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STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE

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August 19, 2026

Laura Stokes
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SUBJECT: DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE LEGACY RANCH PROJECT, SCH NO. 2025110456, ORANGE COUNTY, CA

Dear Laura Stokes:

The California Department of Fish and Wildlife (CDFW) reviewed the Draft Environmental Impact Report (DEIR) from the City of San Juan Capistrano (City) for the Legacy Ranch Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines[1]. The DEIR's supporting documentation includes a Biological Resources Assessment (Appendix E).

Thank you for the opportunity to provide comments and recommendations regarding Project activities that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to comment on those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish,

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Fish & G. Code, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law[2] of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) or the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

CDFW also administers the Natural Community Conservation Planning program (NCCP), a California regional habitat conservation planning program (Fish and Game Code 2800 et seq.). Although the City of San Juan Capistrano is not a permitted jurisdiction or a participating entity, the Project is within the Planning Area of the Coastal Subregion of the Orange County Central-Coastal Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP).

PROJECT DESCRIPTION SUMMARY

Proponent: Legacy Ranch Partners, LLC (LRP)

Objective: The objective of the Project is to construct and develop an event and rodeo space known as Legacy Ranch. Project features include 149 full-time boarding stalls that could accommodate horses or cattle (17,600 square feet); several independent smaller structures; a covered riding and roping area (55,000 square feet); a warm-up area (33,600 square feet); an equestrian trailer parking and loading area; a stage and audience stands for a maximum of 2,500 spectators; agricultural orchards; row crops; farm stands; a chapel (3,000 square feet) and associated 49 parking spaces; a ranch house (6,300 square feet) and associated restroom (1,000 square feet); and additional event spaces for live

[2] "Take" is defined in Section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

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entertainment. The Project also includes a new food service area (2,500 square feet) within the existing dog park and development of 162 associated parking spaces. The Project would build a pedestrian bridge over Trabuco Creek, spanning through a conservation area protected by a Restrictive Covenant, to connect the central part of the Project site to a new community building and parking lot. To achieve this, the Project would amend current setbacks detailed in the development standards of the Northwest Open Space (NWOS) Specific Plan for additional areas to construct playgrounds, public restrooms (up to 1,500 square feet), signage, and shade structures.

Primary Project activities include site preparation, installation of utilities, paving, building construction, landscaping, architectural coating, excavation, grading, and developing internal dirt roads to asphalt roads to provide access to parking areas.

Three alternatives to the proposed plan above – one no-build alternative (Alternative 1) and two build alternatives (Alternatives 2 and 3) – are under consideration and described below:

- **Alternative 1 – No Build:** Alternative 1 (the no-build alternative) does not include any construction or development of Legacy Ranch.
- **Alternative 2 – Reduced Intensity Alternative:** Alternative 2 would reduce the number of horse/cattle stalls from 149 to 90. All other aspects of development would remain the same.
- **Alternative 3 – Partial Residential Development Alternative (Market Rate Housing):** Alternative 3 would include development of 138 market rate housing units east of Trabuco Creek rather than construction of a new community building and 85 parking spaces. The remainder of the project site would be developed the same.

Location: The approximately 65.5-acre site is located at 30291 Camino Capistrano in San Juan Capistrano (City), within the City-designated NWOS Specific Plan Area. The Project site is bound by single-family residential uses to the north, Camino Capistrano and the Interstate 5 freeway to the east, The Groves Apartments (multi-family residential) to the south, and an Orange County Transportation Authority-owned rail line to the west. Access is provided by Interstate 5 east of the site, with direct access via Camino Capistrano. Trabuco Creek and the Trabuco Creek Trail traverse the Project site, parallel to Camino Capistrano.

Biological Setting: The Project site encompasses a variety of vegetation communities, many of which are disturbed (Table 1).

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Vegetation or Land Cover Type	Total Vegetation on Project Site (Acres)	Sensitive Natural Community (Yes/No)
Scrub		
Sagebrush–Buckwheat Scrub	3.81	No
Sagebrush Scrub	0.42	No
Coyote Brush Scrub	0.14	No
Encelia Scrub	1.13	**Yes**[1]
Sage Scrub–Grassland Ecotone	0.19	No
Subtotal	*5.69*	
Grassland		
Ruderal	26.91	No
Subtotal	*26.91*	
Riparian		
Willow Riparian Scrub	0.56	**Yes**
Disturbed Mulefat Scrub	0.06	No
Sycamore Riparian Woodland	4.48	**Yes**
Coast Live Oak Riparian Forest	2.60	**Yes**
Arroyo Willow Riparian Forest/Black Willow Riparian Forest	1.38	**Yes**
Subtotal	*9.08*	
Woodland		
Coast Live Oak Woodland	2.90	No
Coast Live Oak Woodland/Ruderal	2.40	No
Mexican Elderberry Woodland	0.13	**Yes**
Subtotal	*5.43*	
Watercourses		
Flood Control Channel	1.27	--[3]
Subtotal	*1.27*	
Agriculture		
Irrigated Agriculture	1.18	--
Subtotal	*1.18*	
Developed		
Rural	12.01	--
Ornamental Landscaping	1.60	--
Subtotal	*13.61*	
Disturbed		
Cleared or Graded	2.30	--
Subtotal	*2.30*	
Total	***65.47***	--

Source: LSA (2026).

[1] On the project site, this vegetation type appears to be planted revegetation

[2] Provisional: A vegetation type has been proposed based on limited data (few recorded occurrences), but requires further research to validate that the limited occurrences are based on its rarity rather than lack of data.

[3] Not applicable; nonnative vegetation and developed land covers are not included on the List of Sensitive Natural Communities.

Table 1. Vegetation Communities and Land Cover Types Within the Project Site. Referenced from Table 4.3.A of the DEIR (p. 4.3-3).

The central portion of the site appears to be routinely cleared of vegetation and consists primarily of non-native herbaceous forbs such as mustard (*Brassica* spp.) and daisy (*Glebionus* spp.) under an open overstory of native and non-native trees-- primarily coast live oak (*Quercus agrifolia*). Coastal sage scrub and coast live oak woodland vegetation types are present in upland areas along both sides of Trabuco Creek Trail, on the upper banks of Trabuco Creek, and in an unnamed tributary to Trabuco Creek located on the eastern

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portion of the Project site. While invasive plants have infested large areas of the site's upland habitat, healthy populations of coastal sage scrub persist on and adjacent to the site.

The riparian portion of the Project site is along Trabuco Creek (Creek) and its associated transitional zones. Trabuco Creek is channelized in the upstream portion where it crosses underneath Interstate 5 in a culvert. The Creek then flows through an unchannelized, soft-bottom channel as it passes through the site, providing year-round flow of water and a natural riparian environment that supports a diverse range of sensitive plant and wildlife species. Vegetation on the creek banks and within the stream channel is a mix of native and non-native species. Native vegetation primarily consists of mule-fat (*Baccharis salicifolia*), willow scrub including black willow (*Salix gooddingii*) and arroyo willow (*Salix lasiolepis*), and Western sycamore trees (*Platanus racemosa*).

Several plant and wildlife species of potential concern may be present on or near the site, including the following (species marked with an asterisk were observed during surveys in June 2025 or 2026, though not all surveys had been conducted before the DEIR was made available):

Plants

- *San Diego sagewort (*Artemisia palmeri*, California Rare Plant Rank (CRPR) 4.2)
- *Paniculate tarplant (*Deinandra paniculata*, CRPR 4.2)
- *Coulter's matilija poppy (*Romneya coulteri*, CRPR 4.2)
- *Fragrant pitcher sage (*Lepechinia fragrans*; CRPR 4.2)
- *Southwestern spiney rush (*Juncus acutus ssp. leopoldii*, CRPR 4.2)
- *San Diego viguiera (*Bahiopsis laciniata*, CRPR 4.3)
- White rabbit-tobacco (*Pseudognaphalium leucocephalum*, CRPR 2B.2)

Invertebrates

- *Crotch's bumble bee (*Bombus crotchii*; CESA candidate species)
- Monarch butterfly (*Danaus plexippus Plexippus*; federally proposed threatened)

Fish

- Southern California steelhead (*Oncorhynchus mykiss;* ESA-listed endangered, CESA-listed endangered)
- Arroyo chub (*Gila orcutt*; SSC)
- Pacific lamprey (*Entosphenus tridentatus*; SSC)

Birds

- *Coastal California gnatcatcher (*Polioptila californica californica*; ESA-listed threatened; SSC)

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- Least bell's vireo (*Vireo bellii pusillus*; ESA-listed endangered, CESA-listed endangered)
- Cooper's hawk (*Astur cooperii*; CDFW Watch List Species (WL))
- White-tailed kite (*Elanus leucurus*; State Fully Protected Species)
- *Yellow warbler (*Dendroica petechia*; SSC)
- *Yellow-breasted chat (*Icteria virens*; SSC)
- Burrowing owl (*Athene cunicularia*; CESA candidate species)
- Long-eared owl (*Asio otus*; SSC)
- Southwestern willow flycatcher (*Empidonax traillii extimus*; ESA-listed endangered, CESA-listed endangered)
- Loggerhead shrike (*Lanius ludovicianus*; SSC)
- California horned lark (*Eremophila alpestris actia*; WL)
- Southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*; WL)

Amphibians/Reptiles

- *Southwestern pond turtle (*Actinemys pallida*; federally proposed threatened, SSC)
- Western spadefoot (*Spea hammonidii*; federally proposed threatened, SSC[3])

The Project area contains a conservation area protected by a 2013 Declaration of Covenants and Restrictions for the 2C Ranch/Trabuco Creek Habitat Restoration Project (Restrictive Covenant; Attachment C), which serves as mitigation for Orange County Transit Authority's Measure M NCCP/HCP. The purpose of this Restrictive Covenant is to preserve the natural open space in perpetuity for the benefit of biological resources.

The DEIR proposes implementation of Mitigation Measures BIO-1 through BIO-17, Regulatory Compliance Measures HYD-1 through HYD-3, and Mitigation Measure HYD-1 to reduce potential impacts to these species to less than significant.

Project History: CDFW reviewed the Notice of Preparation (NOP)and Initial Study for the Project and submitted a comment letter to the City on December 15, 2025 (Attachment B). Our NOP letter requested additional information about the Restrictive Covenant (referred to as the "conservation covenant" or "conservation easement" in the NOP letter), that the DEIR include mitigation measures which explicitly require avoidance of the Restrictive Covenant area, and details as to how Project activities are compatible with the allowable and prohibited uses of the property. In addition, the NOP letter recommended minimization and

[3] The Fish and Game Commission advanced western spadefoot to candidate status under CESA on August 13, 2026.

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avoidance measures for Crotch's bumble bee, special-status birds and raptors, nesting birds and cumulative impacts.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Additional comments or other suggestions are also included to improve the document.

COMMENT # 1: No Coverage under the Central/Coastal NCCP/HCP

Issue: The City has no take authorization under the Orange County Central-Coastal NCCP/HCP and the Project could have a substantial effect, either directly or through habitat modification, on a species identified as a candidate, sensitive, or special status by CDFW.

Specific impact: Although the Project occurs within Orange County Central-Coastal NCCP/HCP plan area, it is not subject to the provisions and policies of the NCCP/HCP because the City is neither a participating entity nor non-participating landowner. The DEIR incorrectly relies on requirements of the Orange County Central and Coastal NCCP/HCP to reduce project impacts on sensitive and special status species to a level below significant. Thus, enforceable measures to ensure the protection of sensitive species are not appropriately disclosed.

Why impact would occur: Project activities include ground disturbance, vegetation removal, and other construction activities that could impact special status species, such as western spadefoot, least Bell's vireo, and California gnatcatcher, either directly through injury or mortality or through habitat modification. The NCCP/HCP does not include the City as a participating entity as neither a local government signatory, participating landowner, nor non-participating landowner (pp. ES6-ES8). However, in Section 4.3.6 Project Impacts, the DEIR states that the City is afforded coverage. Throughout the DEIR, mitigation measures to reduce significant impacts to species are not required due to provisions of the NCCP/HCP (e.g., western spadefoot, p. 4.3-30). Given that NCCP/HCP coverage is not extended to non-participating entities, the Project Proponent must address their take through other pathways (i.e., FGC §§ 2080-2081).

Evidence impact may be significant: The Central and Coastal NCCP/HCP establishes a multiple species conservation program to minimize and mitigate habitat loss and provides for

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the incidental take of covered species in association with activities covered under the permit. The Project is not a covered activity and thus is not afforded the benefits of the provisions under the NCCP/HCP (such as payment of an in-lieu fee to Natural Communities Coalition) to reduce significant impacts to sensitive species and their habitats.

Public agencies have a duty under CEQA to prevent significant, avoidable damage to the environment by requiring changes in a Project through the use of feasible alternatives or mitigation measures (CEQA Guidelines, §§ 15002(a)(3), 15021). All phases of Project planning, implementation, and operation must be considered in the initial study of the Project (CEQA Guidelines § 15063(a)(1)). Additionally, impacts to CESA-listed species and their habitat meet the definition of endangered, rare, or threatened under CEQA (CEQA Guidelines § 15380). Impacts to CESA listed species and their habitats may result in a mandatory finding of significance because the Project has the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species (CEQA Guidelines § 15065).

Because of the DEIR's erroneous reliance on provisions of the NCCP/HCP, the potential of the Project to impact special status species has not been evaluated. These effects have not been disclosed, evaluated, or mitigated.

Recommended Potentially Feasible Mitigation Measure(s)

CDFW requests the following recommendations are incorporated into the final CEQA document:

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Recommendation #1: NCCP Coverage Re-analysis. CDFW strongly recommends that the City restate its relationship to the Orange County Central/Coastal NCCP/HCP such that it is clear the City has no actual take authorization per the Plan. This includes editing and amending the Project description, Biological Resources Assessment, and all mitigation measures which state that the City has coverage under the Plan, and clarifying the Project does not have NCCP/HCP coverage. Species- specific impacts that need to be re-analyzed and discussed include but are not limited to: western spadefoot, coast horned lizard, orange-throated whiptail, coastal whiptail, red-diamond rattlesnake, southern California legless lizard, California glossy snake, coastal California gnatcatcher, least Bell's vireo, southwestern willow flycatcher, and San Diego desert woodrat. This analysis should include how impacts will be made less than significant with mitigation without regional plan coverage.

COMMENT # 2: Restrictive Covenant and Lake and Streambed Alteration Program Resources Impacts

Issue: The Project's pedestrian bridge installation will impact the Restrictive Covenant area which serves as mitigation for Orange County Transit Authority's Measure M NCCP/HCP. Impacts will occur to resources within the Restrictive Covenant area, including Trabuco Creek and its associated natural communities. The proposed bridge is within an area subject to CDFW's Lake and Streambed Alteration Program regulatory authority. As designed, these impacts could be potentially significant.

Specific impact: CDFW is concerned that bridge construction will result in impacts to the creek and sensitive species, as well as encroach into the riparian zone that is protected under the Restrictive Covenant. The purpose of the Restrictive Covenant is to maintain the preserved area in a natural condition for preservation and enhancement of native species and their habitats. Project construction, development of a pedestrian bridge over Trabuco Creek, and ground-disturbing activities (e.g., pile-driving, equipment staging, mobilization, and road expansion) on both sides of the Restrictive Covenant area will result in fugitive dust, runoff, and encroachment on Trabuco Creek.

Why impact would occur: The DEIR states that the proposed strategies for construction of a pedestrian bridge would impact Trabuco Creek. Pile driving adjacent to the Restrictive Covenant area has the potential to negatively impact species utilizing Trabuco Creek through increased noise and vibration which could result in temporary or permanent displacement of the sensitive species from this section of Trabuco Creek. Pollution of the creek might occur due to 1) dirt, sediment, dust, and other materials being introduced to the

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creek during construction, 2) runoff from nearby equestrian or agricultural facilities polluting creek waters, or 3) increased trash and waste due to increased human access to the site and 4) increased noise and vibration due to increased foot traffic during and after construction. Facilitating public access over the creek would expose currently inaccessible, sensitive areas to increased human and dog disturbance, trash-related predator attraction, habitat pollution, and other anthropogenic stressors that could result in substantial direct or indirect adverse biological impacts. CDFW requests the Project proponent notify CDFW pursuant to Fish and Game Code 1602 and obtain an LSA Agreement from CDFW prior to Project activities.

Evidence impact would be significant: The terms of the Restrictive Covenant directly conflict with the Project activities. The Restrictive Covenant expressly prohibits, "…construction, reconstruction, or placement of any building, sign, structure, or other improvement" on the property (Attachment C, p. 4). Though the Project avoids construction within the Restrictive Covenant, CDFW concurs with the United States Fish and Wildlife Service (USFWS) that construction of a bridge over the preserved area of the creek is not compatible with the stated purposes of the Restrictive Covenant.

