SAN DIEGUITO RIVER VALLEY REGIONAL OPEN SPACE PARK
JOINT POWERS AUTHORITY

9:30 a.m. – 12:00 p.m.
Friday, January 15, 2010
County Administrative Center
1600 Pacific Highway, Room 302/303
San Diego

Speaker slips will be available. Please fill out a slip and give it to the Chair prior to the meeting if you wish to speak to an item on the agenda. The Board may take action on any item listed on the Consent or Action agenda.

Introductions and Announcements

Approval of the Minutes of December 11, 2009

Executive Directors Report

Public Comment

This portion of the agenda provides an opportunity for members of the public to address the Board on items of interest within the jurisdiction of the Board and not appearing on today's agenda. Comments relating to items on today's agenda are to be taken at the time the item is heard. Pursuant to the Brown Act, no action shall be taken by the Board on public comment items.

ACTION

1. JPA Board Ad Hoc Committee Assignments (page 3)

2. Budget Cut Impact Scenarios (page 5)

3. Member Agency Contribution Methodology Calculations (page 32)

INFORMATION

4. Coordination Reports (oral)
   a. San Dieguito River Valley Conservancy
   b. Friends of the San Dieguito River Valley
   c. Volcan Mountain Preserve Foundation
d. San Dieguito Lagoon Committee

5. Status Reports (Oral)
   a. River Park Projects

6. Jurisdictional Status Reports
   An opportunity for the Board members to report on actions taken within their jurisdictions to further the park planning process, or on problems which have arisen.

7. Communications
   a. Letter from JPA to 22nd District Agricultural Association re Master Plan EIR (page 43)

THE NEXT REGULAR JPA MEETING IS SCHEDULED FOR FRIDAY, FEBRUARY 19, 2010

If you have any questions, please call Dick Bobertz at (858) 674-2270.

****Due to the high cost of printing and mailing the JPA and CAC agendas, the JPA has converted to an email distribution of both agendas. Please advise the office at 858 674-2270 if you do not have an e-mail address and want other arrangements will be made. Full packets will continue to be mailed free of charge to JPA and CAC members upon request. For others, the cost of the full agenda, with backup material, is $45 per year, and the cost of the agenda without backup material is $10 per year. The agenda and minutes are available at no cost on the San Dieguito River Park web site at www.sdrp.org
TO: JPA Board
FROM: Staff
SUBJECT: Ad Hoc Committee Assignments for 2010

RECOMMENDATION:
Discuss and approve a new Ad Hoc Committee roster for 2010

SITUATION:
Summary and Recommendation

Your Board appoints members annually to serve on the ad hoc Land Use Committee, Acquisition & Financing Strategies Committee, Budget/Administration/Policy Committee and Wetland Advisory Committee. See the description of each committee’s function on the attached draft roster. The attached list is based on a substitution of new members into the committee assignments held by their predecessors.

Staff recommends that the Board members discuss the draft assignments at today’s meeting, make changes as desired, and approve a roster for 2010.

Respectfully submitted,

Dick Bobertz
Executive Director
Land Use Committee
Richard Earnest
Pam Slater-Price
Jim Cunningham
Sherri Lightner
1st Alternate: Olga Diaz
2nd Alternate: Dave Roberts

Duties: 1) Review CAC and staff recommendations on pending projects, when warranted. Make project recommendations to JPA Board.
2) Consider planning and environmental issues that relate to the San Dieguito River Park.

Acquisition and Financing Strategies Committee
Dave Roberts
Pam Slater-Price
Tom Golich
Jim Cunningham
1st Alternate: Richard Earnest
2nd Alternate: Dianne Jacob

Duties: 1) Review staff recommendations and advise staff on property negotiation. Make acquisition recommendations to JPA Board.
2) Serve as “Investment Committee”. Responsibilities as Investment Committee include review of internal and external endowment funds, preparation of annual analysis and report to the Board, and rebalancing of assets in internal fund as appropriate.

Budget/Administration/Policy Committee
Sherri Lightner
Olga Diaz
Richard Earnest
Dave Roberts
1st Alternate: Jim Cunningham
2nd Alternate: Carl DeMaio

Duties: 1) Review draft budget and work program and present recommendations to JPA Board
2) Executive Director Performance Review
3) Make recommendations regarding standing or ad hoc committees and membership
4) Review and set JPA policies and by-laws

Wetlands Advisory Committee
Pam Slater-Price
Richard Earnest
Dave Roberts
Tom Golich
Jacqueline Winterer, Public Member

Duties: Review and recommend policies and plans relating to the San Dieguito Lagoon Wetland Restoration Project

Representation on 22nd District Agricultural Association Master Plan Committee
Richard Earnest
Sherri Lightner
Dave Roberts, Alternate
Agenda Item 2  
January 15, 2010

TO: JPA Board  
FROM: Staff  
SUBJECT: Budget  

RECOMMENDATION:  
Discuss and provide direction to staff.

SITUATION:  
The City of San Diego has taken action to eliminate funding to the San Dieguito River Park effective April 1, 2010. There is still the possibility as this staff report is being written that the City will be able transfer the funding obligation from the Park & Recreation Department to the Water Department. In the meantime, your Board directed staff to return at today’s meeting with various scenarios to deal with the impacts of the funding cut, in addition to other directives, as shown below.

Motion:  
1. Provide the JPA Board with information regarding:  
   a. MSCP legal requirements for land management.  
   b. The Lake Hodges Golf Improvement Center approval condition relating to establishing a recreation fund in the Water Department.  
   c. Supplemental sources of revenue that could be used to bridge an 18th-month gap in City of San Diego contribution.  
   d. Identify SDRP services that relate to the City Water Department that would have to be cut if the City stops paying its contribution.

2. Prepare three different budget scenarios to show the consequences of a 10%, 25% and 36% budget reduction.

3. Present a review of the member agency contribution calculation methodology (this item is addressed in a separate staff report).

The information requested is provided below:

**MSCP legal requirements for land management**  
There are quite a few agreements and documents that address the MSCP, including the Implementing Agreement, the Final MSCP Program Plan, the City of San Diego Subarea Plan, the MHPA Guidelines, Framework Management Plan, and more. The essence of the agreements is that the City agreed to set aside lands it already owned and preserve them as natural open space in their existing condition at a minimum. Section 6.3.2 of the MHPA Guidelines states,
“Each take authorization holder will be responsible (either directly or through agreements with other agencies or organizations) for the management and biological monitoring of “…its own public lands…”. Please see Attachment 1 for a brief summary of relevant documents.

The San Dieguito River Park helps the City Public Utilities Department with its obligation to implement the Multiple Species Conservation Plan (MSCP) Implementing Agreement by protecting and maintaining MSCP property in the Lake Hodges/San Pasqual Valley area, and was doing that in 1995 and 1997 when the MSCP agreements were approved. SANDAG has computed that the City of San Diego-owned acres within MSCP_MHCP within FPA = 10,899.38. Subtracting the Lake Hodges surface area (1,234 acres), that leaves 9,665.38 acres. According to the MSCP Final Program Plan, the estimated cost for management of MSCP property was $47.00 per acre in 1995 dollars. At $47.00 per acre, that equates to $456,109 per year that the City is expected to spend managing Water System assets in the Lake Hodges/San Pasqual Valley as part of the MSCP Implementing Agreement. In 2010, in current dollars, this would be $66 per acre, which equates to $637,890.

In the case of the Lake Hodges/San Pasqual Valley cornerstone lands, those lands have been managed appropriately in accordance with MSCP guidelines because the River Park rangers have assumed much of that responsibility, with the exception of brush management and biological monitoring. And from 1997 (when the agreements were signed) until FY 2006/07, the City’s Water Department, which owns those properties, was in effect contracting with the JPA to conduct those management activities and care for those properties, through their payment of the JPA’s member agency assessment. If the City eliminates its contribution to the JPA, land management of MSCP cornerstone properties in the Lake Hodges/San Pasqual Valley area will be diminished and may no longer meet the minimum requirements according to the agreements signed by the City.

**The Lake Hodges Golf Improvement Center approval condition relating to establishing a recreation fund in the Water Department**

It is staff’s understanding that at least $440,000 is in the Recreational Trust Fund that was established at the City Water Department when the Hodges Golf Improvement Center was approved by the San Diego City Council. When the JPA applied for those funds to use them to finish the Lake Hodges Bicycle/Pedestrian Bridge, the request was denied because the City Attorney opined that the use was not legal per Proposition 218. JPA Attorney Wayne Brechtel feels that these funds do not fall under the Proposition 218 restrictions. See his attached letter, which was distributed to the Mayor and City Attorney’s office on December 18, 2009. To date no response has been received.

**Supplemental sources of revenue that could be used to bridge an 18-month gap in City of San Diego contribution.**

1. Lake Hodges Recreational Trust Fund (described above), if the City Attorney revises his previous opinion, and agrees that the funds can be used to help cover costs incurred by the San Dieguito River Park JPA for management or improvement of Water Department
lands or recreational activities on such lands. If the City Attorney determines that the funds could be used for this purpose by the JPA, San Diego City Council action would be required to carry it out. At the current City contribution level, those funds of $440,000 would cover 21 months of the City’s share of the JPA budget.

2. A portion of the JPA’s Endowment Fund principal that is held at Fidelity Brokerage could be used. There are two Endowment Funds at Fidelity: An income fund comprised of various mitigation endowments. This fund cannot be drawn down because it is a non-wasting fund created to provide income for habitat management per regulatory requirements. The other fund is a growth fund comprised of distributable funds from the San Diego Foundation Endowment. The intention for this growth fund is to continue to reinvest the earnings and add new funds to it, so that it would grow for 20 years in order to accumulate enough principal to augment our operating budget. This plan is based on the twenty year Fiscal Plan your Board adopted in 1998. The $262,316 in the Growth Fund as of December 31st would cover 12.5 months of our shortage.

3. Another potential source that was mentioned at the December 9th San Diego City Council meeting was revenue from the Fairbanks Ranch Country Club lease, that apparently has not been paid and is delinquent. The amount in question is $169,400. The City Treasurer’s office sent a collection notice to FRCC for that amount on December 28th. We do not know what the issues are concerning the non-payment. If the funds are paid now, they would go into the City of San Diego’s General Fund. A decision to allocate them to the San Dieguito River Park would have to be made by the Mayor and City Council. The $169,400 would cover 8 months of our shortage.

**Supplemental sources of revenue that could be used to bridge the last quarter of this fiscal year.**

1. Furloughs could be used on an interim basis to address the proposed budget cuts. If a furlough program utilizing 5% salary reductions across the board (2 hours per week (or 1 day per month) per employee) were instituted beginning February 1st, it would result in savings of $31,042 this fiscal year, based on current annual payroll (including benefits) of $931,282. This would be sufficient to meet the funding gap if used in conjunction with #2 below. If furloughs alone are used to meet the funding gap in the fourth quarter, the furloughs would have to be increased to 10% salary reduction across the board (4 hours per week or 2 days per month) effective February 1st, which would produce $62,084 in savings. One of the effects of the furloughs would be that all ranger functions such as maintenance of trails and facilities would be reduced. This effect would be concentrated in the areas that are not funded by outside revenue sources. The potential to fill in with volunteers would not be feasible because of the loss of ranger time to organize, supervise and direct volunteers.

2. The San Diego City Council action to eliminate the 4th quarter payment to the River Park this fiscal year was based on numbers from the adopted City budget that showed that their annual member agency contribution was $295,084 and the 4th quarter payment would be
$73,771. In fact, these numbers are not accurate. Those are the numbers from the JPA’s FY 08/09 adopted budget. In FY 09/10, we decreased our member agency assessment by $254,776 and have only been invoicing the City $63,694 per quarter. Apparently the reduced assessment was not included in the budget for FY 09/10 that the City adopted. Therefore, City Parks has been invoiced $30,232 less by the River Park than was approved in the adopted City budget. This $30,232 should still be available, even though the full 4th quarter payment was eliminated. If these funds were received, there would only be a $33,462 shortfall in our 4th quarter revenues.

SDRP services that relate to the City Water Department that would have to be cut if the City stops paying its contribution.

See attached list of work that the River Park does and has done to benefit Water System Assets. The items highlighted would be eliminated if the City does not pay its share of the JPA budget (Attachment 2).

Prepare three different budget scenarios to show the consequences of a 10%, 25% and 36% budget reduction.

If the City budget cuts are not restored, the member agency contributions to the San Dieguito River Park’s operating fund will be reduced by 36%. Staff was directed to show the Board the consequences of cost cutting in the amounts of 10%, 25% and 36%. Because the River Park’s budget was already cut by 15% in the current year, cuts by 10% or 25% or 36% would all require furloughs and/or staff layoffs, as all other available cost-trimming steps have already been taken. The scenarios below utilize the strategy of keeping all field personnel intact because of the River Park’s on-the-ground responsibilities, therefore proposed layoffs have been targeted toward administrative, non-field personnel. The current year’s member agency assessment is $707,711 (a reduction of $111,968 from the previous year). The following scenarios are based on percentages of the $707,711 assessment:

10% Scenario ($70,771 cut): In this scenario, a combination of layoffs would be required. The half-time Sikes Adobe Museum Manager would be laid off for a savings of $26,908 (includes benefits); the Principal Environmental Planner would be reduced from ¾ time to ½ time, for a savings of $35,823 (includes benefits), and our bookkeeping services would be eliminated for a savings of $6,600.

25% Scenario: ($176,928 cut): In this scenario, in addition to the steps listed in the 10% scenario above, the Executive Director position would be eliminated, resulting in additional savings of $125,813 ($155,769 (includes benefits) less $29,955 vacation payout).

36% Scenario: ($254,776 cut): This would result in the loss of three positions. The Executive Director, the Principal Environmental Planner, and the Sikes Adobe Museum Manager. These actions would result in the savings of $297,238 dollars, offset by the vacation leave payouts owing to those employees in the amount of $34,216 dollars, for a net savings of $263,021.
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The impacts of the elimination of the Principal Environmental Planner position (currently 3/4 time) includes loss of capacity to respond to environmental impacts associated with private projects adjacent to the San Dieguito River Park; inability to staff the Project Review Committee of the CAC; inability to handle environmental requirements (NEPA/CEQA compliance, environmental permitting, mitigation monitoring and environmental expertise on planning issues) for the River Park’s own projects (this work would have to be contracted out); loss of capacity to monitor the River Park’s compliance with regulatory requirements associated with mitigation projects, habitat management projects, land management, etc. In addition, because our Principal Environmental Planner also serves as Project Manager on various grant projects (such as the Heritage Trail link and the Cloverdale Creek mitigation project), those responsibilities would have to be shifted to remaining staff if possible or simply not done.

The impacts of the elimination of the Sikes Adobe Museum Manager position (currently 1/2 time) means that there would be no one to take care of that historic facility or provide public tours and educational activities, or raise funds to complete the restoration, such as restoring the period gardens or completing the creamery or train and support docents. The newly rebuilt Sikes Adobe Historic Farmhouse (scheduled for Grand Re-Opening on June 26th) would not be opened to the public, as no-one else on staff could take over these duties, particularly if staff is also trying to handle the work of the Principal Environmental Planner and Executive Director.

Loss of these three positions would put the River Park in a subsistence mode. Remaining staff would attempt to maintain existing River Park facilities. No new projects or initiatives or the CAC could be supported. CAC meetings would be suspended and environmental review of projects would cease along with programming for the Sikes Adobe. The Lagoon Visitor center project would be put on hold.

ADDITIONAL CONSIDERATIONS

In addition to the items above that your Board requested be included for discussion at today’s meeting, staff recommends that your Board direct staff to research and recommend, in consultation with experienced advisors and member agency staff, long-term alternative funding options, including potentially 1) a special parcel tax on the 2010 or 2011 ballot, or a special assessment, with the formation of a County Service Area for a specified part of the county which could include all 5 cities with consents of the City Councils or 2) creation of a county-wide recreation district per Public Resources Code 5506.3 (a)(1).

CAC RECOMMENDATION:

The CAC has not reviewed this item.

Respectfully submitted,

Dick Bobertz
Executive Director
Attachments:
1. Summary of MSCP Agreements
2. Services that benefit Water Systems Assets that would be eliminated
3. Letter from General Counsel Wayne Brechtel re Lake Hodges Recreational Trust Fund
Excerpts from Various MSCP Agreements

From Implementing Agreement

10.6 Preserve Management.

A. Lands to be Managed. THE CITY OF SAN DIEGO agrees to be responsible for managing the following lands within the MHPA in perpetuity: lands which it owns within the MHPA as specified in the Subarea Plan; any lands within that portion of the MHPA which is within THE CITY OF SAN DIEGO jurisdictional boundaries which are acquired for permanent preservation with MSCP regional funds or local funding sources; and other lands within that portion of the MHPA which is within THE CITY OF SAN DIEGO jurisdictional boundaries which are obtained as mitigation pursuant to the Subarea Plan where those lands have been dedicated to THE CITY OF SAN DIEGO in fee title, or a conservation easement has been granted to THE CITY OF SAN DIEGO, or a covenant of easement has been granted to THE CITY OF SAN DIEGO which allows access for management purposes.

