unreasonably affect present and anticipated beneficial uses; and the degradation will not result in violation of any applicable Water Quality



Revised Tentative Order No. R9-2013-0007

Control Plan, ~~and, d~~Discharges must meet requirements that will result in use the best practicable treatment or control to avoid pollution or a condition of nuisance. Consistent with the Policy, this Order contains waste discharge requirements to ensure beneficial uses are maintained or enhanced through mitigation and monitoring requirements for impacts to waters of the State. The waste discharge requirements are designed to ensure and verify that the highest level of water quality is maintained consistent with the maximum benefit to the people of the State.

~~K.L.~~ **No Net Loss Policy.** In 1993, the Governor of California issued the California Wetlands Conservation Policy (Executive Order W- 59-93). Commonly referred to as the “No Net Loss Policy” for wetlands, the Executive Order requires State agencies to “ensure no overall net loss [of wetlands] and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship and respect for private property.” This Order meets the objectives of Executive Order W-59-93 through the establishment of compensatory mitigation requirements which offset adverse water quality impacts attributed to the Project in a manner that protects and restores the abundance, types, and conditions of aquatic resources and supports their beneficial uses.

~~L.M.~~ **California Environmental Quality Act.** The Discharger is the lead agency under the California Environmental Quality Act (Public Resources Code section 21000, et seq., (CEQA)). The Discharger certified a Final Environmental Impact Report (EIR) for the South Orange County Transportation Improvement Project, and filed a Notice of Determination (SCH # 2001061046) on February 23, 2006, under CEQA Guidelines Title 14, California Code of Regulations. The Discharger determined the Project, without mitigation, will have a significant effect on the environment. Therefore, the Final EIR incorporates mitigation measures that mitigate many of the Project’s effects on the environment to less than significant. For those impacts the Discharger determined to be unavoidable impacts, the Discharger adopted a Statement of Overriding Considerations finding that the benefits of the project outweighed the impacts.

The San Diego Water Board has reviewed the lead agency’s Final EIR and Statement of Overriding Considerations. None of the significant unavoidable environmental impacts triggering the lead agency’s adoption of the Statement of Overriding Considerations are within the areas of responsibility of the San Diego Water Board. The San Diego Water Board also concludes that without mitigation, the Project as proposed may have a significant effect on the environment. This Order requires implementation of mitigation measures that will reduce effects on the environment within the San Diego Water Board’s jurisdiction to less than significant. The Order requires the Discharger to comply with a monitoring and reporting program that will ensure that the mitigation measures are implemented and the requirements of this Order are met.

**M.N. Executive Officer Delegation of Authority.** The San Diego Water Board by prior resolution has delegated all matters that may legally be delegated to its Executive Officer to act on its behalf pursuant to Water Code section 13223. Therefore, the Executive Officer is authorized to act on the San Diego Water Board's behalf on any matter within this Order unless such delegation is unlawful under Water Code section 13223 or this Order explicitly states otherwise

**N.O. Public Notice.** The San Diego Water Board has notified the Discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Details of the notification are provided in the Information Sheet provided in Attachment B of this Order.

**O.P. Public Hearing.** The San Diego Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. Details of the Public Hearing are provided in the Information Sheet provided in Attachment B of this Order.

**IT IS HEREBY ORDERED** that, in order to meet the provisions contained in Division 7 of the Water Code (commencing with section 13000) and regulations adopted thereunder, the Discharger shall comply with the requirements in this Order.

### **III. DISCHARGE PROHIBITIONS**

- A. The discharge of waste, in a manner or location other than as described in the Report of Waste Discharge or findings of this Order, and for which valid waste discharge requirements are not in force is prohibited.
- B. The discharge of sand, silt, clay, or other earthen materials from any activity in quantities which cause deleterious bottom deposits, turbidity, or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.
- C. The treatment, storage, or disposal of waste in a manner that creates a pollution, contamination or nuisance, as defined by Water Code section 13050, is prohibited.
- D. The dumping, deposition, or discharge of waste directly into waters of the State, or adjacent to such waters in any manner which may permit it's being transported into the waters, is prohibited unless authorized by the San Diego Water Board
- E. The Discharger must comply with all applicable Discharge Prohibitions contained in Chapter 4 of the Basin Plan, incorporated into this Order as if fully set forth herein.

#### **IV. CONSTRUCTION BEST MANAGEMENT PRACTICES**

- A. Prior to the start of the project, and annually thereafter, the Discharger must educate all personnel on the requirements in this Order, including pollution prevention measures, spill response, and Best Management Practices (BMPs) implementation and maintenance.
- B. The Discharger must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the United States and/or State.
- C. The Discharger, and/or all legally responsible parties in the Project construction area, must enroll in and comply with the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, NPDES No. CAS000002, *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*, and any subsequent revisions thereto.
- D. The treatment, storage, and disposal of wastewater during the life of the project must be done in accordance with waste discharge requirements established by the San Diego Water Board pursuant to Water Code 13260.
- E. Discharges of concentrated flow during construction or after completion of the Project must not cause downstream erosion or damage to properties or stream habitat.
- F. Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the United States and/or the State or placed in locations that may be subjected to storm flows. Pollutants discharged to areas within a stream diversion area must be removed at the end of each work day or sooner if rain is predicted.
- G. All surface waters, including ponded waters, must be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving waters. Diversion activities must not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.
- H. Cofferdams and water barrier construction shall be adequate to prevent seepage into or from the work area. Cofferdams or water barriers shall not be made of earth or other substances subject to erosion or that contain pollutants. When dewatering is necessary to create a temporary dry construction area, the water

shall be pumped through a sediment-settling device before it is returned to the water body. The enclosure and the supportive material shall be removed when the work is completed, and removal shall proceed from downstream to upstream.

- I. All areas that will be left in a rough graded state must be stabilized no later than two weeks after completion of grading. The Discharger is responsible for implementing and maintaining BMPs to prevent erosion of rough graded areas. Hydroseed areas must be revegetated with native species appropriate for the area. The revegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be found online at <http://www.cal-ipc.org/ip/inventory/weedlist.php>. Follow-up seed applications must be made as needed to cover bare spots and to maintain adequate soil protection.
- J. Except as authorized by this Order, substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each Project activity involving hazardous materials.
- K. Removal of vegetation must occur by hand, mechanically, or using United States Environmental Protection Agency (USEPA) approved herbicides deployed using applicable BMPs to prevent impacts to beneficial uses of waters of the State. Use of aquatic pesticides must be done in accordance with State Water Resources Control Board Water Quality Order No. 2004-0009-DWQ, *Statewide General National Pollutant Discharge Elimination System Permit For The Discharge Of Aquatic Pesticides For Aquatic Weed Control In Waters Of The United States General Permit No. CAG990005*, and any subsequent revisions thereto.

## V. POST- CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. All storm drain inlet structures within the Project boundaries must be stamped and/or stenciled with appropriate language prohibiting non-storm water discharges.
- B. The Project adds approximately 100 acres of impervious surface. The Discharger must install and implement the post construction BMPs for the Project described in the *Runoff Management Plan (RMP) for 241 Tesoro Extension Project*, prepared by Saddleback Constructors for F/ETCA, and dated February 14, 2012. Post-construction BMPs must be installed and functional within 30 days of Project completion and prior to any authorized use of the State Route (SR) 241 Tesoro Extension.
- C. Post-construction BMPs must be in conformance with applicable requirements set forth in the statewide storm water NPDES permit for the California

Department of Transportation (Caltrans), Order No. 2012-0011-DWQ, NPDES No. CAS000003. Post construction BMPs must also provide for the capture and treatment of the 85th percentile, 24-hour storm event from 100 percent of the added impervious surfaces, and comply with the draft Model Water Quality Management Plan (Model WQMP) for South Orange County, dated December 16, 2011, and the draft South Orange County Hydromodification Plan (HMP), dated December 11, 2011.

- D. All post-construction structural treatment BMPs, including, but not limited to, vegetated swales and media filters, must be regularly inspected and maintained in perpetuity per manufacturers' specifications for proprietary structural devices, and at frequencies no less than those recommended by the California Storm Water Quality Association (CASQA)<sup>1</sup> guidance for non-proprietary measures. At a minimum, the Discharger must comply with the following:
1. Final maintenance plans for the vegetated swales must be developed and implemented based on CASQA guidance.
  2. Flow-based treatment BMPs (e.g., media filters and vegetated swales) must be inspected at a minimum monthly from October through April and at least twice from May through September each year.
  3. Retention basins must be maintained as necessary to prevent nuisance conditions, including those associated with odors, trash, and disease vectors. Such maintenance shall not compromise the ability of the basins to perform water quality treatment required by this Order.
  4. Records must be kept regarding inspections and maintenance in order to assess the performance of the systems and determine whether adaptations are necessary to protect receiving waters.
- E. Bridges, culverts, dip crossings, or other stream crossing structures shall be designed and installed so they will not cause scouring of the stream bed and erosion of the banks in the vicinity of the Project. Storm drain lines/culverts and other stream crossing structures shall be designed and maintained to accommodate at least a 100-year, 24-hour storm event, including associated bedload and debris with a similar average velocity as upstream and downstream sections. Bottoms of temporary culverts shall be placed at stream channel grade and bottoms of permanent culverts shall be open bottom or embedded and backfilled below the grade of the stream greater than or equal to a depth of 1 foot.

---

<sup>1</sup> California Storm Water Quality Association (*California Storm Water BMP Handbook, New Development and Redevelopment 2003*), available on-line at: <http://www.cabmphandbooks.org/> [Accessed on January 15, 2012]

- F. If groundwater dewatering is required for the Project, the Discharger shall enroll in and comply with the requirements of Regional San Diego Water Board Order No. R9-2008-0002 NPDES No. CAG919002, General Waste Discharge Requirements For Groundwater Extraction Waste Discharges From Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters within The San Diego Region Except for San Diego Bay.

## VI. RECEIVING WATER LIMITATIONS

- A. The receiving water limitations set forth below for the unnamed tributaries of Cañada Gobernadora and Cañada Chiquita Creeks are based on applicable water quality standards contained in the Basin Plan and federal regulations and are a required part of this Order. Project activities shall not cause or contribute to violation of these receiving water limitations.

1. **Water Quality Objectives.** Water quality objectives applicable to the unnamed tributaries of Cañada Gobernadora and Cañada Chiquita Creeks established in Chapter 3 of the ~~San Diego Water Board's Water Quality Control Plan for the San Diego Basin (Basin Plan)~~ shall not be exceeded.
2. **Priority Pollutant Criteria.** Priority pollutant criteria applicable to the unnamed tributaries of Cañada Gobernadora and Cañada Chiquita Creeks promulgated by the ~~U.S. Environmental Protection Agency~~-USEPA through the a) National Toxics Rule (NTR) (40 CFR 131.36 promulgated on December 22, 1992 and amended on May 4, 1995) and b) California Toxics Rule (CTR) (40 CFR 131.38, (65 Fed. Register 31682-31719), adding Section 131.38 to Title 40 of the Code of Federal Regulations, on May 18, 2000) shall not be exceeded.

## VII. COMPENSATORY MITIGATION

- A. **Duty to Comply.** The Discharger shall retain responsibility for providing compensatory mitigation for the Project as required in this Order and shall direct any agreement(s) to obtain compensatory mitigation services.

~~B. **Compensatory Mitigation Plan.** The Discharger shall implement compensatory mitigation as detailed in the *Habitat Mitigation and Monitoring Plan for the Tesoro Extension Project*, prepared by NewFields, October 2012 (and any subsequent versions reviewed and approved by the San Diego Water Board) at the general locations described in Attachment C of this Order.~~

- ~~C.B. **Updated Compensatory Management Plan Development.** The Discharger shall update and finalize the *Draft Habitat Mitigation and Monitoring Plan (HMMP) for the Tesoro Extension Project*, prepared by NewFields, dated October 2012 prepare and submit a finalized and updated Habitat Mitigation and Monitoring Plan (HMMP). The HMMP must be received by the San Diego Water~~

Board no later June 14, 2013 and prior to the start of Project construction. The finalized and updated HMMP shall contain the following elements to the satisfaction of the San Diego Water Board:

1. A description of the legal arrangements and instruments for financial assurance, protection, and management that will be used to ensure the long term protection of the compensatory mitigation sites in perpetuity.
2. A description of the interim and long-term management and reporting plans for the compensatory mitigation sites including but not limited to:

~~At a minimum, this shall include:~~

- a. A description and schedule of maintenance, after initial construction, to support achievement of performance standards and maintenance for any other purpose.
  - b. A detailed long-term plan that specifies how the site will be used, how the site will be maintained, who will be responsible for the work, and a schedule for all activities.
  - c. Management measures ~~needed that will be implemented~~ to ensure long-term sustainability after performance standards have been achieved; the responsible party for implementing the management measures; and long-term financing mechanisms; as well as the conditions that will trigger certain maintenance needs or management activities. Compensatory mitigation sites shall be designed to be self-sustaining when mature to the maximum degree practicable.
3. A description of the factors considered during the site selection process. This should include consideration of watershed needs, and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation site.
  4. A map of suitable scale and description to identify the ecological characteristics of the compensatory mitigation sites and how that replaces the functions and services of the Project impact sites. This may include descriptions of historical and existing plant communities, historical and existing hydrology, soil conditions, and other site characteristics appropriate to the type of water body proposed as mitigation.
  5. A description of the amount and form of financial assurance (e.g. performance bonds, escrow accounts, casualty insurance, letters of credit, legislative appropriations for government sponsored projects, or

other appropriate instruments) to be provided, including a brief explanation of the rationale for this determination.

6. Detailed written specifications and work descriptions for the development of the compensatory mitigation sites, including at a minimum, timing, sources of water (include proof of pertinent water right(s), if applicable), methods for establishing desired plant communities, and erosion control measures.
7. A description and schedule of maintenance requirements to ensure the continued viability of the aquatic resources once initial construction is completed.
8. A description of ecologically based, and measureable, performance standards that will be used to determine whether the compensatory mitigation objectives are being met.
9. A description of the factors or parameters that will be monitored to determine whether the compensatory mitigation is on track to meet performance standards and whether adaptive management is needed. A schedule for monitoring and reporting must be included.
10. A description of how the compensatory mitigation sites will be managed, in perpetuity after performance standards have been achieved, to ensure the long-term sustainability of the resource. The description shall identify the long-term finance mechanisms and the party responsible for long-term management.
11. An adaptive management plan that includes a management strategy to address unforeseen changes in site conditions or other components of the compensatory mitigation sites. The adaptive management plan ~~should~~ must be of sufficient detail to guide decisions for revising the compensatory mitigation plans and implementing corrective measures as necessary to address both foreseeable and unforeseen circumstances.

**C. Compensatory Mitigation Plan Implementation.** Following receipt of a complete Habitat Mitigation and Monitoring Plan (HMMP), containing the information required under section VII.B. of this Order, the HMMP will be posted on the San Diego Water Board website and released for public review and comment for a minimum of 30 days. Based on the timely comments received, the San Diego Water Board Executive Officer will determine whether to hold a public hearing for San Diego Water Board consideration of the HMMP. If no hearing is scheduled the San Diego Water Board Executive Officer may inform the Discharger in writing that the HMMP is complete based on available



information and that the Discharger shall commence with implementation of the HMMP at the general locations described in Attachment C of this Order. Before beginning these activities the Discharger shall:

1. Notify the San Diego Water Board of its intent to initiate the actions included in the HMMP; and
2. Comply with any conditions set by the San Diego Water Board.

D. **Temporary Project Impacts.** The Discharger must restore areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the United States and/or State. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species. The Discharger must implement all necessary BMPs to control erosion and runoff from areas associated with this project. The revegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be found online at <http://www.cal-ipc.org/ip/inventory/weedlist.php>. Follow-up applications shall be made, as needed, to cover bare spots and to maintain adequate soil protection.

E. **Timing of Compensatory Mitigation.** The Discharger shall implement the compensatory mitigation projects in accordance with the tasks and schedule described below:

1. The construction of the compensatory mitigation projects must be completed no later than ~~182~~ months following the initial discharge of dredge or fill material into waters of the State. The Discharger shall submit a written notification to the San Diego Water Board providing the date of the initial discharge of dredge or fill material into waters of the State. This notification must be received by the San Diego Water Board no later than five (5) days following the initial discharge. Delays in implementing mitigation must be compensated for by an increased mitigation implementation of 10 percent of the cumulative compensatory mitigation for each month of delay.

~~2. If the Discharger is unable to implement the compensatory mitigation described in this Order within 182 months following the initial discharge, the Discharger will be in violation of this Order and subject to administrative civil liabilities under the California Water Code, section 13350.~~

- ~~3.2.~~ Within 6 months of the start of Project construction, the Discharger shall ~~document provide that for~~ adequate funding to purchase and maintain the compensatory mitigation sites exists to satisfy the compensatory mitigation requirements of the Project as described in the HMMP in perpetuity.

4.3. Mitigation maintenance and monitoring programs required and approved by the San Diego Water Board shall begin upon completion of construction of the compensatory mitigation projects.

F. **Conservation Easement.** The Discharger must comply with the following requirements:

1. The Discharger must provide a copy of the Conservation Easement for the compensatory mitigation sites to the San Diego Water Board no later than 6 months following issuance of this Order. The Conservation Easement Deed shall indicate the "Grantor" (property owner) and "Grantee" (holder) of the Conservation Easement.
2. Pursuant to Civil Code Section 815, and Government Code Sections 65965-65968~~For the purposes of independent review,~~ the holder of the Conservation Easement for Mitigation Area B, per the existing easement agreement with U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife (CDFW), shall continue to be held by the Discharger (See Attachment F). For Mitigation Area A, the holder of the Conservation Easement shall not be the Reserve at Rancho Mission Viejo Discharger. The Discharger shall provide documentation to the San Diego Water Board that it has sufficient funds available to the holder of the Conservation Easement~~to allow the holder~~ to monitor the compensatory mitigation sites in perpetuity and to ensure compliance with the satisfactory Conservation Easements and report to the agencies. The Discharger shall provide such documentation of adequate and available funds~~Funds shall be provided by the Discharger to the holder~~ no later than 18 months from the effective date of ~~issuance of~~ this Order.
3. ~~The Each~~ Each Conservation Easement must ensure that the property designated for compensatory mitigation will be retained in perpetuity and maintained without future development or encroachment on the site or activities which could otherwise reduce the functions and values of the site for the variety of beneficial uses of waters of the State that it supports. The Conservation Easement or other appropriate legal limitation must prohibit, without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland functions and values of the site. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, maintenance roads, and areas of maintained landscaping for recreation.
4. The Conservation Easement must provide the Assessor's Parcel Numbers for all of the properties in the compensatory mitigation sites.

- 4-5. Recordation of the Conservation Easement shall occur no later than ten (10) days after the Discharger receives concurrence from the San Diego Water Board, and any other agency with jurisdiction, that the Compensatory Mitigation Sites have achieved the performance criteria set forth in the approved Final Habitat Mitigation and Monitoring Plan (approved Final HMMP) required in sections VII.B and VII.C of this Order.
- 5-6. Endowment funding for the interim and long-term management of the compensatory mitigation sites must meet the following requirements:
- a. Pursuant to California Civil Code section 815.3 and California Government Code section 65965 et seq., the Discharger shall hold an endowment for purposes of funding long-term management of the compensatory mitigation sites. The endowment holder shall not be the Discharger.
- a.b. The Discharger shall include a line item in its annual budget for the interim and long-term management of the compensatory mitigation sites and segregate funds as necessary to ensure compliance with the long-term management requirements of the Conservation Easement and the approved Final HMMP.
- b.c. The Discharger must provide the San Diego Water Board with proof of full funding for the endowment fund for the interim and long-term management of the compensatory mitigation sites in accordance with the HMMP no later than 6 months from the issuance of this Order.
- G. **Letter of Credit Financial Assurance**. The Discharger must comply with the following requirements to use a letter of credit, an escrow account, pledge savings, or other form of financial security acceptable to the San Diego Water Board, as a form of financial assurance:
1. No later than 6 months from the issuance of this Order, the Discharger shall provide the San Diego Water Board an irrevocable letter of credit or proof of another form of acceptable financial assurance acceptable to the San Diego Water Board in an amount determined by the San Diego Water Board to be sufficient for the value of (1) the acquisition of sites in the land required for compensatory mitigation, (2) the estimated cost of obtaining the Conservation Easement amount of the endowment fund, and (3) the estimated cost of construction of the compensatory mitigation projects, and (4) the estimated cost of achieving establishment and compliance with the performance measures set forth in the approved Final HMMP amount of the conservation easement endowment. The Discharger shall prepare a draft letter of credit financial assurance instrument and submit it to the San Diego Water Board for its approval no later than 90 days following

issuance of this Order. The ~~letter of credit~~financial assurance instrument shall allow the San Diego Water Board to immediately draw on the ~~letter of credit~~financial assurance instrument if the San Diego Water Board determines in its sole discretion that the Discharger has failed to meet its mitigation obligations.

2. The Discharger's bank shall finalize and execute the ~~letter of credit~~financial assurance instrument after the San Diego Water Board approves the draft ~~financial assurance instrument~~letter of credit.
3. If the Discharger has not met its mitigation obligations within 60 days prior to the ~~financial assurance instrument's~~letter of credit's expiration date, the Discharger shall confirm with its bank that the expiration date will be extended. If the bank elects not to extend the expiration date, the Discharger shall establish a new ~~financial assurance instrument~~letter of credit to replace the original ~~financial assurance instrument~~letter of credit. The new ~~financial assurance instrument~~letter of credit shall be subject to the San Diego Water Board's approval following the same procedure described in the requirements above. The Discharger shall maintain a ~~financial assurance instrument~~letter of credit in place, as described above, until the Discharger has met its mitigation obligations.

## VIII. REPORTING REQUIREMENTS

- A. Mitigation and monitoring reporting must be conducted for the compensatory mitigation sites and submitted to the San Diego Water Board prior to December 1st of each year. The Discharger shall provide a report to the San Diego Water Board after the completion of baseline surveys of aquatic resources at the compensatory mitigation sites. The Discharger shall also provide annual reports for the compensatory mitigation sites during the management period for the first five years and until all long-term performance measures identified in the approved HMMP have been met to the satisfaction of the San Diego Water Board. The reports must (1) document conditions at the mitigation sites so that changes can be tracked and management issues identified and addressed and (2) include the following information:

1. The following identification numbers in the header or subject line: Place ID No. 785677, Order No. R9-2013-0007;
2. The names, qualifications, and affiliations of the persons contributing to the report;
3. A status report on the construction of the Project;
4. Tables presenting the raw data collected in the field as well as analyses of the physical and biological data, including at a minimum:

- a. Topographic complexity characteristics at each mitigation site;
  - b. Upstream and downstream habitat and hydrologic connectivity; and
  - c. Width of native vegetation buffer around the entire mitigation site.
5. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
  6. Other items specified in the approved HMMP;
  7. Results of general compensatory mitigation sites conditions, global positioning system (GPS) recordation of jurisdictional waters, and changes in hydrology. Any recommendations for habitat enhancement measures, changes in the monitoring program, or issues such as weed removal and erosion control;
  8. An annual monitoring report, prepared by the easement holder, documenting compliance with the conservation easement. At the discretion of the Conservation Easement holder, the report may be prepared and submitted as a separate report or the information may be submitted to the San Diego Water Board in the Annual Compliance and Effectiveness Report prepared for the San Juan Creek Watershed/Western San Mateo Creek Watershed Special Area Management Plan and Southern Subregion Habitat Conservation Plan;
  9. Photo documentation must be conducted in accordance with the State Water Resources Control Board Standard Operating Procedure 4.2.1.4.<sup>2</sup> The Discharger must conduct photo documentation of the Project site, post construction BMPs, and mitigation areas prior to, during, and after Project construction. In addition, photo documentation must include Geographic Positioning System (GPS) coordinates for each of the photo points referenced. The report must include a compact disc that contains digital files of all the photos (*jpeg file type or similar*); and
  10. Documentation that Project information has been uploaded to the California Wetlands Portal at <http://www.californiawetlands.net/tracker/>.

**B. California Rapid Assessment Method.** The California Rapid Assessment Method (CRAM) must be utilized at the impact and mitigation sites prior to impacts to establish pre-project baseline conditions. In addition, CRAM must be utilized at the mitigation sites at years 3 and 5 following completion of the mitigation site construction and continuing until success criteria have been met.

---

<sup>2</sup> Available at [http://www.waterboards.ca.gov/sandiego/water\\_issues/programs/401\\_certification/docs/StreamPhotoDocSOP.pdf](http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/StreamPhotoDocSOP.pdf) [Accessed on January 15, 2012]

The results of the CRAM assessment must be submitted each year with the Annual Monitoring Reports and data must be uploaded into eCRAM (<http://www.cramwetlands.org>).

- C. **Geographic Information System Reporting.** The Discharger must submit Geographic Information System (GIS) shape files of the impact and mitigation areas with the annual report. All impact and mitigation areas shape files must be polygons. Two GPS readings (points) must be taken on each line of the polygon and the polygon must have a minimum of 10 points. GIS metadata must also be submitted.
- D. **Project Completion Report.** Within 30 days of Discharger's final acceptance of the completed Project by the design build contractor completion and prior to any authorized use of the State Route (SR) 241 Tesoro Extension, the Discharger must submit a Project Completion Report to the San Diego Water Board containing the following information:
1. The dates for initiation of Project construction and completion of Project construction;
  2. An evaluation, interpretation and tabulation of Project activities detailing the completion of construction and compliance with all requirements of this Order and all applicable mitigation measures contained in the Project's certified Final Environmental Impact Report for the *South Orange County Transportation Infrastructure Improvement Project*;
  3. As-built Project drawings no bigger than 11 inches x 17 inches; and
  4. Photos of the completed Project including post-construction BMPs.
- E. **Compensatory Mitigation Completion Report.** The Discharger must prepare and submit a report to the San Diego Water Board, within 30 days of completion of mitigation site preparation and planting, containing the following information:
1. The as-built status of the mitigation sites;
  2. Mitigation site topography maps;
  3. Planting locations;
  4. Pre- and post-construction photos of the mitigation sites; and
  5. A survey report documenting the boundaries of mitigation sites.
- F. **Noncompliance Reports.** The Discharger must report to the San Diego Water Board any noncompliance which may endanger human health or the environment. Any information shall be provided orally within 24 hours from the time the Discharger becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The written submission shall contain a description

of the incident and its cause, the period of the noncompliance including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The San Diego Water Board may waive the above-required written report under this provision on a case by case basis if an oral report has been received within 24 hours.