CDFW exercises its regulatory authority as provided by Fish and Game Code section 1600 et seq. to conserve fish and wildlife resources which includes rivers, streams, or lakes and associated Sensitive Natural Communities. Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following:

1) Divert or obstruct the natural flow of any river, stream, or lake;
2) Change the bed, channel, or bank of any river, stream, or lake;
3) Use material from any river, stream, or lake; or,
4) Deposit or dispose of material into any river, stream, or lake.

The Project may adversely affect Trabuco Creek along the eastern boundary of the Project site. Inadequate avoidance and mitigation measures will result in the Project continuing to have a substantial adverse direct and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW.

Recommended Potentially Feasible Mitigation Measure(s):

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CDFW requests the following recommendations and mitigation measures are incorporated into the final CEQA document:

Recommendation #2: Project Redesign – CDFW supports the removal of the proposed pedestrian bridge over the creek and recommends evaluation of enhancing pedestrian paths along the existing Camino Capistrano bridge instead. Avoidance of impacts to the Restrictive Covenant areas, Trabuco Creek, and Trabuco Creek Trail will substantially reduce impacts to biological resources within the Project area and circumnavigate conflicts with the Restrictive Covenant's prohibited uses.

Mitigation Measure #1: LSA – The Project proponent shall notify the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code 1602 and obtain an LSA Agreement from CDFW prior to Project activities. The LSA Notification shall include a hydrology report to evaluate whether altering streams within the Project site may impact hydrologic activity. The hydrology report shall also include a hydrological evaluation of any potential scour or erosion at the Project site due to a 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions. Please visit CDFW's Lake and Streambed Alteration Program[4] webpage for more information (CDFW 2024).

Mitigation Measure #2: Compensatory Mitigation – If impacts to streams are not avoided, the City shall provide compensatory mitigation for impacts on streams and associated plant communities. Any off-site mitigation shall occur where a stream supports the same plant communities impacted by the project and preferably within the same watershed.

COMMENT # 3: Brown-headed Cowbirds and Equestrian-Related Water Quality

Issue: CDFW is concerned about increased depredation of nestling birds due to increased numbers of brown-headed cowbirds (*Molothrus ater*; cowbirds) at the site due to increased use of the site by horses and cattle. Additionally, the proposed equestrian facilities will increase stream pollution caused by runoff water from barnyards, feed lots, and manure storage facilities proposed for the site. Increased use of herbicides, pesticides, and fertilizer in agricultural areas may contribute to pollution via rainwater runoff.

Specific impact: With the Project's increased use of the site by horses and cattle, the potential for increased cowbird parasitism on least Bell's vireo and coastal California gnatcatcher may be significant. The reproductive success and productivity of sensitive bird

[4] https://wildlife.ca.gov/Conservation/LSA

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species is detrimentally impacted by brown-headed cowbird, a brood parasite that lays its eggs in the nests of other species of small passerines, rather than building its own nest. The host birds unknowingly raise the cowbird chicks, often at the expense of their own young, whose eggs are pushed out of the nest by the larger cowbird fledgling. Brown-headed cowbird parasitism of least Bell's vireo nests may exceed 42 percent in some locations (Kus 1999). Areas bordered by equestrian centers, golf courses, and lands used for agricultural, residential, and commercial development are attractive to cowbirds and have traditionally been difficult to manage with regard to cowbird control (Kus 1999). In addition, runoff from livestock and orchard operations may result in fish mortality, unsightly floating debris, and contamination of Trabuco Creek. Downstream pollution due to animal waste will increase as the number of equine or cattle using the site increases.

Why impact would occur: The proposed equestrian and agricultural facilities may increase the local cowbird population, resulting in reduced reproductive success for least Bell's vireo, coastal California gnatcatchers, yellow warbler, yellow-breasted chat, southwestern willow flycatcher, southern California rufous-crowned sparrow, and other native birds. Use of herbicides might negatively impact native species of vegetation by resulting in reduced health of individual plants and impacts to seed development and fertilization, resulting in loss of individuals and population decline. Use of pesticides may result in direct mortality of native invertebrates including Crotch's bumble bee and other pollinators, which in turn would impact species of fish, birds, herpetofauna, and mammals that prey on invertebrates within and around the Project site. Fertilizer runoff into Trabuco Creek might contaminate riparian ecosystems downstream.

Evidence impact would be significant: CDFW considers adverse impacts to a species protected by CESA, absent appropriate mitigation, to be significant under CEQA. Under CESA, take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9).

CDFW considers impacts to CESA-listed species a significant direct and cumulative adverse effect without implementing appropriate avoidance and/or mitigation measures. In addition, nests of all native bird species are protected under State laws and regulations, including Fish and Game Code, sections 3503 and 3503.5. Inadequate avoidance and mitigation measures could result in continual substantial adverse direct and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species by CDFW or

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any species identified as a special status species by USFWS.

Mitigation Measure HYD-1: Equestrian-Related Water Quality Best Management Practices (BMPs) does not address brown-headed cowbird impacts due to boarding and increased use of horses and cattle on the Project site. While the BMPs include guidance regarding 1) grooming and washing, 2) manure collection, storage and disposal, and 3) buffer areas and facility designs, these measures would not prevent cowbird population growth because access to seeds and insects found in horse and cattle scat would continue to provide a rich source of food. Cowbird trapping on an ongoing basis to manage cowbird populations is recommended to reduce the impact to native birds to less than significant.

Recommended Potentially Feasible Mitigation Measure(s):

CDFW requests the following recommendations and mitigation measures are incorporated into the final CEQA document:

Recommendation #3: Cowbird Trapping Program – CDFW concurs with the USFWS that the Project should incorporate measures to offset an expected increase in cowbirds in the project vicinity. Implementing cowbird trapping as part of routine, long-term, ongoing maintenance of the site would help to offset the associated impacts to adjacent least Bell's vireo, coastal California gnatcatcher, southwestern willow flycatcher, yellow warbler, yellow-breasted chat, and other native bird populations.

Recommendation #4: Equestrian BMPs – CDFW recommends the City implement practices such as fencing livestock away from watercourses, managing soil to reduce erosion, using buffer strips of native vegetation along outskirts of livestock facilities, ensuring proper manure management, evaluate use of retention ponds, and take additional measures to prevent livestock runoff into Trabuco Creek and adjacent habitats and streambeds.

COMMENT # 4: Impacts to Southwestern Pond Turtle

Issue: The Project may continue to have a significant impact on southwestern pond turtle.

Specific impact: CDFW considers the site occupied by southwestern pond turtle; therefore, any impacts caused by Project construction and activities occurring during the breeding season could impact southwestern pond turtle directly or by degrading upland nesting habitat on stream or pond margins as a result of altering hydrologic conditions. Impacts to southwestern pond turtle could result in southwestern pond turtle in changes in behavior

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associated with shifts in habitat use, making them more vulnerable to injury, mortality or predation. Behavioral changes can also affect breeding activities and nesting disruptions. Impacts and disruptions to nests can cause mortality to females, eggs, or hatchlings. These impacts could result in population decline of a SSC.

Why impact would occur: The Project would impact southwestern pond turtle. Page 4.3-30 in the DEIR states, "[t]he southwestern pond turtle (*Actinemys pallida*) was observed along Trabuco Creek during focused surveys in 2026. Although the proposed project has been designed to avoid impacts on Trabuco Creek, with only minor impacts occurring on the upper banks along the edge of Tributary 1 and for placement of footings for the bridge over Trabuco Creek, the southwestern pond turtle could occur in the upland habitats adjacent to the creek and could be directly impacted by construction activities. Additionally, proposed project activities have the potential to affect water quality along the creek, including runoff from agricultural and equestrian uses, resulting in a potentially significant impact." Construction of a pedestrian foot bridge could impact southwestern pond turtle directly by killing, injuring, or disrupting breeding individuals, or through habitat modification.

Because one southwestern pond turtle was observed in June 2026 and there are documented nearby occurrences in Oso Creek, Aliso Canyon, Cristianitos Canyon, Salt Creek, Sulphur Creek, and San Mateo Creek (CNDDB 2026), we encourage the City to disclose the presence of this species in the final EIR.

Evidence impact would be significant: A SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- is listed as ESA-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;
- is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or
- has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status (CDFW 2022b).

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Impacts to a SSC could require a mandatory finding of significance under CEQA (CEQA Guidelines, § 15065). Impacts on southwestern pond turtle, either directly or indirectly through habitat modifications, would be a significant impact. The Project's impact on southwestern pond turtle has yet to be mitigated below a significant level. Accordingly, the Project continues to have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species by CDFW.

Recommended Potentially Feasible Mitigation Measure(s):

CDFW requests the following recommendations and mitigation measures are incorporated into the final CEQA document:

Recommendation #5: CDFW recommends that southwestern pond turtles are assumed to be present at the time of construction of the Project, and appropriate mitigation measures and Best Management Practices for pond turtles be incorporated into the final EIR. Such measures are required to maintain essential habitat, undisturbed conditions, and unpolluted waters in this natural stretch of Trabuco Creek for these species and avoid potential take of undetected individuals or their eggs.

COMMENT # 5: Impacts on Rare Plants and Sensitive Natural Communities

Issue: The Project may have ongoing impacts on rare, threatened, and endangered plants as well as Sensitive Natural Communities.

Specific Impact: The Project could result in the loss of individuals and populations of rare, threatened, and endangered plants including, but not limited to: San Diego sagewort paniculate tarplant, Coulter's matilija poppy, fragrant pitcher sage, southwestern spiney rush, San Diego viguiera, and white rabbit-tobacco. In addition, the Project could result in the loss of Sensitive Natural Communities including but not limited to: Encelia scrub (1.13 acres), willow riparian scrub (0.56 acres), sycamore riparian woodland (4.48 acres), coast live oak riparian forest (2.60 acres), arroyo willow riparian forest/black willow riparian forest (1.38 acres), and Mexican elderberry woodland (0.13 acres). Additional vegetation and land cover types, such as coast live oak Woodland (2.90 acres) and coast live oak woodland/ruderal (2.40 acres), are present on the Project site and are not considered CDFW Sensitive Natural Communities. However, these remain ecologically important and relatively rare for the region.

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Why impact would occur: The Project would result in direct physical changes to the environment (e.g., grading, excavating, laying concrete foundation, paving, trenching, drilling, jackhammering, and blasting). The Project could remove rare plants and habitat supporting rare plants. In addition, the Project could impact habitat supporting rare plants and Sensitive Natural Communities by introducing edge effects. Edge effects that could impact rare, special status, and sensitive biological resources include encroachment, introduction of non-native plants and pests (e.g., Argentine ants), increasing fire risk, and fuel modification.

The DEIR provides Mitigation Measure BIO-1 that would require the development of a mitigation plan for impacts on special-status plants. However, the Project's impact on rare, threatened, and endangered species does not completely address potential impacts because it relies on translocation. CDFW generally does not support the use of translocation, relocation, or salvaging plants as the primary mitigation strategy for unavoidable impacts to rare, endangered, and threatened plants. Studies have shown that these efforts are experimental and the outcome unreliable (CNPS 1998). CDFW has found that permanent preservation and management of habitat capable of supporting these species is often a more effective long-term strategy for conserving sensitive plants and their habitats. Additionally, rare, endangered, and threatened plants are habitat specialists that require specific habitat conditions to exist and persist. Moving rare plants to an area that does not support habitat for rare plants could result in loss of those salvaged plants.

Evidence impact would be significant: Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law under CESA (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9).

Plants with a CRPR of 1B and 2B meet the definition of endangered, rare, or threatened species under CEQA (CEQA Guidelines, § 15380; CNPS 2022). Plants with a CRPR of 4 may meet the definition of endangered, rare, or threatened species. Impacts on rare plants could require a mandatory finding of significance.

Sensitive Natural Communities are communities that are of limited distribution State-wide or within a county or region and are often vulnerable to environmental effects of projects. CDFW considers plant communities, alliances, and associations with a State ranking of S1, S2, and S3 as sensitive and declining at the local and regional level. An S3 ranking indicates there are 21 to 100 viable occurrences of this community in existence in California, S2 has six to 20 occurrences, and S1 has fewer than six viable occurrences (Sawyer et al. 2009).

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Impacts to sensitive natural communities should be considered significant under CEQA unless they are clearly mitigated below a level of significance.

For reasons discussed above, the Project could have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS. Moreover, Mitigation Measures identified in the DEIR may not meet the standards required for deferred mitigation (CEQA Guidelines, § 15126.4). Mitigation Measure BIO-1 does not 1) commit the City to mitigation, 2) adopt specific performance standards the mitigation will achieve, and 3) identify the types of potential actions that can feasibly achieve that performance standard (CEQA Guidelines, § 15126.4).

Recommended Potentially Feasible Mitigation Measure(s):

CDFW requests the following recommendations and mitigation measures are incorporated into the final CEQA document:

Recommendation #6: CDFW recommends that the Project fully avoid impacts to California Rare Plant Rank (CRPR) 4 species as they would CRPR 1 and 2 species, due to the limited distribution of these plant species in the region and limited open space reserves available for them in the City. CDFW recommends that species that have been detected by Project biologists be assumed to be present at the time of construction and appropriate mitigation measures employed, regardless of whether they are observed again before future construction begins.

Mitigation Measure #3: For impacts on CRPR 1 or 2 species, compensatory mitigation shall be provided at no less than 3:1. For impacts on CRPR 4 species, compensatory mitigation shall be provided at no less than 2:1. Compensatory mitigation shall be provided for the total number of plants and total acreage of habitat supporting those plants impacted. Mitigation plans shall be submitted to CDFW prior to adoption and approved by the City before Project activities commence.

Mitigation Measure #4: For impacts on S2 ranked natural community alliance or association, compensatory mitigation shall be provided at no less than 3:1. For impacts on S3 ranked community alliance or association, compensatory mitigation shall be provided at no less than 2:1. Areas that may be impacted by permanent fuel modification shall be included as part of the total acreage that would need to be compensated. Mitigation plans shall be

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submitted to CDFW prior to adoption and approved by the City before Project activities commence.

Mitigation Measure #5: Mitigation lands shall be protected in perpetuity under a land protection instrument, such as a conservation easement, dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands. An appropriate endowment shall be provided for the long-term management of mitigation lands. A mitigation plan shall include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. Issues that shall be addressed include but are not limited to the following: protection from any future development and zone changes; restrictions on access; proposed land dedications; control of illegal dumping; water pollution, and; increased human intrusion. CDFW and USFWS shall be third party beneficiaries to any conservation easements that are recorded for purposes of compensatory mitigation.

COMMENT # 6: Tree Trimming, Tree Removal, and Landscaping

Issue: The Project may remove historic oak trees and other large, native trees that currently support native species and migratory birds.

Specific impact: Future development of coast live oak woodland/ruderal vegetation communities west of the Trabuco Creek Trail consisting of scattered coast live oak trees with a ruderal or bare understory could cause impacts to wildlife that currently use these trees as habitat, such as raptors, migratory birds, and bats. The DEIR proposes a minimum 1:1 replacement of heritage trees, resulting in a significant temporal loss of mature woodland habitat.

Why impact would occur: Removal of historic oak trees within Project area adjacent to Trabuco Creek Trail and Trabuco Creek may impact resources to the area by removing habitat for species such as owls, raptors, and special-status birds. The DEIR does not require in-kind replacement of removed trees. Landscaping using wood chips, mulch, or absorptive material increasing moisture-retention above soil-substrate, would increase presence of Argentine ants (*Linepithema humile*), thus disrupting native ant community and reducing presence of native ants that native species, such as the coast horned lizard and southwestern threadsnake, depend on for prey.

Evidence impact would be significant: The City of San Juan Capistrano General Plan describes the City's Conservation and Open Space Goals. Policy 2.3 directs the City to

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"develop open space uses in an ecologically sensitive manner", and policy 2.4 to "continue to designate the City as a bird sanctuary to preserve and protect the populations of all migratory birds which serve as a prime resource to the character and history of the community."

Additionally, oak woodlands are a "covered habitat" protected under the NCCP/HCP, and there is likely to be significant use of existing oak trees by raptors, bats, migrating birds, and other native species of wildlife. Take of migratory birds is prohibited under the federal Migratory Bird Treaty Act and California Migratory Bird Treaty Act (Fish & G. Code, § 3513).

CDFW encourages the City and Project Proponent to preserve as many existing native trees wherever possible and adapt project designs around existing oak trees. Where new landscaping is installed, CDFW recommends it be composed of native plants that provide suitable habitat for sensitive species identified in the DEIR. CDFW discourages the use of wood chips, mulch, or other absorptive material that would increase presence of invasive Argentine ants which outcompete and displace native species of ants and reduce foraging sources for native herpetofauna.

Recommended Potentially Feasible Mitigation Measure(s):

CDFW requests the following recommendations and mitigation measures are incorporated into the final CEQA document:

Recommendation #7: CDFW recommends the City avoid tree removal wherever possible, adapting plans around existing historic native trees, and establish procedures to ensure that existing suitable trees are preserved and maintained throughout the City, heritage trees are preserved, and use native, drought resistant and California-friendly trees throughout the Project site per Municipal Code regulations (Article 3, Section 9.2.349, Tree Removal Permit and Article 5, Section 9-3.557, Tree Preservation). Any native heritage trees removed should be replaced at a 10:1 ratio to compensate for the temporal loss of mature trees and account for restoration failures.