B. Preserve Management Program. Within six months of the Effective Date, THE CITY OF SAN DIEGO shall submit to the USFWS and CDFG for review a draft framework management plan for that portion of the MHPA which is within the Subarea, in accordance with Section 6.3.1 of the MSCP Plan. Within nine months of the Effective Date THE CITY OF SAN DIEGO shall submit a final framework management plan to the USFWS and CDFG for approval. The framework management plan shall incorporate the species-specific management actions set forth in Table 3-5 of the MSCP Plan as appropriate, as well as preserve-wide management actions which shall not exceed the cost for management set forth in Section 7.3.2 of the MSCP Plan as adjusted annually for inflation. The framework management plan shall also incorporate a requirement for the subsequent preparation and implementation of area-specific management directives, which shall be prepared in a phased manner for logical and discrete areas of land within the Subarea as those lands are committed to permanent preservation. Until such time that area-specific management directives are formulated and applied to logical and discrete areas within the Subarea Plan, THE CITY OF SAN DIEGO agrees to maintain for habitat value those lands it is obligated to manage, as specified above in Section 10.6.A of this Agreement.

E. Contribution of Cornerstone Lands. Pursuant to the Cornerstone Lands Conservation Bank Agreement executed by the Parties, incorporated herein and attached as Exhibit K, THE CITY OF SAN DIEGO will contribute to the MHPA and manage in accordance with the Subarea Plan, approximately 10,400 acres of land owned by THE CITY OF SAN DIEGO Water Utilities Department, minus the exclusions identified for specific development activities, watershed management activities and uses described in Section 1.2.5 of the Subarea Plan and the Cornerstone Lands Conservation Bank Agreement. THE CITY OF SAN DIEGO will grant conservation easements in phases and manage the identified Cornerstone Lands in accordance with the Cornerstone Lands Conservation Bank Agreement.
11.2 Regional Funding.

B. Short-term Regional Funding. In the short-term, prior to voter approval of a long-term regional financing mechanism as discussed in Section 11.2C below, THE CITY OF SAN DIEGO will participate with the other Participating Local Jurisdictions to seek financing for the acquisition of private lands within the MHPA during the first three years following the Effective Date. Prior to the establishment of a regional financing mechanism, THE CITY OF SAN DIEGO agrees to fund the costs of managing and monitoring those lands identified in Section 10.6A of this Agreement. The management of Cornerstone Lands shall be subject to the Cornerstone Lands Conservation Bank Agreement attached as Exhibit K.

From City of San Diego Subarea Plan

The City of San Diego subarea encompasses 206,124 acres within the MSCP study area. The subarea is characterized by urban land uses with approximately three quarters either built out or retained as open space/park system. The 1997 population within the subarea was approximately 1.3 million. The City of San Diego MHPA represents a “hard line” preserve, in which boundaries have been specifically determined. It is considered an urban preserve which is constrained by existing or approved development, and is comprised of linkages connecting several large areas of habitat. The City's MHPA is approximately 56,831 acres and includes approximately 47,910 acres within City jurisdiction,

The following Cornerstone Lands and San Pasqual Valley will be protected as habitat lands, as described in this section, as part of the City’s MHPA:

- Watershed management lands around Hodges Reservoir include that portion of San Pasqual Valley from Hodges Reservoir east to the area referred to as the “narrows;”
- Lands surrounding portions of Upper and Lower Otay Lakes;
- Lands surrounding San Vicente Reservoir;
- Lands owned by the City of San Diego in Marron Valley; and
- Portions of San Pasqual Valley from the “narrows” east to Boden Canyon; this area of San Pasqual Valley is not part of the Cornerstone Lands.

The majority of these areas were ranked very high biological value on the Habitat Evaluation Map, and each has been identified as a core biological resource area.

From the Cornerstone Lands Agreement

The City Water Department owns four large contiguous areas of land in the study area containing valuable biological resources (Figure 6). These lands total 10,400 acres and are commonly referred to as the Cornerstone Lands because they are considered essential building blocks for creating a viable habitat preserve system. The Cornerstone Lands have been largely maintained by the Water Department in an undisturbed natural condition to serve as watershed for Lake Hodges, San Vicente and Otay Reservoir. A 2,600-acre area of the Cornerstone Lands in the southeastern portion of the study area, known as Marron Valley, was purchased by the
Water Department many years ago as a potential dam site. However, today Marron Valley is not considered suitable for that purpose and some of this surplus land is currently leased by the City of San Diego for cattle grazing. The San Diego City Charter restricts the use and disposition of water utility assets. The Water Department must be compensated for any title restrictions placed on the Cornerstone Lands and for any financial burdens which do not directly benefit the City’s water utility rate payers. Therefore, to meet the policy objectives of the MSCP and comply with the City Charter, the City of San Diego intends to enter into a Conservation Land Bank Agreement with the wildlife agencies for the Cornerstone Lands. As part of this agreement, the City will commit to phasing in conservation easements over all 10,400 acres of the Cornerstone Lands. The conservation easements will allow the Water Department to continue to use the Cornerstone Lands as watershed and for water utilities facilities for the benefit of water utility rate payers, but will restrict those lands from being used for other purposes inconsistent with habitat preservation. In turn, the wildlife agencies will permit the Water Department to establish a mitigation bank to sell 3,900 mitigation credits at fair market value to public entities, public utility/service providers and private property owners doing projects in San Diego County and needing mitigation. For consumers purchasing the credits, each mitigation credit will be treated by the wildlife agencies as the functional equivalent of purchasing one acre of high quality offsite mitigation land. The easements will be phased in over time by the City in correlation with threshold sales of mitigation credits.

**Hodges Reservoir/San Pasqual Valley**

The Hodges Reservoir/San Pasqual Valley core area represents one of the largest continuous blocks of habitat in the MSCP study area and serves as a major east-west corridor. This area includes core gnatcatcher and cactus wren populations, one of the two “centers of distribution” for Encinitas baccharis in the MSCP study area, large expanses of grassland that provide valuable raptor foraging habitat and valuable wetland habitat in San Pasqual Valley which supports several MSCP target species dependent on riparian habitats. The western portion of the valley, east of I-15 and above the drawdown area of the lake, is currently an intensively farmed agricultural preserve which has been cultivated since before this century. The most important areas for conservation are those natural areas around Hodges Reservoir, the riparian habitat along the San Dieguito River and its tributaries through San Pasqual Valley, and the naturally vegetated slopes above the river valley. The majority of the riparian habitats in the river valley provide excellent opportunities for restoration and enhancement of the wildlife corridor through the valley. Conserved lands in the Hodges Reservoir/San Pasqual Valley area will be the cornerstone for a natural east/west open space corridor within the San Dieguito River Valley and San Pasqual Valley. Vegetation communities in these areas are depicted in Figure 7. Conservation and management of Cornerstone Lands around Hodges Reservoir and native habitats in San Pasqual Valley will be guided by the 1995 City of San Diego San Pasqual Valley Plan. Many of the goals, policies, and specific proposals of the San Pasqual Valley Plan address sensitive resources and open space and are compatible with the MSCP conservation goals.

1.5.1 Management Goals and Objectives

The habitat management aspect of the City of San Diego’s MHPA is an important component of the MSCP, related to the goal of the Program. The overarching MSCP goal is to maintain and enhance biological diversity in the region and conserve viable populations of endangered, threatened, and key sensitive species and their habitats, thereby preventing local extirpation and
ultimate extinction, and minimizing the need for future listings, while enabling economic growth in the region. Where land is preserved as part of the MSCP through acquisition, regulation, mitigation or other means, management is necessary to continue to ensure that the biological values are maintained over time, and that the species and habitats that have been set aside are adequately protected and remain viable. The City will be responsible for and will continue the management and maintenance of its existing public lands (including those with conservation easement), at current levels. The City will also manage and maintain lands obtained as mitigation where those lands have been dedicated to the City in fee title or easement, and land acquired with regional funds within the City’s MHPA boundaries. Likewise, the federal and state agencies will manage, maintain and monitor their present land holdings, as well as those they acquire on behalf of the MSCP, consistent with the MSCP. Lands in the MHPA which are set aside as open space through the development process but are not dedicated in fee to the City, or other acceptable entity, will be managed by the landowner consistent with approved mitigation, monitoring and reporting programs or permit conditions. Private owners of land within the MHPA, who are not third party beneficiaries, will have no additional obligations for the management or maintenance of their land. In order to assure that the goal of the MHPA is attained and fulfilled, management objectives for the City of San Diego MHPA are as follows:

1. To ensure the long-term viability and sustainability of native ecosystem function and natural processes throughout the MHPA.
2. To protect the existing and restored biological resources from intense or disturbing activities within and adjacent to the MHPA while accommodating compatible public recreational uses.
3. To enhance and restore, where feasible, the full range of native plant associations in strategic locations and functional wildlife connections to adjoining habitat in order to provide viable wildlife and sensitive species habitat.
4. To facilitate monitoring of selected target species, habitats, and linkages in order to ensure long-term persistence of viable populations of priority plant and animal species and to ensure functional habitats and linkages.
5. To provide for flexible management of the preserve that can adapt to changing circumstances to achieve the above objectives.
Table 7-4

SUMMARY OF ESTIMATED PROGRAM COSTS

<table>
<thead>
<tr>
<th></th>
<th>Local Jurisdictions</th>
<th>Federal and State Governments</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Acquisition</td>
<td>$131 – $180 million</td>
<td>$131 – $180 million</td>
<td>$262 – $360 million</td>
</tr>
<tr>
<td>Annual Recurring Costs at Buildout&lt;sup&gt;1&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preserve Management</td>
<td>$4,205,000 / yr.</td>
<td>$1,900,000 / yr.</td>
<td>$6,105,000 / yr.</td>
</tr>
<tr>
<td>Biological Monitoring&lt;sup&gt;3&lt;/sup&gt;</td>
<td>$156,600 / yr.</td>
<td>$73,800 / yr.</td>
<td>$230,400 / yr.</td>
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<tr>
<td>Program Administration</td>
<td>$255,000 / yr.</td>
<td>5</td>
<td>$255,000 / yr.</td>
</tr>
<tr>
<td>Total Annual Costs</td>
<td>$4,616,600 / yr.</td>
<td>$1,973,800 / yr.</td>
<td>$6,590,400 / yr.</td>
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</tbody>
</table>

Source: Onaka Planning & Economics; Douglas Ford and Associates; Ogden.
Note: Land acquisition costs are in millions of 1996 dollars. Annual costs are in 1996 dollars.

1 Annual costs projected to be incurred in 2029, converted to 1996 dollars.
2 Includes $1,230,000 of continued annual expenditure by local jurisdictions for the maintenance of open space preserves established prior to 1996.
3 Average cost over a 10-year cycle; costs will vary by year according to the types of monitoring activity undertaken.
4 Program administration costs for local jurisdictions are assumed to increase after initiation of the MSCP, reach a maximum, and then decline to the amount shown.
5 Administrative costs for federal and state government lands are included in the operating budgets of the USFWS and CDFG offices in San Diego County.
per acre, with a median sales price of $4,400 per acre. Median price is the price above and below which one-half of the lands were sold. Approximately 89% of lands recently sold had prices below the average acquisition cost ($9,700 per acre) associated with the jurisdictions' low estimates, and 94% of lands had prices below the average acquisition cost ($13,300 per acre) associated with the jurisdictions' high estimates. Based on this comparison, it may be concluded that the local jurisdictions' estimates provide a conservative basis for the financing plan (i.e., existing sales are generally lower in price than the estimates used in this plan).

7.3.2 Preserve Management

Management Responsibilities

Under the MSCP, the participating local jurisdictions will be collectively responsible for managing preserve lands they currently own (45,240 acres) and preserve lands they acquire in the future (13,500 acres) (Table 7-6). In addition, it is anticipated that some of the lands conserved through the development process will be dedicated to local agencies or nonprofit organizations to be managed at public expense. For purposes of financial analysis, it is assumed that up to 75% of privately owned habitat conserved through the development process will be dedicated for public management; this would amount to 47,380 acres of the 63,170 acres of private lands estimated to be conserved. The amount of land dedicated to local jurisdictions may vary from this assumption, depending on policies adopted by the jurisdictions regarding such dedication. At buildout, it is anticipated that the local jurisdictions will be responsible for managing 106,120 acres of habitat lands in the preserve.

Table 7-6

ACRES OF LAND TO BE MANAGED BY PUBLIC AGENCIES

<table>
<thead>
<tr>
<th>Source of Conservation</th>
<th>Local Jurisdictions</th>
<th>Federal and State Governments</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Public Lands</td>
<td>45,240</td>
<td>36,510</td>
<td>81,750</td>
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<tr>
<td>Public Acquisition</td>
<td>13,500</td>
<td>13,500</td>
<td>27,000</td>
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<tr>
<td>Dedication of Private Lands</td>
<td>47,380¹</td>
<td>—</td>
<td>47,380</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>106,120</strong></td>
<td><strong>50,010</strong></td>
<td><strong>156,130</strong></td>
</tr>
</tbody>
</table>

¹ Of the 63,170 acres of habitat lands to be conserved by private owners through the development process, it is assumed that 47,380 acres will be dedicated to the local jurisdictions or nonprofit organizations for management funded by the regional funding program.

Some private landowners may choose to retain ownership of habitat lands conserved through the development process. For purposes of estimating local financing costs, it is assumed that private owners will retain ownership of 25%, or 15,790 acres, of habitat lands conserved in this way. These lands may be managed as habitat and open space by individual owners as conditions of development permits, by homeowners associations, or by local landscape maintenance districts. Private owners of land inside the MHPA who
do not develop, and are therefore not third-party beneficiaries of the jurisdictions' take authorizations, will have no additional obligations for management of their land.

Federal and state governments will be responsible for managing preserve lands they currently own (36,510 acres) and preserve lands they acquire in the future (13,500 acres), for a total of 50,010 acres. Additionally, proper management of the preserve system will require ongoing and detailed analysis of data collected through biological monitoring activities, as discussed in Section 7.3.3.

**Costs of Preserve Management**

Preserve management activities are described in Section 6.3. Costs associated with habitat conservation exceed those associated with general open space maintenance, due to additional activities required to protect sensitive species and prevent habitat degradation. Specific management activities are addressed in the preserve management plans of take authorization holders.

Estimated costs of preserve management activities range from $47 per acre per year in the City of San Diego, where habitat lands are often bordered by urban development, to $37 per acre per year in the unincorporated county, where habitat lands generally are located away from urban development. These estimates were derived from a review of current open space and habitat maintenance expenditures in the MSCP study area, with adjustments made for additional biological management. These costs may be compared with the average cost of $38 per acre per year for the management of comparable open space preserves in California. Costs of preserve management may be reduced through the participation and efforts of volunteers, as is common in the management of open space preserves.

At preserve buildout, the estimated cost of managing 106,120 acres of preserve land under the local jurisdictions' responsibility is $4.2 million per year (1996 dollars). Annual costs of preserve management in the years prior to buildout would vary according to the amounts of land acquired or dedicated to date.

**City of San Diego.** Habitat lands in proximity to urban development require a substantially higher level of management activities than those in isolated areas due to the impact of urban uses on native species. In fiscal year 1995, the City of San Diego managed approximately 18,000 acres of open space, at an average cost of $36 per acre, exclusive of brush management. In addition, the City relies on extensive volunteer work for trail maintenance, visitor services, vegetation and species management, and incidental restoration activities. When the value of these services is added to the current budget, the average management cost is $47 per acre per year.

**County of San Diego.** For the portion of the MSCP preserve located in the unincorporated area, the County of San Diego has estimated an average cost of $37 per acre per year. This is based on a review of five open space preserves totaling 8,360 acres currently maintained by the County. The habitat areas in these preserves are relatively undisturbed. All areas allow limited public access and passive recreational use, including trails. Based on existing budget data and inferred costs of administrative, support, and volunteer services, the County Department of Parks and Recreation calculated the cost of preserve management to range from $16 to $105 per acre per year, depending on the level of habitat degradation and difficulty of access, with an average cost of $37 per acre per year.
Other Cities and Special Districts. For habitat lands in the other jurisdictions and lands owned by special districts, including water districts and the City of San Diego Water Utilities Department, the estimated cost of preserve management is $38 per acre per year. This is based on an analysis of a sample of open space preserves and wildlife refuges in California comparable to the MSCP preserve, totaling 107,000 acres. The estimated cost is the average of per acre management costs in the sample, adjusted for additional biological management.

Current (1995) Budgets for Open Space Preserves. Local jurisdictions and special purpose agencies currently budget a total of approximately $1.23 million per year for the maintenance of open space areas proposed for inclusion in the MSCP preserve. (Where open space areas extend outside the MHPA, only a pro rata portion of the budget corresponding to areas inside the MHPA has been included.) It is assumed in the financial analysis that the existing budgets for open space maintenance will continue in the future, with adjustments for inflation.

Brush Management. It is assumed in this plan that new developments adjacent to the MSCP preserve will be responsible for and will fund the costs of brush management, consistent with policies of the City and County of San Diego and other jurisdictions. Therefore, in estimating preserve management costs for the MSCP, brush management costs were excluded. Some jurisdictions currently undertake brush management on their publicly owned lands adjacent to existing residential areas where fire hazards have been identified. It is assumed for this analysis that these brush management functions will continue to be funded from sources other than the MSCP.

7.3.3 Biological Monitoring

Biological monitoring consists of diverse activities at multiple sites, including surveys, mapping, and data collection and analysis (see Section 6.4 and the MSCP Biological Monitoring Plan). The annual cost of monitoring differs by the type and frequency of monitoring activities and by the current condition of biological resources. The Biological Monitoring Plan estimates start-up costs of $54,800 in the first year and annual costs over a 10-year cycle, ranging from $109,800 to $405,300. The average annual cost over the 10-year cycle, excluding start-up costs, is $230,400. It is anticipated that the cycle of monitoring activities will be repeated every 10 years.

