

ACTION ITEMS/DISCUSSION CALENDAR

TEAM
TEMECULA ELSINORE
ANZA  MURRIETA
RESOURCE CONSERVATION DISTRICT

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RESOURCE CONSERVATION DISTRICT

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 **TEAM**
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TEMECULA ELSINORE
ANZA  MURRIETA
RESOURCE CONSERVATION DISTRICT





PO Box 5407
Riverside, CA 92517
(951) 780-1012
Fax (951) 780-5893
<http://www.sawatershed.org>

Board of Directors: August 30, 2016

Mandy Parkes,
Chair

Brett Mills,
Vice-Chair

Rick Neugebauer,
Treasurer

Kerwin Russell,
Secretary

Richard Zembal,
Director

Temecula-Elsinore-Anza-Murrieta Resource Conservation District
P.O. Box 2078
Temecula, CA 92593-2078

Re: **Conservation Easement Monitoring & Reporting 2016-2017 Proposal Amendment**

The Santa Ana Watershed Association (SAWA) is submitting this amendment to our proposal in response to TEAMRCD's RFP for Conservation Easement Monitoring and Reporting 2016-2017 as requested by TEAMRCD. This amendment is offered to suggest options to reduce the cost of SAWA's original proposal dated August 24, 2016 with respect to the Greer Ranch Conservation Easement Work Plan.

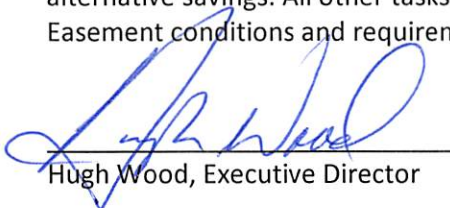
SAWA proposes to reduce the following task to one annual visit by SAWA, with the arrangement that the TEAMRCD staff will conduct the same activity on the other 3 quarterly visits:

*Item 2. Quarterly Inspection Schedule: Second week of October 2016 (SAWA)
Second week of January 2017 (TEAMRCD)
Second week of April 2017 (TEAMRCD)
Second week of July 2017 (TEAMRCD)*

This change will reduce the original work plan budget by \$1,800.00 and the revised total for the Greer Ranch portion of the proposal would be \$3,700.00. The Adeline Farms portion would remain the same cost of \$620.00 for an annual total of \$4,320.00 plus mileage. We believe subsequent annual inspections will not require the orientation meeting and survey, which will reduce the costs further. It is possible, that in subsequent years, if these inspections and communications with the HOA are effective, the number of biologist could be reduce to one, further reducing the costs.

Because of the limited inspections and follow up on habitat encroachment and damage, it is important that this first year be an in depth review of the Conservation Easement and any problems which need addressing.

If the quarterly inspection option is impractical for TEAMRCD, a potential alternative option to reduce the annual budget will be considered on the first visit by the project supervisor and biologist once the entire project area is assessed. At that time, SAWA may be able to propose alternative savings. All other tasks must remain in the proposal to ensure Conservation Easement conditions and requirements are addressed appropriately.



Hugh Wood, Executive Director

TEMECULA ELSINORE ANZA MURRIETA
RESOURCE CONSERVATION DISTRICT
AGREEMENT FOR SERVICES BY SAWA

This Agreement is made this day of October 4, 2016 by and between the Temecula Elsinore Anza Murrieta Resource Conservation District ("TEAMRCD") and Santa Ana Watershed Association ("SAWA")

RECITALS

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties to this Agreement:

- TEAMRCD desires to engage the services of SAWA to perform such services as may be assigned, from time to time, by TEAMRCD in writing;
- SAWA agrees to provide such services pursuant to, and in accordance with, the terms and conditions of this Agreement and has represented and warrants to TEAMRCD that SAWA possesses the necessary skills, qualifications, personnel, and equipment to provide such services; and
- The services to be performed by SAWA shall be specifically described in one or more written Agreements/Work Orders issued by TEAMRCD to SAWA pursuant to this Agreement.

AGREEMENT

Now, therefore, in consideration of the foregoing Recitals and mutual covenants contained herein, TEAMRCD and SAWA agree to the following:

ARTICLE I

TERM OF AGREEMENT

1.1 This agreement shall become effective on the date first above written and shall continue until July 31, 2020, unless sooner terminated as provided for herein.