- G. **Hazardous Substance Discharge.** Except for a discharge which is in compliance with this Order, any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the State, shall as soon as (a) that person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the County of Orange, Environmental Health Division in accordance with California Health and Safety Code section 5411.5 and the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State toxic disaster contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.17), and immediately notify the State Water Board or the San Diego Water Board of the discharge. This provision does not require reporting of any discharge of less than a reportable quantity as provided for under subdivisions (f) and (g) of section 13271 of the Water Code unless the Discharger is in violation of a Basin Plan prohibition.
- H. **Oil or Petroleum Product Discharge.** Except for a discharge which is in compliance with this Order, any person who without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, shall, as soon as (a) such person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State oil spill contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.1). This requirement does not require reporting of any discharge of less than 42 gallons unless the discharge is also required to be reported pursuant to Clean Water Act section 311, or the discharge is in violation of a Basin Plan prohibition
- I. **Report Submittal.** The Discharger shall submit both one complete electronic copy (on compact disc or other appropriate media) and one complete paper copy of all reports required under this Order including notifications, technical reports, and monitoring reports. All correspondence and documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: Place ID No. 785677, Order No. R9-2013-0007. The preferred electronic format for each report submission is PDF format that is

~~Optical Character Recognition (OCR) capable text searchable.~~

- J. **Signatory Requirements.** All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:
1. For a corporation, by a responsible corporate officer of at least the level of vice president; or
  2. For a partnership or sole proprietorship, by a general partner or proprietor, respectively; or
  3. For a municipality, or a State, federal, or other public agency, by either a principal executive officer or ranking elected official.
- K. **Duly Authorized Representative.** Applications, reports, or information submitted to the San Diego Water Board may be signed by a duly authorized representative of that person described in Reporting Requirement ~~JH~~ above if:
1. The authorization is made in writing by a person described above;
  2. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity; and
  3. The written authorization is submitted to the San Diego Water Board.

If such authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the Project, a new authorization satisfying the above requirements must be submitted to the San Diego Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative.

- L. **Certification.** All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:
- "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
- M. **Submittal Address.** Unless otherwise directed in writing by the San Diego Water Board, ~~the~~ Discharger must submit reports required under this Order, or other information required by the San Diego Water Board, to:

Executive Officer



California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, California 92123

## IX. PROVISIONS

- A. **Duty to Comply.** The Discharger must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the Water Code and is grounds for (a) enforcement action; (b) termination, revocation and reissuance, or modification of this Order; or (c) denial of a report of waste discharge in application for new or revised waste discharge requirements.
- B. **Duty to Comply.** The Discharger must, at all times, fully comply with the engineering plans, specifications and technical reports submitted to the San Diego Water Board) to support this Order and all subsequent submittals required under this Order and as described herein. The conditions within this Order shall supersede conflicting provisions within such plans, specifications, technical reports and other submittals required under this Order.
- C. **Need to Halt or Reduce Activity Not a Defense.** It shall not be a defense for a Discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order.
- D. **Duty to Mitigate.** The Discharger shall take all reasonable steps to minimize or prevent any discharge in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the noncompliance.
- E. **Property Rights.** This Order does not convey any property rights of any sort or any exclusive privileges. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations
- F. **Inspection and Entry.** The Discharger must allow the San Diego Water Board or the State Water Resources Control Board, and/or their authorized representative(s) (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to:
  - 1. Enter upon the ~~Applicant's~~ **Discharger's** premises, where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order;

2. Access and copy, at reasonable times, any of the Discharger's records that must be kept under the conditions of this Order;
3. Inspect and photograph, at reasonable times, any of the Discharger's facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this Order; and
4. Sample or monitor, at reasonable times, for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code, any substances or parameters at any location where a regulated facility or activity is located or conducted under the conditions of this Order.

The San Diego Water Board or the State Water Resources Control Board, and/or their authorized representative(s) (including an authorized contractor acting as their representative) will, to the extent feasible and appropriate, coordinate with the Discharger at least 24 hours prior to entry, unless the need for access is to address an emergency.

- G. **Retention of Records.** The Discharger shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by this Order, and records of all data used to complete the application for this Order. Records shall be maintained for a minimum of five years from the date of the sample, measurement, report, or application. Records may be maintained electronically. This period may be extended during the course of any unresolved litigation regarding this discharge or when requested by the San Diego Water Board.
- H. **Duty to Provide Information.** The Discharger shall furnish to the San Diego Water Board, within a reasonable time, any information which the San Diego Water Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order. The Discharger shall also furnish to the San Diego Water Board, upon request, copies of records required to be kept by this Order.
- I. **Duty to Provide Information.** When the Discharger becomes aware that it failed to submit any relevant facts in a Report of Waste Discharge or submitted incorrect information in a Report of Waste Discharge or in any report to the San Diego Water Board, it shall promptly submit such facts or information.
- J. **Reopener Provision.** This Order may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:
1. Violation of any terms or conditions of this Order.

2. Obtaining this Order by misrepresentation or failure to disclose fully all relevant facts.
3. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
4. A change in the USACOE non-jurisdictional determination for the Project that requires the San Diego Water Board's consideration and action upon a CWA section 401 certification application for the Project pursuant to 23 CCR sections 3830 -3869.

~~Should this Order serve as a CWA section 401 Certification action, it will be subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).~~

- K. **Reopener Provision.** The filing of a request by the Discharger for the modification, revocation, reissuance, or termination of this Order, or notification of planned changes or anticipated noncompliance does not stay any condition of this Order.
- L. **Reopener Provision.** The San Diego Water Board reserves the right to suspend, cancel, or modify and reissue this Order, after providing notice to the Discharger, if the San Diego Water Board determines that the Project fails to comply with any of the terms or requirements of this Order or if the or if the results of the Project have unintended impacts to water quality.
- M. **Transfer of Responsibility.** This Order is not transferable to any person except after notice to the San Diego Water Board. This notice must be in writing and received by the San Diego Water Board at least 30 days in advance of any proposed transfer. The notice must include a written agreement between the existing and new Discharger containing a specific date for the transfer of this Order's responsibility and coverage between the current Discharger and the new discharger. This agreement shall include an acknowledgement that the existing Discharger is liable for violations up to the transfer date and that the new discharger is liable from the transfer date on. The San Diego Water Board may require modification or revocation and reissuance of this Order to change the name of the Discharger and incorporate such other requirements as may be necessary under the Water Code.

~~N. **Hydroelectric Facility.** This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent WDR application was filed pursuant to Cal. Code Regs., title 23, section 3855, subdivision (b), and the application specifically identified that a~~

~~FERC license or amendment to a FERC license for a hydroelectric facility was being sought.~~

~~O.N. **Payment of Fees.** This Order is conditioned upon total payment of any fee required under California Code of Regulations, Title 23 section 3833, and owed by the Discharger.~~

**P.O. Order Availability.** A copy of this Order, the application, and supporting documentation must be available at the Project site during construction for review by site personnel and agencies. A copy of this Order must also be provided to the contractor and all subcontractors working at the Project site.

**Q.P. Enforcement Authority.** In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under State law.

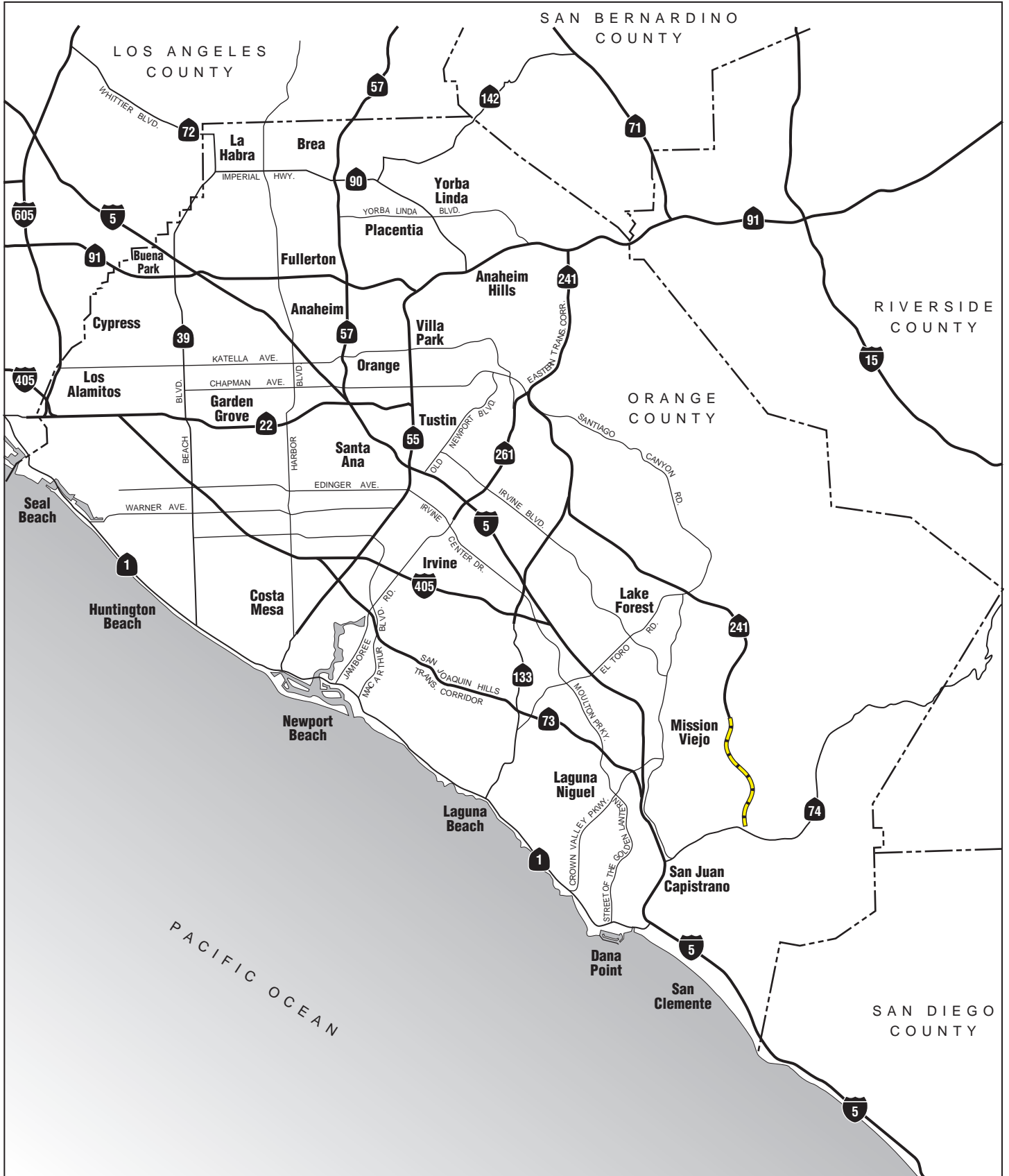
**R.Q. Investigation of Violations.** In response to a suspected violation of any condition of this Order, the San Diego Water Board may, pursuant to Water Code sections 13267 and 13383, require the holder of any permit or license subject to this Order to investigate, monitor, and report information on the violation. The only restriction is that the burden, including costs of preparing the reports, must bear a reasonable relationship to the need for and the benefits to be obtained from the reports.


## X. NOTIFICATIONS

- A. These requirements have not been officially reviewed by the United States Environmental Protection Agency and are not issued pursuant to CWA section 402.
- B. The provisions of this Order are severable, and if any provision of this Order, or the application of any provision of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order, shall not be affected thereby.
- C. This Order becomes effective on the date of adoption by the San Diego Water Board.

F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

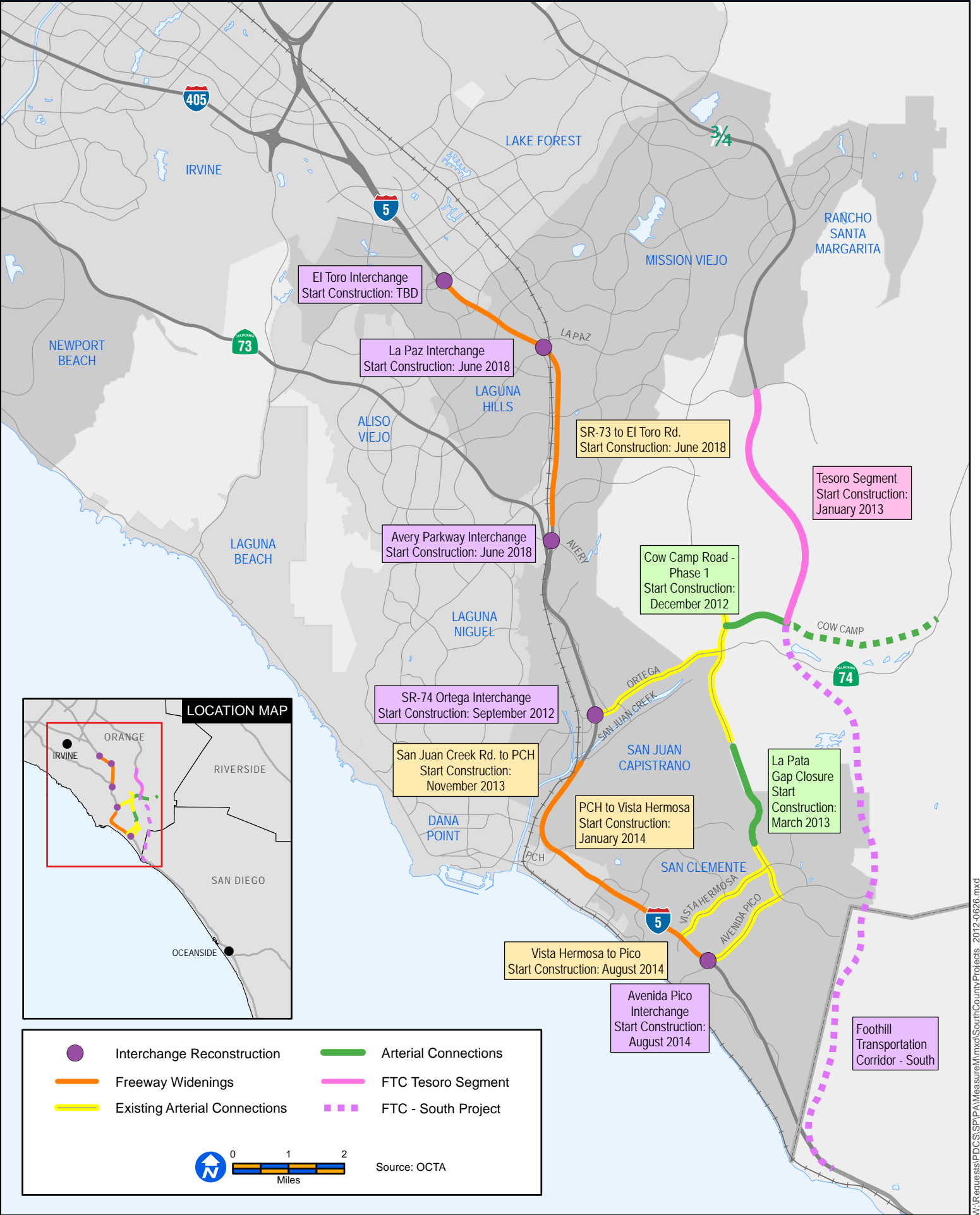
**ATTACHMENT A  
PROJECT SITE MAPS**

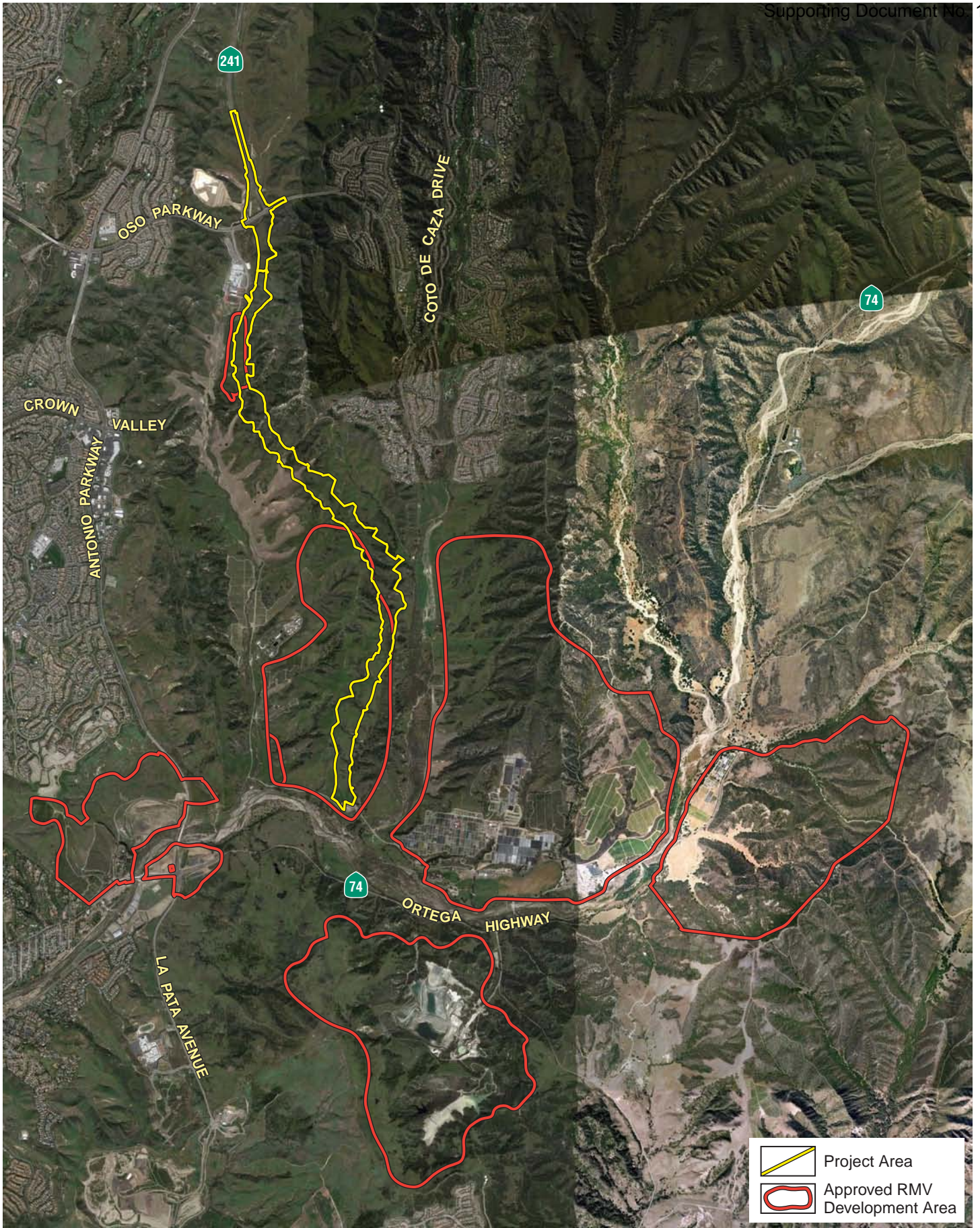


 Proposed Extension

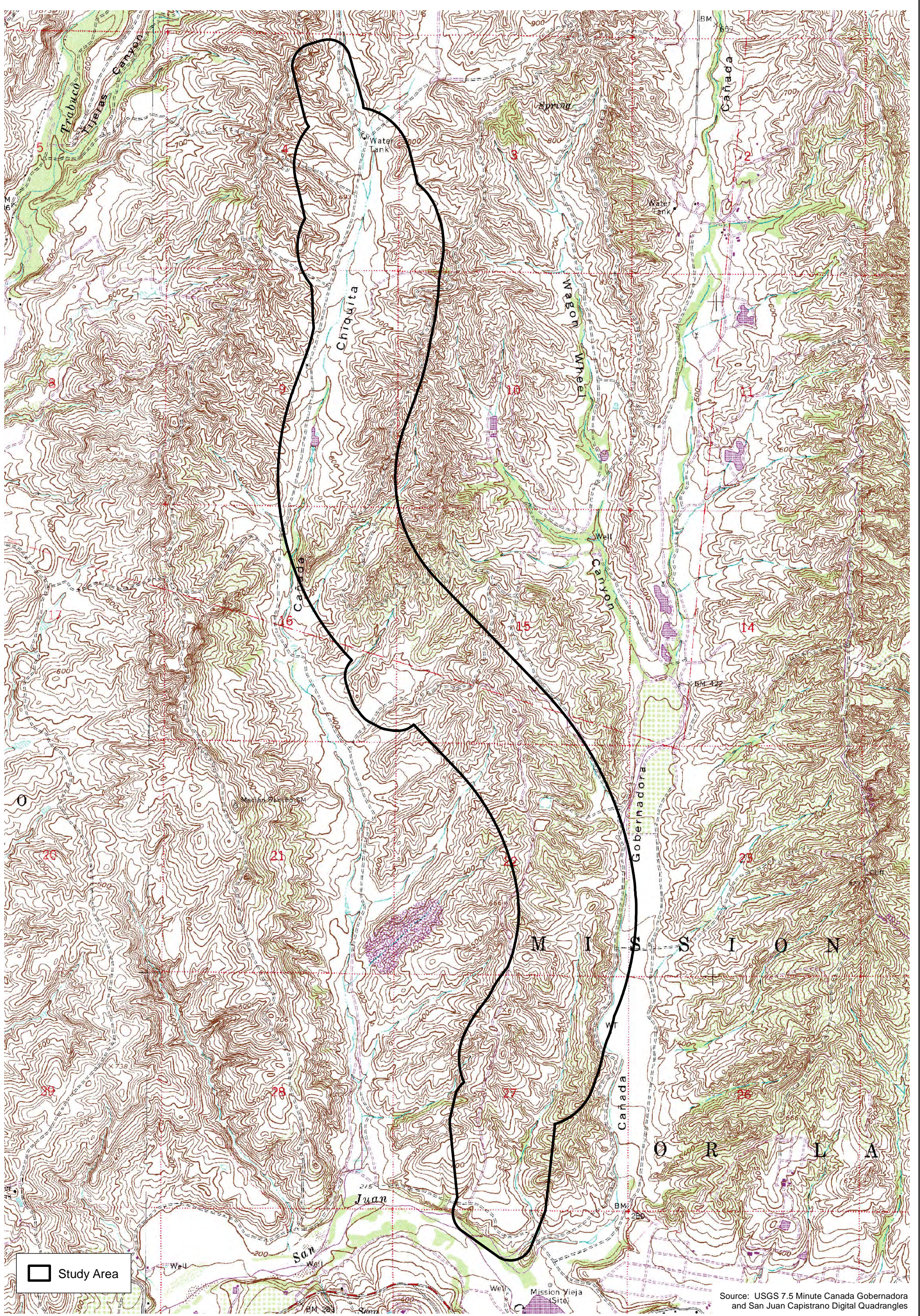
EIR ADDENDUM  
 SR 241 TESORO EXTENSION  
**Regional Vicinity**

# South County Project Schedules









D:\Projects\TCAU010\MXD\Biological\_Assessment\ex\_usgs\_BA.mxd

### Study Area

SR 241 Tesoro Extension Project

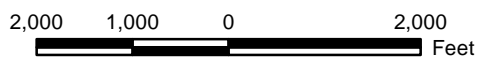
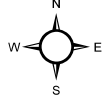
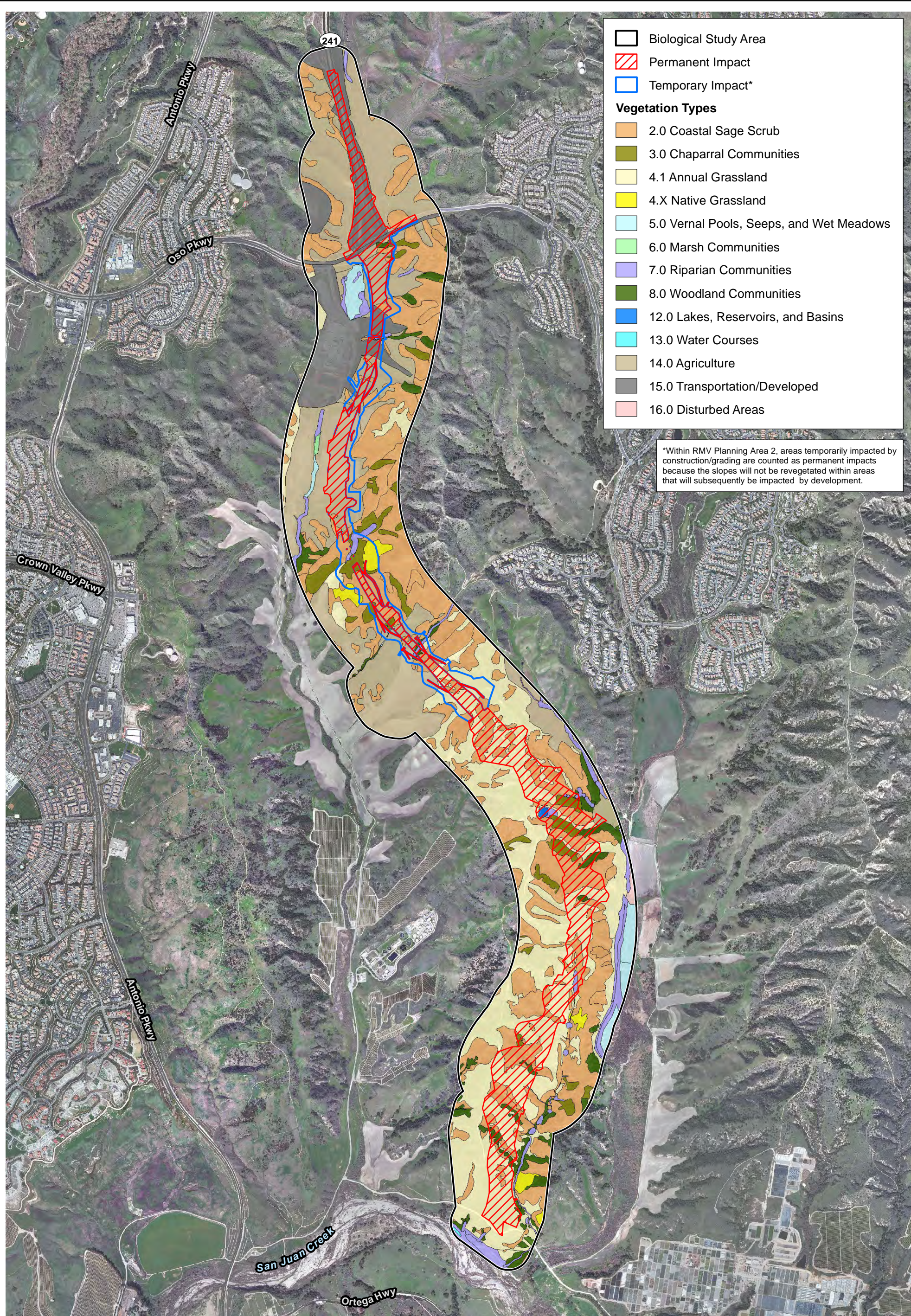


Figure 2



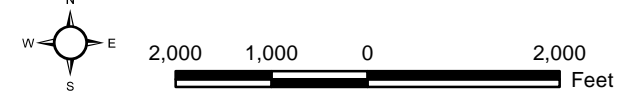
Biological Study Area  
 Permanent Impact  
 Temporary Impact\*

**Vegetation Types**

- 2.0 Coastal Sage Scrub
- 3.0 Chaparral Communities
- 4.1 Annual Grassland
- 4.X Native Grassland
- 5.0 Vernal Pools, Seeps, and Wet Meadows
- 6.0 Marsh Communities
- 7.0 Riparian Communities
- 8.0 Woodland Communities
- 12.0 Lakes, Reservoirs, and Basins
- 13.0 Water Courses
- 14.0 Agriculture
- 15.0 Transportation/Developed
- 16.0 Disturbed Areas

\*Within RMV Planning Area 2, areas temporarily impacted by construction/grading are counted as permanent impacts because the slopes will not be revegetated within areas that will subsequently be impacted by development.