Biological monitoring will be the joint responsibility of the local jurisdictions and other take authorization holders and federal and state governments. For purposes of this analysis, it is assumed that only habitat areas in the preserve that are managed by public agencies will be biologically monitored. It is further assumed that the local jurisdictions and other take authorization holders and federal and state governments will share the cost of biological monitoring in proportion to the acres of habitat they manage.

To ensure uniformity in the gathering and treatment of biological data, the wildlife agencies will assume the primary responsibility for coordinating the biological monitoring program, analyzing data, and providing information and technical assistance to the jurisdictions. These coordination costs are not included in the estimates of preserve management or monitoring costs for the local jurisdictions.

7.3.4 MSCP Program Administration

In addition to preserve management and biological monitoring, funds will be required to manage and administer the MSCP. The following are examples of administrative functions that may be required:
• **Land Acquisition Process.** Land acquisition, including identification of potential acquisition sites, appraisal, negotiation, and management of the acquisition process.

• **Financial Planning and Management.** Financial planning and management of revenues and expenditures for habitat acquisition, preserve management, and monitoring, including administration of the regional funding program and coordination of requests for federal and state funding of program activities.

• **Legal Support.** Legal support for land acquisition and preserve management, administration of fee titles, easements, and other land contracts.

• **Report Preparation.** Reporting of plan implementation, including annual accounting of land acquisition, land dedication, and habitat loss.

• **Database Maintenance.** Maintenance and updates of the regional geographic information system database on vegetation communities and species.

• **Coordination.** Program implementation and coordination, including coordination among local jurisdictions and other take authorization holders for subarea plan implementation and coordination with the wildlife agencies and other public agencies.

• **Support Personnel and Facilities.** General administrative support for the above activities, including support personnel, accounting, facilities, and equipment.

Based on a review of operating experiences of other large-scale conservation programs and by developing generic service budgets, costs for program administration are estimated to range from $7 to $8 per acre per year, during years of maximum administrative costs, to $1.50 per acre per year, after the acquisition program is completed. Annual administrative costs in 1996 dollars are projected to rise from $835,000 in 2000 to a maximum of $1,317,000 in 2004, during the period of land acquisition, then decline to $255,000 at buildout (1996 dollars).

The extent to which the above functions may be performed by individual jurisdictions or as a collective responsibility of participating jurisdictions depends on the organizational structure ultimately selected for MSCP implementation (Section 5.8). The cost estimates do not assume any economies of scale that may be associated with particular organizational structures. Whether the functions described above are performed in whole or in part by local jurisdictions, program administration would require similar overall costs and resources.

### 7.3.5 Funding for Annual Recurring Costs

The example financing plan addresses the first 33 years of program implementation, including a 30-year term of the regional funding program. At the end of these years, continuation of preserve management, biological monitoring, and program administration may be funded either through a permanent endowment that is established during the initial funding program or through a new regional funding program that is submitted to the voters for approval at the end of the initial funding program.

In the example financing plan and in the analysis of alternative funding sources, it is assumed that a permanent endowment will be established by the end of the regional
funding program. Assuming a net interest revenue of 4% to 4.5% per year after inflation, the permanent endowment requires a balance of $235 million in 2029, or $75 million in 1996 dollars.

In formulating the final financing plan, the participating local jurisdictions will select a method of funding annual recurring costs after the end of the regional funding program.

7.4 **ALTERNATIVE REGIONAL FUNDING SOURCES AND TIMETABLE FOR VOTER APPROVAL**

7.4.1 Alternative Regional Sources of Funds

The elected officials of several local jurisdictions serving on the MSCP Policy Committee, with input from the MSCP Working Group, recommended that five potential sources of funds be analyzed for application to the regional funding program. A source or sources of funds will be selected during the preparation of a funding measure for approval by the voters. Although the local jurisdictions will cooperatively seek voter approval for a regional funding source, no jurisdiction will be precluded from pursuing alternative funding sources.

The following section provides a summary of the funding sources selected for analysis. Each source has specific authorizations and potential applications or restrictions on the uses of revenues. Additional legal and financial analysis will be necessary prior to the selection of a specific source or sources.

Proposition 218, passed in November 1996, limits the use of special assessment districts to funding services that provide special benefits to parcels over and above general benefits on real property in the district or to the public at large. At this time, it is not known how this proposition affects the use of a benefit assessment district (AB 2007) or habitat maintenance assessment district (SB 445) for habitat conservation purposes.

**Benefit Assessment (AB 2007)**

AB 2007 enacted in 1993 (Public Resources Code, Section 5506.3 et seq.) provides that San Diego County can initiate proceedings for the formation of a regional open space district coterminal with the boundaries of the county. The law allows the regional open space district to levy assessments under the Landscaping and Lighting Act of 1972, except that the requirement to mail a notice of public hearing to all property owners in the district is replaced with the requirement for publication of a notice. Both the formation of the district and the levy of special assessments must be approved by a majority of the voters in the district. This approach is modeled after that used by Los Angeles County, where the voters approved "Proposition A" in November 1992 to fund $540 million of park and recreation improvements and open space acquisition. Benefit assessments established separate from AB 2007 may be adopted by a local legislative body, after notifying all affected property owners and holding public hearings.

There are certain restrictions associated with the use of AB 2007. Since this is a funding program for a countywide open space district, the financing needs of the MSCP must be coordinated with those of the other regional habitat conservation programs in the county; however, the financing needs of the latter programs have not yet been identified. The law also stipulates that, for 20 years after assessments are first levied, at least 80% of all assessment proceeds must be used for capital outlay projects, including land acquisition. Under the MSCP, however, expenditures for management, monitoring, and program
administration in some years could exceed 20% of total annual expenditures. The benefit assessment could be combined with another source, such as a regional habitat maintenance assessment, to fund these recurring costs. It is also unclear whether the law provides authorization to set aside funds for a permanent endowment.

The law provides that the assessment must be related to benefit, and benefits of open space preservation accrue predominantly to residents. The example financing plan assumes that 85% of total assessments are levied on residential properties and that 15% are levied on commercial and industrial properties, based on a similar split used in the assessment formulas of Los Angeles County.

**Habitat Maintenance Assessment District**

SB 445 (Government Code, Section 50060 et seq.) provides for the establishment of an assessment district to fund the maintenance of natural habitat for up to 30 years. Any city or county may initiate proceedings for the formation of the assessment district. Although a habitat maintenance assessment district may be of any size, for purposes of the regional funding program, the district is assumed to contain the entire MSCP study area.

State legislation (SB 445) requires that all property owners in the district be given notice of a public hearing. If written protests are received from 35% or more of property owners, then the proposed district must be abandoned for at least 1 year. If protests are received from 15% to 35% of property owners, then the proposed assessment must be approved by a majority of voters in an election. If protests are received from less than 15% of property owners, then the legislative body of the city or county may proceed with the formation of the district and the levy of assessments. (As a policy of the MSCP, however, any regional funding program, including a regional habitat maintenance district, will be submitted to the voters for approval.)

The legislation on habitat maintenance assessment districts (SB 445) establishes the principle that a lot or parcel is presumed to benefit from natural habitat, if past or proposed development or use of the lot or parcel has adversely affected or will adversely affect the habitat. Historical impact is thus an accepted basis for determining current benefit from habitat maintenance.

Authorized expenditures by the habitat maintenance assessment district include habitat creation, restoration, enhancement, and maintenance; land acquisition; biological monitoring and evaluation; and related administrative costs. The act also authorizes issuance of bonds to finance the estimated cost of habitat acquisition, creation, restoration, or other improvements. However, the term of the bond is limited to 10 years. The maximum assessment that may be levied by the district on any lot or parcel is limited in 1994 to $25, as specified in SB 445, and in subsequent years to this amount increased by the California Consumer Price Index.

Although a habitat maintenance assessment district is authorized to acquire habitat lands, it is not known if this authority is sufficient to meet the acquisition needs of the MSCP. Special legislation may be required to clarify this authorization. In any event, special legislation will be required to allow issuance of bonds with maturities greater than 10 years and to substitute the requirement of notification by mail with a requirement of notification by publication and majority approval by voters in the district.

A habitat maintenance assessment district may be used in combination with another funding source, which has the authorization to issue long-term bonds for habitat acquisition. This is illustrated in one of the funding scenarios described in Section 7.2.
San Dieguito River Park Functions that Directly Benefit City of San Diego Water System Assets

Protection of the water quality and supply is one of the key purposes of the San Dieguito River Park JPA. The San Dieguito River Park Concept Plan (adopted 1994, updated 2002) states as one of the Park Objectives “Protection of Water Resources – Optimize the water quality and quantity of all groundwater resources and surface water bodies within the planning area through water conservation, erosion control, pollution control and restoration.” Listed below are the ways in which the San Dieguito River Park JPA implements this objective, largely in the watershed area around Lake Hodges and Lake Sutherland and in San Pasqual Valley. The San Dieguito River Park JPA assists the Public Utility Department in meeting other goals as well, such as management of the property that the Public Utility Department owns, and adherence to MSCP requirements, and these are listed as well. The items below directly benefit Water System assets. The City of San Diego owns 21,566 acres of land within the San Dieguito River Park’s jurisdiction. Of those acres, 17,500 acres are owned by the Public Utilities Department upstream of the Lake Hodges Dam.

1. **Watershed Property Acquisition and Management**
   - The River Park has acquired fee title to and maintains 2,976 acres of property in the San Dieguito Watershed for permanent open space preservation purposes. 2,464 of these acres are in the watershed of Lake Hodges and Lake Sutherland, both potable drinking water reservoirs.
   - The River Park manages 250 additional acres for open space and watershed protection purposes.

2. **Habitat Restoration and Invasive Species Removal**
   - The River Park restores natural habitat and control of invasive weeds to preserve watershed functions (example: Pepperweed and Arundo control program). The River Park obtained $1,188,350 in 2008 and 2009 alone to carry out these programs for the benefit of Water System assets.
   - River Park rangers and volunteers have removed thousands of non-native invasive plants that consume hundreds of gallons of water daily (a full grown tamarisk consumes up to 300 gal. per day). Tamarisk and arundo absorb large amounts of ground water and exclude riparian habitat. Riparian habitat in the San Pasqual Valley filters water before entering Lake Hodges, provides critical habitat for various wildlife and bird nesting for federally listed endangered species.
   - Current projects on Public Utilities land include over 200 acres of weed control and installation of approximately 10,000 container plants.

3. **Ranger Patrol**
   - River Park rangers are “eyes and ears” for the Public Utilities Department. When a River Park ranger observes something out of line that threatens Water System assets, such as dumping or ATV riding, a sewage spill, or downed fences, it is reported quickly before more serious damage occurs.
   - River Park rangers coordinate enforcement by San Diego and Escondido police departments. Incidents include, but not limited to, off-road use, dumping, graffiti, vandalism, theft, hunting, fires, homeless encampments, and watershed violations.

4. **Public Access Control**
   - River Park rangers control public access by constructing and signing trails in appropriate locations. This directs recreational users away from sensitive habitat and watershed land, and reduces indiscriminate public entry onto Water System assets.
   - River Park rangers patrol more than 30 miles of existing public trails on Public Utilities Department property seven days a week with objective of controlling access/damage to natural habitat to preserve watershed function of Water System assets.
   - River Park rangers close off (sign and physically block) unwanted “volunteer” trails to reduce inappropriate public access and habitat destruction, such as from off-road vehicles. Closure and revegetation slows and eventually stops the erosion process and enhances the watershed.
5. Litter/Dumping/Pollutant Control

- River Park rangers remove junk and debris that have been dumped into the river bed that impact water quality, may leach hazardous substances into the water, and cause the streambed to back up and overflow and cause sedimentation. For example, in San Pasqual Valley, River park rangers cleaned up a 775 ton dump site in the floodplain that included hundreds of old tires; and cleaned up and removed 30 tons of trash out of a streambank which improved hydrologic function.
- Provide San Dieguito River Park contact for environmental consultant, URS Corporation, which has begun a Corrective Action Plan on behalf of the Resource Environmental Limited Liability Corporation (RELLC) to address contamination of ground water underlying property adjacent to Kit Carson Creek (which feeds directly into Lake Hodges) from two service stations located on Via Rancho Parkway, Escondido.
- Install and regularly empty trash cans around Lake Hodges and at trailheads.
- Install containers and stock dog waste bags at all trailheads.

6. Erosion and Fire control

- River park rangers control erosion from trails, annually remove silt from drainage mechanisms, maintain erosion control measures in drains that cross trails and on closed trails. (Closed trails often originate from previous 4-wheel drive use.
- River park rangers responsibly maintain fire-breaks in the watershed, and liaison with fire-safe councils.

7. Volunteer Support

- Organization and direction of hundreds of volunteers to assist rangers in numbers 2, 3, 4, 5, 6, and 9.

8. Development Review

- Review and comment on development proposals adjacent to Water System assets with object of minimizing impact to watershed and sensitive habitat function.

9. Public Education

- Public education programs to inform citizens of the importance of natural habitat/watershed/reservoir protection and help develop “responsible users”. Public outreach supports education and fosters awareness about the watershed, water quality, and water resource protection by encouraging the community to become environmental stewards through training, programs, activities, interpretive panels and active involvement.
- River Park staff maintains trailheads with information kiosks and dog waste clean-up stations. Kiosks and brochure boxes are used to disseminate information about watershed-related issues.

10. Leadership in Regional Watershed and Land Management Coordination

- Leadership and participation in organizations with the objective of protecting/improving watershed function (example: San Dieguito Watershed Management Plan and subsequent San Dieguito Watershed Council, which the San Dieguito River Park JPA co-chairs with the San Dieguito River Valley Conservancy) and the San Pasqual Weed Management Area.

11. Multiple Species Conservation Plan (MSCP)

- The San Dieguito River Park helps the City Public Utilities Department with its obligation to implement the Multiple Species Conservation Plan (MSCP) Implementing Agreement by protecting and maintaining MSCP property in the Lake Hodges/San Pasqual Valley area. The minimum cost for management of MSCP property is currently $47.00 per acre, going up to $60 per acre in 2010. SANDAG has computed that the City of San Diego-owned acres within MSCP_MHCP within FPA = 10,899.38. Subtracting the Lake Hodges surface area (1,234 acres), that leaves 9,665.38. At $47.00 per acre, that equates to $456,109 per year that the City has
committed to spend managing Water System assets as part of the MSCP Implementing Agreement. It is the San Dieguito River Park that is doing that management, with the exception of brush management and biological monitoring.

12. Interface with Citizens
   - Response to citizen inquiries/complaints relating to issues of property owners adjacent to water System properties.
   - River Park rangers contact individuals, ensure compliance and follow-up regarding: loose animals (primarily dogs off-leash), pollution, fireworks, destruction of plants, defacement of property, dumping, littering, swimming, fires, camping and illegal digging for archaeological artifacts.
   - River park staff has conducted community meetings to bring about awareness of vandalism issues.

13. Emergency Response/Public Safety
   - River Park rangers deal with fire and flood as it relates to Water System assets. After the massive Witch Fire in 2007, River Park rangers secured the Lake Hodges and San Pasqual Valley areas with caution tape, barricades and signage for public safety; created a post-fire emergency action plan; worked with crews from Cal-Fire and San Diego Urban Corps to carry out the emergency action plan, including erosion control measures and installation of fencing to discourage trampling of areas in the process of natural fire recovery.

14. Archaeological Protection
   - River Park staff implemented measures to protect City of San Diego Historic Site “Piedras Pintadas”. This is a Public Utilities Department responsibility, as it is located on Public Utilities Department property.

15. Grant Applications
   - San Dieguito River Park grantwriters have obtained $54,484,723 in state funding for projects that benefit Water System assets (including land acquisition upstream of Lake Hodges and/or Lake Sutherland, erosion control and habitat restoration for watershed protection and water quality improvements).
MEMORANDUM

TO:        Dick Bobertz, Executive Director
          San Dieguito River Valley Regional Open Space Park Joint
          Powers Authority

FROM:      D. Wayne Brechtel, General Counsel

DATE:      December 18, 2009

RE:        Use of the San Pasqual Lake Hodges Recreational Trust Fund

Question Presented:

Can the City of San Diego Water Department use money from a trust fund
established as a condition of the City Council’s approval of the Lake Hodges
Golf Center Project to pay for the cost of projects or activities that benefit
Water Department assets or to cover recreational activities on Water
Department properties?

Short Answer:

Yes. There is no legal barrier to use of the trust fund. The trust fund is a
contractual obligation that is allowed by the City Charter. Further, use of the
fund is not precluded by State Law because it was not derived from taxes,
assessments, water rates, charges or fees. The fund, and its use for specified
purposes, was required as a condition of the City Council’s approval of a
General Plan amendment and permits for the Lake Hodges Golf Center
Project. The Water Department consented to the condition, and as such, it is
a contractual obligation that the Water Department cannot now disregard.

Background

In 2000, the Water Department partnered with a private developer and
sought City Council approval of the Lake Hodges Golf Center ("Hodges Golf
Center") for the purpose of generating lease revenue. The approval required,
among other things, a General Plan amendment and Conditional Use Permit,
neither of which the Council was obligated to grant. Without a General Plan
amendment, the commercial golf center was not an allowed use. The
General Plan at the time required that the project site be used for agricultural purposes only. As a condition of granting the approvals, the City Council imposed a condition that a special trust fund be created within the Water Department’s Enterprise Fund. The Resolution specifies that the fund is to be called the San Pasqual Lake Hodges Recreational Trust Fund. This requirement was stated in Resolution 292939, which approved permits for the project.