ARTICLE II

SERVICES TO BE PERFORMED

2.1 SAWA agrees to provide such services as may be assigned, from time to time, in writing by TEAMRCD. Each assignment shall be made in the form of a written Agreement/Workorder. Each such Agreement/Workorder shall include, but shall not be limited to, a description of the nature and scope of the services to be performed by SAWA, the amount of compensation to be paid, and the expected time of completion.

2.2 SAWA may at SAWA's sole cost and expense, employ such competent and qualified independent professional associates, subcontractors, and other SAWAs as the TEAMRCD deems necessary to perform each assignment; provided that SAWA shall not subcontract any work to be performed without the prior written consent of TEAMRCD.

ARTICLE III

COMPENSATION

3.1 In consideration for the services to be performed by SAWA, TEAMRCD agrees to pay SAWA as provided for in this Agreement.

3.2 Each Agreement/Work Order shall specify a total not-to-exceed sum of money and shall be based upon the regular hourly rates customarily charged by SAWA to its clients.

3.3 TEAMRCD shall reimburse SAWA for reasonable and necessary expenses incurred by SAWA in the performance of services for TEAMRCD. Reimbursement shall be according to a schedule set forth in each Agreement.

3.4 SAWA shall not be compensated for any services rendered nor reimbursed for any expenses incurred in excess of those authorized in any Agreement/Work Order unless approved in advance by TEAMRCD, in writing.

3.5 Unless otherwise provided for in any Agreement/Work Order issued pursuant to this Agreement, payment of compensation earned shall be made Quarterly after receipt from SAWA of a timely, detailed, corrected, written invoice by SAWA's Manager, describing, without limitation, the services performed, when such services were performed, the time spent performing such services, the hourly rate charged therefore, and the identity of individuals performing such services for the benefit of TEAMRCD. Such invoices shall also include a detailed itemization of expenses incurred. Such invoices shall be received in TEAMRCD's office on or before the 15th day of the month, for payment on or about the 15th day of the following month. All payments are made on or about the 15th day of the month. Each such invoice shall be provided to TEAMRCD by SAWA within 15 days after the end of the Quarter in which the services were performed.

ARTICLE IV **SAWA OBLIGATIONS**

4.1 TEAMRCD agrees to perform all assigned services in accordance with the terms and conditions of this Agreement including those specified in each Agreement. In performing the services required by this Agreement and any related Agreement/Work Order, SAWA shall comply with all local, state and federal laws, rules and regulations. SAWA shall also obtain and pay for any permits required for the services it performs under this Agreement and any related Agreement/Work Order, unless indicated in writing by TEAMRCD.

4.2 Except as otherwise provided for in each Agreement, SAWA will supply all personnel and equipment required to perform the assigned services.

4.3 SAWA shall be solely responsible for the health and safety of its employees, agents and subcontractors in performing the services assigned by TEAMRCD. SAWA agrees to conform to, and comply with all applicable health and safety laws and regulations, including the Federal and State Occupational Safety and Health Act (OSHA) regulations. SAWA assumes complete responsibility and liability for the safety of its employees, agents and subcontractors, and shall indemnify and hold harmless TEAMRCD from any claims, damages, fines, penalties, attorney's fees and costs arising from any injuries, damages or claims relating to this Agreement. SAWA shall procure and maintain for the duration of this Agreement insurance against claims for personal injuries or property damages which may arise from or relate to the performance of the work hereunder by the SAWA, its employees, agents, subcontractors or representatives, as follows:

4.03(a) Commercial General Liability, including operations, products and completed operations shall have a liability limit of \$2,000,000 per occurrence for bodily injury, personal injury and property damage; \$1,000,000 if the total amount of the Work Order/Agreement is less than \$35,000 and authorized by the TEAMRCD. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work required by this Work Order or the general aggregate limit shall be twice the required occurrence limit. Coverage shall at least be as broad as Insurance Services Office Commercial General Liability Coverage (Form CG 00 01) or Insurance Services Office Form (CG 00 09 11 88 Owners and SAWA's Protective Liability Coverage Form.)