**Vegetation Types**  
 SR 241 Tesoro Extension Project



**Figure 4**

D:\Projects\TCAU010\MXD\Biological\_Assessment\Ex\_veg\_BA.mxd

**ATTACHMENT B  
INFORMATION SHEET**

**Table of Contents**

<b>1.0</b>	<b>Applicant.....</b>	<b>2</b>
<b>2.0</b>	<b>Project Description .....</b>	<b>2</b>
<b>3.0</b>	<b>Regulatory Background.....</b>	<b>3</b>
<b>4.0</b>	<b>California Environmental Quality Act (CEQA) .....</b>	<b>5</b>
<b>5.0</b>	<b>Water Quality Standards and Prohibitions .....</b>	<b>5</b>
<b>6.0</b>	<b>Basis for Tentative Waste Discharge Requirements .....</b>	<b>10</b>
<b>7.0</b>	<b>Mitigation Measures.....</b>	<b>10</b>
<b>8.0</b>	<b>Runoff Management Plan (RMP).....</b>	<b>14</b>
<b>9.0</b>	<b>Monitoring and Reporting Requirements.....</b>	<b>14</b>
<b>10.0</b>	<b>Public Participation.....</b>	<b>14</b>
<b>11.0</b>	<b>Written Comments .....</b>	<b>15</b>
<b>12.0</b>	<b>Public Hearing .....</b>	<b>16</b>
<b>13.0</b>	<b>Additional Information .....</b>	<b>17</b>
<b>14.0</b>	<b>WDR Review .....</b>	<b>17</b>
<b>15.0</b>	<b>Documents Used in Preparation of the Fact Sheet and Order .....</b>	<b>17</b>
<b>16.0</b>	<b>Interested Parties .....</b>	<b>18</b>

F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

## **1.0 Applicant**

Foothill/Eastern Transportation Corridor Agency  
(Hereinafter Discharger)  
125 Pacifica #120  
Irvine, CA 92618

District Contact:  
Valerie McFall  
(949) 754-3475  
vmcfall@thetollroads.com

## **2.0 Project Description**

The Project is an approximate 5.5 mile long extension of the existing State Route (SR) 241 from its current terminus at Oso Parkway to the future Cow Camp Road immediately north of SR-74 in Orange County. The Project is located within the Cañada Gobernadora and San Clemente US Geological Survey 7.5-minute quadrangle maps.

The purpose of the Project is to provide a transportation facility that will reduce existing and forecasted deficiencies and congestion on the I-5 freeway and the arterial network in southern Orange County. The Project will serve both local (existing and future) and intra- and inter-regional trips.

The Project includes four general-purpose travel lanes, two in each direction. The center median from Oso Parkway to the Cow Camp Road will be revegetated with a native seed mix and will include drainage improvements, similar to the median along the existing SR-241. The median offers future opportunities for bus rapid transit, light rail, or additional lanes as traffic conditions warrant.

Cow Camp Road will be constructed by Rancho Mission Viejo and the County of Orange prior to, or concurrent with, the construction of the Tesoro Extension Project. An interchange at "G" Street and SR-241 will be constructed 0.6 mile north of Cow Camp Road (See Project Site Maps, Attachment A).

The footprint for the Tesoro Extension Project includes areas for grading, remedial grading, and construction disturbance areas. In addition to the paved road and associated bridges and interchanges, the construction area includes access roads, materials storage areas, areas for utility relocations, and areas for the construction of Best Management Practices (BMPs). The Project adds approximately 100 acres of impervious surface.

The Project will discharge waste (fill) in a total of 0.64 acre of waters of the State, including 0.40 acre (5,297 linear feet) of permanent impacts and 0.24 acres

F/ETCA  
 Tesoro Extension (SR 241) Project  
 Order No. R9-2013-0007

(1,819 linear feet) of temporary impacts to jurisdictional waters in the Mission Viejo Hydrologic Area (901.20) in the San Juan Hydrologic Unit (901.00) as summarized in Table 1.

By letter dated November 5, 2012, the United States Army Corps of Engineers (USACOE) determined that the Project activities will not occur within waters of the United States and therefore the Project is not subject to USACOE jurisdiction under Section 404 of the Clean Water Act (CWA) and a Section 404 permit is not required for the Project. The 0.64 acre of wetland and non-wetland waters was determined by the U.S. Army Corps of Engineers (USACOE) to be isolated waters outside of federal jurisdiction. These isolated waters remain non-federal waters of the State, and discharges to these waters are thereby regulated pursuant to California Water Code Section 13260, *et. seq.*

**Table 1: Jurisdictional Impact Summary**

Jurisdiction Type	Permanent Impact		Temporary Impact	
	Area (acres)	Length (LF)	Area (acres)	Length (LF)
Surface Waters of the State (non-wetland; ephemeral)	0.20	5,297	0.15	1,819
Waters of the State (wetland)	0.20	NA	0.09	NA
<b>Total</b>	<b>0.40</b>	<b>5,297</b>	<b>0.24</b>	<b>1,819</b>

### 3.0 Regulatory Background

Section 13260(a) of the California Water Code (Water Code) requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, which could affect the quality of the waters of the State, file a Report of Waste Discharge (ROWD). The discharge of dredged or fill material constitutes a discharge of waste that could affect the quality of waters of the State. Water Code section 13263(a) requires that Waste Discharge Requirements (WDRs) be prescribed as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge. Such WDRs must implement any relevant water quality control plans, taking into consideration beneficial uses to be protected, the water quality objectives reasonably required for those purposes, other waste discharges, the need to prevent nuisance, and the provisions of Water Code section 13241.

Construction activities associated with the proposed discharges of fill threaten beneficial uses on-site and downstream. The Discharger will file a Notice of Intent to the State Water Resources Control Board (State Board) for coverage under State Board Order No. 2009-0009-DWQ, *National Pollutant Discharge*

F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

*Elimination System (NPDES) General Permit, For Storm Water Discharges Of Associated With Construction And Land Disturbance Activities (Order No. 2009-0009-DWQ).* The San Diego Water Board may conduct inspections to verify compliance with Order No. 2009-0009-DWQ, including, but not limited to, implementation of a storm water pollution prevention plan.

Since all federal waters can also be considered waters of the State, the State of California largely relies on Section 401 of the federal Clean Water Act (CWA) (33 U.S.C. § 1341) to regulate discharges of dredged or fill material to waters of the State. That section requires an applicant to obtain "water quality certification" from California that the project will comply with State water quality standards before certain federal licenses or permits may be issued. Each water quality certification includes a condition of coverage with State Water Resources Control Board's General Order No. 2003-0017-DWQ, *Statewide General Waste Discharge Requirements for Dredge and Fill Discharges that have Received State Water Quality Certification.*

In light of recent U.S. Supreme Court rulings, isolated waters, or waters lacking a significant nexus to a traditionally navigable waterbody, are no longer considered waters of the U.S. (i.e. federal waters), and therefore no longer require certification pursuant to Section 401 of the CWA. In order to comply with the State's "No Net Loss" Policy for wetlands (Executive Order W-59-93), discharges of waste to these nonfederal, State wetlands are being regulated pursuant to California Water Code Section 13260.

On November 5, 2012, the USACOE determined the Project property contained no waters of the U.S. On August 10, 2012, the Discharger submitted a ROWD, along with required fees in accordance with the State Water Board's Dredge and Fill Fee Calculator, for discharges of fill associated with the Project to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board). Pursuant to fee schedules currently set in CCR Title 23, no annual fees are required, and a threat to water quality (TTWQ) and complexity (CPLX) rating is not applicable for the site. By letter dated November 14, 2012, the San Diego Water Board informed the Discharger that the application was complete.

Order No. R9-2013-0007 serves as individual waste discharge requirements for discharges of fill to non-federal waters of the State. ~~Should the USACOE non-jurisdictional determination be reversed for this site, without any material change in the nature of the discharge, this Order may also serve as a CWA Section 401 water quality certification.~~

#### **4.0 California Environmental Quality Act**

Before the San Diego Water Board can issue WDRs, the project must have a final, valid environmental document meeting the criteria of the California Environmental Quality Act (CEQA). The CEQA document must fully disclose the potential significant adverse impacts of the project and identify measures to avoid, minimize, rectify, reduce or compensate for the impacts identified, including a monitoring and reporting program to ensure compliance with the proposed mitigation measures.

The Discharger is the lead agency under the California Environmental Quality Act (Public Resources Code section 21000, et seq., (CEQA)). The Discharger certified a Final Environmental Impact Report (EIR) for the South Orange County Transportation Improvement Project, and filed a Notice of Determination (SCH # 2001061046) on February 23, 2006, under CEQA Guidelines Title 14, California Code of Regulations. The Discharger determined the Project, without mitigation, will have a significant effect on the environment. Therefore, the Final EIR incorporates mitigation measures that mitigate many of the Project's effects on the environment to less than significant. For those impacts the Discharger determined to be unavoidable impacts, the Discharger adopted a Statement of Overriding Considerations finding that the benefits of the project outweighed the impacts.

The San Diego Water Board has reviewed the lead agency's Final EIR and Statement of Overriding Considerations. None of the significant unavoidable environmental impacts triggering the lead agency's adoption of the Statement of Overriding Considerations are within the areas of responsibility of the San Diego Water Board. The San Diego Water Board also concludes that without mitigation, the Project as proposed may have a significant effect on the environment. This Order requires implementation of mitigation measures that will reduce effects on the environment within the San Diego Water Board's jurisdiction to less than significant. The Order requires the Discharger to comply with a monitoring and reporting program that will ensure that the mitigation measures are implemented and the requirements of this Order are met.

#### **5.0 Water Quality Standards and Prohibitions**

Section 303 of the federal Clean Water Act (33 U.S.C. §1313) defines the term water quality standards as the uses of the surface waters, the water quality criteria which are applied to protect those uses, and an antidegradation policy<sup>1</sup>.

---

<sup>1</sup> Pursuant to the federal Clean Water Act, water quality standards are composed of three parts: (1) designated uses, e.g., protection of fish and wildlife, recreation and drinking water supply (40 C.F.R. 131.10); (2) numeric or narrative water quality criteria to protect those uses (40 C.F.R. 131.11); and (3) an antidegradation policy (40 C.F.R. 131.12).

F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

A water quality standard defines the water quality goals for a water body by designating the use or uses to be made of the water body, by setting criteria to protect the uses, and by protecting water quality through non-degradation provisions. Under the Porter-Cologne Water Quality Control Act (California Water Code, Division 7, Chapter 2 §13050), these concepts are defined separately as beneficial uses and water quality objectives. Beneficial uses and water quality objectives are required to be established for all waters of the State, both surface and ground waters.

The Project will affect Cañada Gobernadora Creek, Cañada Chiquita Creek and associated tributaries in the Mission Viejo Hydrologic Area (901.20) in the San Juan Hydrologic Unit (901.00). Individual hydrological subareas (HSA) defined in the Mission Viejo hydrologic area include Oso; Upper Trabuco; Middle Trabuco; Gobernadora; Upper San Juan; Middle San Juan; Lower San Juan; and Ortega.

The Cañada Gobernadora Creek sub-basin originates in the community of Coto de Caza and drains southerly into San Juan Creek. The northern portion of the sub-basin consists of the Coto de Caza residential community and the southern portion has undergone ranching operations. The 11.10-square mile Cañada Gobernadora sub-basin is an elongated valley that is aligned north to south. This sub-basin is predominantly underlain by sands and silts and has the potential to generate relatively high amounts of sediment where the surface is disturbed and channelized.

The Cañada Chiquita sub-basin has a catchment of 9.24 square miles and is aligned north to south. Below the “narrows” in middle Chiquita Canyon, soils are predominantly sands, silts, and clays. Above the narrows, the soils contain slightly more gravels and cobbles. The sandy substrates mean that the main creek is prone to incision under altered hydrologic regimes. Several active headcuts are present in Cañada Chiquita Creek, and the channel is presently incising in several locations. The Chiquita sub-basin produces substantially less sediment than Gobernadora Canyon. Cañada Chiquita Creek rises at an elevation of about 1,000 feet, near the Plano Trabuco, and flows southwest for 1 mile, then due south for about 6 miles to the confluence with San Juan Creek about 1 mile west of Cañada Gobernadora Creek.

The Water Quality Control Plan for the San Diego Basin (9) (Basin Plan), adopted on September 8, 1994 as amended, designates existing and potential beneficial uses for surface and ground waters within the San Diego region. Beneficial uses within the project area are summarized in Table 2 below.



**Table 2. Beneficial Uses of the Project Site Surface and Ground Waters**

<b>Beneficial Use</b>	<b>Description</b>
<b>Municipal and Domestic Supply (MUN)</b>	Uses of water for community, military, or individual water supply systems, including, but not limited to, drinking water supply.
<b>Agricultural Supply (AGR)</b>	Uses of water for farming, horticulture, or ranching, including, but not limited to, irrigation, stock watering, or support of vegetation for range grazing.
<b>Industrial Service Supply (IND)</b>	Uses of water for industrial activities that do not depend primarily on water quality, including, but not limited to, mining, cooling water supply, hydraulic conveyance, gravel washing, fire protection, and oil well repressurization.
<b>Contact Water Recreation (REC1)</b>	Uses of water for recreational activities involving body contact with water where ingestion of water is reasonably possible. These uses include, but are not limited to, swimming, wading, water-skiing, skin and scuba diving, surfing, whitewater activities, fishing, and uses of natural hot springs.
<b>Non-contact Water Recreation (REC2)</b>	Uses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.
<b>Warm Freshwater Habitat (WARM)</b>	Uses of water that support warm water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
<b>Cold Freshwater Habitat (COLD)</b>	Uses of water that support cold water ecosystems, including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
<b>Wildlife Habitat (WILD)</b>	Uses of waters that support wildlife habitats, including, but not limited to, the preservation and enhancement of vegetation and prey species used by wildlife, such as waterfowl.

The Basin Plan establishes Water Quality Objectives for surface waters within the Mission Viejo Hydrologic Area (901.20) as shown in Table 3 below.

**Table 3. Water Quality Objectives for Surface Waters in the Mission Viejo Hydrologic Area**

Constituent	Concentration <sup>a</sup>
Total Dissolved Solids	500
Chloride	250
Sulfate	250
Percent Sodium	60
Nitrogen and Phosphorus	b
Iron	0.3
Manganese	0.05
Methylene Blue-Activated Substances	0.5
Boron	0.75
Turbidity (NTU)	20
Color Units	20
Fluoride	1

- a. All units are mg/L unless otherwise noted.
- b. Concentrations of nitrogen and phosphorus, by themselves or in combination with other nutrients, shall be maintained at levels below those which stimulate algae and emergent plant growth. Threshold total Phosphorus (P) concentrations shall not exceed 0.05 mg/l in any stream at the point where it enters any standing body of water, or 0.025 mg/l in any standing body of water. A desired goal in order to prevent plant nuisances in streams and other flowing waters appears to be 0.1 mg/l total P. These values are not to be exceeded more than 10% of the time unless studies of the specific body in question clearly show that water quality objective changes are permissible and changes are approved by the San Diego Water. Analogous threshold values have not been set for nitrogen compounds; however, natural ratios of nitrogen to phosphorus are to be determined by surveillance and monitoring and upheld. If data are lacking, a ratio of N:P =10:1 shall be used.

The Basin Plan establishes Water Quality Objectives for ground waters within the Mission Viejo Hydrologic Area (901.20) as shown in Table 4 below.

**Table 4. Water Quality Objectives for Ground Waters in the Mission Viejo Hydrologic Area**

Constituent	Concentration (mg/L or as noted)							
	Oso	Upper Trabuco	Middle Trabuco	Gobernadora	Upper San Juan	Middle San Juan	Lower San Juan	Ortega
Total Dissolved Solids	1200	500	750	1200	500	750	1200	1100
Chloride	400	250	375	400	250	375	400	375
Sulfate	500	250	375	500	250	375	500	450
Percent Sodium	60	60	60	60	60	60	60	60
NO <sub>3</sub>	45	45	45	45	45	45	45	45
Iron	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
Manganese	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05
Methylene Blue-Activated Substances	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Boron	0.75	0.75						
Turbidity (NTU)	5	5	5	5	5	5	5	5
Color Units	15	15	15	15	15	15	15	15
Fluoride	1	1	1	1	1	1	1	1

The Basin Plan establishes the following Waste Discharge Prohibitions pursuant to California Water Code §13243:

- Prohibition No. 1. The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in California Water Code §13050, is prohibited.
- Prohibition No. 2. The discharge of waste to land, except as authorized by waste discharge requirements or the terms described in California Water Code §13264 is prohibited.
- Prohibition No. 3. The discharge of pollutants or dredged or fill material to waters of the United States except as authorized by an NPDES permit or a dredged or fill material permit (subject to the exemption described in California Water Code §13376) is prohibited.

- Prohibition No. 7. The dumping, deposition, or discharge of waste directly into waters of the state, or adjacent to such waters in any manner which may permit it's being transported into the waters, is prohibited unless authorized by the San Diego Water Board.
- Prohibition No. 14. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.

## 6.0 Basis for Waste Discharge Requirements

Order No. R9-2013-0007 establishes requirements for the discharge of wastes pursuant to Division 7 of the California Water Code and Article 4, Title 23 of the California Water Code, and establishes mitigation and monitoring provisions based on best professional judgment. ~~If the federal non-jurisdictional determination is reversed for this site, without any material change to the discharge, the Order may also serve as a Section 401 Water Quality Certification.~~ The Basin Plan states “certification is dependent upon the assurances that the project will not reduce water quality below applicable standards as defined in the Clean Water Act (i.e., the water quality objectives established and the beneficial uses which have been designated for the surface waters.)” The waste discharge requirements, reporting requirements, and standard provisions in Order No. R9-2013-0007 are established in accordance with Division 7 of the California Water Code. The discharge of fill as regulated by Order No. R9-2013-0007 will not reduce water quality below applicable standards.

## 7.0 Mitigation Measures

Compensatory mitigation for permanent impacts to wetland and non-wetland waters is proposed within Chiquita Canyon. Attachment C shows the general location of the two proposed mitigation areas, Mitigation Area A and Mitigation Area B. The total mitigation acreage, including San Diego Water Board and California Department of Fish and Wildlife (CDFW) jurisdictional areas for establishment and restoration/enhancement (21.27 acres) and upland watershed buffer restoration (13.55 acres) comprises a total of 34.82 acres. The following sections describe existing conditions and the type of mitigation that is proposed for each area.

## **Mitigation Area A**

Mitigation Area A is a 15.96-acre area adjacent to Tesoro High School; located along Chiquita Creek and one of its tributaries (refer to Attachment C). Mitigation Area A is also downstream of the Conservation Area. The establishment/restoration in Mitigation Area A will include the following:

- Restoration of 2.73 acres of southern willow scrub
- Restoration of 0.45 acre of existing channel
- Establishment of 2.36 acres of southern willow scrub
- Establishment of 4.79 acres of mulefat scrub
- Establishment and restoration of 5.63 acres of wet meadow

The soils in Mitigation Area A are suitable for the proposed wetland and riparian establishment, restoration, and enhancement. Soils within Upper Chiquita Canyon along the creek have been mapped as Chino silty clay loam in the *Soil Survey of Orange and Western Part of Riverside Counties, California*. Clay soils have high water holding capacity, which allows for the slow release of moisture, increasing the duration in which water becomes available to plants. The presence of wet meadow habitat along this creek is driven by the soil characteristics and will allow for this type of habitat to be established under the restored hydrologic regime.

## **Mitigation Area B**

Mitigation Area B is an 18.86-acre area within the approximately 1,158-acre Upper Chiquita Canyon Conservation Area (Conservation Area), the headwaters of Chiquita Creek

The Discharger holds the conservation easement on this land, and they have managed the land for the past 15 years. The Conservation Area, no longer grazed, is a 1,158-acre site composed of north-south orientated, narrow to broad valleys between rolling hills. Elevations of the site range between 670 to 1,217 feet above sea level. The Conservation Area currently supports two main plant communities, annual grasslands and coastal sage scrub, with small areas of oak woodland, and remnant perennial grasslands. Additionally, some areas are ecotones that transition from annual grasslands to coastal sage scrub. Cattle grazing has occurred for more than 80 years in the low valleys of the Conservation Area. Within these areas, non-wetland ephemeral drainages have been disturbed and in some cases lost completely. Mitigation Area B is located in the southern end of the Conservation Area (refer to Attachment C). In the upper section of the mitigation area, an old ranch berm exists that blocks the ephemeral drainage course from the northern end of the main valley of the

F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

Conservation Area. The entire proposed mitigation area is currently annual grassland.

Establishment and restoration actions for Mitigation Area B are:

- Establishment of 0.14 acre of southern sycamore woodland
- Restoration of 4.70 acres of riparian oak/elderberry restoration
- Restoration of 13.55 acres of native grassland restoration (upland buffer)
- Establishment of 4,873 linear feet (0.22 acre) of ephemeral drainage
- Restoration of 5,456 linear feet (0.25 acre) of ephemeral drainages

The soils within Mitigation Area B are mainly Botella Clay Loam, with some areas of Capistrano Sandy Loam that currently support annual grasslands, but are typically soils that support native perennial grassland vegetation and oak/elderberry habitat. The presence of these soils and water holding characteristics will allow for these types of habitats to be established and restored under the restored hydrologic regime.

Mitigation activities are expected to be successful based on the location, soil type, expected hydrology, and the use of plant species that occur on-site and are known to perform well in habitat restoration programs.

Mitigation will be conducted as outlined in the *Habitat Mitigation and Monitoring Plan for the Tesoro Extension Project*, prepared by NewFields, October, 2012 and any subsequent versions reviewed and approved by the San Diego Water Board).

Long term maintenance beyond the minimum five-year mitigation monitoring program must be provided. The Discharger shall be responsible for managing the mitigation site in perpetuity to ensure the long-term sustainability of the resource. Long-term management shall include, but is not limited to; adaptive management, long-term financing mechanisms, and a conservation easement.

For the reasons above, it is anticipated that the proposed mitigation will adequately compensate for impacts to waters of the state associated with the discharge of fill material.

F/ETCA  
 Tesoro Extension (SR 241) Project  
 Order No. R9-2013-0007

Table 5, *Impact and Compensatory Mitigation Summary*, provides a summary of the jurisdictional impacts and conceptual mitigation approach.

**Table 5. Impact and Compensatory Mitigation Summary**

Jurisdiction Type	Permanent Impact		Mitigation Proposed (Establishment, Restoration, and Enhancement)		Water Board Mitigation Ratio
	Area (acres)	Length (LF)	Site A	Site B	
waters of the state (non-wetland; ephemeral)	0.20	5,297		<ul style="list-style-type: none"> <li>Establishment: 0.22 acre (4860 LF) of ephemeral, non-wetland drainage area</li> <li>Restoration: 0.25 acre (5,456 LF) of existing ephemeral, non-wetland drainage area.</li> <li>Restoration: 4.70 acres of mixed live oak/elderberry habitat</li> <li>Establishment: 0.14 acre southern sycamore riparian</li> <li>Restoration: 13.55 acres perennial grassland upland buffer</li> </ul>	2.4:1 (ac) 1.9:1 (LF)
waters of the state (wetland)	0.20	NA	<ul style="list-style-type: none"> <li>Establishment: 5.63 acres establishment and enhancement of wet meadow (<u>minimum 4.84 acres of wetland establishment</u>)</li> <li>Establishment: 2.36 acres- establishment of southern willow woodland</li> <li>Establishment: 4.79 acres – establishment of mulefat scrub</li> <li>Enhancement: 0.45 acre – enhancement of existing channel</li> <li>Enhancement: 2.73 acres - enhancement of existing southern willow woodland</li> </ul>		15:1
<b>Total</b>			<b>11.93-acres wetland habitat</b>	<b>0.47-acre ephemeral drainage, 10,316 LF</b>	

## 8.0 Runoff Management Plan (RMP)

The post-construction Best Management Practices (BMPs) for the Project are detailed in *Runoff Management Plan, 241 Tesoro Extension Project* prepared by Saddleback Constructors for the Discharger, February 14, 2012. All onsite highway runoff for SR-241 from the area north of San Juan Creek to Oso Parkway will be conveyed to treatment BMPs via storm drain systems equipped with:

- Grated catch basins that minimize trash and debris entering the network,
- A pipeline network that conveys the runoff flows to treatment BMPs with a mainline that runs longitudinally along the highway, and
- Flow splitters that route water quality flows to the BMPs and allow peak flows to continue on their original flow path.

There are 44 proposed onsite drainage systems for this section of the project, and each will convey flow to treatment BMPs which include; 5 Austin Sand Filters (ASF), 5 Biofiltration Swales (BSW), and 3 Detention Basins (EDB). Treatment BMP locations are shown in Attachment E. The BMP exhibits in Attachment E show the preliminary onsite drainage network locations.

Through this Order (Order No. R9-2013-0007), the Project is conditioned to mitigate (infiltrate, filter, and/or treat), prior to discharging to receiving waters, the volume of runoff produced by all storms up to and including the 24-hour, 85th percentile storm event for volume-based BMPs and/or the 1 hour, 85th percentile multiplied by a factor of two for flow-based BMPs, as determined from the local historical rainfall record. The Project must also conform to the Caltrans Project Planning and Design Guide (PPDG), California Department of Transportation, 2010.

## 9.0 Monitoring and Reporting Requirements

Requirements for monitoring and reporting for the Tesoro Extension (SR 241) mitigation project are found in Order No. R9-2013-0007. Monitoring results will be uploaded by the Discharger to California Wetland Portal (<http://www.californiawetlands.net/tracker/>) for public review.