..Conditional Use/Resource Protection Ordinance Permit NO. 98-0466 is hereby granted, with the additional conditions listed below, to the City of San Diego, Owner, and The Hodges Golf Improvement Center, LLC, Permittee, ...

BE IT FURTHER RESOLVED, that the City Manager is directed to establish a San Pasqual Lake Hodges Recreational Trust Fund within the Water Department’s Enterprise Fund.

The resolution made findings indicating that the lease revenues would be a public benefit. While the language in the resolution is not very specific, the Council Transcript made the amount and the purpose of the funds clear. The Council required that 25% of the proceeds from the lease or any other unanticipated sales within the San Pasqual Valley

for the creation of a permanent recreational improvement to enhance public recreation and cultural preservation

It was also described as to provide “greater enhancements” for the River Park. The Water Department, which was to receive the revenue from the Hodges Golf Center lease, specifically concurred with this requirement. The transcript also indicates that this was an additional benefit for the San Dieguito River Park, due to the concerns regarding the inconsistency of the commercial use of the property, which was in direct conflict with prior council action and planning documents

The required trust fund was established, and I understand, is still maintained as Fund 41505 (hereafter “Lake Hodges Trust Fund”).

The JPA previously asked that the Water Department use some of the money in the Lake Hodges Trust Fund to help cover a funding shortfall for the recently completed the Lake Hodges Bridge. The Water Department declined on the grounds that use of the funds for the bridge project would be an unauthorized transfer or enterprise fund money, and that the trust fund moneys can only be used for water related services. The denial was based upon an opinion issued by Deputy City Attorney Raymond C.

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1 Council Policy 700-14 adopted in 1992 requires city owned property within the San Dieguito JPA’s Focused Planning Area, including Lake Hodges, to be leased for agricultural uses only and that leases shall provide public access and address maintenance of trails.
Palmucci, who cited Proposition 218, the 2006 Grand Jury Report and a recent Supreme Court case called Bighorn-Desert View Water Agency v. Karl Verjil (2006) 39 Cal. 4th 205; 138 P.3d 220; 46 Cal. Rptr. 3d 73. A copy of Mr. Palmucci’s opinion is attached.

As discussed below, I believe Mr. Palmucci’s opinion is too conservative for a couple of reasons. First, the Lake Hodges Trust Fund is not comprised of taxes or assessments within the meaning of Proposition 218. The fund is comprised of lease revenues, not assessments or taxes. Second, the fund is a contractual obligation of the approval that allowed the project that generates the lease revenue to proceed forward. The City Charter expressly provides for payment of such “contractual obligations.”

**Grand Jury Report**

The Grand Jury Report found that, for the City of San Diego, the Water Utility Fund would pay for the services of other departments by using Service Level Agreements, but that this process was being abused. Transfers were not well documented, and could not be said with certainty to be proportionately related to the service being provided. Even worse, the “lake recreation” program, which operated concession stands as a service to the public at the city lakes, was operating at a loss, which was absorbed by the water utility fund and not by the parks and recreation general fund budget.

> In other words, if the City were transferring monies out of the water and sewer funds for other uses, it would inflate the “cost of service” in water and sewer with the excess charges constituting a hidden tax on San Diego residents.  

(Grand Jury Report)

The Grand Jury Report, which is attached, specifically mentioned lease revenues should go back into the enterprise fund, although it was focusing on lease revenues from Qualcomm Stadium\(^2\). The Report also specifically targeted using Water Department Enterprise Fund money to fund parks and recreation uses.

The Grand Jury Report caused a lot of political heat, and the City made a lot of changes. A lot of money from the General Fund was transferred to the Water Utility Fund to reimburse the fund for inappropriate past charges. The City Council changed Policy 400-3, which addressed recreational uses at City Lakes.

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\(^2\) **Fact:** The WD owns a significant part of the land under Qualcomm Stadium, but it appears that the WD gets no revenue from its property.  
**Finding:** The WD ratepayers should receive revenue from WD property under Qualcomm Stadium.  
Under what was termed “Business Process Engineering”, the Water Department and Parks and Recreation worked jointly on changes to the Reservoir Recreation Program to minimize impacts to the General Fund. The revised policy 400-03 requires the costs related to recreation uses such as public access, community usage and grounds and facility maintenance to be reimbursed from the General Fund to the Water Department, and that other recreational use costs must be paid by user fees. This resulted in increased user fees such as parking and boat rentals so that the lake recreation program becomes revenue neutral. The new policy was adopted in December of 2008.

Importantly, nothing in the revised policy 400-03 addressed the unique status of the Lake Hodges Trust fund or contradicted the Water Department’s ability to use the fund to cover its contractual obligations.

**Statutes and Case Law**

The collection and appropriation of taxes are limited under the constitution. The collection and appropriation of assessments, rates and charges are also limited under the Constitution as amended by Prop 218. Prop 218 especially targeted any fees or charges that were collected through property taxes or as part of ownership of land, and required that such fees or charges be subject to a vote of the public. Although Prop. 218 was unclear, case law has clarified that water rate charges for the monthly delivery of water are considered “fees” as defined in Prop. 218 under both Constitution Article XIII C and XIII D. Supreme Court Case Bighorn-Desert View Water Agency v. Kari Verjil (2006) 39 Cal. 4th 205; 138 P.3d 220; 46 Cal. Rptr. 3d 73. The Supreme Court has ruled that these water service fees are subject to the initiative power, but that Prop. 218 provided an exemption allowing rates to be raised without a vote of the public. Recent case law has indicated that exemptions are to be to be construed in a narrow manner, and point to the definition of “water” to be used for purposes of Prop 218. Certain other charges such as capacity charges,

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(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section.

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4 *Cal Gov Code § 53750. Definitions:* 
For purposes of Article XIIIC and Article XIIID of the California Constitution and this article: (m) 
"**Water**" means any system of public improvements intended to provide for the production, storage,
standby charges, permit fees, etc. generally do not qualify for the exemption. Even though water service fees are exempt from the requirement of a public vote, they are not exempt from the other provisions of Prop. 218, including the requirement that they only be spent for the purpose acquired. (See Howard Jarvis Taxpayers Assn. v. City of Roseville (2002) 97 Cal.App.4th 637, 645 [119 Cal. Rptr. 2d 9 and Richmond v. Shasta Community Services District (2004) 32 Cal. 4th 409; 83 P.3d 518; 9 Cal. Rptr. 3d 121]

In addition, a recent case has indicated that funds from a utility enterprise fund cannot be transferred to the general fund unless the amount transferred from the enterprise fund is proportionally related to the cost of the service being provided by the city general fund, as required under Prop. 218. This case had to do with a city solid waste enterprise fund paying 1% of its funds to the general fund in order to fund street repairs due to fact that the trash trucks increase the wear and tear on a street. The Court disallowed a blanket 1% transfer.

Before Proposition 218, a city did not need to be too precise in accounting for all of the costs of a utility enterprise, since the city was permitted (unless otherwise restricted by its charter) to make a profit on its utility operations in any event and rates were permitted to reflect the "value" of the service, not just the cost of providing the service. (See Jarvis v. Los Angeles, supra, 85 Cal.App.4th at pp. 81-82; Oneto v. City of Fresno, supra, 136 Cal. App. 3d at p. 464.)

supply, treatment, or distribution of water. See also Howard Jarvis Taxpayers Association v. City of Salinas (2002) 98 Cal. App. 4th 1351; 121 Cal. Rptr. 2d 228

5 (b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:
(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.
(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.
(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.
(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.
(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Cal Const, Art. XIII D § 6 (2009) §

6. Property related fees and charges
Proposition 218 changed all that with its constitutional requirement that "[r]evenues derived from the fee or charge shall not exceed the funds required to provide the property related service." (See art. XIII D, § 6, subd. (b)(1); see also Jarvis v. Roseville, supra, 97 Cal.App.4th at p. 649.) Cities are still entitled to recover all of their costs for utility services through user fees. (Jarvis v. Roseville, supra, 97 Cal.App.4th at p. 648.) The manner in which they may do so, however, is restricted by another portion of Proposition 218: "The amount of a fee or charge imposed ... shall not exceed the proportional cost of the service attributable to the parcel." (Art. XIII D, § 6, subd. (b)(3).)


All of the cases I reviewed dealt with either tax revenues, or fees and charges regulated by Prop. 218. I did not find any cases since Prop 218 that were directly on point with regard to lease revenues that are deposited into an enterprise fund. Lease revenues are not a tax, and are not revenue from a tax. (Cal Const, Art. XIII B § 8; See also Oildale Mutual Water Co. v. North of the River Municipal Water Dist. (1989) 215 Cal. App. 3d 1628, 264 Cal Rptr. 544. Russ Bldg. Partnership v. City and County of San Francisco (1987, Cal App 1st Dist) 199 Cal App 3d 1496, 246 Cal Rptr 21. Lease revenues are also not an assessment, fees or charges regulated by Prop. 218.

City Charter and Municipal Code

Separate from the Proposition 218 issues, the Hodges Trust Fund is comprised of Water Department revenues that must be used for proper purposes. The City Charter gives the City the power to operate a water utility and specifies that revenues from the water utility are to be placed in the Water Utility Fund. City Charter, Sections 1 and 53. The Municipal Code, Chapter 6, Article 7 regulates the uses of the water system, the connections, fees and rates of the water utility.

The term “revenues” is defined to include “all income and receipts derived from the use of, or operation of, the waterworks or any part thereof”. Waterworks are also defined and include all property for storage and transmission of water. Under the definition in Article VII, Subdivision 1, lease revenues would be considered “revenues” of a portion of the city’s “waterworks”.

According to the City Charter, the Water Utility Fund is to be used for operating and maintenance costs; replacements, betterments, and expansion of facilities; payments necessary for obtaining water from the Colorado River; any other contractual
obligations; reserves for future expansion of water utility plant; reserves for future water purchases. City (Charter Section 53.) Use of the Hodges Trust Fund as directed by the City Council when it approved the Lake Hodges Golf Center Project is a contractual obligation, an obligation that made the lease generating project possible.

Conclusion:

The Lake Hodges Recreational Trust Fund was a condition of the City Council’s agreement to approve a General Plan amendment and other permits for the Lake Hodges Golf Center Project that now generates lease revenue for the Water Department. It is akin to a development fee and is a contractual commitment made by the Water Department when it accepted the terms of the City Council approval. The funds in the trust account are not assessments of other fees implicated by Proposition 218. Use of the funds for the purposes directed by the City Council is a contractual obligation of the Water Department that is expressly authorized by the City Charter. Thus, it is my opinion that use of money in the Lake Hodges Trust Fund to help cover costs incurred by the San Dieguito River Valley JPA for management or improvement of Water Department lands or recreational activities on such lands is appropriate.
TO: JPA
FROM: Staff
SUBJECT: JPA Member Contribution Formula

RECOMMENDATION:
Maintain the current member agency contribution levels.

1. SITUATION:

A. Summary and Recommendation

The Joint Exercise of Powers Agreement that established the San Dieguito River Park in June, 1989 specifies under Section 14 Funding that:

(c) Public Agencies may, but shall not be required to contribute money, office space, furnishings, equipment, supplies, or services as may be necessary (Attachment 1).

Subsequent to the adoption of the agreement, in December 1989, the member agency city managers and county administrative officer met with the executive director of the newly formed River Park and agreed on a formula for determining the percentage contributions of the members to the annual operating budget. Although there is no record of formal adoption of the contribution formula, it was memorialized in a letter from the executive director to the city manager of Poway (Attachment 2).

The formula is a very generalized benefit assessment calculation based on population and area within the River Park Focused Planning Area (FPA). Variations in contribution levels were established by combining percentages derived from five population categories and three acreage categories. It appears the categories may have been set to ensure that the percentage levels of the members, when combined, would add to 100%. No adjustment methodology was identified to accommodate changes in individual member agency categories that would result in a total other than 100%.

A current review shows that three changes in category levels have occurred over the last twenty years. The City of Poway increased in population over the last census to 51,126, exceeding their previous 50,000 population category limit which would result in a 3% increase in contribution level by the formula. Also, the cities of Poway and Escondido were calculated by SANDAG to both exceed 500 acres within FPA boundaries which would result in a 2% increase in both contribution levels. (These apparent increases in area within the FPA boundary are questionable because they would require either an
expansion of the FPA boundary or an annexation by a member agency of territory within the FPA. Although a thorough records check remains to be done, neither situation can be identified by long-time River Park or member agency staff.)

Taken together these changes would increase Poway’s contribution level from 10% to 15% and Escondido’s contribution level from 13% to 15%. However, since there is no adjustment methodology identified, the totals for all member agencies would rise above 100% to 107%, invalidating the results.

A. **Issues**

The benefit assessment methodology used to establish member agency contributions twenty years ago does not accommodate changes to member agency population and acreage category levels.

B. **Environmental Review**

None required.

2. **CITIZENS ADVISORY COMMITTEE RECOMMENDATION:**

   This item has not been reviewed by the CAC.

3. **FISCAL IMPACT:**

   Unidentified, because the 1989 benefit assessment methodology does not accommodate adjustment for changes of population or acreage in the FPA.

4. **ALTERNATIVES:**

   a. Maintain the current member agency contribution levels because they have been accepted for over 20 years as reasonable and the minor variations with the original benefit assessment formula are not meaningful.

   b. Direct staff to research other potential benefit assessment methods.

**RECOMMENDATION:**

Maintain the current member agency contribution levels.

Respectfully Submitted,

Dick Bobertz,
Executive Director
Exhibits:
2. December 1989 letter from Mike Gotch to James Bowersox
Joint Powers Authority Agreement

JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE COUNTY OF SAN DIEGO AND THE CITIES OF DEL MAR, ESCONDIDO, POWAY, SAN DIEGO AND SOLANA BEACH CREATING THE SAN DIEGUITO RIVER VALLEY REGIONAL OPEN SPACE PARK JOINT POWERS AUTHORITY

THIS AGREEMENT is hereby made by and between the COUNTY OF SAN DIEGO, a political subdivision of the State of California, and the cities of DEL MAR, ESCONDIDO, POWAY, SAN DIEGO, and SOLANA BEACH, municipal corporations, which shall individually or collectively be referred to as "Public Agencies".

RECITALS

A. Public Agencies are each empowered, pursuant to California Government Code Section 6500, et seq., to exercise their common powers jointly by agreement, including the powers to acquire and hold property, to undertake overall planning for and to plan and design public facilities and appurtenances for park purposes, and to develop, operate and maintain parks.

B. Public Agencies agree that it is their goal to create, preserve and enhance the San Dieguito River Valley Regional Open Space Park (hereinafter referred to as "Park") for the benefit of the public.

C. Public Agencies agree that a local agency shall be created to provide a coordinated program for the acquisition, planning, design, plan implementation, operation and maintenance of the Park and such other activities related thereto as determined by this Joint Powers Authority to be appropriate.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Public Agencies as herein expressed, the Public Agencies agree as follows:

1. PURPOSE. This agreement is made pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500), relating to the joint exercise of powers common to public agencies. Public Agencies each possess the powers referred to in the recitals hereof. The purpose of this agreement is to exercise those powers jointly to acquire, plan, design, improve, manage, operate and maintain the San Dieguito River Valley Regional Open Space Park which is described in the SANDAG Focused Planning Area map, Attachment A hereto, as amended in accordance with the terms of this agreement, which is hereby incorporated by reference as if fully set forth herein. Such purposes are to be accomplished and said common power exercised in the manner hereinafter set forth. The goals of the Public Agencies are to exercise such powers in order to:
(a) Preserve land within the focused planning area of the San Dieguito River Valley as a regional open space greenbelt and park system that protects the natural waterways and the natural and cultural resources and sensitive lands, and provides compatible recreational opportunities that do not damage sensitive lands.

(b) Provide a continuous and coordinated system of preserved lands with a connecting corridor of walking, equestrian, and bicycle trails, encompassing the San Dieguito River Valley from the ocean to the river’s source.

2. TERM. This agreement shall become effective immediately upon approval by the last of the Public Agencies, and shall continue in full force and effect so long as any two Public Agencies agree to continue as members or for twenty-five years, which ever occurs first. At the end of the twenty-five year term, Public Agencies may act to continue this agreement in full force and effect for an additional fifty years. Public Agencies shall provide ninety days notice of intent to withdraw from the Joint Powers Authority.

3. CREATION OF INDEPENDENT AGENCY. Pursuant to Section 6507 of the California Government Code, there is hereby created a public entity known as the "San Dieguito River Valley Regional Open Space Park Joint Powers Authority" herein called "Authority" and said Authority shall be an entity separate and apart from the Public Agencies.

4. BOUNDARIES. The boundaries of the territory within which Authority shall exercise its powers shall be those described in Attachment A. Said boundaries may be amended by Authority subject to concurrence by the Public Agencies within whose jurisdiction the proposed boundary change lies.

5. BOARD. Authority shall be governed by a board to be known as the "San Dieguito River Valley Regional Open Space Park Board (hereinafter called "Board"). Each member shall serve in his/her individual capacity as a member of the Board. The membership of the Board shall be as follows:

(a) Two (2) elected members of the governing bodies of the County of San Diego and the City of San Diego appointed by their respective, governmental bodies.

(b) One (1) elected member of the City Councils of the cities of Del Mar, Escondido, Poway and Solana Beach appointed by their respective councils.