4.03(b) Automobile liability coverage shall be no less than \$1,000,000 per accident for bodily injury and property damage and coverage shall be at least as broad as Insurance Services Office Form CA 0001 covering Automobile Liability, Code C1 (any auto.)

4.03(c) Workers Compensation Insurance as required by the State of California and Employer's Liability Insurance.

4.03(d) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by TEAMRCD in advance.

4.03(e) TEAMRCD as Additional Insured. This Commercial General Liability and Automobile Liability Policies shall provide that TEAMRCD, its officers, officials, employees, agents, volunteers and supervising engineer are to be covered as insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of SAWA or arising out of work or operations performed by or on behalf of the SAWA under this Agreement/Work Order, including materials, parts or equipment furnished in connection with such work or operations. For any claims related to the work formed under this Work Order, the SAWA's insurance coverage shall be primary as to TEAMRCD, its officers, officials, employees, agents, volunteers and supervising engineer. Any insurance maintained by TEAMRCD, its officers, officials, employees, agents, volunteers or supervising engineer shall be excess to SAWA's insurance and shall not contribute with it. Each insurance policy required by this subsection shall be endorsed to state that coverage shall not be cancelled by either party except after thirty (30) days prior written notice to TEAMRCD.

4.03(f) Waiver of Subrogation. SAWA hereby agrees to waive subrogation which any insurer of SAWA may require from SAWA by virtue of the payment of any loss. SAWA agrees to obtain any endorsement that may be necessary to give effect to this waiver of subrogation. The Workers Compensation policy shall be endorsed with a waiver of subrogation in favor of TEAMRCD for all work performed by SAWA, its employees, agents and subcontractors.

4.03(g) Acceptability of Insurers. Insurance required by this Section is to be placed with an insurer admitted in and regulated by the State of California with a current AM Best rating of no less than A-:X. If the insurance company is not admitted in the State of California, it must be on the List of Eligible Surplus Line Insurers (LESLI), shall have a minimum AM Best rating of "A", Financial Category "X", and shall be domiciled in the United States, unless otherwise approved by TEAMRCD in writing. Each such policy of insurance shall expressly provide that it shall be primary and noncontributory with any policies carried by TEAMRCD and, to the extent obtainable, such coverage shall be payable notwithstanding any act of negligence of TEAMRCD that might otherwise result in forfeiture of coverage. Evidence of all insurance coverage shall be provided to TEAMRCD prior to issuance of the first Agreement. Such policies shall provide that they shall not be canceled or amended without 30 day prior written notice to TEAMRCD. SAWA acknowledges and agrees that such insurance is in addition to SAWA's obligation to fully indemnify and hold TEAMRCD free and harmless from and against any and all claims arising out of an injury or damage to property or persons caused by the negligence, recklessness or willful misconduct of SAWA in performing services assigned by TEAMRCD.

4.03(h) Coverage Verification. SAWA shall furnish TEAMRCD with original certificates and amendatory endorsements effecting coverage required by this Section. All certificates and endorsements shall be in a form acceptable to TEAMRCD. SAWA shall require and verify that all of its subcontractors maintain insurance meeting all of the requirements of this Section.

4.4 SAWA hereby covenants and agrees that TEAMRCD, its officers, employees, and agents shall not be liable for any claims, liabilities, penalties, fines or any damage to property, whether real or personal, nor for any personal injury or death caused by, or resulting from, or claimed to have been caused by or resulting from, any negligence, recklessness or willful misconduct of SAWA. SAWA shall hold harmless, defend and indemnify TEAMRCD and its officers, employees, agents and volunteers from and against any and all liability, loss, damage, fines, penalties, expense and costs, including, without limitation, attorneys' fees and litigation expenses and costs, of every nature arising out of or related to SAWA's negligence, recklessness or willful misconduct related to or arising from the performance of the work required under this Agreement and any related Agreement or SAWA's failure to comply with any of its obligations contained in this Agreement and any related Agreement, except as to such loss or damage which was caused by the active

negligence or willful misconduct of TEAMRCD.