## 10.0 Public Participation

The public was notified by a San Diego Water Board internet website posting on August 24, 2012 that a report of waste discharge application for WDRs for the Project was submitted.

As a step in the WDR adoption process, the San Diego Water Board developed



F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

Tentative Order No. R9-2013-0007, a draft version of the Order. The San Diego Water Board has taken the following steps to encourage public participation in the San Diego Water Board's proceedings to consider adoption of the Tentative Order.

### **Notification of Interested Parties**

The San Diego Water Board notified the Discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and provided them with an opportunity to submit their written comments and recommendations. Notification was provided through the San Diego Water Board website and the San Diego Water Board Meeting agenda publication.

The Tentative Order No. R9-2013-0007 was posted on the San Diego Water Board's website for public review and comment on January 17, 2013.

### **11.0 Information and Copying**

The Report of Waste Discharge (ROWD), related documents, the tentative Order including discharge specifications and special provisions, comments received, and other information are on file and may be inspected at the address below at any time between 8:00 a.m. and 5:00 p.m., Monday through Friday. Copying of documents may be arranged through the San Diego Water Board by calling 858-467-2952.

### **12.0 Submission of Written Comments**

Interested persons wishing to submit written comments on the Tentative Order must submit them so that they are received no later than 5:00 p.m. on February 18, 2013. Comments should be submitted either in person during business hours or by mail to:

David W. Gibson, Executive Officer  
Attn: Darren Bradford  
Place ID No. 785677  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

The early submission of written comments on the Tentative Order is encouraged. Electronic written comments are acceptable and should be submitted via e-mail to the attention of Darren Bradford at [dbradford@waterboards.ca.gov](mailto:dbradford@waterboards.ca.gov).

Please indicate in the subject line of all written comments "Comment – Tentative Order No. R9-2013-0007, Place ID: 785677." If the submitted written comments

F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

exceed five pages in length or contain foldouts, color graphics, or maps, 15 hard copies must be submitted for distribution to the San Diego Water Board members and staff.

The submission of written comments is the opportunity for interested persons to raise and comment on issues pertaining to the terms and conditions of the Tentative Order. Consistent with State Water Resources Control Board regulations that apply to this proceeding, written comments received after the close of the comment period will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party. Written comments received by the close of the comment period will be provided to the San Diego Water Board members for their review in advance of a public hearing to consider adoption of the Tentative Order. All timely written comments will also be posted as they are received on the San Diego Water Board website.

[In response to a request for an extension of the public comment period by Shute, Mihaly & Weinberger LLP on behalf of Save San Onofre Coalition, the deadline for submission of comments on the Tentative Order was extended from February 18, 2013 to February 25, 2013.](#)

### **13.0 Public Hearing**

Tentative Order No. R9-2013-0007 will be considered by the San Diego Water Board for adoption in a public hearing during its regular Board meeting as follows:

Date: March 13, 2013  
Time: 9:00 a.m.  
Location: Regional Water Quality Control Board  
San Diego Water Board Meeting Room  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

On January 17, 2013, a public hearing notice and copies of the Tentative Order were emailed to all known interested persons and posted on the San Diego Water Board's website. Interested persons are invited to attend the public hearing. Participants in the public hearing will have an opportunity to address the San Diego Water Board members at the hearing subject to reasonable limitations prior to the Board taking action on the Tentative Order.

Please be aware that dates and venues may change. The San Diego Water Board Web address is [http://www.waterboards.ca.gov/sandiego/board\\_info/agendas/](http://www.waterboards.ca.gov/sandiego/board_info/agendas/) where you can access the current agenda for changes in dates and locations.

F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

## **Information and Copying**

The Report of Waste Discharge (ROWD), related documents, the tentative Order including discharge specifications and special provisions, comments received, and other information are on file and may be inspected at the address below at any time between 8:00 a.m. and 5:00 p.m., Monday through Friday. Copying of documents may be arranged through the San Diego Water Board by calling 858-467-2952.

## **Register of Interested Persons**

Any person interested in being placed on the mailing list for information regarding Order No. R9-2013-0007 should contact Darren Bradford (see contact information below), reference the project, and provide a name, address, phone number, and email address.

### **14.0 Additional Information**

For additional information, interested persons may write to the following address or contact Darren Bradford of the San Diego Water Board staff at 858-637-7137 or via email at [DBradford@waterboards.ca.gov](mailto:DBradford@waterboards.ca.gov).

Attn: Darren Bradford  
California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

### **15.0 WDR Petitions**

A person may petition the State Board to review the decision of the San Diego Water Board regarding the final Order in accordance with California Water Code Section 13330. A petition must be made within 30 days of the San Diego Water Board taking an action.

### **16.0 Documents Used in Preparation of the Information Sheet and Order**

The following documents were used in the preparation of this Information Sheet and Order No. R9-2013-0007:

- a. Application/Report of Waste Discharge submitted on August 10, 2012 with 13 attachments.

F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

- b. Supplemental application information submitted on October 4, 2012.
- c. Draft Habitat Mitigation and Monitoring Plan, October 1, 2012.
- d. Drainage Plan. Prepared by CH2M Hill, October 1, 2012.
- e. Final Drainage Report. Prepared by Saddleback Constructors, June 1, 2012.
- f. Chiquita Woods Wildlife UC General Plan, prepared by CH2M Hill, September 30, 2012.
- g. Sam Creek Bridge General Plan, Prepared by CH2M Hill, September 30, 2012.
- h. Wildlife/Access UC No. 3 General Plan, prepared by CH2M Hill, September 30, 2012.
- i. Runoff Management Plan: 241 Tesoro Extension Project, Prepared by Saddleback Constructors, February 14, 2012.
- f. South Orange County Transportation Infrastructure Improvement Project Environmental Impact Report, SCH #2001061046, February 23, 2006.
- g. South Orange County Transportation Infrastructure Improvement Project, Notice of Determination, SCH #2001061046, February 23, 2006.
- h. Letter from the U.S. Army Corps of Engineers to the Transportation Corridor Agencies. Subject: Determination regarding requirement for Department of the Army Permit, November 5, 2012.
- i. Storm Water Pollution Prevention Plan Outline: 241 Tesoro Extension Project, Prepared by Saddleback Constructors, July 27, 2012.

## 17.0 Interested Parties

The following individuals and/or entities have been identified as interested parties:

Damon Nagami  
Natural Resources Defense Council  
dnagami@nrdc.org

Susan Meyer  
Army Corps of Engineers  
Susan.A.Meyer@usace.army.mil

F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

Bill Orme  
State Water Resources Control Board, Division of Water Quality  
BOrme@waterboards.ca.gov

David Zoutendyk  
U.S. Fish and Wildlife Service  
David\_Zoutendyk@fws.gov

Kelly Fisher  
California Department of Fish and Game  
kfisher@dfg.ca.gov

Tech Staff Info & Use	
File No.	12C-072
WDID	9000002505
Reg. Measure ID	387248
Place ID	785677
Party ID	536510

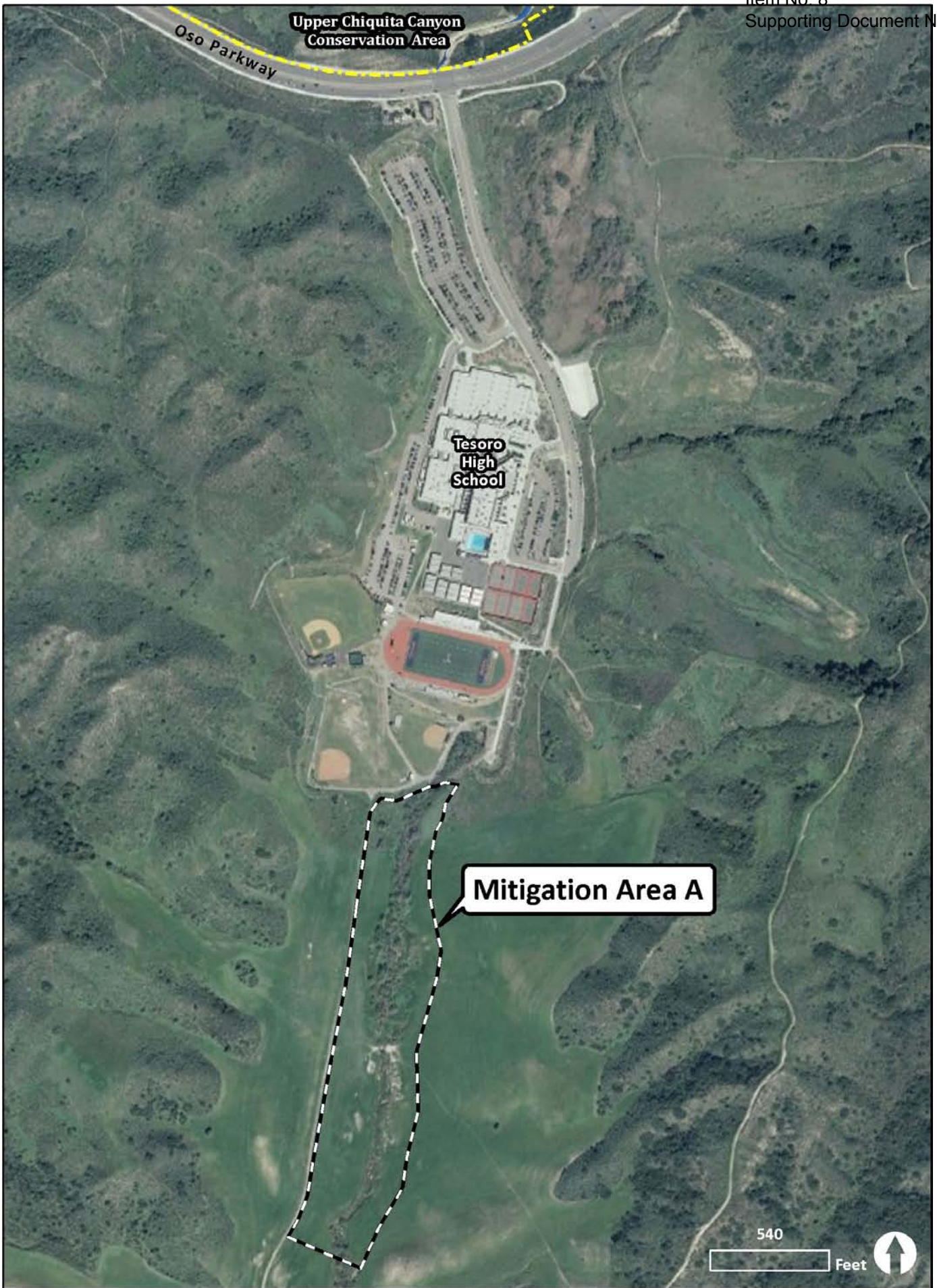
F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

**ATTACHMENT C  
MITIGATION SITE MAPS**



# Tesoro Extension Project

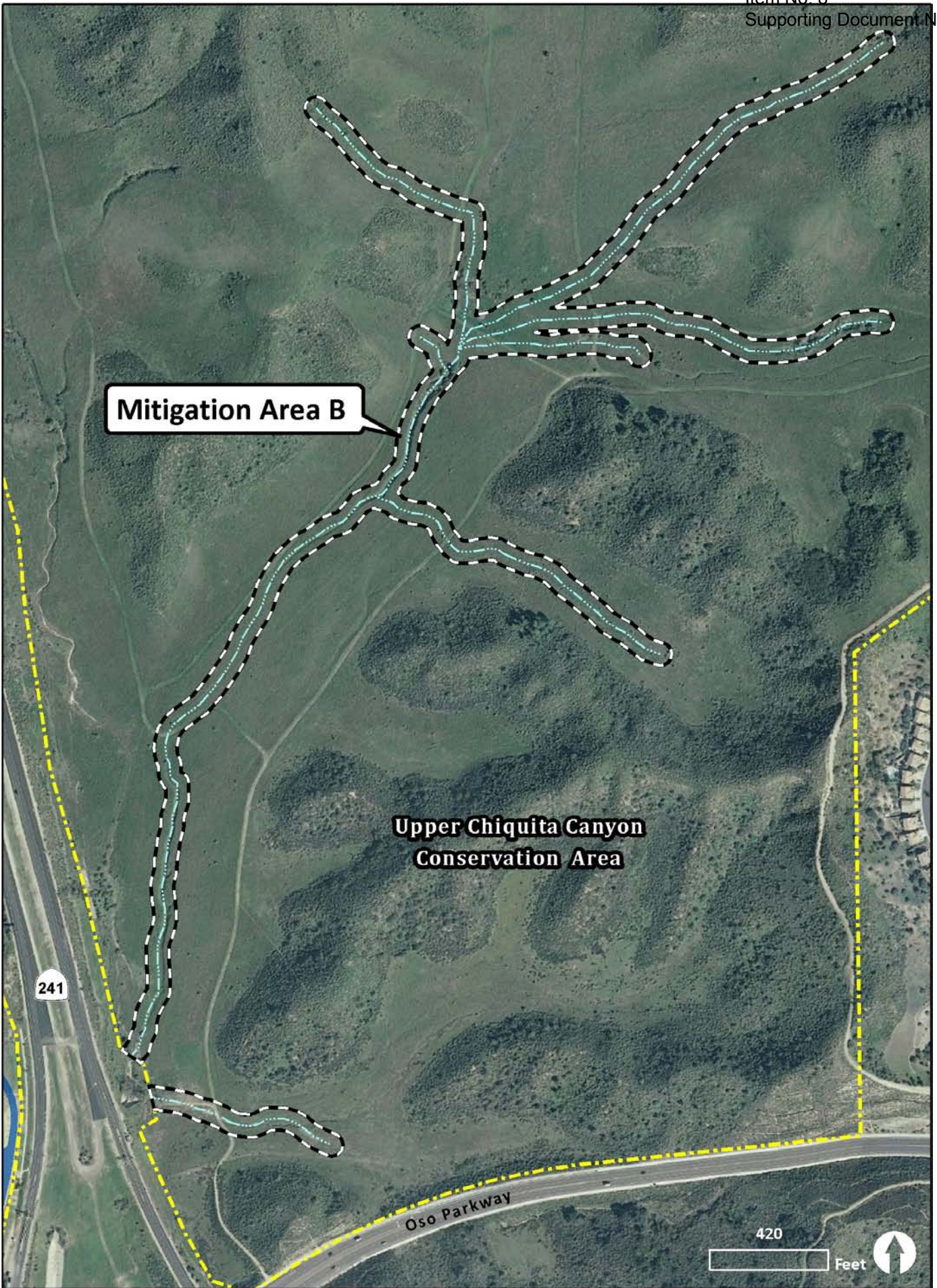
## EXHIBIT A



# Tesoro Extension Project

## EXHIBIT B



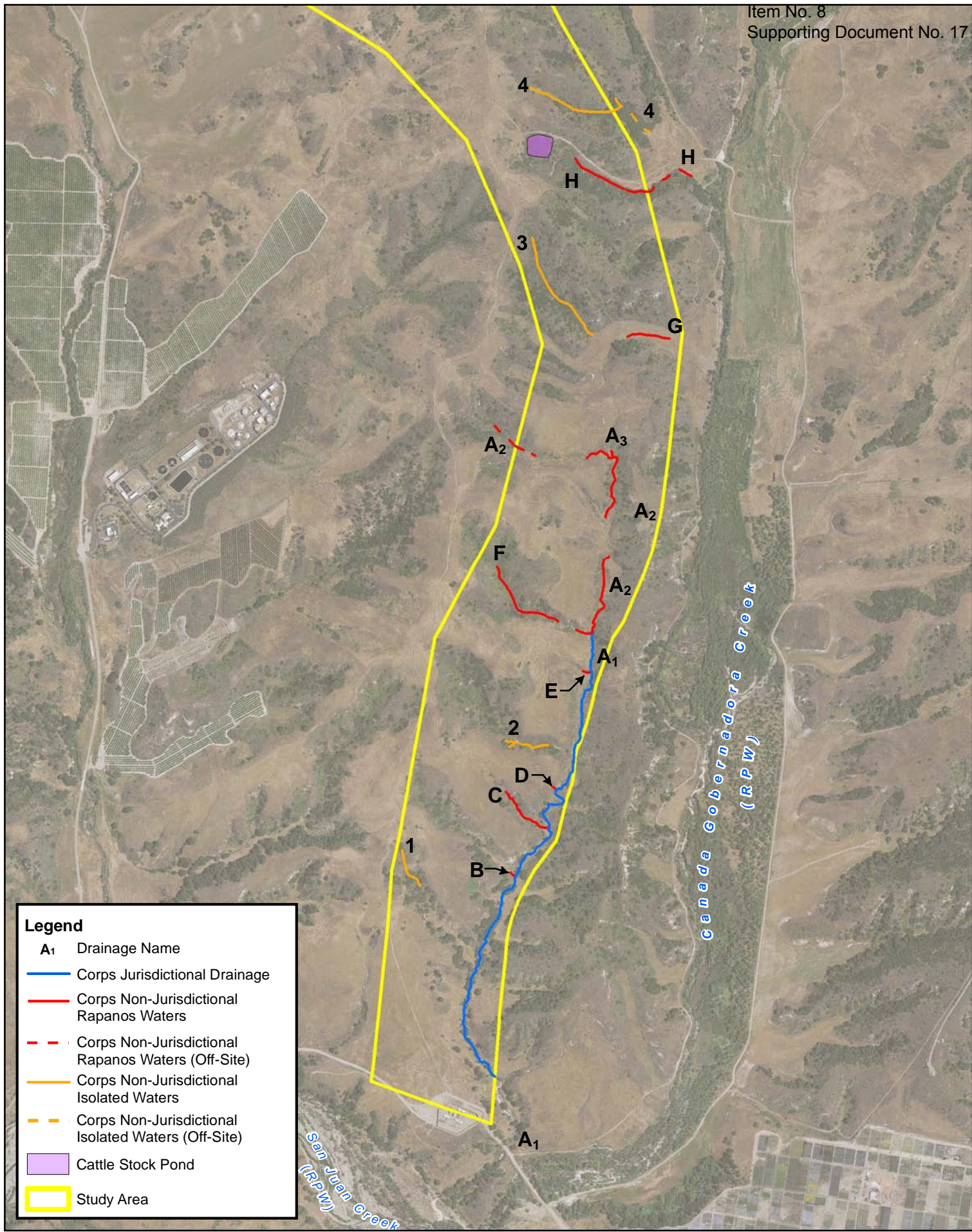


**Tesoro Extension Project**

**EXHIBIT C**

F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

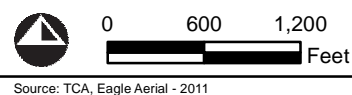
**ATTACHMENT D**  
**NON-FEDERAL WATERS OF THE STATE**



8/7/2012 JN.M:\Midat\10105687\GIS\Corps\Maps\_Index\Map\_85x11.mxd JMcPherson

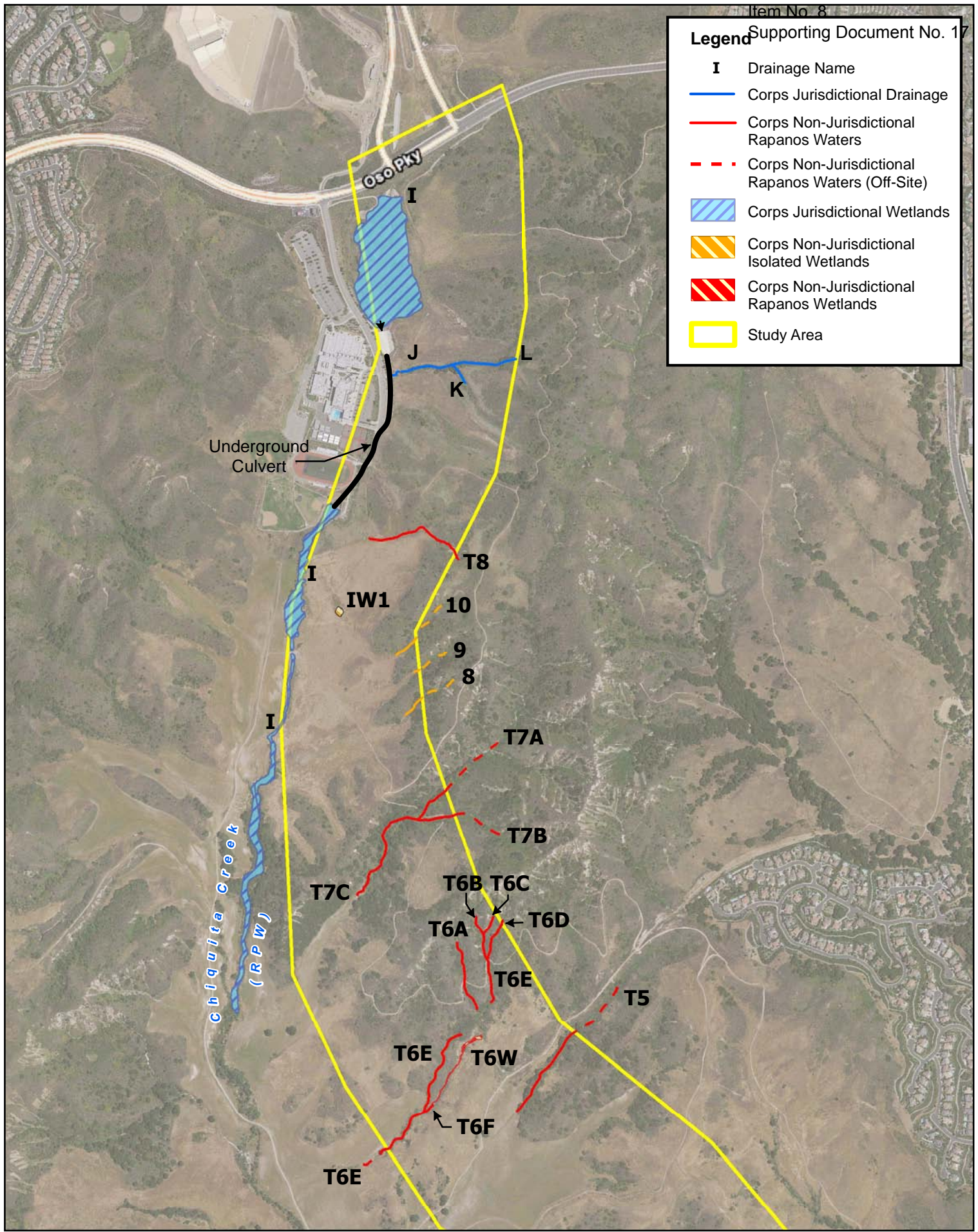
**Legend**

- A<sub>1</sub> Drainage Name
- Corps Jurisdictional Drainage
- Corps Non-Jurisdictional Rapanos Waters
- - - Corps Non-Jurisdictional Rapanos Waters (Off-Site)
- Corps Non-Jurisdictional Isolated Waters
- - - Corps Non-Jurisdictional Isolated Waters (Off-Site)
- Cattle Stock Pond
- Study Area