(c) The Chairperson of the San Dieguito Citizens Advisory Committee. The elected members shall serve at the pleasure of their appointing authority. Each member shall have an alternate which may act in his/her absence. Alternates shall be chosen in the same manner as regular members except that the alternate to the Chairperson of the San Dieguito Citizens Advisory Committee shall be the Vice Chairperson of that Committee. Any vacancy shall be filled in the same manner as described herein for appointment. The Board shall select its own Chairperson and Vice Chairperson from among the members.
6. MEETINGS OF THE BOARD.

(a) Regular Meeting. The Board shall conduct regular meetings at least annually and such other times as the Board shall direct or the bylaws specify.

(b) Ralph M. Brown Act. All meetings of the Board, including, without limitation, regular, adjourned regular, and special meetings shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

(c) Quorum. A majority of Board members shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. The affirmative vote of at least a majority of the members available in the quorum shall be required for any act of the Board other than adjournment.

7. RULES OF THE BOARD. The Board may adopt, from time to time, bylaws, rules, and regulations as may be required for the conduct of its meetings and the orderly operation of Authority; and copies and amendments thereto shall be filed with the Public Agencies.

8. STANDING COMMITTEE. The Board shall appoint a standing committee to be known as the San Dieguito Citizens Advisory Committee which shall be advisory to the Board. The Committee shall have a Chairperson selected by the Board and a Vice Chairperson selected by the Committee subject to the concurrence of the Board.

9. OFFICERS AND EMPLOYEES OF AGENCY.

(a) Staff. The Public Agencies and the San Diego Association of Governments will staff Authority, until such time as Authority acts to hire or appoint permanent staff.

(b) Executive Director. The Board may appoint an Executive Director who shall have such duties as prescribed by the Board.

(c) Treasurer. The Treasurer of the Authority shall be the duly appointed and active Treasurer of the County of San Diego serving ex-officio as Treasurer of Authority. The Treasurer shall receive, have the custody of and disburse funds upon the warrant or checkwarrant of Auditor pursuant to the accounting procedures set forth in Section 15 hereof, and shall make the disbursements required by this agreement or to carry out any of the provisions or purposes of this agreement. The Treasurer may invest Authority funds in accordance with general law. All interest collected on Authority funds shall be accounted for and posted to the account of such funds.

(d) Auditor. The Auditor of the Authority shall be the duly appointed and acting Auditor of the County of San Diego serving ex-officio as Auditor of Authority. The Auditor shall draw warrants or check-warrants against the funds of Authority in the Treasury when the demands are approved by the Board, or such other persons as may be specifically designated for that purpose. Any fees paid to Auditor for
performance of said services shall not be greater than those normally paid by other entities receiving similar services.

(e) **Experts and Other Employees.** Authority may employ such other officers, employees, consultants, advisors, and independent contractors as it may determine necessary.

(f) Authority shall cause such of its officers and employees to be bonded as required by Auditor.

10. **POWERS OF AUTHORITY.** Authority shall have the powers:

(a) To acquire, hold and dispose of property by any legal method for Park purposes, to undertake overall planning for and to plan and design the Park, and to take any and all actions necessary to accomplish these powers. Decisions by Authority to acquire or dispose of real property shall be subject to prior approval of the Public Agencies wherein the property to be acquired or disposed of lies. Prior to acquisition or disposal of real property within the Park by Public Agencies, they shall refer the proposed transaction to Authority for review and recommendation. However, failure of a Public Agency to so refer a transaction shall not affect its validity.

(b) To establish guidelines for and advise Public Agencies on appropriate land uses within the Park.

(c) To review and comment on development proposals submitted to Public Agencies which are within or have an impact on the Park.

(d) To improve, manage, operate and maintain the Park.

(e) To make and enter into contracts and agreements to carry out its activities.

(f) To employ agents and employees.

(g) To sue and be sued in its own name.

(h) Pursuant to California Government Code Section 6509, the powers of Authority shall be subject to those legal restrictions which the County of San Diego has upon the manner of exercising said power.

11. **OPERATION AND MAINTENANCE.** Authority shall provide for operation and maintenance of the Park. For an initial period, as determined by Authority, Authority shall contract with the County of San Diego through its Department of Parks and Recreation to operate and maintain the Park. Authority shall audit and evaluate County’s performance after said initial period and as necessary to determine whether the County should continue to perform this function.

12. **CONDITIONAL POWERS.** Subject to unanimous agreement of Public Agencies, Authority shall have the power to issue bonds and levy assessments under any assessment district act or impact fee provisions authorized by State law.

13. **BUDGET.** Authority shall prepare and adopt an annual budget prior to the beginning of each fiscal year. The “fiscal year” for Authority shall
be coterminous with that of the County.

14. FUNDING.

(a) Authority shall fund its activities by and is authorized to expend Satellite Wagering Funds which are available to Authority to carry out its activities.

(b) Authority is empowered to make applications for and receive grants from governmental or private sources for its activities.

(c) Public Agencies may, but shall not be required to contribute money, office space, furnishings, equipment, supplies, or services as may be necessary.

(d) Authority may receive gifts, donations, bequests and devises of all kinds and descriptions, and perform any and all legal acts in regard thereto as may be necessary or advisable to advance the objects and purposes of the Authority and to apply the principal and interest of such gifts, donations, bequests and devises as may be directed by the donor, or as the Board of the Authority may determine in the absence of such direction.

(e) Authority may collect and expend revenues generated from Park operations and activities.

15. FUNDS DEPOSITED IN COUNTY TREASURY. The Treasury of County shall be the depository of the funds of Authority and the Treasurer shall receive and have custody of Authority funds.

16. RECORDS AND ACCOUNTS - CHARGE FOR SERVICES.

(a) Authority shall be strictly accountable for all funds.

(b) Authority shall cause to be kept proper books of records and accounts in which a complete and detailed entry shall be made of all its transactions, including all receipts and disbursements. Accounting systems shall be established and maintained consistent with State laws and rules and regulations of the State Controller as required by Auditor. Said books shall be subject to inspection at any reasonable time by the duly authorized representatives of Public Agencies.

(c) Authority shall cause a single annual audit of the accounts and records of Authority to be performed as provided in Sections 6505, 6505.1 and 6505.5 of the California Government Code. Within eight (8) months after close of each fiscal year, a financial statement for such fiscal year shall be provided to the Public Agencies.

(d) The County of San Diego shall determine the charges, if any, to be made against Authority for the services of the Treasurer, the Auditor and other County officers and employees.

17. LIABILITY OF PARTIES. Pursuant to the Authority of Section 6508.1 of the California Government Code, the debts, liabilities, or obligations, of Authority shall be solely the debts, liabilities and obligations of
Authority and not the Public Agencies.

18. **DISPOSITION OF ASSETS.** At the termination of this agreement, all property of Authority, both real and personal, including all funds on hand, after payment of all liabilities, costs, expenses, and charges validly incurred under this agreement, shall be returned to the respective Public Agencies as nearly as possible in proportion to the contributions, if any, made by each.

19. **NOTICES.** Notices hereunder shall be sufficient if delivered to:

COUNTY OF SAN DIEGO (Address)

CITY OF DEL MAR (Address)

CITY OF ESCONDIDO (Address)

CITY OF POWAY (Address)

CITY OF SAN DIEGO (Address)

CITY OF SOLANA BEACH (Address)

20. **MISCELLANEOUS.** The paragraph headings herein are for convenience only and are not to be construed as modifying or governing the language in the paragraph referred to. This agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed.

21. **OPERATING MEMORANDA.** To preserve a reasonable degree of flexibility, many parts of this agreement are stated in general terms. It is understood that there will be operating memoranda executed and amended from time to time which may further define the rights and obligations of the parties hereto.

22. **SUCCESSORS.** This agreement shall be binding upon and shall inure to the benefit of the successors to the Public Agencies.

23. **PARTIAL INVALIDITY.** If any one or more of the terms, provisions, promises, covenants, or conditions of this agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

24. **FILING OF NOTICE OF AGREEMENT.** Within 30 days after this agreement becomes effective pursuant to paragraph 2 above, the SANDAG Executive Director shall file with the Secretary of State the Notice of Agreement required by Government Code Section 6503.5.

IN WITNESS WHEREOF, this agreement is executed by the City of Escondido, the City of Poway, and the City of San Diego, acting by and through their City Managers, pursuant to Resolutions No. 89-193, No. 89-072, and No. 273718 respectively, by the City of Del Mar and City of Solana Beach acting by and through their City Managers, pursuant to Minute action of April 10, 1989, Item 9N-1-c (confirmed by Resolution No. 89-49) and Minute action of May 1, 1989, Item 7, respectively, and by the County of San Diego, acting by and through the County Board of Supervisors, pursuant to Minute Order No. 56, authorizing such execution.
Mr. James Bowersox, City Manager  
City of Poway  
P.O. Box 789  
Poway, CA 92064

Dear Jim:

Thank you for taking the time to meet with me on December 5, 1989 to discuss the FY 91 budget for the San Dieguito River Park JPA. At that meeting the City Managers, Deputy Chief Administrative Officer and I agreed on a formula and percent allocation for the JPA's budget for next fiscal year and beyond. The percentage allocation was developed using a formula based on a combination of population plus acreage included within the focused planning area.

To recap, the percentage for each member agency and the formula are as follows:

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<th>Percentage Allocation</th>
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<td>City of Del Mar</td>
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<td>City of Solana Beach</td>
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<td>City of Poway</td>
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<td>County of San Diego</td>
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<td>10 - 50,000</td>
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<td>250 - 500,000</td>
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<td>500,000 plus</td>
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As we discussed, the proposed FY 91 budget for the JPA was expected to be $339,041. Based upon off track betting (OTB) revenue projections of $89,516, the collective member agency budget assessment was expected to be $249,525. Since our meeting on December 5th, SANDAG has advised that all costs (legal, secretarial, rent, etc.) absorbed by SANDAG will become a July 1st responsibility of the JPA. An estimate of those costs could be as high as $50,000.

Please let me know by December 27th if you concur with the percentage allocation and the resulting level of contribution. Thank you again for your time on December 5th.

Sincerely,

Mike Gotch, Executive Director  
San Dieguito River Park JPA
December 16, 2009

Dustin Fuller
Sr. Environmental Planner
22nd District Agricultural Association
Del Mar Fairgrounds
2260 Jimmy Durante Boulevard
Del Mar, CA 92014-2216

Subject: Comments on Del Mar Fairgrounds Master Plan Draft
Environmental Impact Report

Dear Mr. Fuller:

The San Dieguito River Park Joint Powers Authority (JPA) appreciates the opportunity to comment on this extremely important project located within the western gateway of the San Dieguito River Park. The JPA has enjoyed an excellent working relationship over the last few years with staff of the 22nd DAA particularly with respect to locating a segment of the San Dieguito River Park Coast to Crest Trail on Fairgrounds property. It is because of our active involvement in this fragile lagoon ecosystem and public recreational resource that the JPA is concerned with the 22nd DAA’s plans to significantly increase the intensity of uses in this area and even change its focus from a Fair and horse racing venue to a convention center complex with other related uses. Our comments on the Del Mar Fairgrounds Draft EIR (DEIR) reflect these concerns.

The San Dieguito River Valley Regional Open Space Park is a vision that is quickly becoming a reality. With the recent restoration of over 150 acres of wetlands within the San Dieguito Lagoon and the extension of the Coast to Crest Trail into this area, the Park’s western gateway is nearing completion. However, the Fairgrounds proposed 2008 Master Plan ignores their place within the regional public park and instead proposes a significant intensification and change in use that will severely impact the Park. The JPA supports Senator Kehoe’s recent proposal to work with stakeholder State
agencies including the 22nd DAA to extend and expand the public greenway west of I-5 along the north side of the San Dieguito River.

The JPA is a public agency formed in 1989 to create a regional open space park in the San Dieguito River Valley from the beaches in Del Mar to Volcan Mountain near Julian. The proposed project lies within the western focused planning area (FPA) of the San Dieguito River Park. The JPA is empowered by its member agencies (County of San Diego and the cities of Del Mar, Escondido, Poway, San Diego, and Solana Beach) to acquire, hold and dispose of property for park purposes, to undertake overall planning for and to plan, design, improve, operate, manage, and maintain the San Dieguito River Park. The JPA is further empowered to establish land use and development guidelines for the Park’s FPA. The goals adopted by the JPA’s member agencies are:

- To preserve and restore land with the FPA as a regional open space greenway and park system that protects the natural waterways and the natural and cultural resources and sensitive lands that provide compatible recreational opportunities, including water related uses, that do not damage sensitive lands.
- To provide a continuous and coordinated system of preserved lands with a connecting corridor of walking, equestrian, and bicycle trails, encompassing the San Dieguito River Valley from the ocean to the river’s source.
- To use public land only for the benefit of the public, and for uses consistent with the goals of the Park.

Our main concern lies in the inadequacy of the Fairgrounds Master Plan DEIR to recognize and therefore sufficiently evaluate impacts from:

- Intensification of land uses in the San Dieguito River Valley from a substantial redevelopment of the Fairgrounds property with new uses and a proposed change in the original purpose of the Fairgrounds property;
- Failure to address the project site’s critical location within a fragile coastal wetland and to evaluate the project’s impacts within that context, as well as missed opportunities to adequately mitigate those impacts in and adjacent to the river/lagoon;
- Reliance on a flawed wetland jurisdictional analysis that substantially conflicts with previous delineations done on the site (Army Corps 1993) and with recent positions taken by the California Coastal Commission (2003), upon which land use decisions will be made.

As supported by the comments made in this letter, the JPA believes that the Fairgrounds Master Plan DEIR fails to meet the standards for adequacy of an EIR required by Section 15151 of the CEQA Guidelines, and contains many unsupported and unsubstantiated statements and conclusions that are not supported by evidence in the record.
Our specific comments are as follows:

1. **The DEIR failed to Identify the Controversy Regarding the Project’s Inconsistency with the Coastal Act.**

   1.1. The proximity of the project adjacent to the San Dieguito River and near to the Pacific Ocean requires that any proposed land uses be compatible with the significant coastal and wetland resources within these areas. Both the San Dieguito River and the Pacific Ocean are considered Environmentally Sensitive Habitat Areas mandating special protection. In addition, the proposed project is adjacent to a park and recreation area, which also mandates special protection. Because the Fairground is in an area of original jurisdiction for the Coastal Commission, the Policies of Chapter 3 of the Coastal Act govern the consideration of new development, and whether it will be permitted, in accordance with Public Resources Code Section 30200.

   1.2. One of the key policies in the Coastal Act is the limitation on development within wetlands. New development is prohibited within wetlands, except for such uses as restoration, incidental public services, or port facilities under Section 30233. Even coastal dependent uses, which are given priority in the Coastal Act, are generally not to be sited in a wetland. (30255). The proposed project is sited on historic wetlands, and proposes to develop in areas which are disputed to be wetlands. The DEIR did not adequately disclose the controversy regarding the issue of whether the South Overflow Lot and the East Overflow Lots are wetlands.

   1.3. The Fairgrounds Master Plan proposes new uses and significant land use intensification. The DEIR has failed to identify the controversy regarding whether the new uses and land use intensification are permitted under the Coastal Act, whether they are sited in an environmentally sound manner, and whether they adequately protect marine resources.

   1.4. We believe that the proposed Master Plan will result in significant physical impacts to traffic, recreation, hydrology, biology and aesthetics, as documented later in this letter. These physical impacts are in direct conflict with the Policies of the Coastal Act. The EIR has failed to identify the inconsistencies under the Coastal Act which will result with implementation of the Master Plan. These inconsistencies are the basis for much of the controversy surrounding the proposed expansion of uses and should be identified in the EIR. See comments below under Land Use regarding Tables 4.1-A through F.

2. **The DEIR’S Jurisdictional Delineation Reports for the East and South Parking Lots Improperly Constrict the Standards for Determination of Wetlands and Are Not Factually Supported.**
Paving the entire East Parking Lot (EOL) and further increasing the intensity of parking on the South Parking Lot (SOL) are impermissible uses because the entire SOL and the southern one-third of the EOL are documented wetlands. Any improvement to the surface of the parking lot is likely to be considered fill, which would not be permitted on any areas of the parking lot considered wetlands.

All experts agree that the East and South Parking Lots are historic “tidal marshland and flood plain of the San Dieguito River Estuary . . .” (e.g., Jurisdictional Delineation Report, July 2007, p. 1.) Their status has been altered due to the placement of fill and use as overflow parking locations on an intermittent and seasonal basis. The issue addressed in the Jurisdictional Delineation Reports prepared for the Master Plan DEIR\(^1\) is whether the East and South Parking Lots qualify as wetlands under Army Corps of Engineers, California Department of Fish and Game or Coastal Commission standards. A review of the facts set forth in the Jurisdictional Delineation Reports, as well as additional information available, indicate that the entire South Parking Lot and a substantial portion of the East Parking Lot qualify as wetlands, under all standards. The Jurisdictional Delineation’s conclusion otherwise is unsupportable for the reasons set forth below.

2.1. The Jurisdictional Delineation Reports Assume, Without Factual Support, That All Existing Fill And Use Of The East And South Parking Lots Are Lawful Uses Established Prior To The Coastal Act.