4.5 In the event that TEAMRCD requests that specific employees or agents of SAWA supervise or otherwise perform the services specified in each Agreement/Work Order, SAWA shall ensure that such individual(s) shall be appointed and assigned the responsibility of performing the services.

4.6 In the event SAWA is required to prepare plans, drawings, specifications and/or estimates, the same shall be furnished with a registered professional engineer's number and shall conform to local, state and federal laws, rules and regulations. SAWA shall obtain all necessary permits and approvals in connection with this Agreement, any Agreement/Work Order or Change Order. However, in the event SAWA is required to obtain such an approval or permit from another governmental entity, SAWA shall provide all necessary supporting documents to be filed with such entity, and shall facilitate the acquisition of such approval or permit.

ARTICLE V

TEAMRCD OBLIGATIONS

5.1 TEAMRCD shall:

5.01a Furnish all existing studies, reports and other available data pertinent to each Agreement that are in TEAMRCD's possession;

5.01b Designate a person to act as liaison between SAWA and TEAMRCD.

5.01c Ensure that all properties on which SAWA is to provide services under the terms of this agreement are either owned, or are properties where TEAMRCD had acquired an authorized and legal right to have SAWA perform its services on said property.

ARTICLE VI

ADDITIONAL SERVICES, CHANGES AND DELETIONS

6.1 During the term of this Agreement, TEAMRCD may, from time to time and without affecting the validity of this Agreement or any Agreement issued pursuant thereto, order changes, deletions, and additional services by the issuance of written Change Orders authorized and approved by TEAMRCD.

6.2 In the event SAWA performs additional or different services than those described in any Agreement or authorized Change Order without the prior written approval of TEAMRCD, SAWA shall not be compensated for such services.

6.3 SAWA shall promptly advise TEAMRCD as soon as reasonably practicable upon gaining knowledge of a condition, event, or accumulation of events, which may affect the scope and/or cost of services to be provided pursuant to this Agreement. All proposed changes, modifications, deletions, and/or requests for additional services shall be reduced to writing for review and approval or rejection by TEAMRCD.

6.4 In the event that TEAMRCD orders services deleted or reduced, compensation shall be deleted or reduced by a comparable amount as determined by TEAMRCD and SAWA shall only be compensated for services actually performed. In the event additional services are properly authorized, payment for the same shall be made as provided in Article III above.

ARTICLE VII

CONSTRUCTION PROJECTS: CHANGE ORDERS

7.1 Deleted

ARTICLE VIII

TERMINATION OF AGREEMENT

8.1 In the event the time specified for completion of an assigned task in an Agreement exceeds the term of this Agreement, the term of this Agreement shall be automatically extended for such additional time as is necessary to complete such Agreement and thereupon this Agreement shall automatically terminate without further notice.

8.01 Notwithstanding any other provision of this Agreement, TEAMRCD, at its sole option, may terminate this Agreement at any time by giving 10 day written notice to SAWA.

8.02 In the event of termination, the payment of monies due SAWA for work performed prior to the effective date of such termination shall be paid after receipt of an invoice as provided in this Agreement.

ARTICLE IX

SAWA STATUS

9.1 SAWA shall perform the services assigned by TEAMRCD in SAWA's own way as an independent contractor, in pursuit of SAWA's independent calling and not as an employee of TEAMRCD. TEAMRCD shall be under the control of TEAMRCD only as to the result to be accomplished and the personnel assigned to perform services. However, SAWA shall regularly confer with TEAMRCD's liaison, as provided for in this Agreement.

9.2 SAWA hereby specifically represents and warrants to TEAMRCD that the services to be rendered pursuant to this Agreement shall be performed in accordance with the standards customarily applicable to an experienced and competent professional consulting organization rendering the same or similar services. Furthermore, SAWA represents and warrants that the individual signing this Agreement on behalf of SAWA has the full authority to bind SAWA to this Agreement.

ARTICLE X

AUDIT AND OWNERSHIP OF DOCUMENTS

10.1 All draft and final reports, plans, drawings, specifications, data, notes, and all other documents of any kind or nature prepared or developed by SAWA in connection with the performance of services assigned to it by TEAMRCD are the sole property of TEAMRCD, and SAWA shall promptly deliver all such materials to TEAMRCD. SAWA may retain copies of the original documents, at its option and expense. Use of such documents by SAWA for project(s) not the subject of this Agreement shall be at SAWA's sole risk without legal liability or exposure to TEAMRCD.