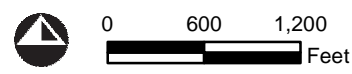


Source: TCA, Eagle Aerial - 2011

TESORO EXTENSION  
**Jurisdictional Map - South**



8/7/2012 JN.M:\Midat\10105687\GIS\Corps\Maps\_Index\Map\_85x11.mxd JMcPherson

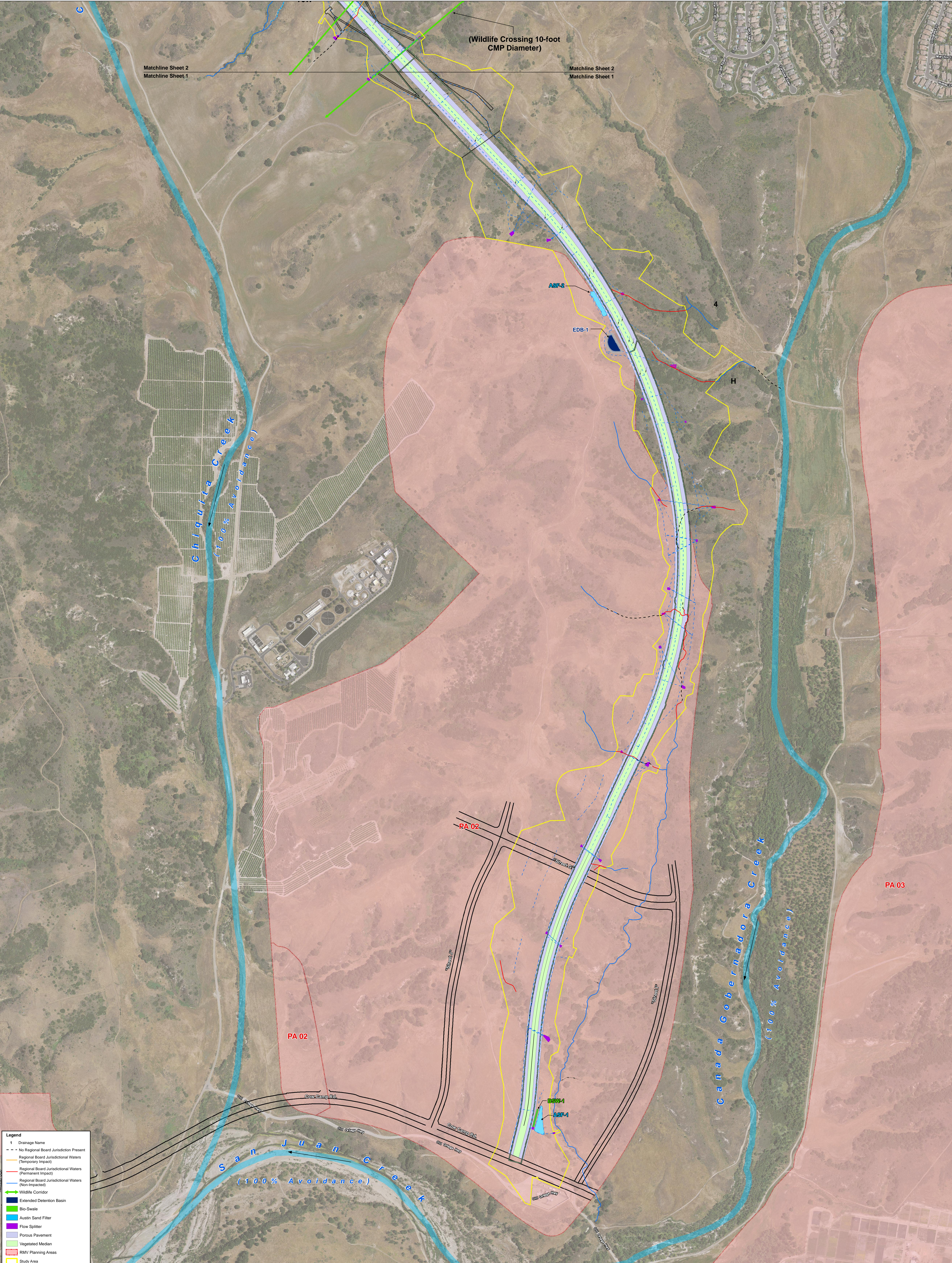


Source: TCA, Eagle Aerial - 2011

TESORO EXTENSION  
**Jurisdictional Map - North**

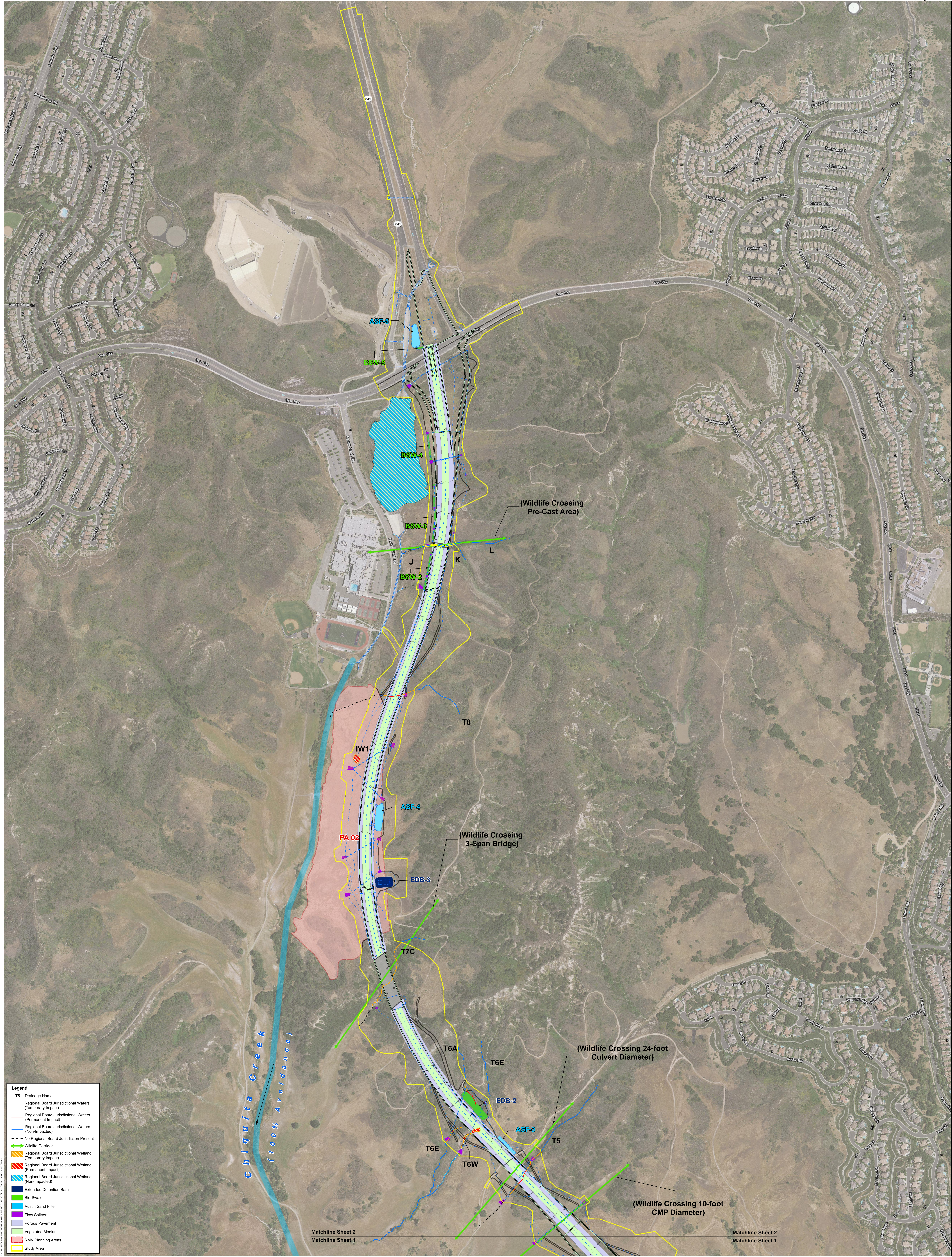
F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

**ATTACHMENT E**  
**TREATMENT CONTROL BEST MANAGEMENT PRACTICE PLANS**



**Legend**

- 1 Drainage Name
- - - No Regional Board Jurisdiction Present
- Regional Board Jurisdictional Waters (Temporary Impact)
- Regional Board Jurisdictional Waters (Permanent Impact)
- Regional Board Jurisdictional Waters (Non-Impacted)
- Wildlife Corridor
- Extended Detention Basin
- Bio-Swale
- Austin Sand Filter
- Flow Splitter
- Porous Pavement
- Vegetated Median
- RMV Planning Areas
- Study Area



- Legend**
- T5 Drainage Name
  - Regional Board Jurisdictional Waters (Temporary Impact)
  - Regional Board Jurisdictional Waters (Permanent Impact)
  - Regional Board Jurisdictional Waters (Non-Impacted)
  - No Regional Board Jurisdiction Present
  - Wildlife Corridor
  - Regional Board Jurisdictional Wetland (Temporary Impact)
  - Regional Board Jurisdictional Wetland (Permanent Impact)
  - Regional Board Jurisdictional Wetland (Non-Impacted)
  - Extended Detention Basin
  - Bio-Swale
  - Austin Sand Filter
  - Flow Splitter
  - Porous Pavement
  - Vegetated Median
  - RMV Planning Areas
  - Study Area

Matchline Sheet 2  
Matchline Sheet 1

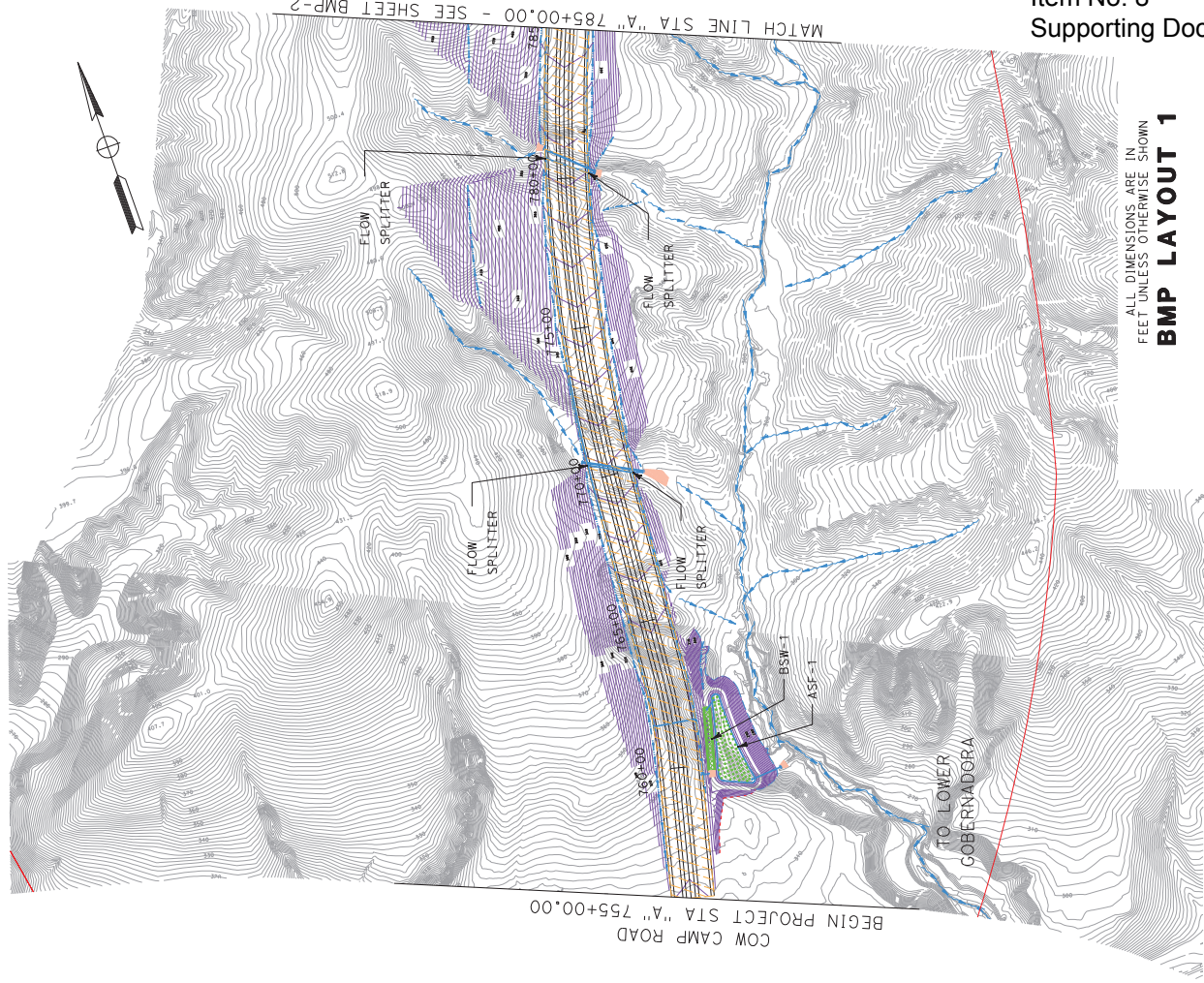
Matchline Sheet 2  
Matchline Sheet 1

SCALE 1"=400'

**BMP LAYOUT 1**

ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE SHOWN

**BMP-1**



**LEGEND**

- FLOW DIRECTION
- DRAINAGE AREA BOUNDARY
- PROPOSED STORM DRAIN
- PROPOSED JUNCTION STRUCTURE
- PROPOSED CATCH BASIN
- EXISTING STORM DRAIN
- DETENTION BASIN
- AUSTIN SAND FILTER
- AC SPILLWAY
- DRAINAGE DITCH
- PIPE RISER
- RIP RAP ENERGY DISSIPATOR
- FLARED END SECTION
- BIO-SWALE
- BIO-STRIP
- CONTOUR LINE (PROPOSED GRADING)
- RMV PLANNING AREA BOUNDARY

RELATIVE BORDER SCALE  
 1/32 IN INCHES

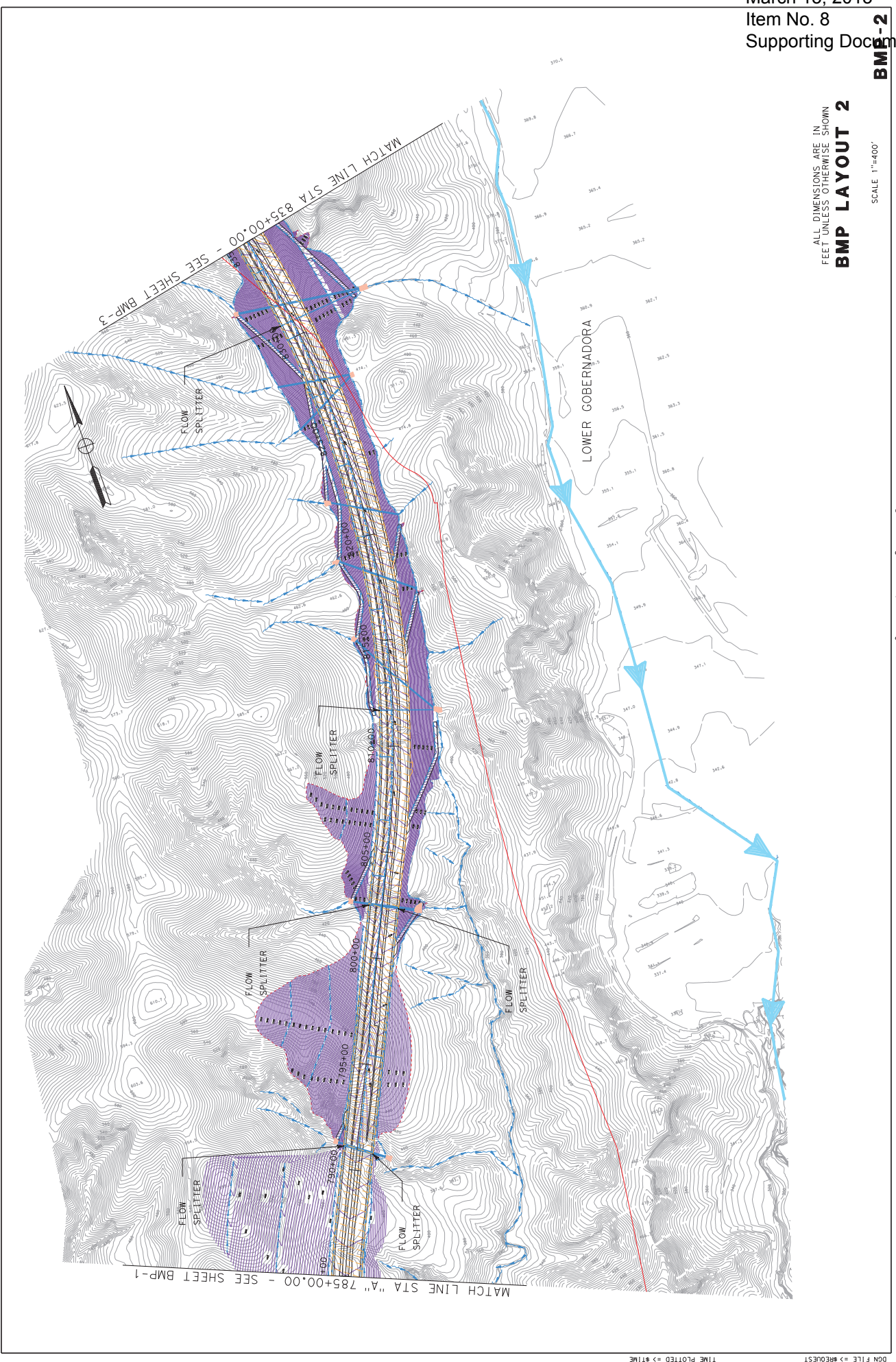




BMP-2

ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE SHOWN  
**BMP LAYOUT 2**

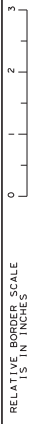
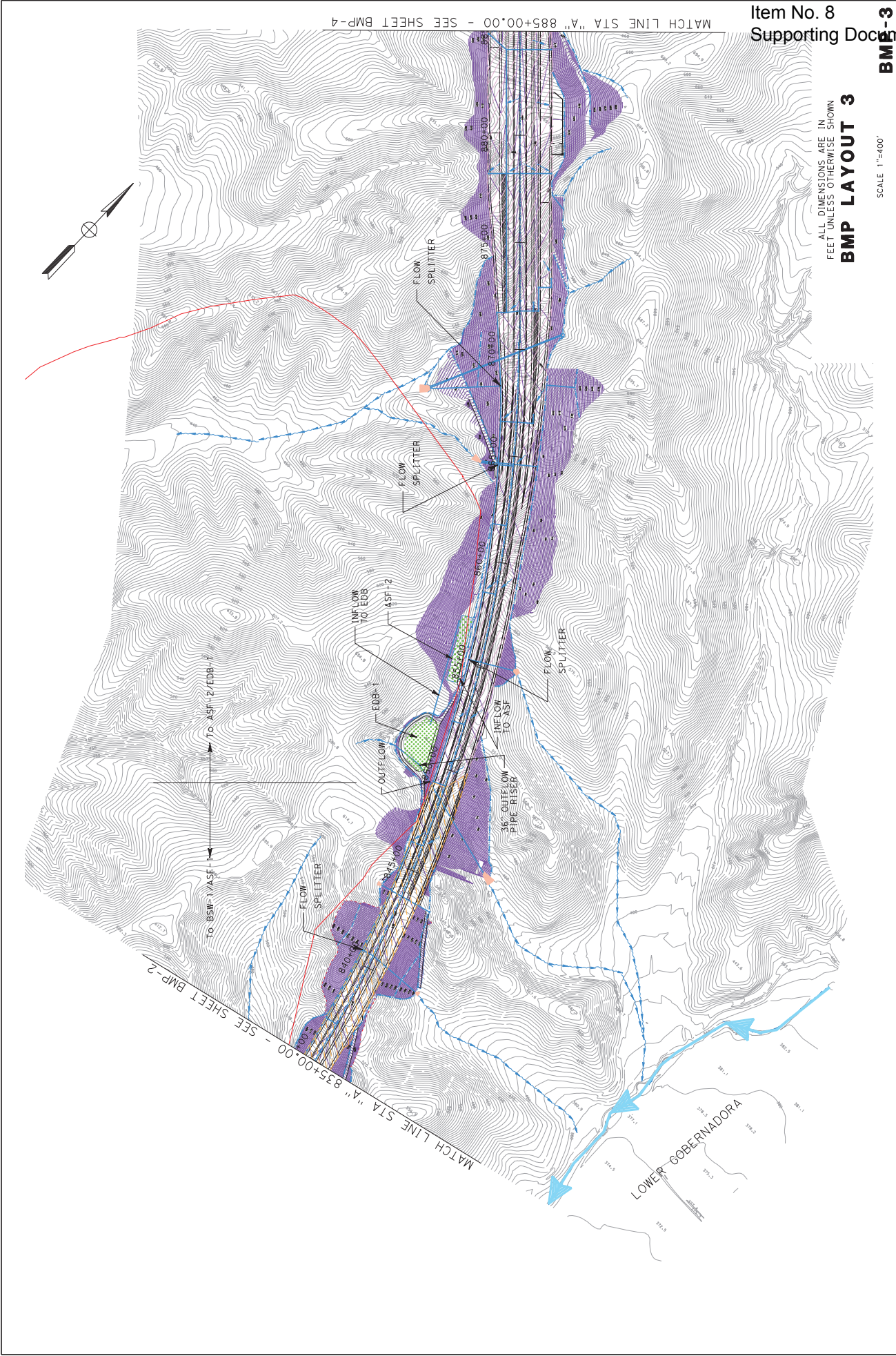
SCALE 1"=400'



SCALE 1"=400'

**BMP LAYOUT 3**  
ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE SHOWN

**BMP-3**

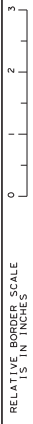
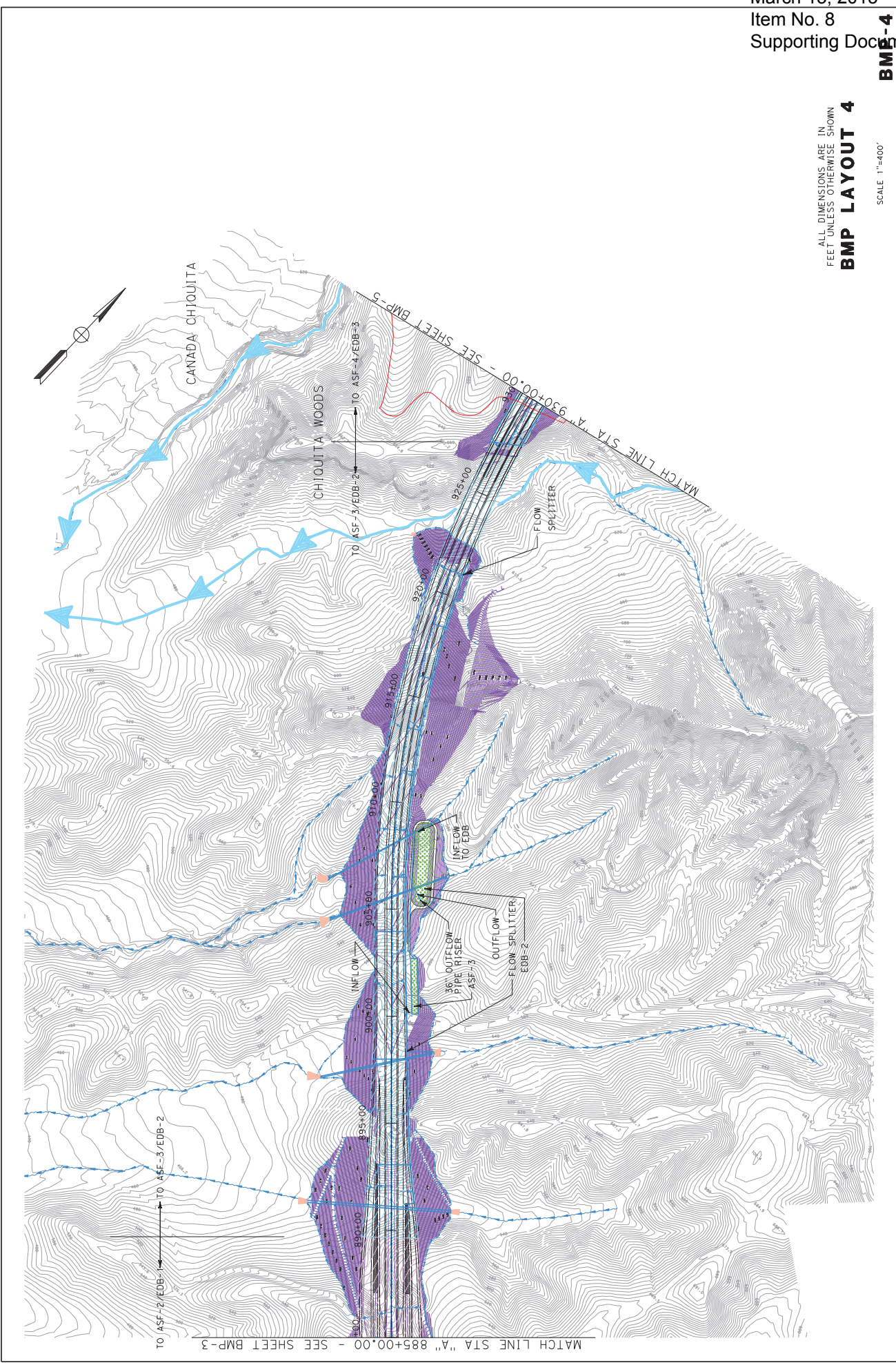


SCALE 1"=400'

**BMP LAYOUT 4**

**BMP-4**

ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE SHOWN

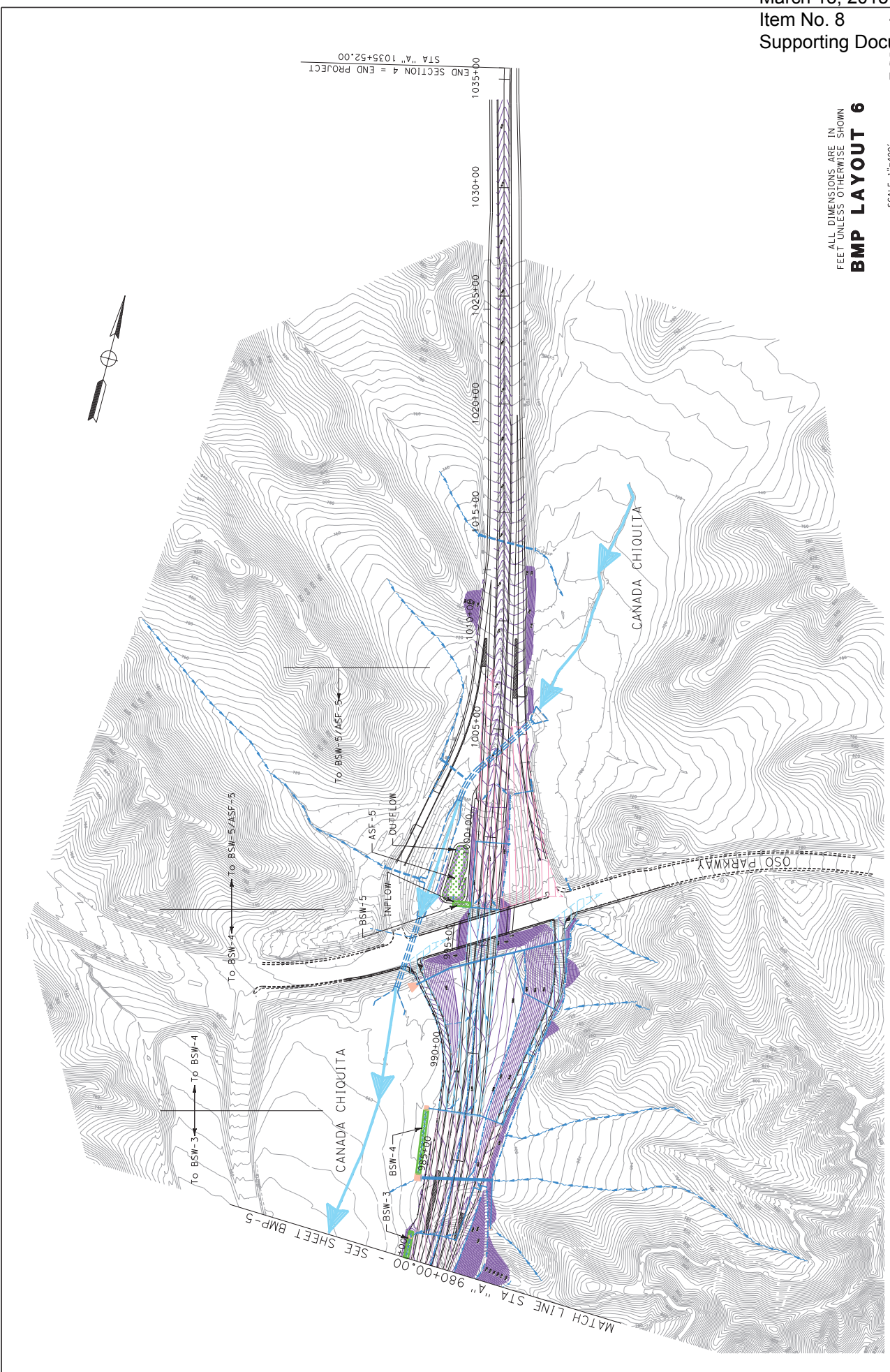


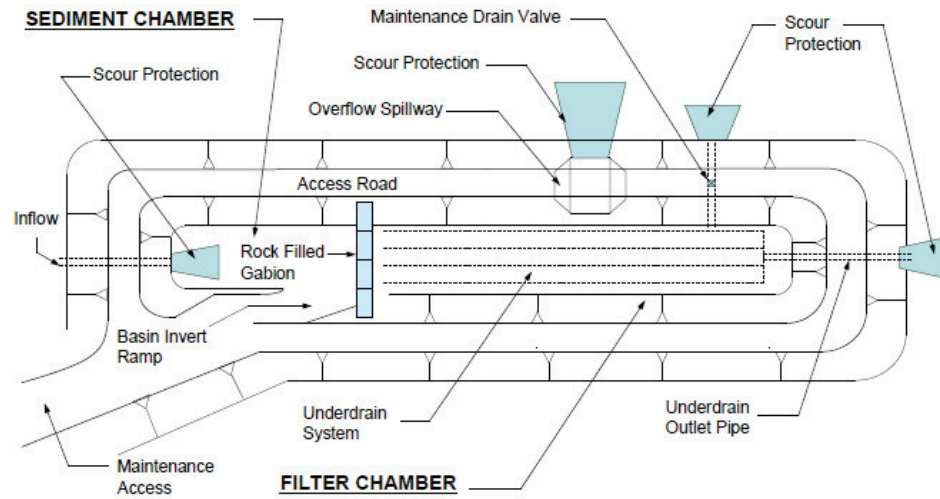


SCALE 1"=400'

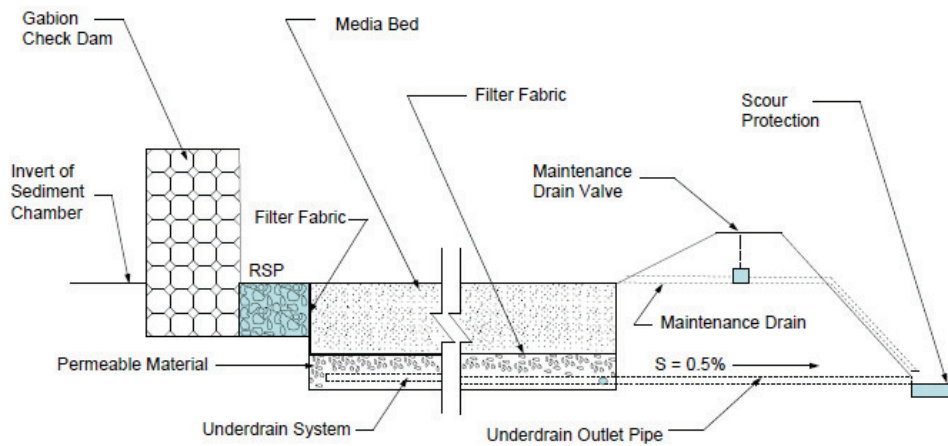
**BMP LAYOUT 6**  
ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE SHOWN

**BMP-6**





**Plan View**



**Second (Filter) Chamber Cross Section**

NOT TO SCALE

Figure 7-1. Proposed ASF Design Details<sup>3</sup>

<sup>3</sup> California Department of Transportation 2010.