A key factor used in the Jurisdictional Delineation Reports to conclude the East and South Parking Lots are not wetlands is an assumption that they were lawfully converted to upland habitat and have been regularly maintained in a condition that allows for ongoing parking and other upland uses (GLA Report dated August 7, 2007, pp. 21-22.) The presumption that all fill was lawfully placed is based upon historic photos showing the area being used for parking, but not actual evidence of permits for placement of fill within the parking lot areas. Available evidence submitted with this comment letter or other comments demonstrate that placement of fill has occurred well after the effective date of the California Coastal Act and other regulations that limit the fill and development of wetlands. (See attached Fish and Wildlife Service letter dated June 15, 1990). Further, the intensity of parking and annual grading has resulted in the compaction of soils, removal of vegetation and otherwise inhibited the reemergence of wetland characteristics and has increased dramatically over the past few decades. There is no evidence indicating that such increases in intensity are lawful. To the contrary, within the last 5 years the Coastal Commission has attempted to limit the unpermitted increase in parking activities, so that the damaged wetlands can be restored, as shown in the Coastal Commission staff report excerpts below:

Historically, the EOL, SOL and GDR have been used by the applicant as a public parking reservoir during the annual fair and thoroughbred race meet. Because use of the lots for parking for these two main yearly events predated the Coastal Act, the Commission has not challenged the continued use of this area for overflow parking during these events, even though major portions of

\(^1\) The Jurisdictional Delineation Reports are found in Appendix C of the DEIR. The Report prepared by Glenn Lukos Associates (“GLA”) is Appendix A to the Biological Resources Report. Their ultimate conclusion is referred to collectively as the “Jurisdictional Delineation.”
these three areas are wetlands. Over time, however, since the Coastal Act was made law, the use of the Fairgrounds outside the fair and races has expanded significantly, and it now hosts multiple interim events nearly every weekend all year long. The applicant asserts that occasionally the SOL is used by patrons during these smaller events, especially for the annual Cinco de Mayo celebration, when attendance is high. In addition, the SOL has been used for periodic storage of trucks and materials. None of these uses have been authorized by the Coastal Commission, although they meet the Coastal Act definition of development and thus require permits. ) (CDP 6-04-049, page 12, March 2005; emphasis added)

...However, in this particular case, the Commission accepts the applicant’s commitment not to use the SOL, which is most sensitive biologically, for new events accommodated by the subject proposal. (CDP 6-04-049, page 13, March 2005; emphasis added)

The biggest concern is that the increase in intensity of use could force reliance on the Fairgrounds unimproved overflow parking lots, all of which contain some wetland resources and a potential for restoration. A special condition thus prohibits new events at the horse arena facility using overflow parking lots, (which the applicant has already stated will not be necessary to accommodate future events) (CDP 6-07-082, page 1 March 2008; emphasis added)

2.2. The Jurisdictional Delineation Fails To Comply With The Broad Definition Of Wetlands Pursuant To Coastal Commission And Army Corps Standards And Further Failed To Account For The “Unique” Circumstances That Have Inhibited Wetland Recovery Within The East And South Parking Lots.

As noted in the Jurisdictional Delineation Reports, a final jurisdictional determination regarding coastal wetlands requires concurrence by the appropriate regulatory agencies, including the Army Corps of Engineers and Coastal Commission. Accordingly, it is necessary that the Jurisdictional Delineation used in the DEIR apply the standards used by these agencies when determining whether an area qualifies as a wetlands. The Jurisdictional Delineation Reports prepared for the DEIR improperly disregarded the Army Corps and Coastal standards for determining the status of wetlands within the East and South Parking Lots.

Wetland indicators are generally divided into three categories: (1) wetland hydrology, (2) hydric soils, and (3) hydrophytic vegetation. The U.S. Army Corps of Engineers generally requires the presence of all three indicators as a condition to finding wetlands within its jurisdiction. The Coastal Commission, on the other hand, employs a far broader definition of wetlands that is satisfied by two, or even one of the three wetland indicators. Further, Commission standards provide for a finding of wetlands in circumstances where the quality has been degraded due to manmade activities. (See, Kirkorowicz v. California Coastal Commission (2000) 83 Cal.App.4th 980, 994.) The broad definition of wetlands under the Coastal Act was acknowledged in the Jurisdictional Reports prepared for the Master Plan EIR:

The Coastal Act section 30121 defines ‘wetlands’ as land (within the Coastal Zone) ‘which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, or fens.’ The 1981 CCC Statewide Interpretive Guidelines state that hydric soils and hydrophytic vegetation ‘are useful
indicators of wetland conditions, but the presence or absence of hydric soils and/or hydrophytes alone are not necessarily determinative when the commission identifies wetlands under the Coastal Act. In the past, the Commission has considered all relevant information in making such determinations and relied upon the advice and judgment of experts before reaching its own independent conclusions as to whether a particular area will be considered wetland under the Coastal Act. The Commission intends to continue to follow this policy.'

(GLA report dated August 7, 2007, p. 21.) Further, the Army Corps of Engineers and Commission have recognized the East and South Parking Lots to be an atypical situation in which alternative methods for determining the wetlands delineation should be employed. This circumstance was confirmed by Coastal Commission Biologist Dr. John Dixon, in a memorandum to staff dated July 28, 2004:

The 22nd Agricultural District routinely removes vegetation and mechanically alters the ground surface in these parking lots. Where vegetation, soils, or hydrology have been altered by recent human activities, a wetland may fail to meet standard diagnostic criteria due to these alterations. In such 'atypical situations,’ alternative methods must be employed in making wetland determinations, as described in the 1987 Corps manual. In their 1993 delineation, the Corps and EPA noted that normal circumstances did not exist on the site and that the site was significantly disturbed and therefore ‘atypical situation.” They then applied appropriate alternative methods under delineation.

(GLA Report dated August 7, 2007, p. 21-22.) As noted in the Jurisdictional Delineation Reports, application of the alternative standards by the Army Corps of Engineers resulted in the designation of a significant portion of the East Parking Lot and almost all of the South Parking Lot as wetlands. The Jurisdictional Delineations prepared by GLA disregarded the Coastal Commission standards set forth above and expressly rejected the approach taken by the Army Corps of Engineers. Instead, GLA takes the position that “because the areas were converted to upland habitat and have been regularly maintained in a condition that allows for ongoing parking and other upland uses, it is presumed that from a regulatory perspective, the area should be considered to be upland. . . . [I]t is GLA’s opinion that the new normal circumstance (since the 1960s) for these areas as parking and associated maintenance and as such do not represent ‘atypical situations’ . . . (GLA report dated August 7, 2007, pp. 21-22.)

GLA’s position is unsupportable for a number of reasons. First, as discussed above, the assumption that all existing fill and current uses are exactly the same as what occurred in the 1960s is not factually supported. Second, as discussed below, the GLA position ignores abundant evidence of wetland indicators within the East and South Parking Lots. Finally, GLA erroneously presumes that the “atypical” situation identified by the Army Corps of Engineers
and Coastal Commission was based upon when the existing uses commenced. That is not the case. The unique atypical situation identified by the Army Corps of Engineers and Coastal Commission was based upon the current status and use of the properties. For these reasons, GLA’s analysis applied the wrong standard from the onset.

2.3. The Jurisdictional Delineation Reports Disregarded Abundant Factual Evidence Indicating That The Majority Of Both The East And South Parking Lots Are, In Fact, Wetlands.

In spite of the placement of fill, ongoing use for parking, substantial increases in the intensity of parking, ongoing grading and maintenance activities, both the East and South Parking Lots continue to exhibit wetland indicators, including inundation, hydric soils and wetland vegetation. Hydrophytic Vegetation Is Present Throughout Both The East And South Parking Lots

The Jurisdictional Delineation Reports noted that surveys done in 2005 were especially appropriate for identification of vegetation because they followed a rainy season for several months in which the East and South Parking Lots had not been graded and otherwise disturbed. “It should be noted that the site was not cleared of vegetation prior to the March and April 2005 site visits because of the heavy rains associated with the 2005 rainy season, making it possible to identify the vegetation within both the East and South Parking Lots.” (GLA Report dated August 7, 2007, p. 3). GLA’s assessment that the 2005 surveys would be informative was right on point. The surveys established that within the few months in which the Lots were allowed to remain undisturbed, wetland vegetation began making a comeback in both parking lots. This was documented by photographic evidence (see GLA Report dated August 7, 2007, photograph 3, p. 14) and written confirmation in the GLA Report, The 2007 GLA report confirmed that “Spergularia marina and S. bocconii [were] mixed throughout both parking lot areas with S. Marina more common on the site.” (GLA Report dated August 7, 2007, p. 14, fn. 16.)

Spergularia marina, commonly known as salt marsh sand spurry, is designated as an obligate species, i.e., one that almost always occurs in wetlands. There is some debate that it should be categorized as a facultative species, i.e., a species that usually occurs in wetlands, but in either instance, it is clearly a wetland indicator species. GLA dismisses the presence of this wetland indicator species for a couple of reasons. First, it contends that it is an opportunistic plant that is often seen in upland areas. Second, it states that it should be disregarded because it was found after the 2005 rainy season in which there was an unusually large amount of precipitation. “The unusually high rainfall, combined with the opportunistic character of the salt marsh sand spurry, make it a poor wetland indicator this season and it is not appropriate to make a positive determination for the presence of a predominance of hydrophytic vegetation.” (GLA Report dated August 7, 2007, p. 15.).

GLA’s dismissal of the wetland vegetation indicator species cannot be reconciled with facts, and is inconsistent with the methodology employed in the report. On the one hand, GLA asserted that its survey conducted after the 2005 rainy season was especially appropriate for the identification of wetland species because of the large amount of precipitation and lack of recent maintenance activities within the East and South Parking Lots. (See p.3.) However, when the survey identified wetland vegetation, GLA asserts that it should be disregarded because of the
significant rain during the 2005 season. The reality is that in spite of the fill, compacted soil, and past maintenance activities, wetland vegetation quickly returned to both sites after a rainy season and a few months of no artificial clearing activities. These unique facts strongly support a finding that the sites are wetlands within the Coastal Act standards.

Historic photographs attached to the Jurisdictional Reports also indicate the presence of hydrophytic vegetation on the parking lots as a continuous occurrence, even during periods in which the parcels have been used for parking purposes. For example, Exhibit 6, aerial photo dated June 26, 1969, shows extensive vegetation over the south lot and portions of the east lot. Exhibit 7, dated November 9, 1972, again shows extensive vegetation. Exhibit 8, dated August 9, 1973, shows vegetation on both the east and south lots. Vegetation is evident on other historical photos attached to the Jurisdictional Report. The Jurisdictional Reports, however, do not identify what type of vegetation is depicted. A reasonable assumption is that the vegetation was of the wetland type returning after the lack of some maintenance activities during those years. This again, is strong evidence of the wetland status of the properties.

The East And South Parking Lots, Particularly The South Parking Lot, Have Been The Subject Of Frequent Inundation.

Saturated soils and inundation were identified in the Jurisdictional Reports. However, the presence of water and saturated soil was dismissed on the basis that saturation was not of a depth that would normally be expected in a wetland. This, again, is an instance in which the “atypical” circumstance presented by the East and South Parking Lots was disregarded by the Jurisdictional Delineation. The presence of any saturated soil in spite of the compacted soil, ongoing maintenance activities is strong evidence that the true wetland nature of the sites continues to emerge.

Further, we have been informed that Fairground staff pump water out of the south parking lot during high tide events to limit the extent of tidal inundation. The Jurisdictional Delineation should consider this circumstance, particularly whether it is an authorized use. In any event, artificially pumping down the water level during high tide events to prevent inundation is certainly an “atypical” circumstance that should be taken into consideration when evaluating the extent of wetland areas.

Historic Activity That Temporarily Prevented Activity Within A Portion Of The South Parking Lot Resulted In Return Of Wetland Species.

In 1990, the 22nd DAA was required to fence and berm 4 acres of the South Parking Lot as an interim least tern nesting site. During the time it was fenced, it became high quality salt marsh habitat used by the endangered Belding savannah sparrow. (See, Coastal Development Permit No. 6-02-161, p. 8.) The new wetlands area was, apparently, graded without authorization, triggering an enforcement action by the U.S. Army Corps of Engineers. (See, attached U.S. Fish and Wildlife Service letter dated June 15, 1990.) In any event, the quick return of the undisturbed portion of the South Parking Lot to viable wetland habitat is compelling evidence that the wetland characteristics of the East and South Parking Lots remain today.
In summary, the wetland characteristics of the East and South Parking Lots continue to exist in spite of decades of fill, parking, compaction, and maintenance activities to remove vegetation and even the intentional pumping of tidal waters from the site. The Jurisdictional Delineation Reports prepared for the DEIR fail to acknowledge these circumstances, and in doing so, artificially reduce the wetland delineation in a manner that is not scientifically or factually supportable. The Jurisdictional Delineation Reports should be redone to accurately depict the extent of wetlands, so that the Project can be appropriately designed to exclude any development, or intensity of uses within wetland areas.

3. **The DEIR Project Description is incomplete and does not contain sufficient information to fully understand or evaluate the project and thus does not comply with CEQA Guidelines Section 15124.**

3.1. There is no map of all existing facilities describing their size and use as well as all proposed facilities describing their size and use. A table quantifying the proposed changes to the site should be providing including: existing and future land uses, buildings and their size and locations; buildings to be demolished and their uses and sizes; and existing structures and uses at Horsepark and any proposed improvements as stated in the Fairgrounds the Master Plan. The table should also identify the existing and proposed intensity of each facility and/or use so that the impact of the increased intensity can be properly evaluated in the DEIR. This is especially important, given that a key project goal is to increase use of Fairground facilities.

3.2. There is not enough information about the “landscape buffer”. The “landscape buffer” is not labeled or described for the area next to the proposed hotel/exhibit halls although it is mentioned elsewhere in the DEIR (see comments on Land Use). The Project Description does not include floor plans of the proposed hotel or underground garage or quantify the square footage of the proposed new buildings.

3.3. There is not enough information about the “ecological setback area”. An “ecological setback area” east of Jimmy Durante Blvd. is mentioned on page 4.1-35 but is not described in the Project Description. Figure 3.7 and associated description of the East Parking Lot (EOL) does not mention or label this setback. The parking lot access road appears to be quite close to the river and may be within the “ecological setback”, although that distance cannot be determined from the figure. The existing Coast to Crest Trail is also not labeled on Figure 3.7. People who are not familiar with the project site cannot possibly evaluate whether impacts are accurately evaluated if the project is not accurately presented with existing conditions and uses.

3.4. There is not full disclosure about the status of the San Dieguito River Park Coast to Crest Trail on Fairgrounds property. The Fairgrounds Master Plan and DEIR should identify the segments of the Coast to Crest Trail that currently exist and are proposed on Fairgrounds property. Currently, the Coast to Crest Trail continues west of I-5 on
Fairgrounds property along the south edge of the Fairgrounds Driving Range and both the East and South Overflow parking lots. The Master Plan does not identify the trail as an existing allowed use on Fairgrounds property nor does it identify the proposed future extension of the Coast to Crest Trail west of Jimmy Durante. The JPA is concerned that the status of the trail is not fully recognized by the 22nd DAA.

**LAND USE**

4. **The JPA believes that the impacts to the San Dieguito River Park from the project are significant and require mitigation to reduce such impacts to an important regional lagoon and public recreational resource particularly with respect to:**

*Wetland Buffer*

4.1. The wetland setbacks mentioned in the DEIR are inadequate and do not comply with Coastal Act policy nor do they sufficiently mitigate for the introduction of higher intensity uses along the river. For example, no habitat protection buffer is provided between the river and proposed hotel/exhibit halls. A “landscaped buffer” is mentioned on page 3-33 but is not defined or labeled on Figures 3.9 or 3.10c. High intensity uses such as RV parking, vehicles, service access, and truck loading docks are proposed adjacent to the river. The purpose of a buffer is to protect adjacent sensitive areas from harm and should not contain a high concentration of human uses within it.

*Paving of the East Parking Lot and Continued Use of the South Lot*

4.2. Historically, the use of the areas known as the east overflow lot (EOL) and the south overflow lot (SOL) was only for seasonal parking during the summer months only for the Fair and the racing season, their historic use. However, according to information contained in recent Coastal Commission hearing proceedings unauthorized use of the two overflow parking lots has been increasing (CDP 6-04-049, dated February 25, 2005, page 1-10-12). In a 2003 Coastal Staff report, there was evidence that by 1998/1999, the east overflow lot was only used on 17 days during the non-fair or racing season. By 2002, that use had increased to 159 days. (CDP 6-02-161 dated August 8, 2003, pages 10-11). Any increase in use of these lots since 1972 has not been formally recognized by the Coastal Commission, and is inconsistent with the Coastal Act.

4.3. The SOL is documented wetlands and should be restored immediately in compliance with the Coastal Act and Clean Water Act, and as partial mitigation for the temporal loss of these wetlands over the past several years and for future impacts.

4.4. Paving the East Parking Lot (EOL) with an all-weather surface would significantly intensify automobile usage of the site by creating a year-round parking lot. The Draft EIR does not disclose that an all-weather surface would allow year-round parking and potentially other uses on the lot, whereas the lot is only approved by the Coastal
Commission for seasonal overflow parking during the fair and racing seasons. The proposed 100’ “ecological setback area” (page 4.1-35) is inadequate to buffer vehicular traffic and other potential high intensity uses from the adjacent wetlands. Also see additional comments under Biology.

4.5. Mitigation for impacts from permanently paving even a portion of the 20-acre EOL that is located within the coastal zone and San Dieguito River Park’s FPA, and next to a lagoon should include an adequate buffer area and the immediate restoration of documented wetland portion of the lot.