ADDITIONAL COMMENTS

Additional Comment #1: **Recommended Project Alternative**. CDFW acknowledges and supports the Project Proponent's removal of the Farm Stay Core, including 70 "farm stay" units, farm stay center, and associated development as analyzed during the Notice of

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Preparation for the Project. CDFW also appreciates the Project alternatives provided to reduce or potentially avoid impacts to environmental resources.

Based on similar concerns about potential impacts to aquatic and riparian resources from the Farm Stay Core in the Project's prior design including 70 "farm stay" housing units, CDFW does not support residential development at the site, and discourages the Project Proponent from adopting Alternative 3 - the Partial Residential Development Alternative (Market Rate Housing) as described in the DEIR (p. 1-8). This development alternative would be built directly adjacent to Trabuco Creek and the Restrictive Covenant area. Construction of homes, as well as a pedestrian bridge providing access to the natural areas from these homes and would likely result in increased significant impacts on sensitive wildlife and vegetation species due to increased intensity of use and increased anthropogenic impacts on the sensitive riparian ecosystem, and increased pollution to riparian and upland zones. Per the DEIR, implementation of this alternative would likely result in greater environmental impacts related to aesthetics, air quality, biological resources, and utilities compared to the proposed Project as it would increase overall development and intensity of use (Section 5.3.5, p. 5-10).

To preserve the overall ecological health of this section of Trabuco Creek and its associated natural communities of wildlife and plant species and reduce pollution, CDFW encourages limiting project impacts by adopting Alternative 2 - the Reduced Intensity Alternative. This alternative would reduce overall intensity of daily use of the site by people, horses, and cattle, and rodeo events on the Project site. CDFW also encourages the Lead Agency or Project Proponent to develop and post signage at the entrance to and along the route of Trabuco Creek Trail with educational information regarding the natural history of plants and wildlife and stating that the area is an environmentally sensitive area. Additional signs are encouraged to set expectations for pet owners, stating that all pets must be on a (six-foot maximum) leash, asking the public to clean up after their pets, and provide dog waste bags and trash bins. By requiring pets to remain leashed, this would help prevent conflicts and protect both animals and people and limit disturbance and dog waste contamination to native plants, wildlife, and streams.

Additional Comment #2: CESA. Several CESA-protected species occur or have the potential to occur on site during Project activities. Take of any endangered, threatened, candidate species, or CESA-listed plant species that results from the Project is prohibited, except as authorized by state law (Fish & G. Code §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9). While CDFW appreciates the avoidance and minimization measures the Project Proponent has

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incorporated into the DEIR to avoid take of special status species, incidental take may still occur. Consequently, if Project activities will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the Project Proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances, among other options [Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c)]. Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements of a CESA ITP.

Additional Comment #3: Rodenticides. Rodenticides that could result in direct or secondary poisoning to wildlife should not be used for the duration of the Project and after the Project is complete in perpetuity. The final EIR should include measures which prohibit use of rodenticides or other poisons used to control burrowing animals or manage ground squirrel populations or any rodents within the Project Area for the duration of construction and long-term site maintenance.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNDDB website[5] provides direction regarding the types of information that should be reported and allows on-line submittal of field survey forms.

[5] https://wildlife.ca.gov/Data/CNDDB

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In addition, information on special status native plant populations and sensitive natural communities, should be submitted to CDFW's Vegetation Classification and Mapping Program using the Combined Rapid Assessment and Relevé Form[6].

The City should ensure data collected for the preparation of the DEIR is properly submitted.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City in identifying and mitigating Project impacts on biological resources. CDFW requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of any forthcoming hearing date(s) for the Project (CEQA Guidelines, § 15073(e)).

Questions regarding this letter or further coordination should be directed to Tristan Edgarian[7], Environmental Scientist.

Sincerely,

Signed by:
Glen Lubcke
AD7D070BCB66466...

Glen M. Lubcke
Environmental Program Manager
South Coast Region

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[6] https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit
[7] Phone: (858) 203-5877; Email: Tristan.Edgarian@wildlife.ca.gov

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ATTACHMENTS

Attachment A: Draft Mitigation, Monitoring, and Reporting Program

Attachment B: NOP Comment Letter

Attachment C: Declaration of Covenants and Restrictions: 2C Ranch/Trabuco Creek Habitat Restoration Project

ec: California Department of Fish and Wildlife
Glen M. Lubcke, Environmental Program Manager
Jennifer Turner, Senior Environmental Scientist (Supervisor)
Tristan Edgarian, Environmental Scientist

Office of Land Use and Climate Innovation
State.Clearinghouse@lci.ca.gov

REFERENCES

[CDFW] California Department of Fish and Wildlife. 2024. Lake and Streambed Alteration Program. Available at: https://wildlife.ca.gov/Conservation/Environmental-Review/LSA

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Attachment A: Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

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Mitigation Measure	Timing	Responsible Party
Mitigation Measure #1: LSA – The Project proponent shall notify the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code 1602 and obtain an LSA Agreement from CDFW prior to Project activities. The LSA Notification shall include a hydrology report to evaluate whether altering streams within the Project site may impact hydrologic activity. The hydrology report shall also include a hydrological evaluation of any potential scour or erosion at the Project site due to a 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions. Please visit CDFW's Lake and Streambed Alteration Program[8] webpage for more information (CDFW 2024).	Prior to finalizing CEQA document; and Prior to Project Initiation	Lead Agency; and, Project Proponent
Mitigation Measure #2: Compensatory Mitigation – If impacts to streams are not avoided, the City shall provide compensatory mitigation for impacts on streams and associated plant communities. Any off-site mitigation shall occur where a stream supports the same plant communities impacted by the project and preferably within the same watershed.	Prior to finalizing CEQA document; and Prior to Project Initiation	Lead Agency
Mitigation Measure #3: For impacts on CRPR 1 or 2 species, compensatory mitigation shall be provided at no less than 3:1. For impacts on CRPR 4 species, compensatory mitigation shall be provided at no less than 2:1. Compensatory mitigation shall be provided for the total number of plants and total acreage of habitat supporting those plants impacted. Mitigation plans shall be submitted to CDFW prior to adoption and approved by the City before Project activities commence.	Prior to finalizing CEQA document; and Prior to Project Initiation	Lead Agency; and, Project Proponent

[8] https://wildlife.ca.gov/Conservation/LSA

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Mitigation Measure	Timing	Responsible Party
Mitigation Measure #4: For impacts on S2 ranked natural community alliance or association, compensatory mitigation shall be provided at no less than 3:1. For impacts on S3 ranked community alliance or association, compensatory mitigation shall be provided at no less than 2:1. Areas that may be impacted by permanent fuel modification shall be included as part of the total acreage that would need to be compensated. Mitigation plans shall be submitted to CDFW prior to adoption and approved by the City before Project activities commence.	Prior to finalizing CEQA document; and Prior to Project Initiation	Lead Agency; and, Project Proponent
Mitigation Measure #5: Mitigation lands shall be protected in perpetuity under a land protection instrument, such as a conservation easement, dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands. An appropriate endowment shall be provided for the long-term management of mitigation lands. A mitigation plan shall include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. Issues that shall be addressed include but are not limited to the following: protection from any future development and zone changes; restrictions on access; proposed land dedications; control of illegal dumping; water pollution; and, increased human intrusion. CDFW and the USFWS shall be third party beneficiaries to any conservation easements that are recorded for purposes of compensatory mitigation.	Prior to finalizing CEQA document; and Prior to Project Initiation	Lead Agency; and, Project Proponent

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Mitigation Measure	Timing	Responsible Party
Recommendation #1: NCCP Coverage Re-analysis. CDFW strongly recommends that the City restate its relationship to the Orange County Central/Coastal NCCP/HCP such that it is clear the City has no actual take authorization per the Plan. This includes editing and amending the Project description, Biological Resources Assessment, and all mitigation measures which state that the City has coverage under the Plan, and clarifying the Project does not have NCCP/HCP coverage. Species- specific impacts that need to be re-analyzed and discussed include but are not limited to: western spadefoot, coast horned lizard, orange-throated whiptail, coastal whiptail, red-diamond rattlesnake, southern California legless lizard, California glossy snake, coastal California gnatcatcher, least Bell's vireo, southwestern willow flycatcher, and San Diego desert woodrat. This analysis should include how impacts will be made less than significant with mitigation without regional plan coverage.	Prior to Project Initiation	Lead Agency; and, Project Proponent
Recommendation #2: Project Redesign – CDFW supports the removal of the proposed pedestrian bridge over the creek and recommends evaluation of enhancing pedestrian paths along the existing Camino Capistrano bridge instead. Avoidance of impacts to the Restrictive Covenant areas, Trabuco Creek, and Trabuco Creek Trail will substantially reduce impacts to biological resources within the Project area and circumnavigate conflicts with the Restrictive Covenant's prohibited uses.	Prior to Project Initiation	Lead Agency; and, Project Proponent
Recommendation #3: Cowbird Trapping Program – CDFW concurs with the USFWS that the Project should incorporate measures to offset an expected increase in cowbirds in the project vicinity. Implementing cowbird trapping as part of routine, long-term, ongoing maintenance of the site would help to offset the associated impacts to adjacent least Bell's vireo, coastal California gnatcatcher, southwestern willow flycatcher, yellow warbler, yellow-breasted chat, and other native bird populations.	Prior to Project Initiation, During Project Construction, Project Operation, and After Project Completion	Lead Agency; and, Project Proponent

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Mitigation Measure	Timing	Responsible Party
Recommendation #4: Equestrian BMPs – CDFW recommends the City implement practices such as fencing livestock away from watercourses, managing soil to reduce erosion, using buffer strips of native vegetation along outskirts of livestock facilities, ensuring proper manure management, evaluate use of retention ponds, and take additional measures to prevent livestock runoff into Trabuco Creek and adjacent habitats and streambeds.	Prior to Project Initiation, During Project Construction, Project Operation, and After Project Completion	Lead Agency; and, Project Proponent
Recommendation #5: CDFW recommends that southwestern pond turtles are assumed to be present at the time of construction of the Project, and appropriate mitigation measures and Best Management Practices for pond turtles be incorporated into the final EIR. Such measures are required to maintain essential habitat, undisturbed conditions, and unpolluted waters in this natural stretch of Trabuco Creek for these species and avoid potential take of undetected individuals or their eggs.	Prior to Project Initiation, and During Project Construction	Lead Agency; and, Project Proponent
Recommendation #6: CDFW recommends that the Project fully avoid impacts to California Rare Plant Rank (CRPR) 4 species as they would CRPR 1 and 2 species, due to the limited distribution of these plant species in the region and limited open space reserves available for them in the City. CDFW recommends that species that have been detected by Project biologists be assumed to be present at the time of construction of the Project in the regions they were observed in pre-construction surveys, and appropriate mitigation measures be taken at that time, regardless of whether they are observed again before future construction begins.	Prior to Project Initiation, and During Project Construction	Lead Agency; and, Project Proponent

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Mitigation Measure	Timing	Responsible Party
Recommendation #7: CDFW recommends the City avoid tree removal wherever possible, adapting plans around existing historic native trees, and establish procedures to ensure that existing suitable trees are preserved and maintained throughout the City, heritage trees are preserved, and use native, drought resistant and California-friendly trees throughout the Project site per Municipal Code regulations (Article 3, Section 9.2.349, Tree Removal Permit and Article 5, Section 9-3.557, Tree Preservation).	Prior to Project Initiation, and During Project Construction	Lead Agency; and, Project Proponent

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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

December 15, 2025

Laura Stokes
City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675
Lstokes@sanjuancapistrano.org

Subject: Notice of Preparation of a Draft Environmental Impact Report for the Legacy Ranch Project, SCH No. 2025110456, Orange County, CA

Dear Laura Stokes:

The California Department of Fish and Wildlife (CDFW) reviewed the Initial Study (IS) and Notice of Preparation (NOP) from the City of San Juan Capistrano (City) for the Legacy Ranch (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines[1].

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Fish & G. Code, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law[2] of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) or the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Legacy Ranch Partners, LLC (LRP)

Objective: The objective of the Project is to develop the Legacy Ranch, which includes equestrian facilities, farm stay units, a chapel, and event space. There will also be agricultural and recreational uses within the Project area. Primary Project activities include site preparation, excavation, grading, dewatering, and construction.

Location: The Project is located at 30291 Camino Capistrano, within the Northwest Open Space (NWOS) Specific Plan Area in San Juan Capistrano, Orange County. The Project site is bound by single-family residential uses to the north, Camino Capistrano to the east, The Groves Apartments (multi-family residential) to the south, and an Orange County Transportation Authority-owned rail line to the west. Regional access is provided by Interstate 5 east of the site, with direct access via Camino Capistrano. Trabuco Creek and the Trabuco Creek Trail traverse the Project site, parallel to Camino Capistrano.

Biological Setting: While the NOP states the site has grassland, shrubs, and mature trees, it does not include a biological report, nor does it disclose specific biological resources that may occur on site. The document also states that Trabuco Creek runs along the eastern side of the site and has a densely vegetated riparian corridor. This riparian area is covenanted with a 14-acre conservation easement that encompasses Trabuco Creek and both its banks.

CDFW has historical records of the following species on and around the site:

Birds

a. Coastal California gnatcatcher (*Polioptila californica californica*; Endangered Species Act (ESA)-listed threatened; California Species of Special Concern (SSC))

- White-tailed kite (*Elanus leucurus*; State Fully Protected Species)

[2] "Take" is defined in Section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

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- Least bell's vireo (*Vireo bellii pusillus*; ESA-listed endangered, CESA-listed endangered)
- Yellow warbler (*Dendroica petechia*; California SSC)
- Cooper's hawk (*Astur cooperii*)
- Yellow-breasted chat (*Icteria virens*; California SSC)

Amphibians/Reptiles

- Western pond turtle (*Emys marmorata*; SSC)

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Specific Comments

1) Conservation covenant area. Overall, the Draft Environmental Impact Report (DEIR) should provide more information about the conservation easement in the riparian corridor, including: the recordation number on file with the County Clerk's office, the grantee, allowed and prohibited uses of the easement, and whether the easement was recorded as part of mitigation obligations associated with a specific permit or project. We request that the DEIR clarify whether the Project will indirectly or directly impact the easement area, as the IS states no impacts will occur in or within 100 feet of the easement area, but Figure 2-3 shows trails, the "event barn", and the dog park within the easement and the 100-foot setback. Additionally, the NOP states construction of playgrounds, restrooms, shade structures, and signage is permitted within the required setbacks (page 28). Within this additional context, we recommend that the DEIR include mitigation measures which explicitly require avoidance of the easement area, or details as to how Project activities are compatible with the allowable and prohibited uses of the conservation easement.

2) Crotch's bumble bee. The Project site may contain suitable foraging or nesting habitat for Crotch's bumble bee. Crotch's bumble bee can use a variety of upland land cover types for foraging and often nest underground, sometimes occupying abandoned rodent burrows. If Crotch's bumble bees are using burrows on the Project site for nesting, direct impacts could result from ground-disturbing activities, which could lead to death or injury of adults, eggs, and larva, burrow collapse, nest abandonment, and reduced nest success. Additionally, the Project may result in temporal or permanent loss of foraging habitat. Any use of pesticides on site also has the potential to directly harm or kill Crotch's bumble bee.

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b. Protection Status. The California Fish and Game Commission accepted a petition to list the Crotch's bumble bee as threatened or endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. Crotch's bumble bee is granted full protection under CESA. Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, §786.9). In addition, Crotch's bumble bee has a State ranking of S1/S2. This means that Crotch's bumble bee is considered critically imperiled or imperiled and is extremely rare (often five or fewer populations). Crotch's bumble bee is also listed as an invertebrate of conservation priority under the Terrestrial and Vernal Pool Inverts of Conservation Priority List (CDFW 2017). Crotch's bumble bee also meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Therefore, take of Crotch's bumble bee could require a mandatory finding of significance by the City (CEQA Guidelines, § 1565).

c. Surveys and Disclosure. CDFW recommends the Project Proponent retain a qualified biologist familiar with the species to survey the Project site for Crotch's bumble bee and suitable habitat. Surveys should be conducted during the flying season when the species is most likely to be detected above ground, between March 1 to September 1 (Thorp et al. 1983). Survey should also occur within one year prior to vegetation removal and/or ground disturbance and adhere to the Survey Considerations for CESA Candidate Bumble Bee Species (CDFW 2023). The DEIR should provide full disclosure of the presence of Crotch's bumble bee and the Project's potential impact on Crotch's bumble bee.

d. Avoidance, Minimization, and Mitigation. If the site is determined to be occupied by Crotch's bumble bee, the DEIR should include measures to avoid impacts on Crotch's bumble bee. If Crotch's bumble bee is present, the qualified biologist should identify the location of all nests in or adjacent to the Project site. If nests are identified, 50-foot no-disturbance buffer zones should be established around nests to reduce the risk of take. Additionally, the DEIR should require consultation with CDFW to determine if a CESA Incidental Take Permit (ITP) is required. In addition, the Project Proponent should provide compensatory mitigation for removal or damage to any floral resource associated with Crotch's bumble bee. Floral resources should be replaced as close to their original location as is feasible.