10.2 SAWA shall retain and maintain, for a period not less than four years following termination of this Agreement, all time records, accounting records, certified payroll, and vouchers and all other records with respect to all matters concerning services performed, compensation paid and expenses reimbursed. At any time during normal business hours and as often as TEAMRCD may deem necessary, SAWA shall make available to TEAMRCD's agents for examination of all such records and will permit TEAMRCD's agents to audit, examine and reproduce such records.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 This Agreement supersedes any and all previous agreements, either oral or written, between the parties hereto with respect to the rendering of services by SAWA for TEAMRCD and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Any modification of this Agreement will be effective only if it is in writing signed by both parties.

11.2 SAWA shall not assign or otherwise transfer any rights or interest in this Agreement without the prior written consent of TEAMRCD. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

11.3 Time is of the essence in the performance of services required hereunder. The SAWA agrees to be bound by the schedule presented as part of this Agreement. Extensions of time within which to perform services may be granted by TEAMRCD if requested by SAWA and agreed to in writing by TEAMRCD. All such requests must be documented and substantiated and will only be granted as the result of unforeseeable and unavoidable delays not caused by the lack of foresight on the part of SAWA.

11.4 SAWA shall comply with all local, state and federal laws, rules and regulations including those regarding nondiscrimination and the payment of prevailing wages.

11.5 TEAMRCD expects that SAWA will devote its full energies, interest, abilities and productive time to the performance of its duties and obligations under this Agreement, and shall not engage in any other consulting activity that would interfere with the performance of SAWA's duties under this Agreement or create any conflicts of interest. If required by law, SAWA shall file a Conflict of Interest Statement with TEAMRCD.

11.6 Any dispute which may arise by and between SAWA and the TEAMRCD, including the SAWA's, its employees, agents and subcontractors, shall be submitted to binding arbitration. Arbitration shall be conducted by a neutral, impartial arbitration service that the parties mutually agree upon, in accordance with its rules and procedures. The arbitrator must decide each and every dispute in accordance with the laws of the State of California, and all other applicable laws. Unless the parties stipulate to the contrary prior to the appointment of the arbitrator, all disputes shall first be submitted to non-binding mediation conducted by a neutral, impartial mediation service that the parties mutually agree upon, in accordance with its rules and procedures. However, SAWA shall continue to perform as required by the Agreement during any dispute between SAWA and TEAMRCD.

11.7 During the performance of the Agreement, SAWA and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status and denial of family care leave. SAWA and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. SAWA and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12290 et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 et seq., set

forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. SAWA and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. SAWA shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11.8 SAWA is subject to the provisions listed in the prevailing wage determination made by the Director of Industrial Relations pursuant to California Labor Code, Sections 1770, 1773 and 1773.1. It is agreed that all provisions of law applicable to public contracts may be applicable to this Agreement. If required by law, SAWA shall not pay less than the prevailing wage.

11.10 SAWA's employees, agents and subcontractors shall adhere to, and comply with, the California Drug Free Workplace Act at Government Code, Sections 8350 through 8357.

11.9 In the event that any provision of this Work Order is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Work Order shall continue to be in full force and effect and shall not be affected thereby.

In witness whereof, the parties hereby have made and executed this Agreement as of the day and year first above-written.

Santa Ana Watershed Association

Name and Title

Date

Temecula Esinore Anza Murrieta Resource Conservation District

Name and Title

Date

OLD BUSINESS

RESOLUTION NO. 2016-03

**RESOLUTION OF THE TEMECULA-ELSINORE-ANZA-
MURRIETA RESOURCE CONSERVATION DISTRICT
APPROVING THE REPLACEMENT OF THE ANNUAL AUDIT
REQUIREMENT PURSUANT TO GOVERNMENT CODE
SECTION 26909 WITH AN AUDIT CONDUCTED EVERY
THIRD YEAR AND OTHER SPECIFIED FINANCIAL
REPORTING AND REQUESTING RIVERSIDE COUNTY
BOARD OF SUPERVISORS' APPROVAL OF SAME**