4.6. Paving the EOL would also enable the lot to be used for other convention and event related activities. This potential is not disclosed in the DEIR nor does the Master Plan limit the EOL use to seasonal parking. Neither the DEIR nor the Master Plan are clear about what other uses would be anticipated or allowed on the EOL once it is surfaced with all-weather pavement.

Intensification of Land Uses

4.7. The proposed hotel and exhibit buildings represent a convention center complex and a change of use. The project would change the site from low-intensity use most of the year during the 40-week long “interim season” (page 4.1-47) to year-round high intensity uses by adding the proposed convention and trade uses. The impacts from this change in intensity are not adequately disclosed nor mitigated in the Draft EIR.

The existing public use brings huge numbers of people to the Fairgrounds. According to the Master Plan the annual fair has between 40,000 to 60,000 spectators on weekdays and 60,000 to 90,000 on weekends, with peak attendance over 100,000 in a single day, along with 500,000 to 800,000 attendees for approximately 300 yearly events during the non-fair, non-racing season (i.e., interim season) (Master Plan, page 7). 1.2 million people attend the fair during the 22 day run (Master Plan, page 1). The races bring in 700,000 spectators (Master Plan, page 1). In 2006 three million people attended year round events (Master Plan, page 1). The DEIR fails to disclose the intensity of the existing uses. The DEIR and Master Plan fail to disclose what the attendance projections will be at Master Plan buildout. The only information provided is in the traffic analysis, which projects a 20 percent increase in attendees for events during the interim season (DEIR, page 4.2-86). No future increase in fair attendance is projected, although the trend has been for the attendance at the fair to increase each year. According to the Del Mar Fairground website, attendance has gone up approximately 10 percent since 2000.

4.8. This concentration of people in a single location is not consistent with Coastal Act Section 30212.5 which requires public facilities to be distributed to mitigate for overcrowding and overuse. The EIR has failed to identify this impact, instead indicating that the “Coastal Act promotes the concentration of development” (page 4.1-72), citing Policy 30250 which discusses new residential, commercial or industrial development, not new public facilities. The EIR also indicates that the “parking uses” are spread
within the project area at page 4.1-65, without addressing whether the fairgrounds facility itself is a concentration of use.

4.9. The project is misrepresented in the EIR as a continuation of existing uses. Page 4.1-27 falsely describes the 2008 Master Plan project as “a continuation of the existing uses“, rather than a wholesale redevelopment of the entire southwest portion of the property. The Master Plan proposes to continue the high concentration of the public use, significantly increase the intensity of use, and add new land uses. The Land Use Intensification analysis is biased and dismisses all significant impacts with subjective, unsubstantiated statements (pgs. 4.1-27, 4.1-44, and 4.1-47) when in fact the project will significantly increase the intensity of uses. These changes will cause direct harm to the San Dieguito River Park, the fragile coastal lagoon area, and is inconsistent with the San Dieguito River Park Concept Plan and Coastal Act policies.

4.10. The 9 structures proposed to be demolished (254,780 square feet of building space according to Table 8 in the Master Plan) were built 50 to 60 years ago and do not comply with the California Coastal Act. The proposed hotel/exhibit halls represent a significant increase in building coverage, yet the total square feet of new building area is not disclosed in the EIR. A table should be provided in the EIR quantifying the building uses and square feet proposed with a total and a comparison to the existing building areas. New buildings must be designed consistent with the Coastal Act regulations and policies.

4.11. The existing and proposed Fairground uses make it difficult for the public to access the San Dieguito River Park Coast to Crest Trail particularly during the summer season. Any increases in use will likely create additional impediments to public access. Therefore, there is no basis for the conclusion in Table 4.1A on page 4.1-65 that the Master Plan is consistent with Coastal Act Section 30212. The finding that the project does “not block” access is not accurate, and in and of itself is not evidence of consistency with this policy, which requires the provision of public access.

4.12. While it is true that the Fairgrounds is publicly owned and the Fair itself provides a lower cost visitor use (Table 4.1.A), the substantial increase in uses as a result of Fairgrounds Master Plan build-out as currently designed would represent a new barrier to public use of the adjacent Coast to Crest trail and the general public’s enjoyment of the San Dieguito River Park. Mitigation for impacts to the existing recreational uses (i.e., lagoon segment of the Coast to Crest Trail) should include the provision of a dedicated trail parking area and public accessway to maintain and improve public access to the coastal recreational resource. An example of a dedicated public access is the Coastal Rail Trail area between Highway 101 and the railroad tracks in Solana Beach. Signage, a meandering trail, and parking should be provided for the general public rather than a narrow strip behind a proposed hotel. A dedicated trail parking area should also be provided in the northern non-wetland portion of the EOL with a clearly-marked pedestrian access to the existing trail.
4.13. There is no commitment in the Master Plan to restore the south overflow lot, which is only listed as a mitigation “strategy” for a long-term project proposal that may never happen (i.e., parking garage). Future restoration of the SOL as mitigation for a parking structure that may never be approved is no better than the non-existent, delinquent restoration that the 22nd DAA has neglected to implement thus far. In reality this represents a permanent use of the SOL as a parking lot and continual maintenance as such.

4.14. Providing a minimal buffer between sensitive tidal wetlands and high-intensity uses is not a “land use separation benefit” as stated on page 4.1-44 of the EIR, but the absolute minimum typically required by the Coastal Act. The project represents new uses and intensification of existing uses that encroach into the small strip of open space along the river and would permanently change the landscape from low-scale agricultural-style exhibit halls built prior to the establishment of the Coastal Act and San Dieguito River Park to a looming 4-story wall along the river stretching from the railroad tracks to Jimmy Durante Blvd almost one-third of a mile. This represents a substantial change that is inconsistent with the California Coastal Act.

4.15. The JPA is not opposed to the Fairground and racing uses on the property nor to reasonable expansion of those uses, but the Coastal Act gives priority to coastal-dependent uses. The Fairgrounds is not a coastal dependent use and there should be a better balance between the Fairgrounds property and use of the public land for other recreational uses. A greater protection of the lagoon resource along with public access to recreational trails should be balanced with expansion of the Fairgrounds’ use of the property.

4.16. The Coast to Crest Trail is a component of the adopted State Trails Plan and the Fairgrounds redevelopment must include implementation of the trail through its property and evaluate impacts to the trail.

4.17. Claims made on page 4.1-27 that the Master Plan is consistent with the San Dieguito River Park Concept Plan are false. The project in fact significantly impacts the San Dieguito River Park as it represents over-intensification of uses too close to lagoon resources without providing adequate mitigation. The 100-year floodplain and open space corridor are not preserved but would be paved over for permanent parking uses in the case of the EOL and encroached upon by the large-scale hotel that does not respect the visual corridor or sensitive resources adjacent to it.

4.18. The Draft EIR includes the unsubstantiated statement that the project is a “limited encroachment on visual and physical development in the FPA”, when in fact it represents a substantial encroachment. The hotel and new exhibit halls are inconsistent
with Development Standards included in the Concept Plan which address the form, mass and profile of structures to blend and minimize impacts to the viewshed. Please see our comments under Aesthetics below.

5. AESTHETICS

5.1. The statement that there “are no dominating natural features or public viewpoints on site” is false and misrepresents the unique visual character of the area (page 4.5-2). The project site is part of a unique coastal lagoon setting with ocean views (including resources and viewpoints on the project site) and designated wetlands. That setting dominates the site and surrounding area. The San Dieguito River Park and surrounding community have worked for decades to protect this scenic treasure including a substantial public investment of over $18 million to acquire and protect nearby lands to preserve them for future generations. Public agencies like the City of San Diego have also acquired land within the lagoon area and have required that private property owners within the coastal valley dedicate portions of their property to preserve the sensitive resources. The DEIR does not objectively characterize the existing visual and aesthetic setting nor provide a balanced analysis. This is in violation of CEQA Section 15125(c) which states that “special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project”.

5.2. Section 4.5.2 should include a complete description of the project’s setting within the San Dieguito River Park FPA. The FPA is based on the viewshed from the river and the DEIR should describe the project within that context. The FPA boundary is not intended to establish a static demarcation between potentially developable and undevelopable land but instead serves to identify those areas where improper development could significantly impact the existing character of the land. The project site is located in the Del Mar Lagoon area, Landscape Unit A, the western gateway to the San Dieguito River Valley. One of the Special Design Considerations within the Del Mar Landscape Unit is to protect “the sweeping open space views” and that “future development should be compatible with the open space character of the lagoon area in terms of both visual compatibility and intensity of use”. The DEIR fails to adequately describe the important scenic context within which the Fairgrounds lie or evaluate the project impacts within that context.

5.3. The Existing Viewshed Descriptions (pg. 4.5-2) fails to cite the western extent of the Coast to Crest Trail that travels through the southern boundary of the project site (i.e., continues west to Jimmy Durante Blvd.).

5.4. Key View #7 is only taken from one point along the Coast to Crest trail (Fig. 4.5.1), that point is furthest east of the project site and does not fairly or objectively characterize the views from the existing trail. Key views should also include a view from the boardwalk.
trail section on the SOL and views along the river west of Jimmy Durante Blvd where the trail is planned.

5.5. The description of key view #7 is misleading in its treatment of views to the ocean. While whitewater ocean views cannot be seen from that particular location on the trail, near-distant views toward what is obviously the ocean horizon can be seen. Ocean horizon views increase substantially as one travels west along the trail still on Fairgrounds property. This view toward the ocean horizon on the western edge of the Coast to Crest trail is a captivating component of the trail because it represents the “coast” end of the trail. This important visual symbol is not adequately described in the DEIR and additional views should be added from the boardwalk and west of Jimmy Durante Blvd. to further document the true viewshed.

5.6. We agree with the qualifying statement on page 4.5-22 (DEIR, 2nd paragraph) about the limitations of visual simulations, yet much of the analysis and conclusions in this section of the DEIR seem to rest solely on the simulations as erroneous evidence of no impacts. The analysis should include scaled cross sections and line-of-sight diagrams with a clear description and visual analysis of existing and proposed building heights from existing and proposed ground elevations.

5.7. The addition of what is essentially a convention center complex is not a “modification” as described on page 4.5-23, but a wholesale redevelopment of the property adjacent to the river with a substantial increase in scale and massing of buildings. The analysis should reflect that fact. For example, the proposed 4-story hotel/exhibit buildings with the rooftop ballfield lights are out of scale with the surrounding area and would extend higher than most other uses in the area including existing commercial uses. The proposed exhibit halls (3 stories) would be close to double the height of the existing exhibit halls. As pointed out in the DEIR, the existing exhibit halls are mostly low-scale in character. Existing taller structures are significantly farther from the river corridor and primarily along Via de la Valle. The proposed 66-foot high hotel structure would be incompatible with the area particularly so close to the river where no other multi-story structures exist. Adding 70-foot tall rooftop lights would create an additional light envelope above the roofline visually extending the building height by another 70 feet. The impact on the existing river valley character from these dramatic visual changes would clearly exceed the DEIR’s significance threshold 4.5.3 and require mitigation.

5.8. The lighting plan referenced on page 4.5-22 is critical for the analysis and should not be hidden in an appendix since light and glare is a potentially significant impact on the surrounding sensitive habitat.
5.9. The statement on page 4.5-23 “the project site would remain a Fairgrounds and Racetrack facility with implementation of the proposed near-term and long-term projects” is false. Change in use to a year-round convention facility and increased intensity represents a substantial change.

5.10. The Aesthetics section of the DEIR contains vague, dismissive language such as page 4.5-23 which states that the 22nd DAA is “committed to minimize nighttime lighting” from the training facility and other on-site light sources. This language in the DEIR is unsubstantiated, and in fact, contradicted by project elements such as rooftop lighting for recreational facilities. Impacts of night lighting are not clearly documented.

5.11. The analysis of whether the proposed reader board sign will be seen from the Coast to Crest Trail is missing from the DEIR (pg 4.5-23). Mission type architecture does not mitigate the impact of views of the lagoon to the south, or views from the Coast to Crest Trail of the proposed Las Vegas-style electronic, double sided reader board sign. The purpose of the sign is to be seen, and therefore, will impact views from almost any place in the eastern lagoon area.

5.12. The DEIR should analyze alternative locations for the proposed multi-story parking garage where it would have less impact on the visual setting by clustering it with other already developed Fairground uses on the west side of Jimmy Durante Blvd, rather than encroaching into an undeveloped area. The visual impact of this use is not adequately analyzed in the DEIR and alternative project sites should be discussed.

5.13. The proposed lighting of the public trail adjacent to the hotel is inconsistent with the rest of the Coast to Crest trail which is not lighted.

5.14. The DEIR does not specify whether the paved EOL will contain night lighting. The lot is temporarily lit during parking for the fair and horse racing seasons, so is it proposed to be lit during the interim season and if so when and how often? Would night use of the parking lot for exhibits also be allowed? The DEIR is deficient because it does not evaluate these issues. Lighting that illuminates the habitat, particularly during the bird breeding season, represents a significant impact and is not adequately analyzed in the DEIR.

5.15. The statement on page 4.5-25 that views from I-5 are “fleeting” and “not considered to be views of a scenic vista” is incorrect. In fact views from the freeway are long in duration as the freeway approaches the southern edge of the valley and through the scenic lagoon area. This scenic vista has been recognized by Caltrans as it is listed as a potential scenic highway according to this DEIR (page 4.5-28).
5.16. The analysis of adverse effects on scenic vistas is inadequate. The 66-foot tall convention center complex (i.e., hotel and convention halls) will not be screened by a landscaped berm as stated on page 4.5-25. Rather, the hotel will be twice as high as the current exhibit halls and the scale and massing of the structures will be substantially greater and closer to the river than the existing exhibit buildings. The use of “Mission style” architecture is not a mitigation measure and will not mitigate the visual impacts (page 4.5-41). These impacts clearly exceed the significant threshold 4.5.1 and require mitigation.

5.17. The height of the proposed hotel and convention buildings may be inaccurately portrayed in the DEIR. According to the Floodplain Study in Appendix C of the DEIR, the habitable floor elevations of these buildings must be built at least one foot above the 100-year flood surface elevation of 12.5 feet, or an elevation of 14 feet. The existing site elevation is 7 feet according to the Geotechnical Evaluation in Appendix G of the DEIR. Are the proposed building elevations cited in the DEIR taken from the existing grade or the new grade of 14 feet? This lack of information or error would add at least another 7 feet to the height of the proposed buildings as compared to the existing condition. This must be disclosed and clearly described in the DEIR.

5.18. Currently the closest buildings to the river’s north bank within the lagoon area are ¼ mile to 1/3 mile away with the sole exception of the Fairgrounds exhibit halls and associated structures. These represent the only structures protruding into a substantial open space corridor that exists along the entire north side and most of the south side of the river/lagoon for a distance of over two miles. The Fairground structures were built long before the San Dieguito River Park was established. The new greater-intensity uses (convention center complex) will have a significant impact on the Park because instead of the redevelopment of this area contributing to the open space buffer that has been established and protected along the river/lagoon, it will intensify urban development close to the river without mitigation. The 22nd DAA as a state agency controlling 300 acres of public land must mitigate for the impacts caused by such a major intensification of use and must comply with the Coastal Act. Mitigation should include a substantial contribution to the open space greenbelt along the north side of the river thereby furthering the goals of the San Dieguito River Park. A substantial greenbelt should be a highlight of the Fairgrounds Master Plan, instead of the narrow space proposed adjacent to the river filled with uses such as berms, parking, and hotel service roads with a 66-foot tall structure that will cover almost one-third of a mile from the railroad tracks to Jimmy Durante Blvd. The DEIR fails to acknowledge these impacts and is therefore deficient.

5.19. The DEIR claims that because the hotel complex will be shorter than the Grandstand that it would not further obstruct views within and into the river corridor and towards the ocean. This is false. The Grandstand is 900 feet from the river and located in the interior
of the property, while the proposed convention center complex will be almost directly adjacent to the river. The mass and scale will be significantly greater than the existing structures. The DEIR does not adequately demonstrate this. An overlay analysis should be included in the DEIR superimposing the new structures over the existing to show the difference in scale and massing.

5.20. The statement on page 4.5-27 that there are “no other agency-designated scenic resources within a scenic corridor on site” is not true. The JPA is just such an agency with an adopted Concept Plan the purpose of which is to preserve the visual quality of the river corridor. Although most of the Fairgrounds property was developed before the River Park was established, the 22nd DAA proposed new development must now recognize the importance of the Fairgrounds’ setting within the coastal zone and San Dieguito River Park. The substantial redevelopment of the site with new uses must comply with the California Coastal Act and should be consistent with the development standards contained within the Park’s Concept Plan.

5.21. The viewed impact analysis for view #7 from the Coast to Crest trail is inadequate by limiting the view to only that adjacent to the freeway and underestimates the impacts as the trail moves toward the west. View 7 is not a “typical public view from the trail” (as defined on pg 4.5-45) and views from the trail would become increasingly affected by proposed new development on the Fairgrounds. The view from the trail particularly west of Jimmy Durante would change from low-scale agricultural-style exhibit halls to a looming 66-foot tall 4-story complex over the river and trail. The additional 70-foot lighting proposed on the roof would add to the imposing nature of this building, especially at night. Analysis must document the change in land cover/massing between existing and future. Mitigation should include reducing the buildings’ mass and scale and increasing the buffer between the river and the buildings to reduce the visual impact to the public river corridor.