F/ETCA  
Tesoro Extension (SR 241) Project  
Order No. R9-2013-0007

**ATTACHMENT F**  
**CHIQUITA CANYON PERIMETER CONSERVATION EASEMENT**

RECORDING REQUESTED BY  
FIRST AMERICAN TITLE INSURANCE COMPANY

Recorded in the County of Orange, California  
Gary L. Granville, Clerk/Recorder



No Fee

19960269158 08:00AM 05/30/96

~~RECORDING REQUESTED BY~~  
AND WHEN RECORDED MAIL TO:

400 266053 15 27 FAT  
E01 A04 27 55 0.00 14.00 0.00 78.00 0.00 0.00  
0.00 0.00 0.00 0.00 0.00

Foothill/Eastern Transportation  
201 E. Sandpointe, Suite 200  
Santa Ana, California 92707

CONFORMED COPY  
Not Compared with Original

Attention: Ms. Kathy Besnard

The undersigned declares that this document is recorded for the benefit of Foothill/Eastern Transportation Corridor Agency and is therefore exempt from the payment of the recording fee pursuant to Government Code Section 6103 and from the payment of the documentary transfer tax pursuant to Revenue and Taxation Code Section 11922.

**COPY**

By: Kathy Besnard  
Authorized Representative for Agency

(Space above this line for Recorder's use only)

**CHIQUITA CANYON PERIMETER CONSERVATION EASEMENT**

THIS CONSERVATION EASEMENT (the "Easement Agreement") is made this 29 day of May, 1996 by and between San Juan Partnership No. 1, a California limited partnership ("Grantor"), and The Foothill/Eastern Transportation Corridor Agency, a joint powers agency ("Grantee"), with reference to the following facts:

**RECITALS:**

A. Grantor is the sole owner in fee simple of certain real property in the County of Orange, State of California, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Conservation Easement Property"). The Conservation Easement Property (including the Reservoir Property defined herein), totals approximately 942 acres.

FA9636244 RCR



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Foothill/Eastern Transportation Corridor Agency  
201 E. Sandpointe, Suite 200  
Santa Ana, California 92707

Attention: Ms. Kathy Besnard

The undersigned declares that this document is recorded for the benefit of Foothill/Eastern Transportation Corridor Agency and is therefore exempt from the payment of the recording fee pursuant to Government Code Section 6103 and from the payment of the documentary transfer tax pursuant to Revenue and Taxation Code Section 11922.

By: Kathy Besnard  
Authorized Representative for Agency

---

(Space above this line for Recorder's use only)

**CHIQUITA CANYON PERIMETER CONSERVATION EASEMENT**

THIS CONSERVATION EASEMENT (the "Easement Agreement") is made this 29 day of May, 1996 by and between San Juan Partnership No. 1, a California limited partnership ("Grantor"), and The Foothill/Eastern Transportation Corridor Agency, a joint powers agency ("Grantee"), with reference to the following facts:

**RECITALS:**

A. Grantor is the sole owner in fee simple of certain real property in the County of Orange, State of California, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Conservation Easement Property"). The Conservation Easement Property (including the Reservoir Property defined herein), totals approximately 942 acres.

B. The Conservation Easement Property possesses open space, coastal sage scrub and other habitat types which are important to the conservation of the coastal California gnatcatcher and other sensitive species and also possesses attributes which would allow for the restoration of coastal sage scrub habitat (collectively, "conservation values") of great importance to Grantor, Grantee, the people of Orange County, the people of the State of California and people of the United States of America. Such conservation values provide habitat for the coastal California gnatcatcher and other sensitive and rare species.

C. Grantee is a joint powers authority formed by the County of Orange and a number of cities within the County of Orange pursuant to Government Code sections 6500 et seq. and 66484.3 for the purpose of planning, financing, designing and constructing, in part, the North Segment of the Foothill Transportation Corridor which extends from Oso Parkway to the east leg of the Eastern Transportation Corridor (the "North Segment"). A portion of the "North Segment" is known as the "Oso Segment."

D. As part of planning, designing and constructing a portion of the Oso Segment and North Segment, the Grantee and United States Army Corps of Engineers have engaged in consultation with the United States Fish and Wildlife Service ("Service") pursuant to Section 7 of the Federal Endangered Species Act (26 U.S.C. §1531 et seq.) with regard to the effect of the construction of the Oso Segment on the coastal California gnatcatcher and its habitat. The Service has issued its Biological Opinion (pursuant to Section 7(b) of the Federal Endangered Species Act), concluding that construction and operation of portions of the Oso Segment are not likely to jeopardize the continued existence of the coastal California gnatcatcher.

E. Grantor intends to convey to Grantee the right to preserve, enhance and protect the conservation values of the Conservation Easement Property in perpetuity subject to the terms of this Easement Agreement.

F. A portion of The Conservation Easement Property will be used to mitigate for impacts of the Oso Segment, and Grantee desires to perform such mitigation

by acquiring an easement to use the Conservation Easement Property for the purposes of habitat preservation, replacement, enhancement, creation and maintenance and other environmental mitigation purposes.

G. Grantor and Grantee have agreed to participate in the processing and development of a Natural Communities Conservation Plan for the Southern Subregion of Orange County ("Plan"). In the event the Plan is approved and enacted, it is the intent of Grantor and Grantee that this easement shall be consistent with the Plan and become a part of the Plan.

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, Grantor and Grantee agree as follows, and Grantor hereby grants and conveys to Grantee an easement in perpetuity over the Conservation Easement Property of the nature and character and to the extent hereinafter set forth (the "Easement").

1. **Purpose.** It is the purpose of the Easement to assure that the Conservation Easement Property will be retained forever in an open space condition (subject to those uses permitted in Sections 2 and 4 of this Easement Agreement) and for coastal sage scrub preservation, revegetation and related purposes and to prevent any use of the Conservation Easement Property that will impair or interfere with the conservation values of the Conservation Easement Property other than as set forth herein. Grantor intends and agrees that the Easement shall limit the use of the Conservation Easement Property, subject to the uses permitted in this Easement Agreement, to such activities, including without limitation, those involving the preservation and enhancement of coastal sage scrub habitat.

2. **Rights of Grantee and Character of Easement.**

(a) To accomplish the purpose of the Easement, the following rights and obligations are hereby conveyed to and accepted by Grantee by the grant contained herein:

(i) To preserve, enhance and protect the conservation values of the Conservation Easement Property; and

(ii) To enter upon the Conservation Easement Property to carry out the purposes of the Easement.

(b) The use of the surface of the Conservation Easement Property for conservation values is the exclusive use for the Conservation Easement Property subject to those other purposes set forth in Section 4 below. With respect to the subsurface of the property comprising the Conservation Easement Property, Grantor retains the right to reasonable access to and use thereof for Grantor's existing wells and waterline, so long as Grantor's exercise of such retained rights does not materially disturb, disrupt or interfere with the Easement; provided, however, that any such access and use shall be consistent with the purposes set forth herein. Neither Grantor, Grantee nor any third party acting with the permission of Grantor or Grantee may drill, mine, store or explore through the current surface or the upper 300 feet of the subsurface of the Conservation Easement Property.

(c) No use of the Conservation Easement Property by the general public is authorized hereunder without the express prior written consent of Grantor and Grantee and their respective successors in interest in the Conservation Easement Property, and Grantor and Grantee shall not encourage or permit the general public to use or enter upon the Conservation Easement Property. For purposes of this subparagraph, the term "general public" shall not include persons accompanied by Grantor or Grantee or its employees, agents, representatives, contractors or subcontractors and entering onto the Conservation Easement Property for purposes related to the conservation value of the Conservation Easement Property and the purposes set forth in Section 4. Notwithstanding the foregoing, Grantor and Grantee acknowledge that the Service and CDFG are third party beneficiaries of this Easement Agreement and shall have a right of access onto the Conservation Easement Property

for purposes associated with the conservation value hereof upon 24 hours notice to Grantor and Grantee.

(d) Grantee's rights under this Easement are expressly made subject to Grantor's reserved right under Section 4 and all other easements, covenants, conditions, restrictions, reservations, rights and rights-of-way of record, apparent, or the wells and waterline of which Grantee is aware.

(e) If Grantee plans to transfer this easement interest to another entity, it shall provide a minimum of 45 days written notice to Grantor, the Service and CDFG and shall not transfer the easement interest without the prior written consent of each which consent shall not be unreasonably withheld. Grantee may assign its rights and obligations under this Easement Agreement only to an organization that is (1) approved by the Service, CDFG and Grantor which approval shall not be unreasonably withheld, and (2) a public agency or a qualified organization at the time of transfer under section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision applicable), and the applicable regulations thereunder, and (3) authorized to acquire and hold a conservation easement under California Civil Code Section 815 et seq. (or any successor provision then applicable).

(f) Grantee shall not abandon its rights and obligations under this Easement Agreement. In the event of the termination of Grantee's ability to hold and manage this easement, the rights and obligations of Grantee hereunder shall ipso facto, and without further action on the part of any entity be deemed assigned to CDFG 60 days after written notice to Grantor, Grantee, the Service and CDFG, unless Grantee in such 60 day period has cured its inability to hold and manage this easement. In the event CDFG is unwilling or unable to carry out Grantee's obligations under this Easement Agreement, then Grantee shall transfer the easement to a public entity or qualified organization, in accordance with Section 2(e)(1), (2) and (3).

(g) The easement rights granted herein shall include Grantee's right to use the Conservation Easement Property for fire management, including use of

prescribed fires, development, maintenance and relocation of access roads, irrigation related to restoration activities, revegetation and conservation of natural resource values as permitted in accordance with the Management Plan as defined in Section 4(d) hereof.

**3. Special Terms and Requirements Regarding Easement.**

(a) Encumbrances. Neither Grantor nor Grantee shall suffer or permit to be enforced against the Conservation Easement Property, or any portions thereof, any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from any services, supplies, labor or materials furnished or alleged to have been furnished to or for Grantor or Grantee at or for use on the Conservation Easement Property, and each party shall promptly pay or cause to be paid all of said liens, claims or demands caused by such party before any action is brought to enforce the same. Each party hereby agrees to and hereby does protect, defend, indemnify and hold harmless the other party and the Conservation Easement Property free from any and all losses, costs, demands, damages, claims and liabilities associated with or in any way related to any and all such liens, claims and demands, together with all costs and expenses incurred in connection therewith (including court costs and attorneys' fees). If any such lien shall at any time be recorded against the Conservation Easement Property as a result of the foregoing, and the party causing the same shall fail, within 60 days after such recording, to either (i) pay and discharge the underlying claim and cause a lien release to be recorded or (ii) furnish to the other party a surety bond or other security reasonably satisfactory to the other party protecting the other party against liability for such lien and holding the Conservation Easement Property free from the effect of such lien, then the other party may, but shall not be obligated to, take such action or pay such amounts as may be necessary to remove such lien, and the failing party shall immediately pay to the other party the amount so expended, together with interest thereon at the rate of 10% per annum accruing from the date of such payment until paid in full.

(b) Fencing of Conservation Easement Property. Until the Management Plan is approved in accordance with Section 4(d) hereof, Grantee shall maintain the existing fencing on the Conservation Easement Property. Upon approval of the Management Plan, fencing shall be installed and maintained only in accordance with the Management Plan. All fencing shall allow for the construction and operation of the Foothill Transportation Corridor. If Grantor grazes cattle pursuant to Section 4(c) hereof, Grantor shall be responsible for installing and maintaining fencing appropriate for its cattle operations in accordance with the Management Plan.

**4. Reserved Rights and Uses and Responsibilities of Grantor.**

(a) Utilities and Uses. The Easement is subject to the utility easements of record, apparent or of which Grantee has actual notice, and Grantor's use and maintenance of existing wells, appurtenant structures, waterlines and roadways as of the date this Easement Agreement is recorded in the Official Records of the County of Orange, and such additional easements as Grantor shall designate, subject to Grantee's, the Service's and CDFG's prior written approval, which approval shall not be unreasonably withheld. Prior to exercising any reserved right hereunder to enter onto the surface of the Conservation Easement Property, Grantor shall give Grantee 24 hours prior written notice except in the event of an emergency, in which event Grantor shall give notice as soon as possible. In exercising its reserved rights under Section 4(a), Grantor shall use its best efforts to limit disturbance of coastal sage scrub habitat and shall, to the extent feasible, promptly restore all disturbed habitat.

(b) Reservoir. Grantor reserves the right to use or subject to use, and/or grant to a third party, a portion of the Conservation Easement Property (the "Reservoir Property") for purposes associated with a reservoir for impounding imported waters. In the event that a reservoir is constructed, it shall be done so in accordance with all applicable laws and regulations and shall only be built within the Reservoir Property, which shall total 24 acres. A temporary construction easement abutting the reservoir perimeter will also be reserved, said easement shall not exceed fifty (50) feet in width and shall terminate automatically upon completion of construction of the reservoir. Grantor, or

Grantor's assigns, shall also have a private but not exclusive access through the Conservation Easement Property to the Reservoir Property from a public road for construction and maintenance vehicles and equipment. Upon completion of legal descriptions of the Reservoir Property, of the inlet and outlet water lines and of the access route, within 30 days after a written request from Grantor, Grantee shall execute and record a quitclaim deed in favor of Grantor as to the Reservoir Property and a subeasement for the access and waterline route. The quitclaim deed and subeasement may be recorded; and any such recordation, if at all, shall occur by a date thirty-five (35) years from the date of this Easement Agreement.

(c) Grazing. If allowed under the Management Plan, Grantor shall have the right to graze cattle on the Conservation Easement Property consistent with the Management Plan. The indemnification in Section 6(a) shall apply to grazing activities. If Grantor elects to graze cattle in accordance with the Management Plan, Grantor shall provide security for the Conservation Easement Property.

(d) Responsibility. Grantor and Grantee each hereby understand and agree that Grantor shall have no obligation whatsoever to maintain, restore or otherwise improve the Conservation Easement Property except for damage caused by Grantor's use of the Conservation Easement Property, and that Grantee accepts the Conservation Easement Property in its current "as is" condition. Subject to the review and the approval of the Service, the Grantee shall develop, fund and implement a Management Plan for the Conservation Easement Property ("Management Plan") that shall assure the protection and maintenance in perpetuity of the existing native plant and wildlife values of the area covered by this Easement Agreement. This plan shall be completed within six months of recording this Easement Agreement. The Management Plan shall identify responsible parties and measures for control of public access, fire management, invasive plant and feral animal control, resource monitoring, and other appropriate wildlife resource stewardship strategies. All agricultural activities, including grazing and farming activities, shall cease within the Conservation Easement Property unless approved by the Service and CDFG. Responsibility for funding and



implementation of the Management Plan shall reside with Grantee in perpetuity or until such time as the Service and CDFG concur with alternate arrangements. Grantee may transfer responsibility for such funding and implementation to a third party with the consent of the Service and CDFG. The Management Plan may be amended from time to time with the consent of the Service and CDFG.

(e) Condemnation. In the event of any condemnation or sale of the Reservoir Property, or any portion of the Conservation Easement Property for the widening of the Oso Parkway, Grantor shall be entitled to all proceeds therefrom. In addition, Grantor shall have the right to require Grantee to quitclaim to Grantor any portion of the Conservation Easement Property designated by Grantor for the construction and widening of Oso Parkway. For all other condemnations, Grantor and Grantee shall each be entitled to a share in any condemnation proceeds based on their interest in the Property. If any condemnation action, other than a condemnation of the Reservoir Property, results in a reduction of acreage covered by this Easement Agreement, and if the condemning agency or another party is not required to mitigate for the reduction in conservation values of the Conservation Easement Property, Grantee will compensate for the impacts to the conservation values of the Conservation Easement Property in a manner reasonably acceptable to the Service and CDFG, provided, however, that, except for a condemnation for the widening of Oso Parkway, Grantee shall not be required to expend more in connection with such mitigation than Grantee receives from the condemnation actions.

**5. Sale of Fee Interest and Conservation Credits.**

(a) Grantor may transfer the fee title interest in the Conservation Easement Property provided it gives Grantee, the Service and CDFG not less than 30 days prior written notice of its intent to transfer such fee title interest. Notice shall be given in the manner required in this Easement Agreement. Grantor agrees to incorporate the terms of this Easement Agreement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Conservation Easement Property. The failure of Grantor to perform any act required by this section shall not

impair the viability of this Easement Agreement or limit its enforceability in any way. Grantor may only enter into leases of the fee title to the Conservation Easement Property and may convey other interests in such lands only as permitted by the Management Plan prepared and approved pursuant to Section 4(d) of this Easement Agreement.

(b) Grantee may transfer by sale or otherwise, in accordance with that certain Chiquita Canyon Conservation Bank Agreement among the Service, CDFG and Grantee dated May 24, 1996, credits associated with the Conservation Easement Property to offset impacts of development under the Federal and State endangered species laws. Grantee shall have the exclusive right to determine the price and other consideration concerning such transfer in accordance with the above-referenced Conservation Bank Agreement, and shall not be required to share any such consideration with Grantor.

(c) At Grantor's discretion, and so long as Grantee continues ownership of this easement, Grantor may, after 30 days written notice to Grantee, the Service and CDFG, quitclaim to Grantee the fee interest in the Conservation Easement Property reserving easements to continue existing uses provided for herein at the time of such transfer; and, in such event, Grantor shall no longer be responsible for all taxes and assessments on the Conservation Easement Property after such quitclaim. Concurrently with the quitclaim, Grantee shall grant a conservation easement in substantially the same terms set forth herein, to an entity as provided in Section 2(e)(1), (2) and (3) hereof. Grantor may not quitclaim its fee interest to Grantee until Grantee is prepared to record such conservation easement; Grantee will use its good faith efforts so that it will be prepared to record such conservation easement 30 days after written notice from Grantor to Grantee, the Service and CDFG.

(d) In the event of a quitclaim hereunder, Grantee shall not be obligated to maintain insurance as provided in Section 7.

6. Indemnification.

(a) Grantor's Indemnification. Grantor shall defend, indemnify, protect and hold harmless Grantee, and its directors, officers, employees and agents, and the respective employees thereof, from all losses, claims, suits, costs, damages, liabilities or actions of every name, kind, or description (including attorneys' fees) including those incurred or brought for or on account of injuries to or death of any person or damage to any property, resulting from (a) any negligent act or omission or intentional misconduct of Grantor, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof on the Conservation Easement Property, or (b) for breach of the terms of this Easement Agreement by Grantor, except to the extent as determined to have been caused by the negligent acts or omissions or intentional misconduct of Grantee, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof. Grantor's indemnity obligation shall survive until the lapse of the applicable statutory period for limitation of actions.

(b) Grantee's Indemnification. Grantee shall defend, indemnify, protect and hold harmless Grantor and its directors, officers, employees and agents, and the respective employees thereof, from all losses, claims, suits, costs, damages, liabilities or actions of every name, kind or description (including attorneys' fees), including those incurred or brought for or on account of injuries to or death of any person or damage to any property, resulting from (a) any negligent act or omission or intentional misconduct of Grantee, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof on the Conservation Easement Property, or (b) for breach of any of the terms of this Agreement by Grantee, except to the extent as determined to have been caused by the negligent acts or omissions or intentional misconduct of Grantor, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof. Grantee's indemnity obligation shall survive until the lapse of the applicable statutory period for limitation of actions.

7. **Insurance.**

(a) **Requisite Coverages.** Grantee shall, at all times during Grantor's ownership of the Conservation Easement Property, at its sole cost and expense, obtain and thereafter maintain comprehensive general liability and automobile insurance (including non-owned auto), which shall provide a 30-day notice to Grantor in the event of cancellation or any material change in coverage. The foregoing insurance policies shall reflect that the policy is primary insurance as respects any claim, loss or liability arising directly or indirectly from any of Grantee's activities on the Conservation Easement Property, and any other insurance maintained by Grantor shall be considered noncontributing. This liability insurance must be in a form satisfactory to Grantor and written with limits of liability not less than \$1,000,000 combined single limit bodily injury and property damage liability per occurrence covering the activities and obligations contemplated of Grantee under this Easement Agreement. Grantee shall furnish a Certificate of Insurance (or, if requested by Grantor, copy of the policy) evidencing the foregoing coverage to Grantor for approval. Grantee shall also maintain worker's compensation insurance in an amount required by law, together with employers' liability insurance. Grantee shall provide Grantor with evidence of the worker's compensation and employer's liability insurance coverage, with a waiver of subrogation agreement by the insurance carrier as respects Grantor. Nothing in this paragraph shall limit Grantee's obligations under the other provisions of this Easement Agreement. Grantee shall not self-insure any portion of the insurance required under this paragraph without the express written consent of Grantor, which consent may be withheld by Grantee in its sole and absolute discretion. Any policies required hereunder may be made a part of a blanket policy of insurance, so long as such blanket policy contains all of the provisions required herein and does not in any way reduce the coverage, impair the rights of Grantor hereunder or negate the requirements of this Easement Agreement.

(b) **Additional Insureds.** All policies required to be maintained pursuant to this Section 7 shall contain a provision naming Grantor and any other parties hereafter requested in writing by Grantor as an additional insured ("Additional Insureds").

For purposes of naming Grantee as an additional insured, the following provisions shall be included within each applicable policy:

It is understood and agreed that coverage afforded by this Policy shall also apply to San Juan Partnership No. I, and its officers, directors, agents, employees, divisions, subsidiaries, partners and affiliated companies as additional insureds.

In addition, all policies of insurance required hereunder shall contain a provision that the naming of an additional insured shall not negate any right that additional insured would have had as claimant under the policy if not so named.

(c) Mutual Release/Waiver of Subrogation. Grantee, for itself and its successors, hereby mutually releases and discharges Grantor and the other Indemnitees from all claims and liabilities arising from or caused by any hazard covered by the insurance coverage required herein in connection with the activities conducted on the Conservation Easement Property pursuant to this Easement Agreement, regardless of the cause of the damage or loss. The insurance policies described herein shall contain a waiver by the applicable insurance company of such company's right of subrogation.

(d) Obligations. Nothing herein shall limit Grantee's obligations under the other provisions of this Easement Agreement. The insurance required to be maintained hereunder shall insure against any acts or omissions of Grantee, provided nothing herein shall be interpreted to waive any rights Grantor may have as to any of Grantee's insurance nor shall Grantor be required to make a claim against any such Grantor's insurance.

(e) Grantee's Obligations. To the extent Grantor enters the Conservation Easement Property under the Easement, then Grantor shall comply with the insurance provisions of this section 6 applicable to Grantee prior to its entry onto the Conservation Easement Property.

8. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Conservation Easement Property by competent authority (collectively "taxes"), except that Grantor shall have no obligation to pay any taxes or assessments which may be levied against the Easement itself, as opposed to the underlying fee and Grantor shall furnish Grantee with satisfactory evidence of payment of taxes and assessments upon request. Grantee shall be responsible regarding the imposition of any taxes or assessments levied against the Easement itself, it being understood that while the Easement is held by a governmental entity for public benefit purposes, such Easement should be exempt from all such taxes and assessments.

9. **Notices.** Any notice, demand, request, covenant, approval, or other communication to be given by one party to the others shall be given by personal service, telegram, or express mail, Federal Express, DHL or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the parties at their respective addresses as follows:

To Grantor: San Juan Partnership No. 1  
28811 Ortega Highway  
P.O. Box 9  
San Juan Capistrano, California 92693  
Attn: Anthony R. Moiso and Richard Broming

With a copy to: Stephen R. Finn, Esq.  
Brobeck Phleger & Harrison  
One Market, 24th Floor  
San Francisco, California 94105

To Grantee: Foothill/Eastern Transportation Corridor Agency  
201 E. Sandpointe, Suite 200  
Santa Ana, California 92707  
Attention: Ms. Kathy Besnard

With a copy to: Nossaman, Guthner, Knox & Elliott  
Lakeshore Towers, Suite 1800  
18101 Von Karman Avenue  
Irvine, California 92715-1007  
Attn: Robert D. Thornton, Esq.