3) Special-Status Birds and Raptors. California Natural Diversity database CNDDB records indicate several special-status birds and raptors were observed adjacent to the Project area including white-tailed kite, least bell's vireo, coastal California gnatcatcher, and yellow warbler (CDFW 2025). CDFW recommends the DEIR analyze the potential for the following species to occur within the Project area:

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e. White-tailed kite. According to the White-Tailed Kite Predicted Habitat and White-Tailed Kite Range datasets, the Project site occurs within the white-tailed kite's yearlong range and contains habitat of high suitability. In addition, an occurrence of white-tailed kite was reported to CNDDB within 1 mile of the Project site. White-tailed kite is a State Fully Protected Species under Fish & G. Code § 3511 and Fully Protected Species may not be taken or possessed at any time except with authorization from CDFW and only under specific circumstances which would not apply to the Project. To avoid take of white-tailed kite, CDFW recommends Project work activities occur outside of the nesting season and that a qualified biologist conduct focused surveys for white-tailed kite within the Project area prior to the start of construction activities (see Comment 4). If white-tailed kite is detected nesting in trees within the Project disturbance area, CDFW recommends the qualified biologist establish a 500-foot no work buffer around the nest. Additionally, the DEIR should include a discussion of how potential direct, indirect, and cumulative impacts to white-tailed kite will be fully avoided. Permanent impacts to any foraging habitat for white-tailed kite should be described in the DEIR and should be considered significant unless mitigation is provided.

f. Coastal California gnatcatcher. Gnatcatchers have been observed on site and in adjacent habitat. To confirm the presence or absence of gnatcatcher on site, CDFW recommends the Project Proponent conduct protocol surveys for gnatcatcher within any suitable habitat following the United States Fish and Wildlife Service (USFWS) Survey Guidelines for the Coastal California Gnatcatcher (USFWS 1997). If gnatcatcher is detected during surveys, CDFW recommends the Project Proponent consult with USFWS on appropriate avoidance, minimization, and mitigation measures.

g. Least Bell's vireo. CDFW recommends protocol level surveys on the Project site and within a 500-foot buffer to determine presence or absence of least Bell's vireo (LBVI). The DEIR should provide full disclosure of the presence of LBVI and the Project's potential impact on the species. Mitigation for direct, indirect, and cumulative impacts to the species should be determined after the completion of these surveys and included in the DEIR. If the Project would impact LBVI, the DEIR should include measures to avoid, minimize, and/or mitigate potential impacts to LBVI as well as the habitat supporting the species. Consultation with CDFW is recommended and may include obtaining appropriate incidental take authorization under CESA

4) Nesting Birds. The DEIR should include mitigation measures which avoid impacts to nesting birds. To avoid impacts on nesting birds, CDFW recommends that clearing of vegetation occur outside of the peak avian breeding season, which generally runs from February 1 through September 1 and as early as January 1 for some raptors. If Project construction is necessary during the bird breeding season, a qualified biologist with experience in conducting bird breeding surveys should conduct a

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nesting bird survey within three days prior to work in the area. If an active nest is identified, a buffer shall be established between the construction activities and the active nest so that nesting activities are not interrupted. In general, CDFW recommends a 100-foot buffer for common avian species, 300 feet for listed or highly sensitive species, and 500 feet for raptors. The buffer should be delineated by temporary fencing and remain in effect for the duration of all construction activities. No Project construction shall occur within the nesting buffer area until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the Project. Reductions in the nest buffer distance may be allowable depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

5) Equestrian impacts. The DEIR should include an evaluation of impacts from developing equestrian areas and include mitigation measures to reduce significant impacts. Given that Figure 2-3 in the NOP shows the equestrian area and public trails within the 100-foot offset from the conservation easement area, a discussion and analysis of impacts to the conserved riparian corridor from equestrian use should be included in that evaluation. Horses can significantly impact the habitat and water quality in an area, due to soil compaction, vegetation trampling, trail proliferation, and runoff from stables (Martin and Butler, 2017; Marion and Olive, 2006; Airaksinen, Heiskanen, & Heinonen-Tanski, 2007). In addition to impacts from general equestrian use, CDFW has concerns about brown-headed cowbird (*Molothrus ater*) in the area. Brown-headed cowbirds are notorious for laying their eggs in the nests of other birds and nest parasitism may increase with the presence of horses (Borgmann and Morrison, 2010). CDFW recommends the DEIR include mitigation measures which require cowbird monitoring and management by the Project Proponent.

6) Cattle impacts. Based on the IS, the direct and indirect impacts to biological resources from cattle are unclear. The DEIR should include a discussion of the intended cattle activities on the Project site and analyze the impacts to biological resources from these activities. Mitigation measures which lower the significance of these impacts should be included in the DEIR, if appropriate.

7) Water quality. While the NOP does not indicate any direct Project activities in Trabuco Creek, runoff from the equestrian or agricultural areas may cause impacts to water quality. The DEIR should discuss potential impacts to water quality and include mitigation measures which avoid and/or reduce these impacts.

8) Rodenticides. To avoid direct and indirect impacts to biological resources (i.e., rodents, raptors, and large mammals), the DEIR should include a mitigation measure to prohibit any use of first-generation anticoagulant rodenticides (i.e., diphacinone, chlorophacinone, and warfarin) and second-generation anticoagulant rodenticides (e.g., brodifacoum, bromadiolone, difethialone, and difenacoum) on site

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during Project implementation and for long-term management, operations, and maintenance activities.

9) Herbicides and pesticides. Due to the proposed agricultural farm on the site, CDFW recommends the DEIR provide a discussion and analysis of the use of any herbicides and pesticides, specifically addressing potential impacts to the riparian corridor and the stream.

General Comments

10) Disclosure. The DEIR should provide an adequate, complete, and detailed disclosure about the effects which a proposed project is likely to have on the environment (Pub. Resources Code, § 20161; CEQA Guidelines, § 15151). Such disclosure is necessary so CDFW may provide comments on the adequacy of proposed avoidance, minimization, or mitigation measures, as well as assess the significance of the specific impact relative to plant and wildlife species impacted (e.g., current range, distribution, population trends, and connectivity).

11) Project Description and Alternatives. To enable adequate review and comment on the proposed Project from the standpoint of the protection of fish, wildlife, and plants, CDFW recommends the following information be included in the DEIR.

a. A complete discussion of the purpose and need for, and description of the proposed Project.

b. A range of feasible alternatives to the Project location to avoid or otherwise minimize direct and indirect impacts on sensitive biological resources and wildlife movement areas. CDFW recommends the City select Project designs and alternatives that would avoid or otherwise minimize direct and indirect impacts on biological resources. CDFW also recommends the City to consider establishing appropriate setbacks from sensitive and special status biological resources. Setbacks should not be impacted by ground disturbance or hydrological changes from any future Project-related construction, activities, maintenance, and development. As a general rule, CDFW recommends reducing or clustering a development footprint to retain unobstructed spaces for vegetation and wildlife and provide connections for wildlife between properties and minimize obstacles to open space.

c. Project alternatives should be thoroughly evaluated, even if an alternative would impede, to some degree, the attainment of the Project objectives or would be more costly (CEQA Guidelines, § 15126.6). The DEIR shall include sufficient information about each alternative to allow meaningful evaluation, public participation, analysis, and comparison with the proposed Project (CEQA Guidelines, § 15126.6).

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d. Where the Project may impact aquatic and riparian resources, CDFW recommends the City select Project designs and alternatives that would fully avoid impacts to such resources. CDFW also recommends an alternative that would not impede, alter, or otherwise modify existing surface flow, watercourse and meander, and water-dependent ecosystems and natural communities. Project designs should consider elevated crossings to avoid channelizing or narrowing of watercourses. Any modifications to a river, creek, or stream may cause or magnify upstream bank erosion, channel incision, and drop in water level, which may cause the watercourse to alter its course of flow.

12) Biological Baseline Assessment. An adequate biological resources assessment should provide a complete assessment and impact analysis of the flora and fauna within and adjacent to the Project site and where the Project may result in ground disturbance. The assessment and analysis should place emphasis on identifying endangered, threatened, rare, and sensitive species; regionally and locally unique species; and sensitive habitats. An impact analysis will aid in determining the Project's potential direct, indirect, and cumulative biological impacts, as well as specific mitigation or avoidance measures necessary to offset those impacts. CDFW also considers impacts to Species of Special Concern (SSC) a significant direct and cumulative adverse effect without implementing appropriate avoidance and/or mitigation measures. The DEIR should include the following information.

e. Information on the regional setting is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines, § 15125(c)). The DEIR should include measures to fully avoid and otherwise protect Sensitive Natural Communities. CDFW considers Sensitive Natural Communities as threatened habitats having both regional and local significance. Natural communities, alliances, and associations with a State-wide rarity ranking of S1, S2, and S3 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by visiting the Vegetation Classification and Mapping Program - Natural Communities webpage.

f. A thorough, recent, floristic-based assessment of special status plants and natural communities following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (CDFW 2021). Botanical field surveys should be comprehensive over the entire Project site, including areas that will be directly or indirectly impacted by the Project. Adjoining properties should also be surveyed where direct or indirect Project effects could occur, such as those from fuel modification, herbicide application, invasive species, and altered hydrology. Botanical field surveys should be conducted in the field at the times of year when plants will be both evident and identifiable. Usually, this is during flowering or fruiting. Botanical field survey visits should be spaced throughout the growing season to accurately determine what plants exist in the Project site. This usually involves multiple visits to the Project site (e.g., in early, mid, and late season) to capture the

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floristic diversity at a level necessary to determine if special status plants are present.

g. Floristic alliance- and/or association-based mapping and vegetation impact assessments conducted on the Project site and within adjacent areas. The Manual of California Vegetation, second edition, (Sawyer, Keeler-Wolf, & Evens, 2009) should also be used to inform this mapping and assessment. Adjoining habitat areas should be included in this assessment where the Project's construction and activities could lead to direct or indirect impacts off site.

h. A complete and recent assessment of the biological resources associated with each habitat type on the Project site and within adjacent areas. A full literature review includes but is not limited to CDFW's California Natural Diversity Database (CNDDB). The CNDDB should be accessed to obtain current information on any previously reported sensitive species and habitat. An assessment should include a minimum nine-quadrangle search of the CNDDB to determine a list of species potentially present on the Project site. A nine-quadrangle search should be provided in the Project's CEQA document for adequate disclosure of the Project's potential impact on biological resources.

i. A complete, recent, assessment of endangered, rare, or threatened species and other sensitive species within the Project site and adjacent areas, including SSC and California Fully Protected Species (Fish & G. Code, §§ 3511, 4700, 5050, and 5515). Species to be addressed should include all those which meet the CEQA definition of endangered, rare, or threatened species (CEQA Guidelines, § 15380). Seasonal variations in use of the Project site should also be addressed such as wintering, roosting, nesting, and foraging habitat. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, may be required if suitable habitat is present. See CDFW's Survey and Monitoring Protocols and Guidelines for established survey protocol. Acceptable species-specific survey procedures may be developed in consultation with CDFW and U.S. Fish and Wildlife Service.

j. A recent wildlife and rare plant survey. A lack of records in the CNDDB does not mean that rare, threatened, or endangered plants and wildlife do not occur. Field verification for the presence or absence of sensitive species is necessary to provide a complete biological assessment for adequate CEQA review (CEQA Guidelines, § 15003(i)). CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if Project implementation build out could occur over a protracted time frame or in phases.

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13) Direct and Indirect Impacts on Biological Resources. The DEIR should provide a thorough discussion of direct and indirect impacts expected to affect biological resources with specific measures to offset such impacts. The DEIR should address the following.

k. A discussion of potential impacts from lighting, noise, temporary and permanent human activity, and exotic species, and identification of any mitigation measures. A discussion regarding Project-related indirect impacts on biological resources. These include resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a Natural Community Conservation Plan (Fish & G. Code, § 2800 et. seq.)).

l. A discussion of both the short-term and long-term effects of the Project on species population distribution and concentration, as well as alterations of the ecosystem supporting those species impacted (CEQA Guidelines, § 15126.2(a)).

m. Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in areas adjacent to the Project, should be fully analyzed and discussed in the DEIR.

n. A discussion of post-Project fate of drainage patterns, surface flows, and soil erosion and/or sedimentation in streams and water bodies. The discussion should also address the potential water extraction activities and the potential resulting impacts on habitat supported by the groundwater. Measures to mitigate such impacts should be included.

o. An analysis of impacts from proposed changes to land use designations and zoning, and existing land use designation and zoning located nearby or adjacent to natural areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the DEIR.

14) Cumulative Impact. Cumulative impacts on biological resources can result from collectively significant projects which are individually insignificant. The Project, when considered collectively with prior, concurrent, and probable future projects, may have a significant cumulative effect on biological resources. The Project may have the potential to substantially reduce the number or restrict the range of endangered, rare, or threatened species. Species that may be impacted by the Project include, but are not limited to, the biological resources described in this letter.

Accordingly, CDFW recommends the DEIR evaluate the Project's potential cumulative impacts on biological resources. The Project may have a "significant effect on the environment" if the possible effects of the Project are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in

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connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects (Pub. Resources Code, § 21083(b)). The City's conclusions regarding the significance of the Project's cumulative impact should be justified and supported by evidence to make those conclusions. Specifically, if the City concludes that the Project would not result in cumulative impacts on biological resources, the City, "shall identify facts and analysis supporting the Lead Agency's conclusion that the cumulative impact is less than significant" (CEQA Guidelines section § 15130(a)(2)).

15) Mitigation Measures. Public agencies have a duty under CEQA to prevent significant, avoidable damage to the environment by requiring changes in a project through the use of feasible alternatives or mitigation measures (CEQA Guidelines, §§ 15002(a)(3), 15021). Pursuant to CEQA Guidelines section 15126.4, an environmental document shall describe feasible measures which could mitigate impacts below a significant level under CEQA. Mitigation measures must be feasible, effective, implementable, and fully enforceable/imposed by the lead agency through permit conditions, agreements, or other legally binding instruments (Pub. Resources Code, § 21081.6(b); CEQA Guidelines, § 15126.4).

a. The DEIR should provide mitigation measures that are specific and detailed (i.e., responsible party, timing, specific actions, location) in order for a mitigation measure to be fully enforceable and implemented successfully via a mitigation monitoring and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).

b. If a proposed mitigation measure would cause one or more significant effects, in addition to impacts caused by the proposed Project, the DEIR should include a discussion of the effects of proposed mitigation measures (CEQA Guidelines, § 15126.4(a)(1)). In that regard, the DEIR should provide an adequate, complete, and detailed disclosure about the Project's proposed mitigation measure(s). Adequate disclosure is necessary so CDFW may assess the potential impacts of proposed mitigation measures.

16) Compensatory Mitigation. The DEIR should include compensatory mitigation measures for the Project's significant impacts (direct and/or through habitat modification) to sensitive and special status plants, animals, and habitats. Mitigation measures should emphasize avoidance and minimization of Project-related impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore inadequate to mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement and financial assurance and dedicated to a qualified entity for long-term management and monitoring.

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17) Long-term Management of Mitigation Lands. For proposed mitigation lands, the DEIR should include measures to protect the targeted habitat values in perpetuity. The mitigation should offset Project-induced qualitative and quantitative losses of biological resources. Issues that should be addressed include (but are not limited to) restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate endowment should be set aside to provide for long-term management of mitigation lands.

18) CESA. CDFW considers adverse impacts to a species protected by CESA to be significant. Take of any endangered, threatened, candidate species, or NPPA-listed plant species that results from the Project is prohibited, except as authorized by state law (Fish & G. Code §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9). Consequently, if the Project or any Project-related activity will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the Project proponent seeks appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances, among other options (Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c)). Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required to obtain a CESA Permit.

To ensure CDFW will be able to use the City's CEQA document for the issuance of an ITP, the DEIR should address all Project impacts to CESA-listed species and specify a mitigation, monitoring, and reporting program that will meet the requirements of an ITP.

19) Salvage, Relocation and Translocation of Plants and Animal Species. Salvage, relocation and translocation require the collection, handling, capturing or possession of wildlife and/or plants with the goal of moving or removing them from one location and permanently moving them to a new location. CDFW generally does not support the use of relocation or translocation as mitigation measure for unavoidable impacts to endangered, rare, or threatened plants and animals. These efforts are often not monitored over the long-term and successful outcomes are dubious. CDFW has found that permanent preservation and management of habitat to support affected species is often a more effective long-term strategy for conserving plants and animals and their habitats.