WHEREAS, Temecula-Elsinore-Anza-Murrieta Resource Conservation District ("TEAM RCD") is a resource conservation district created and authorized pursuant to California Public Resource Code section 9001 et seq.; and

WHEREAS, in compliance with Government Code section 26909, TEAM RCD has been having prepared an annual audit of its accounts and records and has been providing them to the Riverside County ("County") Auditor-Controller; and

WHEREAS, pursuant to Government Code section 26909(b), a special district such as TEAM RCD may, by unanimous request of the governing board of the special district and with unanimous approval of the County Board of Supervisors, replace the annual audit required under Government Code section 26909 with an audit conducted at specific intervals, as recommended by the County auditor, to be completed at least once every five years; and

WHEREAS, the cost for the annual audit has been increasing, and currently the lowest bid would still cost TEAM RCD more than \$6,000 for a single year's audit, a significant percentage of TEAM RCD's annual revenues; and

WHEREAS, the TEAM RCD Board of Directors proposes replacing TEAM RCD's annual audits and instead proposes preparing and providing the County Auditor-Controller, and any other agency requiring such information, with: (1) an audit to take place every third year, covering that year's account

1 and records; (2) a yearly financial compilation and review prepared by a certified public accounting firm
2 and (3) quarterly and management reports; and

3 WHEREAS, the president of TEAM RCD has spoken with the Office of the County
4 Auditor-Controller about the proposal, and the County Auditor-Controller's office does not object to this
5 change; and

6 WHEREAS, in the event that the County Auditor-Controller expresses concerns regarding
7 issues within the compilations or finds anomalies of financial concerns with the submitted records at any
8 time, the County Auditor-Controller can order an immediate audit of any TEAM RCD financial records;

9
10 NOW, THEREFORE, BE IT RESOLVED by a unanimous Board of Directors of the
11 Temecula-Elsinore-Anza-Murrieta Resource Conservation District at its regular meeting on this 13th day
12 of October, 2016, that:

13 1. The above recitals are true and correct.

14 2. It is in the best interests of TEAM RCD to change its audit and financial reporting
15 requirements.

16 3. Subject to unanimous approval of the County Board of Supervisors, the Board of
17 Directors replaces its annual audit requirement under Government Code section 26909 with: (1) an audit
18 to take place every third year, covering that year's accounts and records; (2) a yearly financial
19 compilation and review prepared by a certified public accounting firm; and (3) quarterly and management
20 reports.

21 4. To the extent the County Auditor-Controller expresses concerns regarding issues
22 within the compilations or finds anomalies of financial concern with TEAM RCD's submitted records at
23 any time and orders an audit of any TEAM RCD financial records in addition to what would be required
24 under this resolution, TEAM RCD will have prepared and provide such audit in a timely manner.

25 5. A copy of this Resolution shall be forwarded to the Riverside County Board of
26 Supervisors for consideration of and action upon TEAM RCD's request at a forthcoming regular meeting
27 of the Board of Supervisors.
28

6. The audit changes acted upon above shall go into effect immediately upon the unanimous approval of the County Board of Supervisors.

UNANIMOUSLY ADOPTED by the Board of Directors of the Temecula-Elsinore-Anza-Murrieta Resource Conservation District this 13th day of October, 2016.

**ROSE CORONA, Board President
Temecula-Elsinore-Anza-Murrieta Resource
Conservation District**

ATTEST:

CAROL LEE BRADY, Secretary
Temecula-Elsinore-Anza-Murrieta Resource
Conservation District

APPROVED AS TO FORM:

By: MELISSA R. CUSHMAN
Deputy County Counsel/District Counsel

**2016 AMENDMENT TO 2016 MEMORANDUM OF UNDERSTANDING BETWEEN THE
TEMECULA-ELSINORE-ANZA-MURRIETA RESOURCE CONSERVATION DISTRICT
AND MISSION RESOURCE CONSERVATION DISTRICT**

This Amendment ("2016 Amendment") to the March 3, 2016 Memorandum of Understanding ("2016 MOU") by and between the Elsinore-Murrieta-Anza Resource Conservation District ("EMARCD"), a California resource conservation district, and Mission Resource Conservation District ("Mission"), a California resource conservation district, is entered into by the Parties as of the later of the dates set forth below.