To the Service: Regional Director  
U.S. Fish and Wildlife Service  
Portland Eastside Federal Complex  
911 N.E. 11th Avenue  
Portland, Oregon 97232-4181

With a copy to: Field Supervisor  
U.S. Fish and Wildlife Service  
Carlsbad Field Office  
2730 Loker Avenue West  
Carlsbad, California 92008

To CDFG: California Department of Fish and Game  
1416 Ninth Street, Room 1341  
Sacramento, California 95814

Any such notice shall be deemed to have been given upon delivery or forty-eight (48) hours after deposit in the mail as aforesaid. Either party may change the address at which it desires to receive notice upon given written notice of such request to the other parties.

**10. Recordation.** Grantor shall promptly record this instrument in the official records of Orange County, California, and shall rerecord it on its own, or at the request of Grantee, the Service or CDFG, at any time as may be required to preserve its own, Grantee's, the Service's or CDFG's rights under this Easement Agreement.

**11. Miscellaneous Provisions.**

(a) Controlling Law. This Easement Agreement shall be governed by and interpreted in accordance with the laws of the State of California and applicable federal law.

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

(c) Severability. If any provision of this Easement Agreement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) No Rights in Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Conservation Easement Property to or for the general public, it being the intention of the parties hereto that this Easement Agreement shall be strictly limited to and for the purposes herein expressed.

(e) Attorneys' Fees. In any proceeding between the parties hereto seeking enforcement of or attempting to construe any of the terms and provisions of this Easement Agreement, including, without limitation, declaratory relief or other litigation, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses and reasonable attorneys' fees, except, any fees or costs recoverable against the United States shall be determined by applicable federal law and except any fees or costs recoverable against CDFG shall be determined in accordance with California law.

(f) Waiver Remedies. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single



or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

(g) Successors. The covenants, terms, conditions and restrictions of this Easement Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Conservation Easement Property. This Easement Agreement shall be binding upon and shall inure to the benefit of Grantor and its successors and assigns and Grantee and its assigns.

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

(i) Counterparts. The parties may execute this Easement Agreement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original.

(j) No Other Obligations. This Easement Agreement implores no other obligations or restrictions on Grantor and neither its successors nor any person or entity claiming under them shall be in any way restricted from using the Conservation Easement Property in a customary manner except as provided herein.

(k) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the grant of easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the grant.

(l) Third Party Beneficiaries. The Service and CDFG are third party beneficiaries to this Easement Agreement and shall have the independent right to enforce the terms and conditions of this Easement Agreement.

**12. Remedies.** If Grantee determines that Grantor is in violation of the terms of this Easement Agreement or that a violation is threatened, Grantee shall give written notice to Grantor or its successors and assigns of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to

the easement resulting from any use or activity inconsistent with the purpose of this Easement Agreement, to restore the portion of the easement so injured. Grantee shall also notify the Service and CDFG. If Grantor fails to cure the violation within 15 days, or fails to continue diligently to cure such violation until finally cured, Grantee, or the Service or CDFG as third party beneficiaries, may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement Agreement, to enjoin the violation ex parte as necessary, by temporary or permanent injunction to recover any damages to which Grantee may be entitled for violation of the terms of this Easement Agreement, or injury to any conservation values protected by this Easement Agreement, including adverse impacts to any threatened or endangered species, and to require the restoration of the easement to the condition that existed prior to any such injury. If Grantee, the Service or CDFG, or any of them, determines that circumstances require immediate action to prevent or to mitigate significant damage to the conservation values of the easement, Grantee, the Service or CDFG may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's, the Service's and CDFG's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement Agreement, and Grantor agrees that Grantee's, the Service's and CDFG's remedies at law of any violation of the terms of this Easement Agreement are inadequate and that Grantee, the Service or CDFG shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee, the Service or CDFG may be entitled, including specific performance of the terms of this Easement Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's, the Service's and CDFG's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provision of Civil Code Section 815 et seq. are incorporated herein by this reference and this Easement Agreement is made subject to all of the rights and remedies set forth therein. If at any time in the future, Grantor or its successors and assigns or any subsequent transferee uses or threatens to use such lands for purposes not in conformance with the stated conservation purposes contained herein, notwithstanding Civil Codes Section 815 et seq.,

California Attorney General, CDFG or the Service have standing as interested parties in any proceeding affecting this Easement Agreement. In the event that a dispute arises between Grantee and Grantor that results in litigation, the prevailing party shall be entitled to recover reasonable attorneys' fees and litigation costs from the losing party. If Grantor or if Grantee fails to exercise any right or fails to enforce any obligation of this Easement Agreement, such failure shall not be deemed to waive any other right which Grantor or Grantee may hold, including subsequent exercise of the same right to subsequent enforcement of the same obligation. Nothing contained in this Easement Agreement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the easement resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, earth movement or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the easement resulting from such causes.

**IN WITNESS WHEREOF**, Grantor and Grantee have entered into this Easement Agreement as of the day and year first above written.

**GRANTOR:** SAN JUAN PARTNERSHIP NO. I, a California limited partnership

By: Anthony R. Moriso  
GENERAL PARTNER

**GRANTEE:** FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY, a joint powers agency

By: \_\_\_\_\_  
William Woollett, Jr.  
Chief Executive Officer

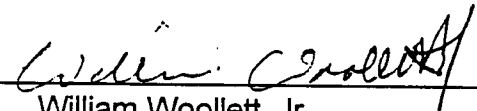
APPROVED AS TO FORM:

By: \_\_\_\_\_  
Agency Counsel

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the within Conservation Easement to the Foothill/Eastern Transportation Corridor Agency, a California joint powers agency, is hereby accepted by the undersigned officer on behalf of the Board of Directors of the Grantee, pursuant to authority conferred by resolutions of said Board of Directors adopted on May 14, 1992 as Resolution Nos. 92F-06, 92F-07 and 92F-08, and the Grantee consents to recordation thereof by its duly authorized officer.

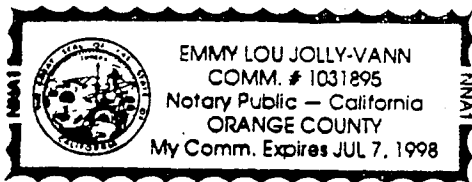
FOOTHILL/EASTERN TRANSPORTATION  
CORRIDOR AGENCY,  
a California joint powers agency

By:   
William Woollett, Jr.  
Chief Executive Officer

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On May 28, 1996, before me  
Emmy Lou Jolly-Vann Notary Public, personally appeared  
Arthur R. Weiss personally known to me (or proved to me on the basis  
of satisfactory evidence) to be the person whose name is subscribed to the within  
instrument and acknowledged to me that he/she executed the same in his/her authorized  
capacity, and that by his/her signature on the instrument the person, or the entity upon  
behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Emmy Lou Jolly-Vann

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On May 29, 1996, before me  
Terrea Tamanaha Notary Public, personally appeared  
William Woodlett, Jr. personally known to me (~~or proved to me on the basis~~  
~~of satisfactory evidence~~) to be the person whose name is subscribed to the within  
instrument and acknowledged to me that he/she executed the same in his/her authorized  
capacity, and that by his/her signature on the instrument the person, or the entity upon  
behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Terrea Tamanaha

**EXHIBIT 'A'**

THAT PORTION OF PARCELS 1 AND 2 OF CERTIFICATE OF COMPLIANCE NO. 95-01  
IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF ORANGE, STATE OF  
CALIFORNIA, RECORDED MARCH 21, 1995 AS INSTRUMENT NO. 95-0112516 OF  
OFFICIAL RECORDS IN THE OFFICE OF THE SAID COUNTY RECORDER, DESCRIBED  
AS FOLLOWS:

~~BEING ALL OF PARCEL 1 AND PARCEL 2 OF SAID CERTIFICATE OF COMPLIANCE  
NO. 95-01, EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS ON  
EXHIBIT A-1 and A-2.~~

A-1 and A-2  
SAID EXHIBIT / ATTACHED HERETO AND MADE APART HEREOF.

EXHIBIT A-1

THAT PORTION OF PARCEL 7 OF CERTIFICATE OF COMPLIANCE NO. CC82-2 IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF ORANGE, STATE OF CALIFORNIA RECORDED SEPTEMBER 3, 1982 AS INSTRUMENT NO. 82-313505 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL 1 OF CERTIFICATE OF COMPLIANCE NO. 90-02 AS RECORDED APRIL 10, 1990 AS INSTRUMENT NO. 90-206547 OF OFFICIAL RECORDS OF SAID COUNTY, SAID POINT ALSO BEING A POINT ON THE WESTERLY LINE OF SAID PARCEL 7 AND A POINT ON THE EASTERLY LINE OF SAID PARCEL 1; THENCE ALONG SAID WESTERLY AND EASTERLY LINE THE FOLLOWING COURSES:

SOUTH 05°54'05" WEST, 616.84 FEET;

SOUTH 19°01'57" WEST, 463.40 FEET;

THENCE LEAVING SAID WESTERLY AND EASTERLY LINES, THE FOLLOWING COURSES:

SOUTH 47°46'38" EAST, 55.46 FEET;

SOUTH 57°30'33" EAST, 208.00 FEET;

SOUTH 72°27'10" EAST, 201.53 FEET;

SOUTH 57°46'45" EAST, 80.14 FEET;

SOUTH 11°22'46" EAST, 172.49 FEET;

SOUTH 15°43'27" EAST, 268.38 FEET;

SOUTH 24°05'09" EAST, 286.88 FEET;

SOUTH 28°31'11" WEST, 222.14 FEET;

SOUTH 40°56'25" EAST, 273.25 FEET;

SOUTH 05°06'07" EAST, 307.26 FEET;

LEGAL DESCRIPTION

SOUTH 27°08'03" EAST, 365.64 FEET;

SOUTH 04°41'17" EAST, 167.53 FEET;

SOUTH 13°43'20" EAST, 184.02 FEET;

SOUTH 02°14'58" EAST, 102.39 FEET;

SOUTH 04°00'15" WEST, 264.19 FEET;

SOUTH 15°44'59" EAST, 457.40 FEET;

SOUTH 06°25'55" WEST, 246.12 FEET;

SOUTH 12°22'59" WEST, 920.60 FEET;

SOUTH 26°15'35" EAST, 247.07 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 1659.87 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 26°15'35" EAST; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°51'35" AN ARC LENGTH OF 140.79 FEET;

NORTH 58°52'50" EAST, 1022.67 FEET;

NORTH 31°07'10" WEST, 170.00 FEET;

NORTH 73°34'53" WEST, 71.10 FEET;

NORTH 29°10'28" WEST, 197.30 FEET;

NORTH 24°30'20" WEST, 344.17 FEET;

NORTH 18°53'40" WEST, 58.24 FEET;

NORTH 60°40'02" EAST, 167.54 FEET;

NORTH 10°58'39" WEST, 66.23 FEET;

NORTH 55°51'05" WEST, 182.25 FEET;

NORTH 13°07'31" WEST, 1241.15 FEET;

NORTH 06°59'28" WEST, 698.24 FEET;



**LEGAL DESCRIPTION**

NORTH 15°01'43" WEST, 1095.49 FEET;

NORTH 00°29'18" WEST, 966.23 FEET;

NORTH 01°49'49" WEST, 681.18 FEET;

NORTH 30°30'09" EAST, 383.02 FEET;

NORTH 04°22'26" EAST, 641.35 FEET;

NORTH 37°45'15" WEST, 62.48 FEET;

NORTH 06°01'42" EAST, 962.58 FEET TO A POINT ON THE SOUTHEASTERLY  
LINE OF PARCEL 1 OF SAID CERTIFICATE OF COMPLIANCE NO. CC82-2;

THENCE ALONG SAID SOUTHEASTERLY LINE, THE FOLLOWING COURSES:

SOUTH 33°57'59" WEST, 1013.29 FEET;

SOUTH 08°45'48" WEST, 1578.34 FEET,

SOUTH 44°49'29" WEST, 269.66 FEET TO THE POINT OF BEGINNING.

CONTAINING 102.43 ACRES, MORE OR LESS.

HORIZONTAL CONTROL DATUM IS BASED ON THE CALIFORNIA STATE PLANE  
COORDINATE SYSTEM, ZONE 6, NORTH AMERICAN DATUM OF 1983, 1988 ORANGE  
COUNTY ADJUSTMENT. DISTANCES SHOWN HEREON ARE GRID. TO OBTAIN  
GROUND DISTANCES DIVIDE GRID DISTANCES BY THE COMBINATION FACTOR  
OF 0.99991929.

EXHIBIT A-2

Those portions of Parcel 2 of Certificate of Compliance No. CC 95-01 in the Unincorporated Territory of the County of Orange, State of California, recorded March 21, 1995 as Instrument No. 95-0112516 of Official Records in the office of the County Recorder of said County, described in parcels as follows:

PARCEL 1

Commencing at a point on the Southerly line of said Parcel 2, said point being also Point "B" on the centerline of Oso Parkway, of variable width, as described in Parcel No. 120 of the easement deed to the County of Orange recorded November 22, 1994 as Instrument No. 94-0674748 of said Official Records; thence leaving said Southerly line and said centerline, North 31°07'08" West 60.00 feet to a point on the Northerly line of said Oso Parkway and the TRUE POINT OF BEGINNING; thence South 58°52'52" West 237.54 feet along said Northerly line to the Easterly line of the proposed Foothill Transportation Corridor; thence along said Easterly line, the following courses: North 31°07'10" West 49.94 feet, North 73°34'53" West 71.11 feet, North 29°10'28" West 197.32 feet, North 24°30'20" West 344.20 feet, North 18°53'40" West 58.24 feet, North 60°40'02" East 167.55 feet, North 10°58'39" West 66.24 feet, North 55°51'05" West 182.26 feet, North 13°07'31" West 1241.25 feet and North 6°59'28" West 288.98 feet; thence leaving said Easterly line, North 23°22'15" East 251.37 feet; thence North 73°14'58" East 187.93 feet; thence South 27°47'02" East 257.78 feet; thence North 38°39'27" East 1346.15 feet; thence North 16°52'32" East 359.20 feet; thence North 79°29'36" West 565.00 feet; thence North 5°13'56" West 246.31 feet; thence North 52°09'29" East 1034.97 feet; thence North 20°46'31" West 695.29 feet; thence North 9°44'26" East 480.51 feet; thence North 57°15'24" East 473.98 feet; thence North 8°34'51" East 853.83 feet; thence North 63°55'26" East 267.68 feet; thence South 67°42'09" East 469.54 feet; thence North 14°12'56" West 784.86 feet; thence North 28°38'06" East 639.15 feet; thence North 74°34'59" East 242.75 feet; thence South 61°12'37" East 323.45 feet; thence South 26°50'06" East 426.50 feet; thence South 6°05'07" East 361.80 feet; thence South 68°43'59" East 133.89 feet; thence North 45°49'34" East 603.92 feet; thence South 59°25'25" East 492.32 feet; thence South 29°17'47" West 489.80 feet; thence South 38°01'16" West 752.15 feet; thence North 64°09'51" West 364.67 feet; thence South 63°13'18" West 540.05 feet; thence South 59°00'00" East 388.60 feet; thence South 24°28'09" West 374.26 feet; thence North 72°56'13" West 353.83 feet; thence South

22°46'28" West 928.43 feet; thence South 69°14'50" West 277.50 feet; thence South 52°51'27" East 520.60 feet; thence South 32°29'16" West 153.76 feet; thence North 83°07'37" West 400.35 feet; thence South 11°05'02" East 299.94 feet; thence North 77°03'52" East 759.41 feet; thence South 38°44'19" East 199.50 feet; thence South 33°50'35" West 469.31 feet; thence South 19°35'21" East 550.73 feet; thence South 36°43'03" West 379.86 feet; thence North 86°31'31" West 856.44 feet; thence South 34°24'38" West 470.97 feet; thence South 62°56'18" East 669.47 feet; thence South 28°59'03" East 275.00 feet; thence South 22°36'32" West 190.82 feet; thence North 85°49'41" West 147.85 feet; thence North 50°46'51" West 356.99 feet; thence North 60°44'46" West 265.50 feet; thence South 75°51'17" West 367.48 feet; thence South 22°35'18" West 1653.30 feet; thence South 40°46'02" East 200.00 feet; thence North 68°58'37" East 441.26 feet; thence North 38°27'03" East 417.59 feet; thence North 48°25'20" East 659.92 feet to Point "A"; thence South 22°30'49" West 341.69 feet; thence South 27°02'46" East 252.87 feet; thence South 46°35'55" West 155.00 feet; thence South 78°22'58" West 318.28 feet; thence South 29°19'21" West 265.78 feet; thence South 74°31'10" East 806.50 feet to said Northerly line of Oso Parkway; thence along said Northerly line, the following courses: South 84°10'00" West 226.65 feet to the beginning of a tangent curve concave Southerly having a radius of 2410.00 feet and Westerly 1063.57 feet along said curve through a central angle of 25°17'08" to the true point of beginning.

Containing an area of 240.027 acres, more or less.

PARCEL 2

Beginning at Point "A" described above; thence leaving the boundary of Parcel 1 described above, North 25°38'32" East 540.01 feet to a point on that certain course described above as "North 85°49'41" West 147.85 feet" for a portion of said boundary, distant South 85°49'41" East 30.00 feet from the Westerly terminus thereof; thence along said boundary, the following courses: North 85°49'41" West 30.00 feet and North 50°46'51" West 33.00 feet to a line parallel with and Northwesterly 60.00 feet from that certain course described above as "North 25°38'32" East 540.01 feet"; thence South 25°38'32" West 679.65 feet along said parallel line to said boundary; thence North 48°25'20" East 154.96 feet along said boundary to the point of beginning.

Containing an area of 0.833 acres, more or less.

**FIRST AMERICAN TITLE INSURANCE COMPANY**



No Fee

19960493716 11:10am 09/27/96

005 9013327 09 30  
E01 23 7.00 66.00 0.00 0.00 0.00 0.00

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Foothill/Eastern Transportation Corridor Agency  
201 E. Sandpointe, Suite 200  
Santa Ana, California 92707

RECORDED  
27/96  
107 7 1996

Attention: Ms. Kathy Besnard

The undersigned declares that this document is recorded for the benefit of Foothill/Eastern Transportation Corridor Agency and is therefore exempt from the payment of the recording fee pursuant to Government Code Section 6103 and from the payment of the documentary transfer tax pursuant to Revenue and Taxation Code Section 11922.

By: Kathy Besnard  
Authorized Representative for Agency

(Space above this line for Recorder's use only)

**CHIQUITA CANYON CENTER CONSERVATION EASEMENT**

THIS CONSERVATION EASEMENT (the "Easement Agreement") is made this 27 day of SEPTEMBER 1996 by and between San Juan Partnership No. I, a California limited partnership ("Grantor"), and The Foothill/Eastern Transportation Corridor Agency, a joint powers agency ("Grantee"), with reference to the following facts:

**RECITALS:**

A. Grantor is the sole owner in fee simple of certain real property in the County of Orange, State of California, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Conservation Easement Property"). The Conservation Easement Property totals approximately 240 acres.

B. The Conservation Easement Property possesses open space, coastal sage scrub and other habitat types which are important to the conservation of the

F1.9636245 RCR

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Foothill/Eastern Transportation Corridor Agency  
201 E. Sandpointe, Suite 200  
Santa Ana, California 92707

Attention: Ms. Kathy Besnard

The undersigned declares that this document is recorded for the benefit of Foothill/Eastern Transportation Corridor Agency and is therefore exempt from the payment of the recording fee pursuant to Government Code Section 6103 and from the payment of the documentary transfer tax pursuant to Revenue and Taxation Code Section 11922.

By: \_\_\_\_\_  
Authorized Representative for Agency

\_\_\_\_\_  
(Space above this line for Recorder's use only)

**CHIQUITA CANYON CENTER CONSERVATION EASEMENT**

THIS CONSERVATION EASEMENT (the "Easement Agreement") is made this \_\_\_ day of \_\_\_\_\_, 1996 by and between San Juan Partnership No. I, a California limited partnership ("Grantor"), and The Foothill/Eastern Transportation Corridor Agency, a joint powers agency ("Grantee"), with reference to the following facts:

**RECITALS:**

A. Grantor is the sole owner in fee simple of certain real property in the County of Orange, State of California, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Conservation Easement Property"). The Conservation Easement Property totals approximately 240 acres.

B. The Conservation Easement Property possesses open space, coastal sage scrub and other habitat types which are important to the conservation of the

Exhibit B

coastal California gnatcatcher and other sensitive species and also possesses attributes which would allow for the restoration of coastal sage scrub habitat (collectively, "conservation values") of great importance to Grantor, Grantee, the people of Orange County, the people of the State of California and people of the United States of America. Such conservation values provide habitat for the coastal California gnatcatcher and other sensitive and rare species.

C. Grantee is a joint powers authority formed by the County of Orange and a number of cities within the County of Orange pursuant to Government Code sections 6500 et seq. and 66484.3 for the purpose of planning, financing, designing and constructing, in part, the North Segment of the Foothill Transportation Corridor which extends from Oso Parkway to the east leg of the Eastern Transportation Corridor (the "North Segment"). A portion of the "North Segment" is known as the "Oso Segment."

D. As part of planning, designing and constructing a portion of the Oso Segment and North Segment, the Grantee and United States Army Corps of Engineers have engaged in consultation with the United States Fish and Wildlife Service ("Service") pursuant to Section 7 of the Federal Endangered Species Act (26 U.S.C. §1531 et seq.) with regard to the effect of the construction of the Oso Segment on the coastal California gnatcatcher and its habitat. The Service has issued its Biological Opinion (pursuant to Section 7(b) of the Federal Endangered Species Act), concluding that construction and operation of portions of the Oso Segment are not likely to jeopardize the continued existence of the coastal California gnatcatcher.

E. Grantor intends to convey to Grantee the right to preserve, enhance and protect the conservation values of the Conservation Easement Property in perpetuity subject to the terms of this Easement Agreement.

F. A portion of The Conservation Easement Property will be used to mitigate for impacts of the Oso Segment, and Grantee desires to perform such mitigation by acquiring an easement to use the Conservation Easement Property for the purposes

of habitat preservation, replacement, enhancement, creation and maintenance and other environmental mitigation purposes.

G. Grantor and Grantee have agreed to participate in the processing and development of a Natural Communities Conservation Plan for the Southern Subregion of Orange County ("Plan"). In the event the Plan is approved and enacted, it is the intent of Grantor and Grantee that this easement shall be consistent with the Plan and become a part of the Plan.

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, Grantor and Grantee agree as follows, and Grantor hereby grants and conveys to Grantee an easement in perpetuity over the Conservation Easement Property of the nature and character and to the extent hereinafter set forth (the "Easement").

1. **Purpose.** It is the purpose of the Easement to assure that the Conservation Easement Property will be retained forever in an open space condition (subject to those uses permitted in Sections 2 and 4 of this Easement Agreement) and for coastal sage scrub preservation, revegetation and related purposes and to prevent any use of the Conservation Easement Property that will impair or interfere with the conservation values of the Conservation Easement Property other than as set forth herein. Grantor intends and agrees that the Easement shall limit the use of the Conservation Easement Property, subject to the uses permitted in this Easement Agreement, to such activities, including without limitation, those involving the preservation and enhancement of coastal sage scrub habitat.

2. **Rights of Grantee and Character of Easement.**

(a) To accomplish the purpose of the Easement, the following rights and obligations are hereby conveyed to and accepted by Grantee by the grant contained herein:

(i) To preserve, enhance and protect the conservation values of the Conservation Easement Property; and

(ii) To enter upon the Conservation Easement Property to carry out the purposes of the Easement.

(b) The use of the surface of the Conservation Easement Property for conservation values is the exclusive use for the Conservation Easement Property subject to those other purposes set forth in Section 4 below. With respect to the subsurface of the property comprising the Conservation Easement Property, Grantor retains the right to reasonable access to and use thereof for Grantor's existing wells and waterline, so long as Grantor's exercise of such retained rights does not materially disturb, disrupt or interfere with the Easement; provided, however, that any such access and use shall be consistent with the purposes set forth herein. Neither Grantor, Grantee nor any third party acting with the permission of Grantor or Grantee may drill, mine, store or explore through the current surface or the upper 300 feet of the subsurface of the Conservation Easement Property.

(c) No use of the Conservation Easement Property by the general public is authorized hereunder without the express prior written consent of Grantor and Grantee and their respective successors in interest in the Conservation Easement Property, and Grantor and Grantee shall not encourage or permit the general public to use or enter upon the Conservation Easement Property. For purposes of this subparagraph, the term "general public" shall not include persons accompanied by Grantor or Grantee or its employees, agents, representatives, contractors or subcontractors and entering onto the Conservation Easement Property for purposes related to the conservation value of the Conservation Easement Property and the purposes set forth in Section 4. Notwithstanding the foregoing, Grantor and Grantee acknowledge that the Service and CDFG are third party beneficiaries of this Easement Agreement and shall have a right of access onto the Conservation Easement Property



for purposes associated with the conservation value hereof upon 24 hours notice to Grantor and Grantee.

(d) Grantee's rights under this Easement are expressly made subject to Grantor's reserved right under Section 4 and all other easements, covenants, conditions, restrictions, reservations, rights and rights-of-way of record, apparent, or the wells and waterline of which Grantee is aware.

(e) If Grantee plans to transfer this easement interest to another entity, it shall provide a minimum of 45 days written notice to Grantor, the Service and CDFG and shall not transfer the easement interest without the prior written consent of each which consent shall not be unreasonably withheld. Grantee may assign its rights and obligations under this Easement Agreement only to an organization that is (1) approved by the Service, CDFG and Grantor which approval shall not be unreasonably withheld, and (2) a public agency or a qualified organization at the time of transfer under section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision applicable), and the applicable regulations thereunder, and (3) authorized to acquire and hold a conservation easement under California Civil Code Section 815 et seq. (or any successor provision then applicable).

(f) Grantee shall not abandon its rights and obligations under this Easement Agreement. In the event of the termination of Grantee's ability to hold and manage this easement, the rights and obligations of Grantee hereunder shall ipso facto, and without further action on the part of any entity be deemed assigned to CDFG 60 days after written notice to Grantor, Grantee, the Service and CDFG, unless Grantee in such 60 day period has cured its inability to hold and manage this easement. In the event CDFG is unwilling or unable to carry out Grantee's obligations under this Easement Agreement, then Grantee shall transfer the easement to a public entity or qualified organization, in accordance with Section 2(e)(1), (2) and (3).

(g) The easement rights granted herein shall include Grantee's right to use the Conservation Easement Property for fire management, including use of

prescribed fires, development, maintenance and relocation of access roads, irrigation related to restoration activities, revegetation and conservation of natural resource values as permitted in accordance with the Management Plan as defined in Section 4(c) hereof.