20) Scientific Collecting Permit and Voucher Collecting Permit. A Scientific Collecting Permit would be necessary if there is a plan to capture and relocate wildlife. Pursuant to the California Code of Regulations, title 14, section 650, qualified biologist(s) must obtain appropriate handling permits to capture, temporarily possess, and relocated wildlife to avoid harm or mortality in connection with Project-related activities. CDFW has the authority to issue permits for the take or possession

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of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish & G. Code, §§ 1002, 1002.5, 1003). A Scientific Collecting Permit is required to monitor project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650). For more information, please see CDFW's Scientific Collecting Permit webpage.

A voucher collection permit is required to collect state-listed plant species for identification purposes during field surveys, or to collect voucher specimens to document a newly discovered or previously unvouchered occurrence of a state-listed plant. There is no charge to apply for a voucher collection permit. Anyone who collects scientific plant specimens of state-listed species, or who may encounter a state-listed species during field surveys should have a plant voucher collection permit. To apply for a Voucher Collecting Permit please see CDFW's Voucher Collecting Permit Page.

21) Lake and Streambed Alteration. CDFW has regulatory authority over activities in streams that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the Project applicant (or "entity") must provide written notification to CDFW pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. CDFW recommends that the City assess whether notification is appropriate. A Notification package for a LSAA may be obtained by accessing CDFW's Lake and Streambed Alteration Program website[3].

22) Wetland Resources. CDFW, as described in Fish and Game Code section 703(a), is guided by the Fish and Game Commission's (Commission) policies[4]. Through its Wetlands Resources policy, the Commission "…seek[s] to provide for the protection, preservation, restoration, enhancement, and expansion of wetland habitat in California" (California Fish and Game Commission, 2005). It is the policy of the Commission to strongly discourage development in or conversion of wetlands. It opposes, consistent with its legal authority, any development or conversion that would result in a reduction of wetland acreage or wetland habitat values. To that end, the Commission opposes wetland development proposals unless, at a minimum, project mitigation assures there will be 'no net loss' of either wetland

[3] http://www.wildlife.ca.gov/Conservation/LSA
[4] https://fgc.ca.gov/About/Policies/Miscellaneous

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habitat values or acreage. The Commission strongly prefers mitigation which would achieve expansion of wetland acreage and enhancement of wetland habitat values."

a. The Wetlands Resources policy provides a framework for maintaining wetland resources and establishes mitigation guidance. CDFW encourages avoidance of wetland resources as a primary mitigation measure and discourages the development or type conversion of wetlands to uplands. CDFW encourages activities that would avoid the reduction of wetland acreage, function, or habitat values. Once avoidance and minimization measures have been exhausted, a project should include mitigation measures to assure a "no net loss" of either wetland habitat values, or acreage, for unavoidable impacts to wetland resources. Conversions include, but are not limited to, conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or removal of materials from the streambed. All wetlands and watercourses, whether ephemeral, intermittent, or perennial, should be retained and provided with substantial setbacks, which preserve the riparian and aquatic values and functions benefiting local and transient wildlife populations. CDFW recommends mitigation measures to compensate for unavoidable impacts be included in the DEIR and these measures should compensate for the loss of function and value.

b. The Fish and Game Commission's Water policy guides CDFW on the quantity and quality of the waters of this State that should be apportioned and maintained respectively so as to produce and sustain maximum numbers of fish and wildlife; to provide maximum protection and enhancement of fish and wildlife and their habitat; encourage and support programs to maintain or restore a high quality of the waters of this State; prevent the degradation thereof caused by pollution and contamination; and, endeavor to keep as much water as possible open and accessible to the public for the use and enjoyment of fish and wildlife. CDFW recommends avoidance of water practices and structures that use excessive amounts of water, and minimization of impacts that negatively affect water quality, to the extent feasible (Fish & G. Code, § 5650).

23) Use of Native Plants and Trees. CDFW recommends the City require the Project Applicant to provide a native plant palette for the Project. The Project's landscaping plan should be disclosed and evaluated in the DEIR for potential impacts on biological resources such as natural communities adjacent to the Project site (e.g., introducing non-native, invasive species). CDFW supports the use of native plants for the Project, especially considering the Project's location adjacent to protected open space and natural areas. CDFW strongly recommends avoiding non-native, invasive species for landscaping and restoration, particularly any species listed as 'Moderate', 'High', 'Limited', and 'Watch' by the California Invasive Plant Council[5] CDFW supports the use of native species found in naturally occurring plant

[5] https://www.cal-ipc.org/plants/inventory/

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communities within or adjacent to the Project site. In addition, CDFW supports planting native species of trees, such as oaks (Quercus genus), and understory vegetation (e.g., ground cover, vines, subshrubs, and shrubs) that create habitat and provide a food source for birds. CDFW recommends retaining any standing, dead, or dying tree (snags) where possible because snags provide perching and nesting habitat for birds and raptors. Finally, CDFW supports planting species of vegetation with high insect and pollinator value.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNDDB website[6] provides direction regarding the types of information that should be reported and allows on-line submittal of field survey forms.

In addition, information on special status native plant populations and sensitive natural communities, should be submitted to CDFW's Vegetation Classification and Mapping Program using the Combined Rapid Assessment and Relevé Form[7].

The City should ensure data collected for the preparation of the DEIR is properly submitted.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts on biological resources.

[6] https://wildlife.ca.gov/Data/CNDDB
[7] https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit

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Questions regarding this letter or further coordination should be directed to Helena Candaele, Environmental Scientist, at (858) 527-8482 or Helena.candaele@wildlife.ca.gov.

Sincerely,

Signed by:
Glen Lubcke
AD7D070BCB66466...

Glen M. Lubcke
Environmental Program Manager
South Coast Region

ec: California Department of Fish and Wildlife
Glen M. Lubcke, Environmental Program Manager
Jennifer Turner, Senior Environmental Scientist (Supervisor)
Helena Candaele, Environmental Scientist

Office of Land Use and Climate Innovation
State.Clearinghouse@lci.ca.gov

REFERENCES

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RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder
NO FEE
$R000630103 2$
2013000613365 12:25 pm 11/04/13
48 417 D02 36
0.00 0.00 0.00 0.00 105.00 0.00 0.00 0.00
)
) Space above for recorder's use

EXEMPT FROM RECORDER'S FEES
Govt. Code §§ 6103 and 27383

APN(s):

DECLARATION OF COVENANTS AND RESTRICTIONS

2C Ranch/Trabuco Creek Habitat Restoration Project

This **DECLARATION OF COVENANTS AND RESTRICTIONS** (Declaration) is made as of this 20 day of AUGUST, 2013, by the City of San Juan Capistrano ("Declarant"), for the benefit of the Orange County Transportation Authority (OCTA) with reference to the following facts:

RECITALS

A. Declarant is a municipal corporation of the State of California and is the sole owner in fee simple of 54 acres of real property located within its legal boundaries, County of Orange, State of California, legally described in **Exhibit "A"** and more particularly depicted on the map in **Exhibit "B"** (Property), attached hereto and by this reference incorporated herein.

B. Declarant acquired the Property to hold for open space and prevent private development in-perpetuity.

C. Pursuant to the Measure M2 Environmental Mitigation Program, OCTA awarded Declarant a $1,500,000 grant to implement a habitat restoration project on the Property, to offset certain impacts of the Measure M funded highway improvement projects that will be undertaken by Caltrans and OCTA, pursuant to conditions of the OCTA Measure M Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP), subject to the Property being preserved for open space and habitat preservation in-perpetuity.

D. The Property shall be preserved for habitat preservation and will be restricted from any development on the terms set forth in Agreement No. C-1-2508 (Agreement) between Orange County Transportation Authority and City of San Juan Capistrano (City). The Property will be managed and monitored in accordance with the provisions of Agreement and the Restoration and Enhancement Plan dated November 15, 2011 (Restoration Plan).

E. The Property possesses significant ecological and habitat values of great importance to the People of the State of California and currently is and will remain in a Natural Condition as defined herein and is intended to be preserved in its natural, scenic, open

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condition to maintain its aesthetic, ecological, educational, historical, recreational, and/or scientific values (collectively, "Conservation Values").

F. Declarant desires to preserve and protect the Property pursuant to the Agreement and the Restoration Plan which may be revised from time to time, with approval by entities listed in G through I below, and which is incorporated herein by this reference.

G. The United State Army Corps of Engineers (ACOE) is the federal agency charged with the primary responsibility for regulating activities in waters of the United States, including wetlands, with regulatory authority over discharges of dredged and fill material into such waters pursuant to Section 404 of the Clean Water Act.

H. The United States Fish and Wildlife Service (USFWS) has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, and native plants and the habitats on which they depend under the Endangered Species Act, 16 U.S.C. Section 1531 et. seq., the Fish and Wildlife Coordination Act 16 U.S.C. Section 661-666c, and other applicable federal laws.

I. California Department of Fish and Wildlife (CDFW) has jurisdiction, pursuant to Fish and Game Code Section 1802, over the conservation, protection and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species, and the CDFW is authorized to hold easements for these purposes pursuant to Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

J. Entities listed in items G through I above, hereafter, are collectively referred to as "Resource Agencies."

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

NOW, THEREFORE Declarant on behalf of itself and Declarant's successors and assigns, declares, acknowledges and agrees as follows:

In consideration of the above Recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant voluntarily records the following covenants and restrictions in-perpetuity over the Property under the terms of this Declaration. Such covenants and restrictions shall run with the land, and be binding upon Declarant's heirs, successors in interest, administrators, assigns, lessees, or other occupiers and users of the Property or any portion thereof.

1. Purpose. The purpose of this Declaration is to ensure that the Property will be retained in-perpetuity in a Natural Condition, defined below, and is consistent with the limitations set forth in the Restoration Plan and Agreement between OCTA and the City, to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Declarant intends that this Declaration will confine the use of the Property to such activities including, without limitation, the primary purposes of the preservation and enhancement of native species and their habitats in a manner consistent with the conservation purposes of this Declaration.

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a. The term "Natural Condition," as referenced in the preceding paragraph and other portions of this Declaration, shall mean the condition of the Property as it exists at the time this Declaration is executed, as well as future enhancements or changes to the Property that occur directly as a result of the following:

i. Habitat creation or restoration, including implementation, maintenance, and monitoring activities, required by OCTA for the NCCP/HCP; and,
ii. In-perpetuity maintenance, that occurs on the Property as described in this Declaration, the Restoration Plan, and Agreement.

b. Declarant certifies to the Resource Agencies that, to the Declarant's actual acknowledge, there are no structures or other man-made improvements existing on the Property. Declarant further certifies to the CDFW, USFWS, and ACOE that, to the Declarant's actual knowledge, there are no previously granted easements existing on the Property that interfere or conflict with the Purpose of this Declaration as evidenced by the Title Report attached in **Exhibit "A"**. The current Natural Condition is evidenced in part by the depiction of the Property attached in **Exhibit "B"**, showing all relevant and plottable property lines, easements, dedication, improvements, boundaries and major, distinct natural features such as waters of the United States. Declarant has delivered further evidence of the Natural Condition to the Resource Agencies including (1) a color aerial photograph of the Property at an appropriate scale taken as close in time as possible to the date this Declaration is executed; (2) an overlay of the Property boundaries on that aerial photograph; and (3) on-site color photographs showing relevant natural features of the Property.

c. If a controversy arises with respect to the Natural Condition of the Property, the Resource Agencies shall be not foreclosed from utilizing any and all other relevant documents, surveys, photographs or other evidence or information to assist in the resolution of the controversy.

2. Agreement to Preserve Habitat. Declarant understands, acknowledges and agrees that the Property shall be restricted from any development and shall be reserved for use as habitat preservation on the terms set forth in Agreement and ensures that in-perpetuity long-term maintenance, management and monitoring set forth in the Restoration Plan and Agreement are performed. Declarant further represents that there are no previously granted easements or encumbrances existing on the Property that could interfere with the purposes of this Declaration.

3. Covenants Running with the Land. In consideration of the benefits to all parties, the Declarant hereby covenants and agrees to restrict, and by this instrument does restrict, the future use of the Property, as set forth below, through the establishment of these covenants running with the land in-perpetuity.

4. Development Rights. All present and future development rights allocated, implied, reserved, or inherent to the Property are hereby extinguished and may not be used on, or transferred to, any portion of the Property, nor any other property adjacent or otherwise.

5. Restrictions Concerning the Property. Neither Declarant nor any other entity shall engage in any activity that is inconsistent with the purpose of this Declaration. Without

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limiting the generality of the foregoing, the following activities on the Property are expressly prohibited, except as allowed by Agreement.

a. Construction, reconstruction or placement of any building, billboard, sign, structure, or other improvement;

b. Unseasonable watering; use of fertilizers, herbicides, pesticides, biocides, or other agricultural chemicals; mosquito abatement activities; weed abatement activities; incompatible fire protection activities; and any and all other uses which may adversely affect the conservation purposes of this Declaration, except weed abatement activities necessary to control or remove invasive, exotic plant species conducted by a herbicide applicator licensed to work within habitat preserve areas, or as approved by the Resource Agencies;.

c. Grazing and agricultural activity of any kind, unless specifically approved by Resource Agencies;

d. Commercial or industrial uses;

e. Depositing or accumulating soil, trash, ashes, refuse, waste, bio-solids or any other material;

f. Filling, dumping, excavating, draining, dredging, mining, drilling, removing, exploring for or extracting minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes;

g. Altering the surface or general topography of the Property, including building roads, paving or otherwise covering the Property with concrete, asphalt, or any other impervious material;

h. Removing, destroying, or cutting trees, shrubs or other vegetation, except as required for (i) fire protection measures, excluding fuel modification zones (defined as a strip of mowed land or the planting of vegetation possessing low combustibility for purposes of fire suppression); (ii) maintenance of existing foot trails or roads; (iii) prevention or treatment of disease; (iv) utility line clearance; (v) removal of noxious or invasive, exotic plants which threaten the integrity of the habitat including but not limited to giant reed (*Arundo donax*), artichoke thistle (*Cynara cardunculus*), pampas grass (*Cortaderia selloana*), saltcedar (*Tamarisk spp.*), tree tobacco (*Nicotiana glauca*), mustard (*Brassica tournefortii*), Russian thistle (*Salsola spp.*), Italian thistle (*Carduus pycnocephalus*), star thistle (*Centaurea solstitialis*), milk thistle (*Silybum marianum*); or (vi) as deemed appropriate by the Resource Agencies for habitat enhancement purposes consistent with the Conservation Values;

i. Use of motorized vehicles, including off-road vehicles, except on existing roadways or as necessary to provide fire protection, law enforcement and authorized maintenance of the Property;

j. Transferring any water right necessary to maintain or restore the biological resources of the Property;

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k. Planting, introduction or dispersal of non-native or exotic plant or animal species;

l. Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Property and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters;

m. Inappropriate placement of storm water drains;

n. Granting any additional interest in the Property that is inconsistent with this declaration, without the prior written authorization of the OCTA, which may not be unreasonably withheld.

6. Long-Term Maintenance, Management, and Monitoring. In addition to the other terms contained herein, but subject to the limitations set forth in Section 13, Declarant, its successor or assigns shall be responsible for the maintenance/repair of the Property in-perpetuity. Such long-term maintenance shall be consistent with the Agreement, and shall include the following activities: (a) as needed, but not less than annual removal of trash or man-made debris; (b) annual maintenance of signage and other notification features or similar descriptions that inform persons of the nature and restrictions of the Property pursuant to Agreement; (c) implement its responsibilities under the Restoration Plan and any amendments thereto and, (d) annual restoration of the Property damaged by any of Declarant's activities prohibited by Section 5 herein. If restoration or enhancement of the Property is required pursuant to subsection 6.(d) above or for any other reason, activities will be conducted consistent with the Habitat Restoration Plan that has been previously reviewed and approved by the Resource Agencies.

7. Enforcement.

a. This Declaration is intended to ensure continued compliance with the terms and conditions of Agreement, and, therefore, may be enforced by OCTA and Resource Agencies (collectively, referred to as "Enforcement Entities");

b. Enforcement Entities, its employees and agents and successors and assigns, have the right, with reasonable 24-hour notice, to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Declarant, or Declarant's representatives, successors or assigns are complying with the terms, conditions and restrictions of this Declaration. OCTA and/or OCTA consultants shall also be permitted access to the property in order to perform biological surveys and/or long term monitoring for informational purposes. The results of said biological surveys/monitoring surveys will be shared with the resource agencies as well as the City upon request.

c. Enforcement Entities shall have the right to enforce each of the terms of this Declaration. The failure of Enforcement Entities to discover a violation or to take immediate legal action shall not bar taking such action at a later time.

d. All reasonable costs incurred in enforcing the terms of this Declaration including, but not limited to, costs of suit and attorneys' fees, and any costs of restoration

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necessitated by violation or negligence under the terms of this Declaration shall be borne by the violator.

e. Enforcement of the terms of this Declaration shall be at the discretion of the Enforcement Entities and any forbearance to exercise rights of enforcement under this Declaration in the event of any breach of any term of this Declaration shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Declaration or of any rights under this Declaration. No delay or omission in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

f. Nothing contained in this Declaration shall be construed to entitle Enforcement Entities to bring any action for any injury to or change in the Property resulting from causes beyond Declarant's control, including, without limitation, fire not caused by Declarant, flood, storm, and earth movement, or from any prudent action taken by Declarant under emergency conditions to prevent, abate, or mitigate significant threat to the public health and welfare, or actions by third parties without the permission of the declarant.