5.22. The analysis incorrectly concludes that views toward the EOL “would not substantially degrade or reduce the visual quality from View 7” because “views would change from a dirt field to paving and bioswales”. The DEIR must disclose that the view would change from a dirt field most of the time to a year-round paved vehicular parking lot with parked vehicles adjacent to the trail on a year-round basis as well as potentially other facilities such as tents, lights, exhibits, and other related structures. This would substantially degrade the visual quality and represents a significant impact that is not mitigated.

5.23. The proposal to place 70’ tall light poles on roof-top sports fields adjacent to the sensitive river and lagoon is not adequately evaluated and mitigated in the DEIR. This proposed project represents a substantial addition of light and glare to the lagoon environment that is not currently there, and the DEIR’s reliance on a lighting plan to
mitigate this impact is not credible and defers mitigation in violation of CEQA Guideline 15126.4(B). In addition, the unclear comparison of foot candle lighting discussed on page 4.5-48 does not add any credible evidence to the impact conclusion. The DEIR also fails to evaluate the fact that the rear of the convention center complex facing the river would be brightly lit at night for security and service reasons as it contains the access road, loading docks, and other service facilities.

5.24. The material to achieve an all-weather surface on the EOL is not defined in the DEIR. A stable natural-looking permeable surface to aid in percolation of surface water should be used. This should occur outside of any delineated wetlands.

6. **BIOLOGY**

6.1. What mechanisms will be put in place to ensure the mitigation measures in the EIR will be carried out and enforced? What role will the 22nd DAA play?

6.2. The biology analysis inadequately characterizes the lagoon and river adjacent to the project site by not defining it as an Environmentally Sensitive Area (ESHA) as defined in Article 5, Section 30107.3 of the Coastal Act.

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

The San Dieguito lagoon and river system adjacent to the Fairgrounds fits squarely within the definition of an ESHA. Coastal lagoons represent only ten percent of their historic range and play a vital role as a refuge and food source along the Pacific Flyway and provide habitat for endangered species. By not adequately characterizing this area as an ESHA, impact thresholds are too high and impacts are understated.

6.3. Furthermore, per Article 5, Section 30240 development adjacent to ESHas “shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas”. The placement of hotel and convention facilities and vehicular uses adjacent to the river and lagoon violate these principles.

6.4. The Biological Resources section of the Draft EIR (section 4.6) mentions indirect impacts to special status species, sensitive habitats, wetlands, and habitat conservation plans from noise and light, but does not quantify the impacts, even though more information about noise and light impacts is provided in sections 4.4 and 4.5 of the DEIR. Information from the Noise and Aesthetics sections should be used in section 4.6.
6.5. The EIR does not adequately evaluate the impact of noise on the lagoon and river emanating from the hotel/convention service facilities and dismisses all operational impacts as insignificant without supporting information. The Project Description states that the western rooftop ballfield may be used for events, which would increase light and noise on the adjacent habitat but this is not evaluated in the DEIR. The Noise section states, “Activities occurring on site, such as the proposed parking lots, the loading docks, and the rooftop events, would be located within 100 ft of the San Dieguito River. At this distance, the noise levels from these activities would range from 64 dBA Lmax from the parking lots to 74 dBA Lmax from the rooftop activities.” This information should be disclosed in the biology section. Some studies have concluded that 60 dBA is a single criterion to use when evaluating impacts to wildlife, in the absence of more specific research. Because the predicted noise levels exceed 60 dBA, a significant impact should be identified, and mitigation should be proposed.

6.6. The DEIR must describe how turning off lights directly adjacent to the lagoon and river at 11pm would mitigate for impacts to wildlife that rely on darkness as cover. Lighting can have significant impacts to nearby habitats and sensitive species. According to significance guidelines in the region for biological resources, the impacts of increases in nighttime lighting include the following: (1) plants depend on darkness for the management of their metabolism; (2) deciduous trees lose their leaves during the fall by the production of hormones that are caused by lengthening nights and do not lose their leaves when light pollution simulates summer’s long days and short nights; (3) animals depend on darkness in order to hunt, conceal their location, navigate, or reproduce, (4) mammals waste energy trying to stay away from lighted areas (5) some physiological processes only happen in the dark, such as resting, repairing, or charging of systems; (6) birds use dark skies to navigate during bi-annual migrations; and (7) migrating birds can become disoriented when they fly through an artificially brightened area. This is not addressed in the DEIR and potential impacts are dismissed with no supporting analysis.

6.7. According to the DEIR, rooftop lights from the Health Club/Sports Training Facility would produce light spillage of up to 0.1 footcandles (fc) along I-5. The light spillage to the San Dieguito Lagoon to the east and south should be quantified and assessed for biological impacts. Since 0.1 foot-candles is 5 times the brightness of moonlight and 500 times the brightness of starlight, it would be a significant increase over natural nighttime conditions. Likewise, the rooftop sports field lighting would generate an additional 0.02 to 0.06 footcandles along the north side of the San Dieguito River. On the north shore, the light created by rooftop sports field lighting would be up to three times the brightness of a full moon, disrupting wildlife for the reasons cited above. This should be identified as a significant biological impact, and mitigation or a reduced project should be proposed. Nighttime lighting will have an even greater impact when combined with the noise generated by the same rooftop events.
6.8. Subjective unsubstantiated statements are used to justify that the project would not impact sensitive species that rely on the lagoon habitat. For example, the argument on page 4.6-43, 4th paragraph implies that the San Dieguito Wetland Restoration mitigation project being implemented by Southern California Edison will mitigate for indirect edge effects caused from the Fairgrounds Master Plan. The DIER states that “sufficient habitat” south of the project site “provides adequate wildlife movement”. What is considered “sufficient” and “adequate”, according to what and to whom, and what measures are used to draw those conclusions? Just because new habitat was created and restored by SCE beyond the project boundary does not make the project’s impacts insignificant. The river habitat narrows west of Jimmy Durante and the proposed expansion of uses will exacerbate impacts. Project-caused indirect edge effects must be mitigated.

6.9. The only proposed mitigation measure that addresses permanent operational impacts is to restore 0.2 acre of the SOL (measure 4.6.7). The other measures only control construction timing and methods. The restoration of 0.2 acre of the SOL is not adequate to sufficiently mitigate for the direct and indirect impacts to an endangered wetland resource from a substantial redevelopment and expansion of the Fairgrounds property. Impacts from noise, lights, air quality, human activity, substantial construction in a floodplain and floodway, and the conversion of jurisdictional wetlands to permanent parking areas are not fully mitigated.

6.10. The basis for use of the SOL for parking is flawed as discussed under our comments in #2 above. The DEIR should disclose the controversy associated with the wetland delineations and identify the loss of this habitat over the years in addition to new impacts from the proposed project. The DEIR is deficient and does not fully mitigate for the temporal loss of wetlands on the SOL or for new impacts.

7. HYDROLOGY AND WATER QUALITY

7.1. According to the DEIR, flow rates at drainage basin 16 (EOL) will increase substantially (72% increase) in the Q2 flow between the existing and proposed condition. The runoff quantity will also increase resulting in a larger ponded area and duration of ponding water on the driving range as stated on page 4.11-57. What is the surface area and depth of the existing pond and future pond area and how long would it remain? Would it potentially extend into the Coast to Crest Trail or the habitat restoration project south of the driving range? Would such a large surface pond become an attractive nuisance and attract sensitive birds and other animals to a polluted area with other dangers such as flying golf balls? Where does the 12” pipe discharge into the river and since the rate of discharge would stay the same (per the DEIR) how would the duration of discharge change between the existing and future condition? Would a longer duration of flow change the vegetation type south of the driving range?
7.2. The DEIR does not contain any information about the quality of the effluent coming from the discharge pipe at basin 16 and whether it would change as a result of the project. Impacts to the lagoon cannot be evaluated without that information. The analysis to determine whether project implementation would degrade water quality (Threshold 4.11.6) is lacking and conclusions are not substantiated.

7.3. Are doors on all four sides of the new structures in the floodway sufficient to call the new buildings “flow-through” (page 4.11-58)? They are not designed like other newer structures located in the floodway along the San Diego River in Mission Valley where expansive openings in the parking areas allow floodwaters to flow through, not just doors that can be easily closed.

7.4. All the mitigation measures listed in Section 4.11 are just compliance with existing regulations and are inadequate to fully mitigate the proposed project.

8. **RECREATION**

8.1. The conclusion that the project would not have a significant impact on existing recreational facilities is false and unsubstantiated. Based on the information in the DEIR, the proposed project would increase the use of the site and the number of people to the area. Many of them would be visitors that would take advantage of recreational facilities in the area specifically the Coast to Crest Trail. But the design does not provide parking for or access to this regional public recreational facility. The DEIR fails to consider these issues and dismisses any impact as insignificant without any analysis. Therefore the DEIR is inadequate.

9. **TRAFFIC**

9.1. Typically, the JPA does not comment on traffic-related issues unless they impact the Park directly. However, existing project site operations are already causing a significant unmitigated impact on the area. The busy Fair and racing seasons already negatively impact Park facilities from gridlock traffic on I-5 and surrounding surface streets to illegal long-term parking at nearby park facilities. In the case of the proposed project, the severe impacts of traffic and air emissions and noise from a considerable increase in traffic may have a significant impact on the health of the sensitive habitat and the enjoyment of the San Dieguito River Park. The Master Plan and DEIR do not address how long-term traffic issues can be effectively addressed except to suggest adding more street lights. This is a major deficiency of the DEIR.
9.2. Access to the existing Coast to Crest Trail would be impacted by the proposed new uses and substantial need for parking to accommodate users. No parking facilities are proposed for the general public trail users. Access to the trail will be walled off by the intensity of uses west of Jimmy Durante Blvd. This is not considered in the DEIR.

9.3. The traffic impact analysis assumes the future widening of El Camino Real and Via de la Valle. The DEIR fails to address the public dialogue that has occurred over the past several years with respect to the future widening of these major roadways and previous positions taken by the JPA and Carmel Valley Community Planning Board regarding the redesign of these widening projects because of their significant impacts to community character. The DEIR does not address how the proposed project will contribute to the need to widen these roadways.

9.4. It appears that one way to reduce the project’s impact on the surrounding community from significant unmitigable traffic impacts is to take a more aggressive role in providing and supporting public transportation. The proposed project mitigation measures to widen surface streets, pave wetlands for parking lots, add a proliferation of streetlights, and build a multi-story parking garage do not address the long-term impacts of these measures on sustainability of the site and the surrounding sensitive resources and community character. This represents a significant long-term impact and irreversible environmental change that is not adequately addressed in the DEIR.

9.5. Consideration and evaluation of improving access to the project site is absent from the Master Plan and DEIR. The only proposed public transit component is a possible train platform that is only addressed as a long-term project with no strategy presented on how that project will be implemented. The seasonal trail platform must be given a higher priority and should be part of a reasonable mitigation package.

10. The Alternatives analysis fails to consider a true range of alternatives that would meet the project objectives.

Section 5.4.2 Alternate Locations should consider separating uses to reduce overcrowding and overconcentration of uses on the Fairgrounds property. The significant impacts that will be caused by this project largely stems from combining too many high-intensity uses on one site that is constrained by its existing setting. For example, the Del Mar Fair use itself could be moved to an alternate location that would have fewer impacts on the surrounding built-out community and on the adjacent sensitive natural resources.
CONCLUSION

The San Dieguito River Park JPA would like to see the DEIR substantially revised to consider and evaluate the issues raised in our letter. The JPA will stay engaged in the Fairgrounds Master Plan EIR process and looks forward to a timely response.

Sincerely,

Pam Slater-Price
Pam Slater-Price, District 3 County Supervisor
JPA Chair

Cc: Senator Christine Kehoe
    California Coastal Commission staff
    City of Del Mar
    City of Solana Beach
    City of San Diego Council offices
    County of San Diego, Supervisors
    Carmel Valley Community Planning Board
    Torrey Pines Community Planning Board
United States Department of the Interior
FISH AND WILDLIFE SERVICE

FISH AND WILDLIFE ENHANCEMENT
SOUTHERN CALIFORNIA FIELD STATION
Laguna Niguel Office
Federal Building, 24000 Avila Road
Laguna Niguel, California 92656

June 15, 1990

Colonel Charles Thomas
District Engineer
Los Angeles District, Corps of Engineers
P.O. Box 2711
Los Angeles, California 90053-2325

Attn: Robert Smith, Regulatory Branch

Re: Unauthorized Fill at San Dieguito Lagoon, City of Del Mar, California

Dear Colonel Thomas:

This letter addresses an alleged violation of Section 404 of the Clean Water Act. On June 9, 1990, Fish and Wildlife Service (Service) biologist Nancy Gilbert was contacted by Glen Greenwalt, a private citizen, regarding the grading and leveling of a saltmarsh located on the north shore of the San Dieguito Lagoon immediately adjacent to Jimmy Durante Boulevard within City of Del Mar, San Diego County California (attached map).

Ms. Gilbert field inspected the site on June 9, 1990, and was informed by Mr. Greenwalt that the grading of the site had begun late Friday afternoon (June 8) and continued through Saturday. The site was inspected late Saturday around 5:30 p.m. and work had ceased for the day. Two graders and one D-8 bulldozer were parked on the site. The grading and leveling appeared to be nearly complete. Enclosed are photographs of the on-going grading and leveling of the site. Land levelers were utilized as well as graders. These photos were taken near the completion of work by Mr. Greenwalt. The subject site is owned and the grading work was performed by the 22nd District Agricultural Association (District).

Fish and Wildlife Service staff had previously visited the project site approximately 2 weeks prior to the site being graded. At that time, the site could be delineated into two areas separated by both a berm and a fence. The site immediately adjacent to the San Dieguito River is approximately 4 acres in size and consisted of saltmarsh and salt pan. The salt marsh vegetation was predominantly pickleweed (Salicornia virginica). Frankenia grandifolia and saltgrass (Distichlis spicata) were also present. The sandy areas contained numerous shallow
Colonel Thomas

depressions or salt pans where salt from evaporated water could be observed. Water ponded regularly on this site in the winter rainy season.

Following the initial site inspection (prior to the grading) Ms. Gilbert informed Trish Butler that she had inspected the site and that the 4 acre and portions of the 12 acre site met the Federal definition of wetland or waters of the United States and that any discharge of fill material falls within the jurisdiction of the U. S. Army Corps of Engineers (Corps). We recommended that the District contact the Corps to determine their jurisdiction over the project site.

Much of the San Dieguito Lagoon is a California Department of Fish and Game Ecological Reserve. The wetlands and open water areas of the lagoon are valuable foraging and loafing areas for large flocks of the federally endangered California least terns (Sterna antillarum browni). The Recovery plan for the least tern specifies that lack of suitable, protected nesting areas at this lagoon have been the limiting factor in tern use of this area. The California salt marsh provides nesting habitat and the saltpan is foraging habitat for the State listed endangered Belding's Savannah Sparrow (Passerculus sandwichensis beldingi). The fill site has been used in the past as a California least tern nesting site and prior to the grading was known to be occupied by the Belding's Savannah Sparrow.

It is the Service's understanding that the California Department of Fish and Game and the District have entered into an agreement regarding the subject site. The Service was not party to that agreement nor do we concur with any agreement which results in the net loss of scarce coastal salt marsh wetland. To the best of our knowledge no California Environmental Quality Act documents or State Endangered Species Act consultations have been prepared nor has a California Coastal Commission permit been issued for the grading of this site.

Based on existing habitat values, the presence of Federal and State listed endangered species, the magnitude of the impact to scarce saltmarsh wetland resources and the knowing violation of the activity, the Service request that these activities be immediately investigated. The Fish and Wildlife Service considers the grading and leveling of this site to be a violation of the Clean Water Act. We recommend that you initiate an enforcement action and a restoration-order.

The Service recommends that you proceed with the following course of action:

1. Issue cease and desist orders immediately to prevent further destruction/degradation of public fish and wildlife resources. Restrict any parking or use of the site until a
thorough investigation has been completed and restoration areas identified. Parking should not be allowed on any area that is in violation of the Clean Water Act.

2. Contact the responsible parties (22nd District Agricultural Association) and inform them of their obligation to conform with the requirements of the Clean Water Act and the Endangered Species Act, as well as the legal penalties associated with non-compliance.

3. Meet with Service staff to coordinate informing the responsible parties about the Endangered Species Act.

4. Prescribe corrective action within a restoration order as allowed for under 33 CFR Part 326.3(c)(2). The restoration order should require the removal of the fill, recontouring to restore the site to its original condition, revegetation of the salt marsh component of the site, and establish a revegetation success criteria and a mitigation monitoring program.

5. Establish a time frame in which the restoration of the site must be completed.

6. Initiation of Formal Consultation with the Service, pursuant to Section 7 of the Endangered Species Act should be considered.

7. If the 22nd Agricultural District refuses or fails to undertake the prescribed corrective actions ordered or refuses to accept a conditioned permit, we believe legal action should be initiated in accordance with 33 CFR 326.5.

The Service is willing to provide additional assistance to resolve this matter. If you have any questions please contact Nancy Gilbert of my staff at (714) 643-4270.

Sincerely,

Brooks Harper  
Office Supervisor

Enclosure

cc: EPA, San Francisco, CA (Attn: R. Leidy)  
CDBG, Long Beach, CA (Attn: L. Sitton)  
CDBG, San Diego, CA (Attn: T. Stewart)  
CCC, San Diego, CA (Attn: E. Lirley)
INTERIM LEAST TERNS NESTING SITE

Note: Final configuration will be subject to DFG approval and will be 4 acres in size.