**3. Special Terms and Requirements Regarding Easement.**

(a) Encumbrances. Neither Grantor nor Grantee shall suffer or permit to be enforced against the Conservation Easement Property, or any portions thereof, any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from any services, supplies, labor or materials furnished or alleged to have been furnished to or for Grantor or Grantee at or for use on the Conservation Easement Property, and each party shall promptly pay or cause to be paid all of said liens, claims or demands caused by such party before any action is brought to enforce the same. Each party hereby agrees to and hereby does protect, defend, indemnify and hold harmless the other party and the Conservation Easement Property free from any and all losses, costs, demands, damages, claims and liabilities associated with or in any way related to any and all such liens, claims and demands, together with all costs and expenses incurred in connection therewith (including court costs and attorneys' fees). If any such lien shall at any time be recorded against the Conservation Easement Property as a result of the foregoing, and the party causing the same shall fail, within 60 days after such recording, to either (i) pay and discharge the underlying claim and cause a lien release to be recorded or (ii) furnish to the other party a surety bond or other security reasonably satisfactory to the other party protecting the other party against liability for such lien and holding the Conservation Easement Property free from the effect of such lien, then the other party may, but shall not be obligated to, take such action or pay such amounts as may be necessary to remove such lien, and the failing party shall immediately pay to the other party the amount so expended, together with interest thereon at the rate of 10% per annum accruing from the date of such payment until paid in full.

(b) Fencing of Conservation Easement Property. Until the Management Plan is approved in accordance with Section 4(d) hereof, Grantee shall maintain the existing fencing on the Conservation Easement Property. Upon approval of the Management Plan, fencing shall be installed and maintained only in accordance with the Management Plan. All fencing shall allow for the construction and operation of the Foothill Transportation Corridor. If Grantor grazes cattle pursuant to Section 4(c) hereof, Grantor shall be responsible for installing and maintaining fencing appropriate for its cattle operations in accordance with the Management Plan.

**4. Reserved Rights and Uses and Responsibilities of Grantor.**

(a) Utilities and Uses. The Easement is subject to the utility easements of record, apparent or of which Grantee has actual notice, and Grantor's use and maintenance of existing wells, appurtenant structures, waterlines and roadways as of the date this Easement Agreement is recorded in the Official Records of the County of Orange, and such additional easements as Grantor shall designate, subject to Grantee's, the Service's and CDFG's prior written approval, which approval shall not be unreasonably withheld. Prior to exercising any reserved right hereunder to enter onto the surface of the Conservation Easement Property, Grantor shall give Grantee 24 hours prior written notice except in the event of an emergency, in which event Grantor shall give notice as soon as possible. In exercising its reserved rights under Section 4(a), Grantor shall use its best efforts to limit disturbance of coastal sage scrub habitat and shall, to the extent feasible, promptly restore all disturbed habitat.

(b) Grazing. If allowed under the Management Plan, Grantor shall have the right to graze cattle on the Conservation Easement Property consistent with the Management Plan. The indemnification in Section 6(a) shall apply to grazing activities. If Grantor elects to graze cattle in accordance with the Management Plan, Grantor shall provide security for the Conservation Easement Property.

(c) Responsibility. Grantor and Grantee each hereby understand and agree that Grantor shall have no obligation whatsoever to maintain, restore or

otherwise improve the Conservation Easement Property except for damage caused by Grantor's use of the Conservation Easement Property, and that Grantee accepts the Conservation Easement Property in its current "as is" condition. Subject to the review and the approval of the Service, the Grantee shall develop, fund and implement a Management Plan for the Conservation Easement Property ("Management Plan") that shall assure the protection and maintenance in perpetuity of the existing native plant and wildlife values of the area covered by this Easement Agreement. This plan shall be completed within six months of recording this Easement Agreement. The Management Plan shall identify responsible parties and measures for control of public access, fire management, invasive plant and feral animal control, resource monitoring, and other appropriate wildlife resource stewardship strategies. All agricultural activities, including grazing and farming activities, shall cease within the Conservation Easement Property unless approved by the Service and CDFG. Responsibility for funding and implementation of the Management Plan shall reside with Grantee in perpetuity or until such time as the Service and CDFG concur with alternate arrangements. Grantee may transfer responsibility for such funding and implementation to a third party with the consent of the Service and CDFG. The Management Plan may be amended from time to time with the consent of the Service and CDFG.

(d) Condemnation. In the event of any condemnation or sale of any portion of the Conservation Easement Property for the widening of the Oso Parkway, Grantor shall be entitled to all proceeds therefrom. In addition, Grantor shall have the right to require Grantee to quitclaim to Grantor any portion of the Conservation Easement Property designated by Grantor for the construction and widening of Oso Parkway. For all other condemnations, Grantor and Grantee shall each be entitled to a share in any condemnation proceeds based on their interest in the Property. If any condemnation action results in a reduction of acreage covered by this Easement Agreement, and if the condemning agency or another party is not required to mitigate for the reduction in conservation values of the Conservation Easement Property, the Conservation Credits under and as defined in the Conservation Bank Agreement referenced in Section 5(b) hereof shall be reduced by a number equal to the reduction in acreage covered by this

Easement Agreement caused by the condemnation. Conservation Credits shall not be reduced to the extent they have been transferred to third parties. If, at the time the condemnation action is filed, Grantee retains insufficient Conservation Credits and Additional Conservation Credits (as defined in the Conservation Bank Agreement) to cover the reduction in Conservation Credits caused by the condemnation, Grantee will compensate for the impacts to the conservation values of the Conservation Easement Property (unless the condemning agency or another party is required to mitigate for the reduction in conservation values) in a manner reasonably acceptable to the Service and CDFG, provided, however, that, except for a condemnation for the widening of Oso Parkway, Grantee shall not be required to expend more in connection with the mitigation than Grantee receives from the condemnation action.

**5. Sale of Fee Interest and Conservation Credits.**

(a) Grantor may transfer the fee title interest in the Conservation Easement Property provided it gives Grantee, the Service and CDFG not less than 30 days prior written notice of its intent to transfer such fee title interest. Notice shall be given in the manner required in this Easement Agreement. Grantor agrees to incorporate the terms of this Easement Agreement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Conservation Easement Property. The failure of Grantor to perform any act required by this section shall not impair the viability of this Easement Agreement or limit its enforceability in any way. Grantor may only enter into leases of the fee title to the Conservation Easement Property and may convey other interests in such lands only as permitted by the Management Plan prepared and approved pursuant to Section 4(c) of this Easement Agreement.

(b) Grantee may transfer by sale or otherwise, in accordance with that certain Chiquita Canyon Conservation Bank Agreement among the Service, CDFG and Grantee dated May 24, 1996 ("Conservation Bank Agreement"), credits associated with the Conservation Easement Property to offset impacts of development under the Federal and State endangered species laws. Grantee shall have the exclusive right to determine the price and other consideration concerning such transfer in accordance with

the above-referenced Conservation Bank Agreement, and shall not be required to share any such consideration with Grantor.

(c) At Grantor's discretion, and so long as Grantee continues ownership of this easement, Grantor may, after 30 days written notice to Grantee, the Service and CDFG, quitclaim to Grantee the fee interest in the Conservation Easement Property reserving easements to continue existing uses provided for herein at the time of such transfer; and, in such event, Grantor shall no longer be responsible for all taxes and assessments on the Conservation Easement Property after such quitclaim. Concurrently with the quitclaim, Grantee shall grant a conservation easement in substantially the same terms set forth herein, to an entity as provided in Section 2(e)(1), (2) and (3) hereof. Grantor may not quitclaim its fee interest to Grantee until Grantee is prepared to record such conservation easement; Grantee will use its good faith efforts so that it will be prepared to record such conservation easement 30 days after written notice from Grantor to Grantee, the Service and CDFG.

(d) In the event of a quitclaim hereunder, Grantee shall not be obligated to maintain insurance as provided in Section 7.

## **6. Indemnification.**

(a) Grantor's Indemnification. Grantor shall defend, indemnify, protect and hold harmless Grantee, and its directors, officers, employees and agents, and the respective employees thereof, from all losses, claims, suits, costs, damages, liabilities or actions of every name, kind, or description (including attorneys' fees) including those incurred or brought for or on account of injuries to or death of any person or damage to any property, resulting from (a) any negligent act or omission or intentional misconduct of Grantor, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof on the Conservation Easement Property, or (b) for breach of the terms of this Easement Agreement by Grantor, except to the extent as determined to have been caused by the negligent acts or omissions or intentional misconduct of Grantee, its officers, directors, employees, contractors, subcontractors and

agents, and the respective employees thereof. Grantor's indemnity obligation shall survive until the lapse of the applicable statutory period for limitation of actions.

(b) Grantee's Indemnification. Grantee shall defend, indemnify, protect and hold harmless Grantor and its directors, officers, employees and agents, and the respective employees thereof, from all losses, claims, suits, costs, damages, liabilities or actions of every name, kind or description (including attorneys' fees), including those incurred or brought for or on account of injuries to or death of any person or damage to any property, resulting from (a) any negligent act or omission or intentional misconduct of Grantee, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof on the Conservation Easement Property, or (b) for breach of any of the terms of this Agreement by Grantee, except to the extent as determined to have been caused by the negligent acts or omissions or intentional misconduct of Grantor, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof. Grantee's indemnity obligation shall survive until the lapse of the applicable statutory period for limitation of actions.

## 7. Insurance.

(a) Requisite Coverages. Grantee shall, at all times during Grantor's ownership of the Conservation Easement Property, at its sole cost and expense, obtain and thereafter maintain comprehensive general liability and automobile insurance (including non-owned auto), which shall provide a 30-day notice to Grantor in the event of cancellation or any material change in coverage. The foregoing insurance policies shall reflect that the policy is primary insurance as respects any claim, loss or liability arising directly or indirectly from any of Grantee's activities on the Conservation Easement Property, and any other insurance maintained by Grantor shall be considered noncontributing. This liability insurance must be in a form satisfactory to Grantor and written with limits of liability not less than \$1,000,000 combined single limit bodily injury and property damage liability per occurrence covering the activities and obligations contemplated of Grantee under this Easement Agreement. Grantee shall furnish a Certificate of Insurance (or, if requested by Grantor, copy of the policy) evidencing the

foregoing coverage to Grantor for approval. Grantee shall also maintain worker's compensation insurance in an amount required by law, together with employers' liability insurance. Grantee shall provide Grantor with evidence of the worker's compensation and employer's liability insurance coverage, with a waiver of subrogation agreement by the insurance carrier as respects Grantor. Nothing in this paragraph shall limit Grantee's obligations under the other provisions of this Easement Agreement. Grantee shall not self-insure any portion of the insurance required under this paragraph without the express written consent of Grantor, which consent may be withheld by Grantee in its sole and absolute discretion. Any policies required hereunder may be made a part of a blanket policy of insurance, so long as such blanket policy contains all of the provisions required herein and does not in any way reduce the coverage, impair the rights of Grantor hereunder or negate the requirements of this Easement Agreement.

(b) Additional Insureds. All policies required to be maintained pursuant to this Section 7 shall contain a provision naming Grantor and any other parties hereafter requested in writing by Grantor as an additional insured ("Additional Insureds"). For purposes of naming Grantee as an additional insured, the following provisions shall be included within each applicable policy:

It is understood and agreed that coverage afforded by this Policy shall also apply to San Juan Partnership No. 1, and its officers, directors, agents, employees, divisions, subsidiaries, partners and affiliated companies as additional insureds.

In addition, all policies of insurance required hereunder shall contain a provision that the naming of an additional insured shall not negate any right that additional insured would have had as claimant under the policy if not so named.

(c) Mutual Release/Waiver of Subrogation. Grantee, for itself and its successors, hereby mutually releases and discharges Grantor and the other Indemnitees from all claims and liabilities arising from or caused by any hazard covered by the insurance coverage required herein in connection with the activities conducted on



the Conservation Easement Property pursuant to this Easement Agreement, regardless of the cause of the damage or loss. The insurance policies described herein shall contain a waiver by the applicable insurance company of such company's right of subrogation.

(d) Obligations. Nothing herein shall limit Grantee's obligations under the other provisions of this Easement Agreement. The insurance required to be maintained hereunder shall insure against any acts or omissions of Grantee, provided nothing herein shall be interpreted to waive any rights Grantor may have as to any of Grantee's insurance nor shall Grantor be required to make a claim against any such Grantor's insurance.

(e) Grantee's Obligations. To the extent Grantor enters the Conservation Easement Property under the Easement, then Grantor shall comply with the insurance provisions of this section 6 applicable to Grantee prior to its entry onto the Conservation Easement Property.

8. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Conservation Easement Property by competent authority (collectively "taxes"), except that Grantor shall have no obligation to pay any taxes or assessments which may be levied against the Easement itself, as opposed to the underlying fee and Grantor shall furnish Grantee with satisfactory evidence of payment of taxes and assessments upon request. Grantee shall be responsible regarding the imposition of any taxes or assessments levied against the Easement itself, it being understood that while the Easement is held by a governmental entity for public benefit purposes, such Easement should be exempt from all such taxes and assessments.

9. Notices. Any notice, demand, request, covenant, approval, or other communication to be given by one party to the others shall be given by personal service, telegram, or express mail, Federal Express, DHL or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid,

certified and return receipt requested, addressed to the parties at their respective addresses as follows:

To Grantor: San Juan Partnership No. I  
28811 Ortega Highway  
P.O. Box 9  
San Juan Capistrano, California 92693  
Attn: Anthony R. Moiso and Richard Broming

With a copy to: Stephen R. Finn, Esq.  
Brobeck Phleger & Harrison  
One Market, 24th Floor  
San Francisco, California 94105

To Grantee: Foothill/Eastern Transportation Corridor Agency  
201 E. Sandpointe, Suite 200  
Santa Ana, California 92707  
Attention: Ms. Kathy Besnard

With a copy to: Nossaman, Guthner, Knox & Elliott  
Lakeshore Towers, Suite 1800  
18101 Von Karman Avenue  
Irvine, California 92715-1007  
Attn: Robert D. Thornton, Esq.

To the Service: Regional Director  
U.S. Fish and Wildlife Service  
Portland Eastside Federal Complex  
911 N.E. 11th Avenue  
Portland, Oregon 97232-4181

With a copy to: Field Supervisor  
U.S. Fish and Wildlife Service  
Carlsbad Field Office  
2730 Loker Avenue West  
Carlsbad, California 92008

To CDFG: California Department of Fish and Game  
1416 Ninth Street, Room 1341  
Sacramento, California 95814

Any such notice shall be deemed to have been given upon delivery or forty-eight (48) hours after deposit in the mail as aforesaid. Either party may change the address at which it desires to receive notice upon given written notice of such request to the other parties.

**10. Recordation.** Grantor shall promptly record this instrument in the official records of Orange County, California, and shall rerecord it on its own, or at the request of Grantee, the Service or CDFG, at any time as may be required to preserve its own, Grantee's, the Service's or CDFG's rights under this Easement Agreement.

**11. Miscellaneous Provisions.**

(a) Controlling Law. This Easement Agreement shall be governed by and interpreted in accordance with the laws of the State of California and applicable federal law.

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

(c) Severability. If any provision of this Easement Agreement, or the application thereof to any person or circumstances, is found to be invalid, the

remainder of the provisions of this Easement Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) No Rights in Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Conservation Easement Property to or for the general public, it being the intention of the parties hereto that this Easement Agreement shall be strictly limited to and for the purposes herein expressed.

(e) Attorneys' Fees. In any proceeding between the parties hereto seeking enforcement of or attempting to construe any of the terms and provisions of this Easement Agreement, including, without limitation, declaratory relief or other litigation, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses and reasonable attorneys' fees, except any fees or costs recoverable against the United States shall be determined by applicable federal law and except any fees or costs recoverable against CDFG shall be determined in accordance with California law.

(f) Waiver; Remedies. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

(g) Successors. The covenants, terms, conditions and restrictions of this Easement Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Conservation Easement Property. This Easement Agreement shall be binding upon and shall inure to the benefit of Grantor and its successors and assigns and Grantee and its assigns.

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

(i) Counterparts. The parties may execute this Easement Agreement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original.

(j) No Other Obligations. This Easement Agreement implores no other obligations or restrictions on Grantor and neither its successors nor any person or entity claiming under them shall be in any way restricted from using the Conservation Easement Property in a customary manner except as provided herein.

(k) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the grant of easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the grant.

(l) Third Party Beneficiaries. The Service and CDFG are third party beneficiaries to this Easement Agreement and shall have the independent right to enforce the terms and conditions of this Easement Agreement.

**12. Remedies**. If Grantee determines that Grantor is in violation of the terms of this Easement Agreement or that a violation is threatened, Grantee shall give written notice to Grantor or its successors and assigns of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the easement resulting from any use or activity inconsistent with the purpose of this Easement Agreement, to restore the portion of the easement so injured. Grantee shall also notify the Service and CDFG. If Grantor fails to cure the violation within 15 days, or fails to continue diligently to cure such violation until finally cured, Grantee, or the Service or CDFG as third party beneficiaries, may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement Agreement, to enjoin the violation ex parte as necessary, by temporary or permanent injunction to recover any damages to which Grantee may be entitled for violation of the terms of this Easement

Agreement, or injury to any conservation values protected by this Easement Agreement, including adverse impacts to any threatened or endangered species, and to require the restoration of the easement to the condition that existed prior to any such injury. If Grantee, the Service or CDFG, or any of them, determines that circumstances require immediate action to prevent or to mitigate significant damage to the conservation values of the easement, Grantee, the Service or CDFG may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's, the Service's and CDFG's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement Agreement, and Grantor agrees that Grantee's, the Service's and CDFG's remedies at law of any violation of the terms of this Easement Agreement are inadequate and that Grantee, the Service or CDFG shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee, the Service or CDFG may be entitled, including specific performance of the terms of this Easement Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's, the Service's and CDFG's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provision of Civil Code Section 815 et seq. are incorporated herein by this reference and this Easement Agreement is made subject to all of the rights and remedies set forth therein. If at any time in the future, Grantor or its successors and assigns or any subsequent transferee uses or threatens to use such lands for purposes not in conformance with the stated conservation purposes contained herein, notwithstanding Civil Codes Section 815 et seq., California Attorney General, CDFG or the Service have standing as interested parties in any proceeding affecting this Easement Agreement. In the event that a dispute arises between Grantee and Grantor that results in litigation, the prevailing party shall be entitled to recover reasonable attorneys' fees and litigation costs from the losing party. If Grantor or if Grantee fails to exercise any right or fails to enforce any obligation of this Easement Agreement, such failure shall not be deemed to waive any other right which Grantor or Grantee may hold, including subsequent exercise of the same right to subsequent enforcement of the same obligation. Nothing contained in this Easement Agreement shall

be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the easement resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, earth movement or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the easement resulting from such causes.

**IN WITNESS WHEREOF**, Grantor and Grantee have entered into this Easement Agreement as of the day and year first above written.

**GRANTOR:** SAN JUAN PARTNERSHIP NO. 1, a California limited partnership

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

**GRANTEE:** FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY, a joint powers agency

By: \_\_\_\_\_  
William Woollett, Jr.  
Chief Executive Officer

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Agency Counsel

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the within Conservation Easement to the Foothill/Eastern Transportation Corridor Agency, a California joint powers agency, is hereby accepted by the undersigned officer on behalf of the Board of Directors of the Grantee, pursuant to authority conferred by resolutions of said Board of Directors adopted on May 14, 1992 as Resolution Nos. 92F-06, 92F-07 and 92F-08, and the Grantee consents to recordation thereof by its duly authorized officer.

FOOTHILL/EASTERN      TRANSPORTATION  
CORRIDOR AGENCY,  
a California joint powers agency

By: \_\_\_\_\_  
William Woollett, Jr.  
Chief Executive Officer



STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On \_\_\_\_\_, 1996, before me  
\_\_\_\_\_, Notary Public, personally appeared  
\_\_\_\_\_ personally known to me (or proved to me on the basis  
of satisfactory evidence) to be the person whose name is subscribed to the within  
instrument and acknowledged to me that he/she executed the same in his/her authorized  
capacity, and that by his/her signature on the instrument the person, or the entity upon  
behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On \_\_\_\_\_, 1996, before me  
\_\_\_\_\_, Notary Public, personally appeared  
\_\_\_\_\_ personally known to me (or proved to me on the basis  
of satisfactory evidence) to be the person whose name is subscribed to the within  
instrument and acknowledged to me that he/she executed the same in his/her authorized  
capacity, and that by his/her signature on the instrument the person, or the entity upon  
behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_

**PROMISSORY NOTE**

\$2,000,000

Newport Beach, California  
\_\_\_\_\_, 1996

**FOR VALUE RECEIVED**, the undersigned, **THE FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY** ("Maker"), a joint powers agency, hereby promises to pay **SAN JUAN PARTNERSHIP NO. 1** ("Payee"), a California limited partnership, or order, at 28811 Ortega Highway, San Juan Capistrano, California 92693, or at such other place as the holder hereof may from time to time designate by written notice to Maker, in lawful money of the United States of America, the sum of **TWO MILLION DOLLARS (\$2,000,000)**.

1. **Payment.** Maker shall make payments of principal as follows: all principal payable on or prior to January 1, 1999.

2. **Prepayment.** Maker may prepay this Promissory Note at any time without prepayment penalty.

3. **Default Interest.** If Maker shall fail to pay the entire unpaid balance of the principal amount of this Promissory Note when due, then interest shall accrue on the unpaid balance from the date of such default at a rate equal to the lesser of the maximum amount permitted under California law or the prime rate of

1.

EXHIBIT C

Wells Fargo Bank plus two percent (2%) until the entire principal amount of this Promissory Note and all accrued interest, costs and fees are paid hereunder.

4. **Absolute Obligation.** Maker shall pay principal and default interest, if applicable, without presentment, demand, protest, notice of dishonor, notice of nonpayment or notice of protest of any kind, all of which are hereby expressly waived by Maker.

5. **No Waiver.** No waiver of any default hereunder shall be implied for any failure on the part of the holder hereof to take, or any delay by the holder hereof in taking, any action with respect thereto or from any previous waiver of any similar or unrelated default. The waiver of any term of this Promissory Note shall be limited to the express written terms of such waiver and must be in writing.

6. **Costs and Attorneys' Fees.** In the event of any failure on the part of Maker to make any payment of interest or principal when the same is due, the holder hereof shall be entitled to recover from Maker all costs of affecting collection of the same (including, but not limited to, reasonable attorneys' fees and costs of suit).

7. **Time.** Time is of the essence with respect to every provision hereof.

8. **Choice of Law.** This Promissory Note shall be construed and enforced in accordance with the laws of State of California.

9. **Notices.** Any notice, demand, request, covenant, approval, or other communication to be given by one party to the other shall be given by personal service, telegram, or express mail, federal express, DHL, UPS or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the parties of the respective addresses as follows:

**Maker:** The Foothill/Eastern Transportation Corridor Agency  
201 East Sandpointe Avenue, Suite 200  
Santa Ana, California 92707  
Attn: Walter D. Kreutzen, Executive Vice President,  
Finance & Administration

**Payee:** San Juan Partnership No. 1  
28811 Ortega Highway  
San Juan Capistrano, California 92693  
Attn: Anthony R. Moiso

**IN WITNESS WHEREOF**, Maker has executed this Promissory Note as  
of the day and year first above written.

**"Maker"**

\_\_\_\_\_  
Foothill/Eastern Transportation Corridor  
Agency, a joint powers agency

By: \_\_\_\_\_  
William Woollett, Jr.  
Chief Executive Officer

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Agency's Counsel

**PROMISSORY NOTE**

\$1,000,000

Newport Beach, California  
\_\_\_\_\_, 1996

**FOR VALUE RECEIVED**, the undersigned, **THE FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY** ("Maker"), a joint powers agency, hereby promises to pay **SAN JUAN PARTNERSHIP NO. 1** ("Payee"), a California limited partnership, or order, at 28811 Ortega Highway, San Juan Capistrano, California 92693, or at such other place as the holder hereof may from time to time designate by written notice to Maker, in lawful money of the United States of America, the sum of **ONE MILLION DOLLARS (\$1,000,000)**.

1. **Payment.** Maker shall make payments of principal as follows: all principal shall be paid on or prior to thirty (30) days after sale of bonds for the acquisition and development of the Foothill Transportation Corridor south of Oso Parkway, Orange County, California; provided, however, that if the bond sale does not occur by July 1, 2007, the Maker shall have no obligation to make any payment hereunder.

2. **Prepayment.** Maker may prepay this Promissory Note at any time without prepayment penalty.

1.

**EXHIBIT D**

3. **Default Interest.** If Maker shall fail to pay the entire unpaid balance of the principal amount of this Promissory Note when due, then interest shall accrue on the unpaid balance from the date of such default at a rate equal to the lesser of the maximum amount permitted under California law or the prime rate of Wells Fargo Bank plus two percent (2%) until the entire principal amount of this Promissory Note and all accrued interest and costs and fees are paid hereunder.

4. **Absolute Obligation.** Maker shall pay principal and default interest, if applicable, without presentment, demand, protest, notice of dishonor, notice of nonpayment or notice of protest of any kind, all of which are hereby expressly waived by Maker.

5. **No Waiver.** No waiver of any default hereunder shall be implied for any failure on the part of the holder hereof to take, or any delay by the holder hereof in taking, any action with respect thereto or from any previous waiver of any similar or unrelated default. The waiver of any term of this Promissory Note shall be limited to the express written terms of such waiver and must be in writing.

6. **Costs and Attorneys' Fees.** In the event of any failure on the part of Maker to make any payment of interest or principal when the same is due, the holder hereof shall be entitled to recover from Maker all costs of affecting collection of the same (including, but not limited to, reasonable attorneys' fees and costs of suit).

7. **Time.** Time is of the essence with respect to every provision hereof.

8. **Choice of Law.** This Promissory Note shall be construed and enforced in accordance with the laws of State of California.

9. **Notices.** Any notice, demand, request, covenant, approval, or other communication to be given by one party to the other shall be given by personal service, telegram, or express mail, federal express, DHL, UPS or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the parties of the respective addresses as follows:

**Maker:** The Foothill/Eastern Transportation Corridor Agency  
201 East Sandpointe Avenue, Suite 200  
Santa Ana, California 92707  
Attn: Walter D. Kreutzen, Executive Vice President,  
Finance & Administration

**Payee:** San Juan Partnership No. 1  
28811 Ortega Highway  
San Juan Capistrano, California 92693  
Attn: Anthony R. Moiso



**IN WITNESS WHEREOF**, Maker has executed this Promissory Note as  
of the day and year first above written.

**"Maker"**

\_\_\_\_\_  
Foothill/Eastern Transportation Corridor  
Agency, a joint powers agency

By: \_\_\_\_\_  
William Woollett, Jr.  
Chief Executive Officer

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Agency's Counsel