8. Remedies. If an Enforcement Entity determines that there is a violation of the terms of this Declaration or that a violation is threatened, written notice of such violation and a demand for corrective action sufficient to cure the violation shall be given to the Declarant who shall diligently pursue corrective action. A copy of the written notice of violation shall be given to OCTA and Resource Agencies at the same time it is given to Declarant. The Enforcement Entities shall not be entitled to damages for any violation, but shall be limited to prospective, injunctive relief only.

9. Amendment. This Declaration may be amended by Declarant only by advance written approval of OCTA and Resource Agencies. Any such amendment shall be consistent with the purposes of this Declaration and shall not affect its perpetual duration. Declarant shall record any OCTA- and Resource Agencies-approved amended instrument in the official records of the County of Orange within thirty (30) days of amendment, and shall provide a conformed copy of the recorded amended Declaration to OCTA and Resource Agencies within thirty (30) days of recordation.

10. Termination of Declaration. Upon prior written approval of Resource Agencies, Declarant may grant a perpetual Conservation Easement over the Property to a third party approved to hold Conservation Easements under Civil Code § 815, *et seq.*, and, by so doing, may terminate this Declaration. Termination may only occur after a Conservation Easement has been recorded and only if the approved Conservation Easement contains all provisions set forth in this Declaration.

11. Controlling Law. The interpretation and performance of this Declaration shall be governed by the laws of the State of California.

12. Severability. If any provision of this Declaration or the application thereof is found to be invalid the remaining provisions of this Declaration or the application of such provisions other than that found to be invalid shall not be affected thereby.

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13. Limitations on Financial Obligations of Declarant. Notwithstanding any other provision of this declaration, Declarant shall not be obligated to expend any funds to monitor, enhance, maintain or repair the Property beyond the one-million, five-hundred thousand dollar ($1,500,000) grant referenced in Recital "C" hereof, with the exception of the obligation to perform the routine monitoring and maintenance described in in Subsection 6.(a) and 6.(b) and any work necessitated by Subsection 6.(d) whereby the Declarant shall be financially responsible for restoration required as a result of damage by Declarant's activities. In the absence of the aforementioned grant funding, Declarant shall maintain the Property consistent with existing practices on City-owned open space. Therefore, the monitoring and maintenance obligations described herein is not intended to increase the financial obligations of the Declarant.

IN WITNESS WHEREOF, Declarant has executed and delivered this Declaration as of the day and year first above written.

By: _____
John Taylor, Mayor
CITY OF SAN JUAN CAPISTRANO, CALIFORNIA

ATTEST:

_____
Maria Morris, City Clerk

APPROVED AS-TO-FORM

_____
Hans Van Ligten, City Attorney

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PUBLIC AGENCY FORM OF ACKNOWLEDGEMENT

State of California)
County of Orange) ss.
City of San Juan Capistrano)
(Gov't Code 40814 & Civil Code 1181)

On **August 20, 2013**, before me, **Maria Morris, City Clerk**, personally appeared **John Taylor, Mayor** and **Hans Van Ligten, City Attorney**, who proved to me on the basis of satisfactory evidence to the be person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/there signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument .

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

(SEAL)

WITNESS my hand and official seal.

Maria Morris, City Clerk

OPTIONAL

Capacity Claimed by Signers

Mayor

Title

Signer is Representing
City of San Juan Capistrano

Description of Attached Document
Title or Type of Document

Declaration of Covenants and Restrictions – 2C Ranch/Trabuco Creek Habitat Restoration Project

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EXHIBIT "A"

Amended
02/22/2008

First American Title

5 First American Way
Santa Ana, CA 92707

February 22, 2008

Cindy Russell
City of San Juan Capistrano
32400 Pasea Adelanto
San Juan Capistrano, CA 92675
Phone:
Fax:

Title Officer:	Brace Berg
Phone:	
Fax No.:	
E-Mail:	brberg@firstam.com
Escrow Officer:	Marlene Van Kirk
Phone:	(714)250-8409
Buyer:	City of San Juan Capistrano
Property:	Vacant Land, CA

PRELIMINARY REPORT

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

The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in Exhibit A attached. Copies of the Policy forms should be read. They are available from the office which issued this report.

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

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

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

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Dated as of February 15, 2008 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

ALTA Extended Owners Policy 2006

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

J. F. SHEA CO., INC., A NEVADA CORPORATION, DBA SHEA HOMES

The estate or interest in the land hereinafter described or referred to covered by this Report is:

A fee.

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes and assessments for the fiscal year 2008-2009, a lien not yet due or payable.

2. General and special taxes and assessments for the fiscal year 2007-2008.

First Installment:	$71.43, PAID
Penalty:	$7.14
Second Installment:	$71.43, DUE
Penalty:	$30.14
Tax Rate Area:	23-056
A. P. No.:	649-421-03

(Affects a portion of Parcel A)

3. General and special taxes and assessments for the fiscal year 2007-2008 are no tax due
Affects APN: 649-421-04.

(Affects a portion of Parcel A)

4. General and special taxes and assessments for the fiscal year 2007-2008.

First Installment:	$22.38, PAID
Penalty:	$2.24
Second Installment:	$22.38, DUE

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Penalty:	$25.24
Tax Rate Area:	23-056
A. P. No.:	649-421-02

(Affects Parcel B)

5. General and special taxes and assessments for the fiscal year 2007-2008.

First Installment:	$2,790.81, PAID
Penalty:	$0.00
Second Installment:	$2,790.81, DUE
Penalty:	$302.08
Tax Rate Area:	23-038
A. P. No.:	121-050-16

(Affects Portion of Parcel C)

6. General and special taxes and assessments for the fiscal year 2007-2008.

First Installment:	$4,138.28, PAID
Penalty:	$0.00
Second Installment:	$4,138.28, DUE
Penalty:	$436.83
Tax Rate Area:	23-038
A. P. No.:	121-070-66

(Affects Portion of Parcel C)

7. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

8. Rights of the public in and to that portion of the land lying within road, street and highway.

9. The right to use the water of Trabuco Creek, as conveyed by J. E. Bacon and others, to the Trabuco Water Company, by Deed recorded July 26, 1892 in Book 64, Page 202 of Deeds.

10. An easement for water ditches and incidental purposes, recorded November 22, 1906 in Book 139 of Deeds, Page 93.

In Favor of:	John O. Forster and others
Affects:	As described therein

11. An easement for ingress, egress and incidental purposes, recorded July 07, 1917 in Book 894, Page 358 of Official Records.

In Favor of:	Orange County Flood Control District
Affects:	Parcels A and B

12. An easement for pole lines and incidental purposes, recorded November 12, 1917 in Book 315 of Deeds, Page 394.

In Favor of:	Southern California Edison Company

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Affects: Parcels A and B

Terms and provisions contained in the above document.

13. An easement for right of way and incidental purposes, recorded May 18, 1920 in Book 360 of Deeds, Page 105.
In Favor of: Rock Springs Land and Cattle Company
Affects: As described therein

14. An easement for pole lines and incidental purposes, recorded September 21, 1926 in Book 678 of Deeds, Page 106.
In Favor of: Southern California Edison Company
Affects: As described therein

15. The terms and provisions contained in the document entitled "Trabuco Water Company Vs. Rock Springs Land and Cattle Company and others, Case No. 17396" recorded May 17, 1927 in Book 47, Page 256 of Official Records.

16. The right to extend and maintain embankment slopes and files, etc., over portions of Parcels B and C, as granted to the State of California by Deed recorded October 26, 1927 in Book 99, Page 178, Official Records.

(Affects Parcel C)

17. An easement for road and incidental purposes, recorded December 03, 1927 as Book 98, Page 466 of Official Records.
In Favor of: Guy Williams and wife
Affects: Parcel C

18. An easement for road, pipe line and incidental purposes, recorded December 03, 1927 as Book 98, Page 470 of Official Records.
In Favor of: J. Roy Smith and wife
Affects: Parcel C

19. Covenants, conditions, restrictions and easements in the document recorded June 19, 1929 as Book 284, Page 118 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

(Affects Parcel C)

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20. An easement for road and incidental purposes, recorded July 11, 1930 as Book 400, Page 127 of Official Records.
In Favor of: K. K. Pathgate
Affects: Parcel C

21. The terms and provisions contained in the document entitled "Agreement" recorded July 11, 1930 in Book 400, Page 133 of Official Records.

(Affects Parcels A and B)

22. An easement for ingress and egress and incidental purposes, recorded July 7, 1937 as Book 894, Page 358 of Official Records.
In Favor of: Orange County Flood Control District
Affects: Parcel C

23. An easement for channel and incidental purposes, recorded July 21, 1937 as Book 896, Page 454 of Official Records.
In Favor of: Orange County Flood Control District
Affects: Parcel C

24. An easement for pole lines and incidental purposes, recorded March 18, 1948 as Book 1739, Page 109 of Official Records.
In Favor of: The San Diego Gas and Electric Company
Affects: Parcel C

25. An easement for electric lines and incidental purposes, recorded December 01, 1949 as Book 1933, Page 405 of Official Records.
In Favor of: San Diego Gas and Electric Company
Affects: Parcel C

26. The reservation in the Deed from Nancy Shanstrom, a widow, to Robert L. Hill and others, dated May 6, 1955, recorded June 2, 1955 in Book 3089, Page 431 Official Records, as follows:

"The grantor hereby reserves unto herself an undivided one-third of the net proceeds received by the grantee as royalty from the sale of any and all oil, gas and other hydrocarbon substances and minerals sold, saved and produced from the above described lands under any oil and gas lease made of said lands by the grantee, his successors or assigns."

27. An easement for ingress, egress, roadways, pipe lines, pole lines, public utilities and incidental purposes, recorded August 15, 1958 in Book 4384, Page 221 of Official Records.
In Favor of: Sunny Naio Farms
Affects: As described therein

28. An easement for pipe lines and incidental purposes, recorded October 09, 1962 as Book 6277, Page 828 of Official Records.
In Favor of: Grace Lee Smith, Trustee and Oso Ranch Company, a partnership
Affects: Parcel C

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29. An easement for slope and incidental purposes, recorded May 05, 1964 as Book 7031, Page 391 of Official Records.
In Favor of: County of Orange
Affects: Parcel C

30. An easement for conduits and incidental purposes, recorded August 06, 1964 as Book 7166, Page 754 of Official Records.
In Favor of: San Diego Gas and Electric Company, a corporation
Affects: Parcel C

31. An easement for conduits and incidental purposes, recorded August 06, 1964 in Book 7166, Page 754 of Official Records.
In Favor of: San Diego Gas and Electric Company, a corporation
Affects: As described therein

32. An easement for ingress, egress and incidental purposes, recorded December 16, 1964 in Book 7348, Page 361 of Official Records.
In Favor of: Moulton-Niguel Water District
Affects: Parcels A and B

33. An easement for road purposes, installation, operation, maintenance, repair, inspection, enlargement, replacement, removal of public utilities and incidental purposes, recorded January 25, 1965 in Book 7390, Page 978 of Official Records.
In Favor of: Berenice G. Loughridge
Affects: As described therein

34. An easement for road, public utility and incidental purposes, recorded January 25, 1965 in Book 7390, Page 990 of Official Records.
In Favor of: Berenice G. Loughridge
Affects: As described therein

35. An easement for road, public utilities and incidental purposes, recorded January 25, 1965 in Book 7391, Page 3 of Official Records.
In Favor of: Loughridge Limited Partnership
Affects: As described therein

36. Covenants, conditions, restrictions and easements in the document recorded March 24, 1965 in Book 7456, Page 459 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

37. Abutter's rights of ingress and egress to or from the highway and/or freeway adjacent to said land, said rights have been relinquished in the document recorded October 06, 1967 in Book 8396, Page 321 of Official Records.

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38. A waiver of any claims for damages by reason of the location, construction, landscaping or maintenance of a contiguous freeway, highway, roadway or transit facility as contained in the document recorded October 06, 1967 in Book 8396, Page 321 of Official Records.

39. Abutter's rights of ingress and egress to or from Camino Los Padres, except at approved access locations have been dedicated or relinquished on the filed Map.

(Affects Parcels A and B)

40. Covenants, conditions, restrictions and easements in the document recorded September 16, 1968 in Book 8722, Page 331 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

41. An easement for pole lines and incidental purposes, recorded December 03, 1969 as Book 9153, Page 348 of Official Records.

In Favor of:	San Diego Gas and Electric Company, a corporation
Affects:	Parcel C

42. An easement for fill, cut, compaction and incidental purposes, recorded August 31, 1970 in Book 9390, Page 915 of Official Records.

In Favor of:	Westport Home Builders, Inc., a California corporation
Affects:	As described therein

43. An easement for temporary easement for ingress, egress and incidental purposes, recorded August 31, 1970 in Book 9390, Page 915 of Official Records.

In Favor of:	Westport Home Builders, Inc., a California corporation
Affects:	As described therein

44. An easement for grading, constructing, maintaining slopes, landscaping, irrigation lines, and for the installation, maintenance of utilities, including, but not limited to sewer, water, electrical, telephone, cable television lines and incidental purposes, recorded December 19, 1978 in Book 12968, Page 1505 of Official Records.

In Favor of:	Avco Community Developers, Inc.
Affects:	Parcels A and B

45. An easement for water transmission, including, specifically, but not by way of limitation, the right to lay, construct, reconstruct, remove and replace, renew, inspect, maintain, repair, improve, relocate and otherwise use, water pipeline or pipe lines and incidental purposes, recorded March 27, 1979 as Book 13082, Page 137 of Official Records.

In Favor of:	San Juan Basin Authority, a public corporate
Affects:	Parcel C

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46. The terms and provisions contained in the document entitled "Agreement of Architectural and Developmental Control" recorded December 20, 1979 as Instrument No. 27615 in Book 13441, Page 1572 of Official Records.

47. The terms and provisions contained in the document entitled "Agreement for Financing Public School Facilities" recorded January 05, 1981 as Instrument No. 1805 in Book 13901, Page 1681 of Official Records.

The terms and provisions contained in the document entitled "Resolution No. 88-6-7-6 Accepting Irrevocable Offer Colinas De Capistrano Open Space" recorded June 13, 1988 as Instrument No. 88-277560 of Official Records.

48. An easement for water and sewer facilities and incidental purposes, recorded July 13, 1981 as Instrument No. 15494 in Book 14137, Page 659 of Official Records.

In Favor of:	Moulton-Niguel Water District
Affects:	Parcel C

49. The fact that the land lies within the boundaries of the San Juan Capistrano Central Redevelopment Project Area, as disclosed by the document recorded July 13, 1983 as Instrument No. 83-301250 of Official Records.

(Affects Parcel C)

50. The terms and provisions contained in the document entitled "Agreement for Financing Public School Facilities" recorded August 01, 1984 as Instrument No. 84-319312 of Official Records.

(Affects Parcels A and B)

51. The terms and provisions contained in the document entitled "Regulatory Agreement and Declaration of Restrictive Covenants" recorded August 30, 1984 as Instrument No. 84-363306 of Official Records.

(Affects Parcels A and B)

52. Tract Map No. 11039 recites in part as follows: All Vehicular Access rights to Camino Los Padres, except at approved access locations are released and relinquished to the County of Orange.

(Affects Parcels A and B)

53. The terms and provisions contained in the document entitled "Agreement" recorded May 14, 1985 as Instrument No. 85-174891 of Official Records.

(Affects Parcels A and B)

54. The terms and provisions contained in the document entitled "Consent To Use Land Under Civil Code Section 813" recorded April 16, 1992 as Instrument No. 92-249162 of Official Records.

(Affects Parcel C)

55. Any facts, rights, interests or claims which would be disclosed by a correct ALTA/ACSM survey.

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56. Prior to the issuance of any policy of title insurance, the Company will require:
An ALTA/ACSM survey of recent date which complies with the current minimum standard detail requirements for ALTA/ACSM land title surveys

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INFORMATIONAL NOTES

1. The property covered by this report is vacant land.

2. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:

   None

3. This preliminary report/commitment was prepared based upon an application for a policy of title insurance that identified land by street address or assessor's parcel number only. It is the responsibility of the applicant to determine whether the land referred to herein is in fact the land that is to be described in the policy or policies to be issued.

4. Should this report be used to facilitate your transaction, we must be provided with the following prior to the issuance of the policy:

   A. WITH RESPECT TO A CORPORATION:
      1. A certificate of good standing of recent date issued by the Secretary of State of the corporation's state of domicile.
      2. A certificate copy of a resolution of the Board of Directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
      3. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

   B. WITH RESPECT TO A CALIFORNIA LIMITED PARTNERSHIP:
      1. A certified copy of the certificate of limited partnership (form LP-1) and any amendments thereto (form LP-2) to be recorded in the public records;
      2. A full copy of the partnership agreement and any amendments;
      3. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
      4. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

   C. WITH RESPECT TO A FOREIGN LIMITED PARTNERSHIP:
      1. A certified copy of the application for registration, foreign limited partnership (form LP-5) and any amendments thereto (form LP-6) to be recorded in the public records;
      2. A full copy of the partnership agreement and any amendment;
      3. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
      4. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

   D. WITH RESPECT TO A GENERAL PARTNERSHIP:
      1. A certified copy of a statement of partnership authority pursuant to Section 16303 of the

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California Corporation Code (form GP-I), executed by at least two partners, and a certified copy of any amendments to such statement (form GP-7), to be recorded in the public records;

2. A full copy of the partnership agreement and any amendments;
3. Requirements which the Company may impose following its review of the above material required herein and other information which the Company may require.

E. WITH RESPECT TO A LIMITED LIABILITY COMPANY:

1. A copy of its operating agreement and any amendments thereto;
2. If it is a California limited liability company, a certified copy of its articles of organization (LLC-1) and any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles of organization (LLC-10) to be recorded in the public records;
3. If it is a foreign limited liability company, a certified copy of its application for registration (LLC-5) to be recorded in the public records;
4. With respect to any deed, deed of trust, lease, subordination agreement or other document or instrument executed by such limited liability company and presented for recordation by the Company or upon which the Company is asked to rely, such document or instrument must be executed in accordance with one of the following, as appropriate:
   (i) If the limited liability company properly operates through officers appointed or elected pursuant to the terms of a written operating agreement, such documents must be executed by at least two duly elected or appointed officers, as follows: the chairman of the board, the president or any vice president, and any secretary, assistant secretary, the chief financial officer or any assistant treasurer;
   (ii) If the limited liability company properly operates through a manager or managers identified in the articles of organization and/or duly elected pursuant to the terms of a written operating agreement, such document must be executed by at least two such managers or by one manager if the limited liability company properly operates with the existence of only one manager.
5. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

F. WITH RESPECT TO A TRUST:

1. A certification pursuant to Section 18500.5 of the California Probate Code in a form satisfactory to the Company.
2. Copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending transaction.
3. Other requirements which the Company may impose following its review of the material require herein and other information which the Company may require.

G. WITH RESPECT TO INDIVIDUALS:

1. A statement of information.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

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LEGAL DESCRIPTION

Real property in the City of San Juan Capistrano, County of Orange, State of California, described as follows:

PARCEL A:

LOT B OF TRACT NO. 11039, AS SHOWN ON A MAP RECORDED IN BOOK 532, PAGES 44 THROUGH 46, INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL B:

THAT PORTION OF CAMINO LOS PADRES, SHOWN ON TRACT NO. 11039 RECORDED IN BOOK 532, PAGES 44 THROUGH 46, INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, INCLUDED WITHIN THAT CERTAIN STRIP OF LAND DELINEATED ON SAID MAP AS "IRREVOCABLY OFFERED TO THE COUNTY OF ORANGE".

PARCEL C:

THOSE PORTIONS OF SECTION 36, TOWNSHIP 7 SOUTH, RANGE 8 WEST AND SECTION 1, TOWNSHIP 8 SOUTH, RANGE 8 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT FILED APRIL 12, 1875 IN THE DISTRICT LAND OFFICE INCLUDED WITHIN THE FOLLOWING DESCRIBED LAND::

BEGINNING AT THE SOUTHEAST CORNER OF PARCEL 3, AS SHOWN ON MAP FILED IN BOOK 129, PAGES 15 TO 21 INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA, SAID CORNER BEING IN THE SOUTH LINE OF THE NORTH ONE-HALF OF SECTION 2, TOWNSHIP 8 SOUTH, RANGE 8 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO SAID OFFICIAL PLAT; THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL 3 THE FOLLOWING COURSES: NORTH 61° 56' 36" WEST 369.94 FEET, NORTH 26° 33' 00" WEST 413.67 FEET, NORTH 51° 46' 44" WEST 1972.54 FEET, NORTH 36° 39' 02" WEST 561.00 FEET, NORTH 8° 20' 26" EAST 621.55 FEET, SOUTH 89° 59' 06" EAST, 245.00 FEET, NORTH 46° 11' 28" EAST 1205.87 FEET, NORTH 8° 13' 39" WEST 1081.17 FEET, NORTH 21° 02' 42" EAST 2229.14 FEET, NORTH 72° 10' 11" EAST 830.00 FEET, AND NORTH 81° 13' 30" EAST, 356.31 FEET TO THE WEST LINE OF THE EAST ONE-HALF OF SECTION 35, TOWNSHIP 7 SOUTH, RANGE 8 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO SAID OFFICIAL PLAT; THENCE ALONG SAID WEST LINE NORTH 0° 33' 41" EAST 828.19 FEET TO THE NORTH ONE-QUARTER CORNER OF SAID SECTION 35; THENCE NORTH 1° 00' 51" EAST, ALONG THE WEST LINE OF THE EAST ONE-HALF OF SECTION 26, TOWNSHIP 7 SOUTH, RANGE 8 WEST, SAN BERNARDINO MERIDIAN, SAN BERNARDINO MERIDIAN, ACCORDING TO SAID OFFICIAL PLAT, A DISTANCE OF 3371.92 FEET; THENCE LEAVING SAID WEST LINE NORTH 89° 05' 24" EAST 261.30 FEET TO THE WESTERLY BOUNDARY OF THE LAND SHOWN ON MAP FILED IN BOOK 90, PAGE 45 OF RECORDS OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY; THENCE ALONG SAID WESTERLY LINE AND THE SOUTHERLY LINE OF SAID LAND SOUTH 0° 54' 36" EAST 195.10 FEET, NORTH 89° 05' 24" EAST 238.45 FEET, SOUTH 0° 54' 36" EAST 232.19 FEET, SOUTH 47° 23' 11" EAST 280.62 FEET, NORTH 42° 36' 14" EAST 351.99 FEET, SOUTH 66° 56' 08" EAST 331.65 FEET, NORTH 56° 19' 35" EAST 505.11 FEET, SOUTH 14° 16' 53" EAST 233.62 FEET AND SOUTH 89° 00' 29" EAST 52.06 FEET TO THE EASTERLY BOUNDARY OF THE LAND SHOWN ON MAP FILED IN BOOK 53, PAGES 17 AND 18 OF SAID RECORDS OF SURVEYS; THENCE ALONG SAID BOUNDARY SOUTH 1° 01' 24" WEST 306.70

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FEET, NORTH 88° 09' 58" WEST 3.00 FEET, SOUTH 0° 53' 06" WEST 1200.22 FEET, SOUTH 21° 50' 35" EAST 228.18 FEET, SOUTH 3° 40' 20" EAST 1185.03 FEET, SOUTH 48° 48' 42" WEST, 327.74 FEET, SOUTHERLY ALONG A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 80.00 FEET THROUGH A CENTRAL ANGLE OF 132° 12' 05" A DISTANCE OF 184.59 FEET, TANGENT TO SAID CURVE SOUTH 83° 23' 23" EAST 346.96 FEET, SOUTH 54° 56' 38" EAST 575.07 FEET, SOUTH 87° 26' 38" EAST, 64.09 FEET, SOUTH 44° 11' 06" EAST 321.20 FEET, SOUTH 29° 13' 06" EAST 156.80 FEET, SOUTH 6° 07' 54" WEST 506.80 FEET, SOUTH 28° 33' 06" EAST 259.60 FEET, SOUTH 5° 15' 38" EAST 383.02 FEET, SOUTH 72° 10' 24" WEST 110.60 FEET, SOUTH 15° 09' 20" WEST 213.00 FEET, SOUTH 24° 07' 06" WEST 164.97 FEET, SOUTHWESTERLY ALONG A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 200.00 FEET THROUGH A CENTRAL ANGLE OF 48° 04' 39" A DISTANCE OF 167.82 FEET, TANGENT TO SAID CURVE SOUTH 72° 11' 45" WEST 57.52 FEET, SOUTHERLY ALONG A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 100.00 FEET THROUGH A CENTRAL ANGLE OF 83° 46' 53" A DISTANCE OF 146.23 FEET, TANGENT TO SAID CURVE SOUTH 11° 35' 08" EAST 857.47 FEET, SOUTH 1° 22' 04" EAST 634.94 FEET, SOUTH 41° 41' 16" EAST 399.05 FEET, NORTH 70° 51' 21" EAST, 1649.78 FEET, SOUTH 18° 40' 22" EAST 20.00 FEET, SOUTH 70° 51' 21" WEST 234.85 FEET, SOUTH 21° 22' 11" EAST 582.26 FEET, SOUTH 70° 52' 23" WEST 388.74 FEET AND NORTH 28° 13' 30" WEST 308.87 FEET TO THE SOUTHWEST CORNER OF THE LAND DESCRIBED IN DEED RECORDED IN BOOK 8303, PAGE 343 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE LEAVING SAID BOUNDARY SOUTH 40° 52' 40" WEST 345.56 FEET TO A POINT IN THAT CERTAIN COURSE IN SAID BOUNDARY SHOWN AS HAVING A BEARING AND LENGTH OF NORTH 16° 57' 00" WEST 842.63 FEET, SAID POINT BEING DISTANT THEREON SOUTH 16° 10' 30" EAST 400.00 FEET FROM THE NORTHERLY TERMINUS OF SAID CERTAIN COURSE; THENCE ALONG SAID CERTAIN COURSE AND SAID BOUNDARY SOUTH 16° 10' 30" EAST 442.41 FEET, SOUTH 8° 17' 07" EAST 30 FEET, SOUTH 81° 42' 53" WEST 108.90 FEET, SOUTH 8° 17' 07" EAST 199.98 FEET, NORTH 81° 42' 53" EAST 108.90 FEET, SOUTH 8° 17' 07" EAST 505.51 FEET, NORTH 80° 35' 03" WEST 101.51 FEET, SOUTH 64° 15' 40" WEST 212.55 FEET, SOUTH 38° 18' 40" WEST 813.43 FEET, SOUTHWESTERLY ALONG A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 80.00 FEET THROUGH A CENTRAL ANGLE OF 24° 16' 05" A DISTANCE OF 33.88 FEET AND NON-TANGENT TO SAID CURVE NORTH 89° 27' 20" WEST 365.91 FEET TO THE BOUNDARY OF THE LAND ON MAP FILED IN BOOK 80, PAGES 38 AND 39 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID BOUNDARY NORTH 12° 45' 17" WEST 115.39 FEET, NORTH 80° 57' 09" WEST 80.77 FEET AND SOUTH 12° 45' 17" EAST 127.67 FEET TO THE BOUNDARY OF THE LAND SHOWN ON SAID LAST MENTIONED RECORD OF SURVEY; THENCE ALONG SAID BOUNDARY NORTH 89° 27' 20" WEST 1620.88 FEET, SOUTH 1° 21' 52" WEST 1312.43 FEET TO THE SOUTH LINE OF THE NORTH ONE-HALF OF SAID SECTION 2; THENCE CONTINUING ALONG SAID BOUNDARY AND SAID SOUTH LINE NORTH 89° 18' 27" WEST 1787.68 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION INCLUDED WITH THE LAND DESCRIBED AS PARCEL NO. 1 IN DEED RECORDED IN BOOK 9843, PAGE 852 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE IN THE EASTERLY BOUNDARY OF THE ABOVE DESCRIBED PARCEL OF LAND, SAID CERTAIN COURSE BEING DESCRIBED AS HAVING A BEARING AND LENGTH OF SOUTH 1° 22' 04" EAST 634.94 FEET; THENCE LEAVING SAID BOUNDARY SOUTH 46° 57' 28" WEST 232.67 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 89° 48' 33" WEST 50.00 FEET; THENCE NORTH 0° 11' 27" WEST 100.00 FEET; THENCE NORTH 89° 48' 33" EAST 50.00 FEET; THENCE SOUTH 0° 11' 27" EAST 100.00 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN THE LAND DESCRIBED AS PARCEL NO. 2 IN DEED RECORDED IN BOOK 9843, PAGE 852 OF OFFICIAL RECORDS OF SAID

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ORANGE COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE WESTERLY BOUNDARY OF THE ABOVE DESCRIBED PARCEL OF LAND, SAID POINT BEING NORTH 1° 00' 51" EAST 760.82 FEET FROM SAID NORTH ONE-QUARTER CORNER OF SECTION 35; THENCE SOUTH 88° 59' 09" EAST 225.32 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 49° 00' 49" EAST 280.00 FEET; THENCE SOUTH 40° 59' 11" EAST 167.00 FEET; THENCE SOUTH 49° 00' 49" WEST 280.00 FEET; THENCE NORTH 40° 59' 11" WEST 167.00 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE OF THE ABOVE DESCRIBED PARCEL OF LAND, SAID CERTAIN COURSE BEING DESCRIBED AS HAVING A BEARING AND LENGTH OF SOUTH 16° 10' 30" EAST 442.21 FEET; THENCE ALONG SAID CERTAIN COURSE AND THE NORTHERLY PROLONGATION THEREOF NORTH 16° 10' 30" WEST 842.21 FEET TO A LINE PARALLEL WITH AND SOUTH 16° 10' 30" EAST 70.00 FEET FROM THE SOUTH LINE OF THE LAND DESCRIBED AS PARCEL 1 IN DEED RECORDED IN BOOK 596, PAGE 50 OF DEEDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, SAID PARCEL BEING SHOWN ON MAP FILED IN BOOK 53, PAGES 17 AND 18 OF RECORDS OF SURVEYS IN SAID OFFICE OF THE COUNTY RECORDER; THENCE NORTH 70° 51' 21" EAST ALONG SAID PARALLEL LINE 120.94 FEET TO A POINT IN A LINE WHICH BEARS SOUTH 12° 58' 39" EAST FROM A POINT ON SAID SOUTH LINE OF SAID PARCEL 1, DISTANT THEREON SOUTH 70° 51' 21" WEST 800.00 FEET FROM THE EASTERLY CORNER OF SAID PARCEL 1, SAID FIRST MENTIONED POINT BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 12° 58' 39" WEST 30.08 FEET TO A LINE PARALLEL WITH AND 40.00 FEET SOUTH FROM SAID SOUTH LINE OF PARCEL 1; THENCE ALONG SAID PARALLEL LINE NORTH 70° 51' 21" EAST 223.84 FEET TO THE NORTHERLY PROLONGATION OF THE EASTERLY LINE OF THE LAND DESCRIBED IN DEED RECORDED IN BOOK 8308, PAGE 343 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE ALONG SAID PROLONGATION SOUTH 28° 10' 01" EAST 59.99 FEET TO THE NORTHEAST CORNER OF SAID LAND; THENCE ALONG THE NORTHERLY LINE OF SAID LAND SOUTH 70° 55' 01" WEST 110.39 FEET TO THE EASTERLY LINE OF THE LAND DESCRIBED AS PARCEL 1 IN DEED RECORDED IN BOOK 4988, PAGE 411 OF SAID OFFICIAL RECORDS; THENCE ALONG SAID EASTERLY LINE AND THE NORTHERLY LINE OF SAID LAND NORTH 28° 13' 30" WEST 29.60 FEET AND SOUTH 70° 51' 21" WEST 121.42 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN THE BOUNDARY OF PARCEL MAP NO. 2001-158 FILED IN BOOK 324, PAGES 14 AND 15 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID OF ORANGE COUNTY.

APN: 649-421-03 (Affects: Portion of Parcel A); 649-421-04 (Affects: Portion of Parcel A); 649-421-02 (Affects : Parcel B); 121-050-16 (Affects: Portion of Parcel C) and 121-070-66 (Affects : Portion of Parcel C)

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*****To obtain wire instructions for deposit of funds to your escrow file please contact your Escrow Officer.******

The First American Corporation
First American Title Company
Privacy Policy

We Are Committed to Safeguarding Customer Information
In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability
This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values, a copy of which can be found on our website at www.firstam.com.

Types of Information
Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information
We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers
Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security
We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this

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Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

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EXHIBIT A
LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)

1. CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990
SCHEDULE B

EXCEPTIONS FROM COVERAGE

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

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

EXCLUSIONS FROM COVERAGE

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

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

2. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970
SCHEDULE OF EXCLUSIONS FROM COVERAGE

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions of area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or

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created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

3. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970 WITH REGIONAL EXCEPTIONS

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 2 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:
Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

4. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970 WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE SCHEDULE OF EXCLUSIONS FROM COVERAGE

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant, (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder, (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

5. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970 WITH REGIONAL EXCEPTIONS

When the American Land Title Association Lenders Policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy, the exclusions set forth in paragraph 4 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:
Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

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6. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE
EXCLUSIONS FROM COVERAGE

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

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

7. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992
WITH REGIONAL EXCEPTIONS

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 6 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

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

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

8. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992

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EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy; or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
   (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
   (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
   (a) to timely record the instrument of transfer; or
   (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

9. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992
WITH REGIONAL EXCEPTIONS

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 8 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

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

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

10. AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL
TITLE INSURANCE POLICY - 1987
EXCLUSIONS

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

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   * land use
   * land division
   * improvements on the land
   * environmental protection

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.
   This exclusion does not limit the zoning coverage described in items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:

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

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

4. Failure to pay value for your title.

5. Lack of a right:
* to any land outside the area specifically described and referred to in Item 3 of Schedule A, or
* in streets, alleys, or waterways that touch your land
This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

11. EAGLE PROTECTION OWNER'S POLICY

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998

Covered Risks 14 (Subdivision Law Violation). 15 (Building Permit). 16 (Zoning) and 18 (Encroachment of boundary walls or fences) are subject to Deductible Amounts and Maximum Dollar Limits of Liability

EXCLUSIONS

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

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
   a. building
   b. zoning
   c. land use
   d. improvements on the land
   e. land division
   f. environmental protection
   This exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.
   This exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
   a. a notice of exercising the right appears in the Public Records at the Policy Date; or
   b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
   a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
   b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
   c. that result in no loss to You; or
   d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
   a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
   b. in streets, alleys, or waterways that touch the Land.
   This exclusion does not limit the coverage described in Covered Risk 11 or 18.

12. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992 WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE WITH EAGLE PROTECTION ADDED

EXCLUSIONS FROM COVERAGE

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

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1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or area of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under insuring provisions 14, 15, 16 and 24 of this policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under insuring provisions 14, 15, 16 and 24 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
   (a) created, suffered, assumed or agreed to by the Insured Claimant;
   (b) not known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (this paragraph (d) does not limit the coverage provided under insuring provisions 7, 8, 16, 17, 19, 20, 21, 23, 24 and 25); or
   (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon:
   (a) usury, except as provided under insuring provision 10 of this policy; or
   (b) any consumer credit protection or truth in lending law.
6. Taxes or assessments of any taxing or assessment authority which become a lien on the Land subsequent to Date of Policy.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
   (a) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
   (b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
   (c) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
   (i) to timely record the instrument of transfer; or
   (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.
8. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided under insuring provision 7.
9. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting title, the existence of which are Known to the Insured at:
   (a) The time of the advance; or
   (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than **it would have** been before the modification**.**
   This exclusion does not limit the coverage provided under insuring provision 7.

SCHEDULE B

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

1. Environmental protection liens provided for by the following existing statutes, which liens will have priority over the lien of the Insured Mortgage when they arise: NONE.

13. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992
WITH EAGLE PROTECTION ADDED
WITH REGIONAL EXCEPTIONS

When the American Land Title Association loan policy with EAGLE Protection Added is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 12 above are used and the following exceptions to coverage appear in the policy.

SCHEDULE B

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

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.

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3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

Part Two:

1. Environmental protection liens provided for by the following existing statutes, which liens will have priority over the lien of the Insured Mortgage when they arise: NONE

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EXHIBIT B
2C RANCH-TRABUCO CREEK HABITAT RESTORATION PROJECT
PROPERTY DESCRIPTION

This exhibit more precisely defines the extent of the land area subject to the conservation easement between the Orange County Transportation Authority (OCTA) and the City of San Juan Capistrano with respect to the 2C Ranch-Trabuco Creek Habitat Restoration project. All and/or portions of the following parcels are subject to the provisions of this conservation easement as more precisely defined by the attached aerial photos which delineate the precise location and configuration of the restoration polygons using latitude-longitude points based on North American Datum of 1983 (NAD83).

- Assessor Parcel Number 121-050-18: An existing 3.3344 acre parcel consisting of the Northwest quarter of Section 36, Township 7, and Range 8 as more precisely delineated on the attached aerial photos.

- Assessor Parcel Number 121-050-19: An existing 31.7147 acre parcel consisting of the Western half of Section 25, Township 7, and Range 8 as well as a portion of the Western half of Section 36, Township 7, and Range 8 as more precisely delineated on the attached aerial photos.

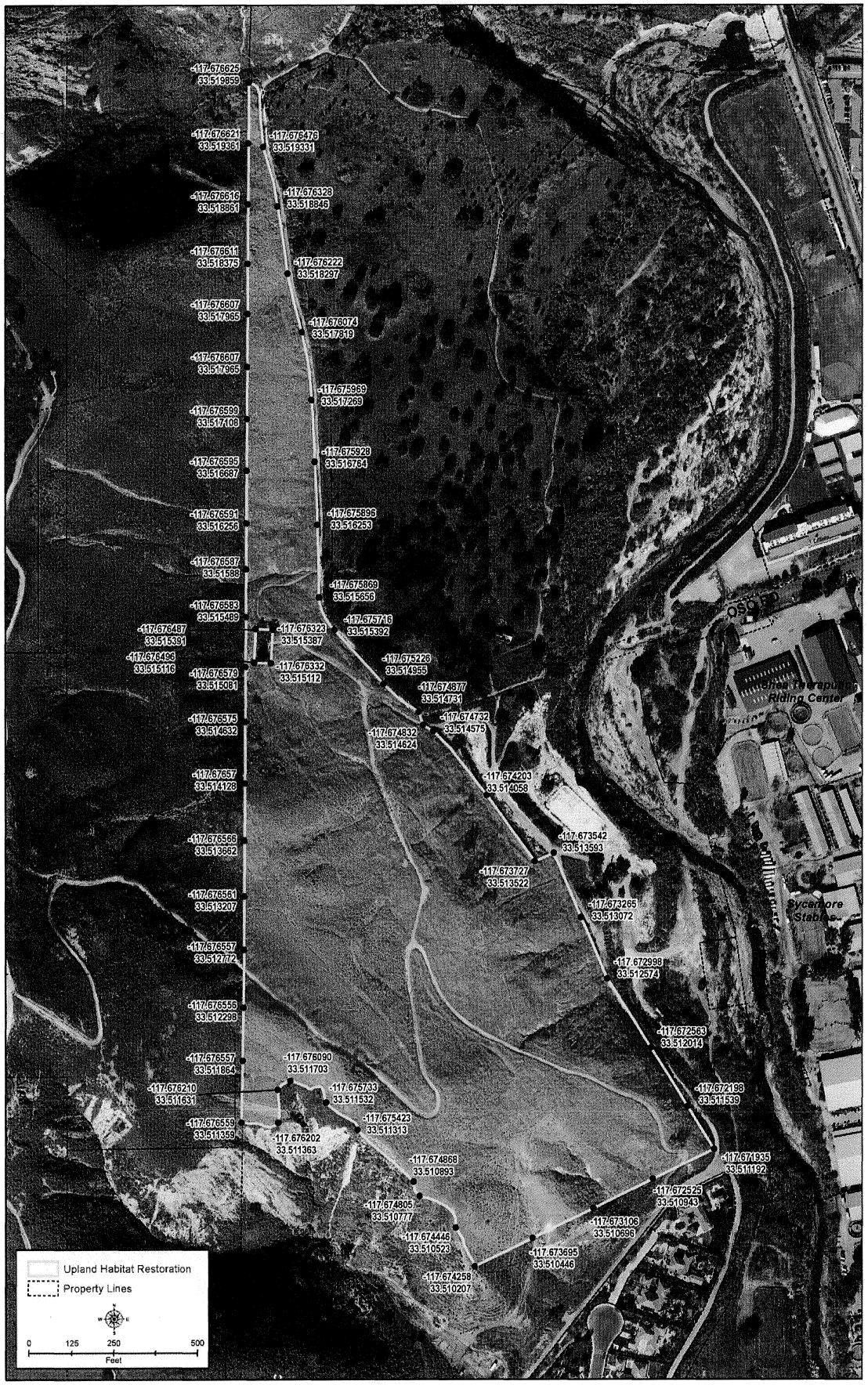
- Assessor Parcel Number 121-050-21: An existing 31.5147 acre parcel consisting of the Northwest quarter of Section 36, Township 7, and Range 8 as more precisely delineated on the attached aerial photos.

- Assessor Parcel Number 121-070-21: An existing 0.5 acre (21,780 square feet) parcel consisting of the Southwest quarter of Section 36, Township 7, and Range 8 as more precisely delineated on the attached aerial photos.

- Assessor Parcel Number 121-070-66: An existing 72.6916 acre parcel consisting of a portion of Section 36, Township 7, and Range 8 as described in Deed Document 7456/470 and a portion of Section 1, Tract 8, Range 8 as described in Deed Document 7456/470 and more precisely delineated on the attached aerial photos.

- Assessor Parcel Number 650-412-13: An existing 3.9454 acre parcel consisting of open space Lot "C" of recorded Tract Map 11093 as more precisely delineated on the attached aerial photos.

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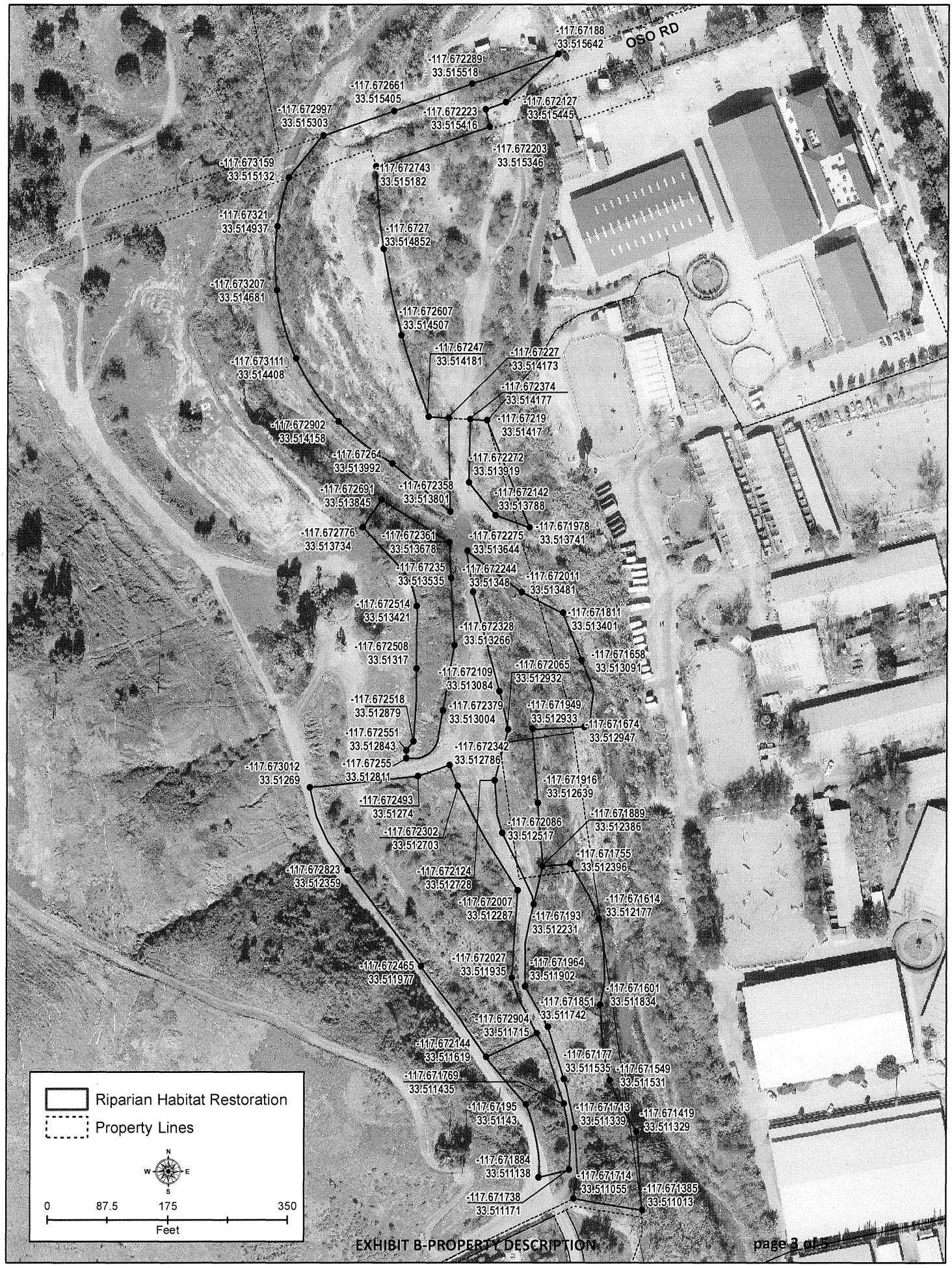
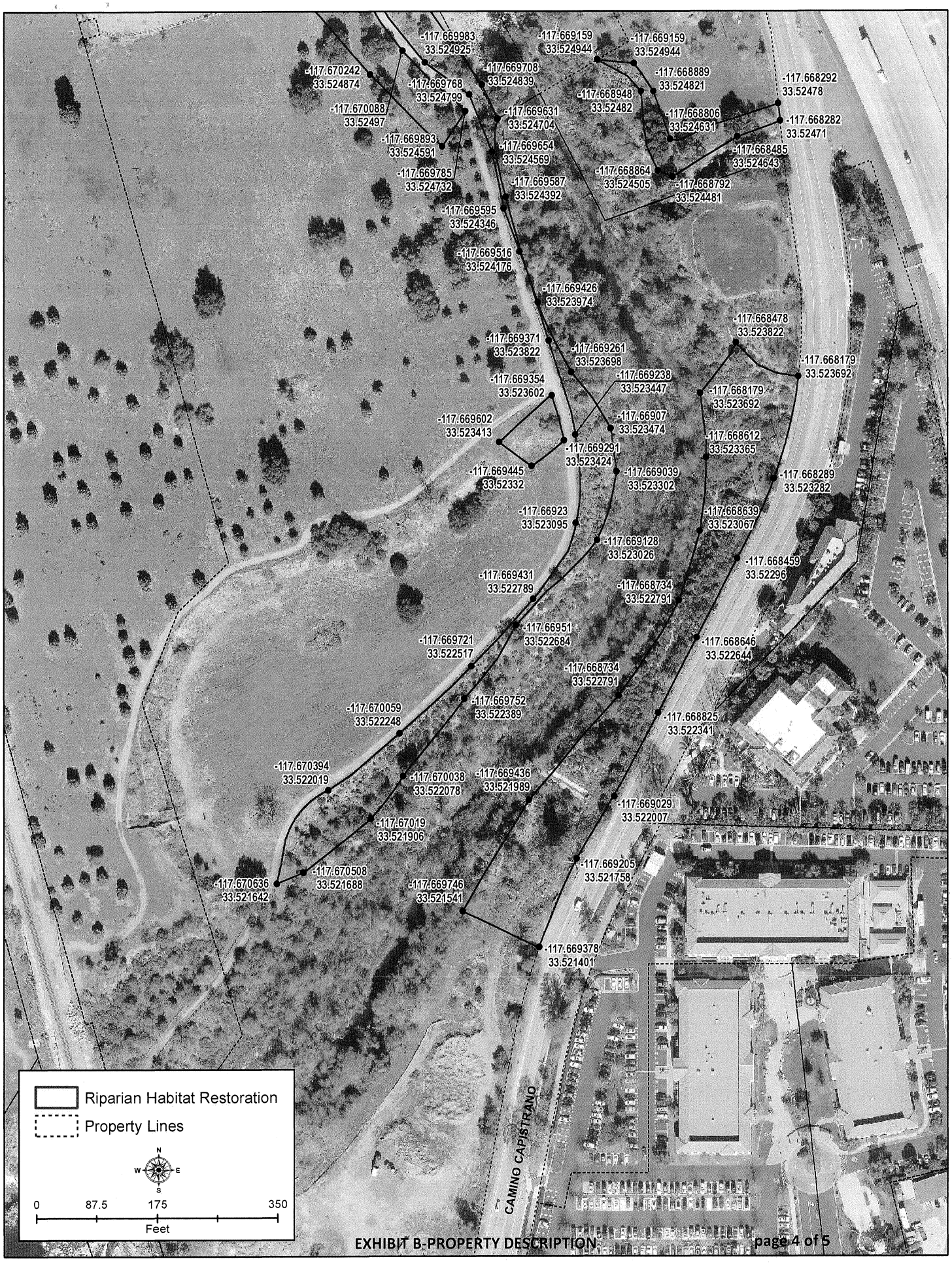


EXHIBIT B-PROPERTY DESCRIPTION

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EXHIBIT B-PROPERTY DESCRIPTION