RECITALS

WHEREAS, on March 3, 2016, EMARCD and Mission entered into the 2016 MOU to carry out an irrigation system auditing program (the "Program") from March 3, 2016, until June 30, 2016; and

WHEREAS, effective May 2016, EMARCD changed its name to the Temecula-Elsinore-Anza-Murrieta Resource Conservation District ("TEAM RCD"); and

WHEREAS, TEAM RCD and Mission wish to extend the date for carrying out the Program from June 30, 2016 to June 30, 2017; and

WHEREAS, TEAM RCD also wishes to update its information relating to Notices to reflect its official name change; and

WHEREAS, the Parties wish to enter into this 2016 Amendment to provide for continued cooperation between the Districts in implementing TEAM RCD's Program and memorializing the rights and obligations of the Parties in relation to such Program.

AGREEMENT

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms and conditions contained herein, and pursuant to the laws of the State of California, TEAM RCD and Mission hereby agree as follows:

1. **Audit Date.** Mission agrees to audit as many irrigation systems as are requested by Rancho California Water District's ("RCWD") agricultural customers by December 31, 2016, through RCWD's Agricultural Irrigation Efficiency Program and to provide TEAM RCD the services described in 2016 MOU.
2. **Notices.** The Parties agree that the any notice, demand, request, consent, approval, or communication that either Party is required to give the other shall be in writing and either served personally or sent by first class mail, postage prepaid, to the appropriate address. Either TEAM RCD or Mission may change the name or address to which its notices are sent by delivering written notice to the other Party at the address listed in this subsection. The Notice addresses for the Parties are as follows:

To TEAM RCD at:

Temecula-Elsinore-Anza-Murrieta
Resource Conservation District
P.O. Box 2078
Temecula, CA 92593-2078

To Mission at:

Mission Resource Conservation District
1588 South Mission Road, Suite 100
Fallbrook, CA 92028

3. 2016 MOU. Except as specifically set forth in this 2016 Amendment, the 2016 MOU and its provisions, including defined terms, are unaffected and shall continue in full force and effect in accordance with its terms, and those provisions shall apply equally to the 2016 Amendment.

4. Counterparts. This 2016 Amendment may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

TEMECULA-ELSINORE-ANZA-
MURRIETA RESOURCE
CONSERVATION DISTRICT, a
California resource conservation district

Name: 

Title: PRESIDENT

Date: 9-9-16

MISSION RESOURCE CONSERVATION
DISTRICT, a California resource conservation
district

Name: 

Title: PRESIDENT

Date: 9/19/16

TEAM RCD
P.O. Box 2078
Temecula, CA 92593

September 9, 2016

Jason Keller
Mission Pacific Land Company
4100 Newport Place, Suite 480
Newport Beach, CA 92660

Re: LSA 1600-2015-0106-R6/Benton Channel


Dear Mr. Keller,

At the September 8, 2016 meeting of Temecula-Elsinore-Anza-Murrieta Resource Conservation District (TEAM RCD), the TEAM RCD Board of Directors discussed your proposal to have TEAM RCD fulfill some of Mission Pacific Land Company's requirements for the French Valley South Tentative Tract No. 30847 (the Project). Essentially, your Project would, for the foreseeable future, increase flows to Benton Channel, permanently impacting TEAM RCD's conservation easement in that area.

It is our understanding that you have discussed with California Fish & Wildlife mitigating Project impacts to the conservation easement by funding the removal of non-native plant species within a segment of Benton Channel and monitoring and further non-native plant removal as needed for the five years following the initial removal. To perform the above-described work for the next five years, Mission Pacific offered TEAM RCD a one-time payment of \$17,000. However, while your proposed *mitigation* requirements may terminate in five years, the potential impacts to the conservation easement from your Project will remain for the life of the Project. Accordingly, rather than a one-time payment of \$17,000, TEAM RCD would instead require a one-time endowment of \$155,000. This would prevent significant environmental impacts in the future from the additional water and related invasive species that will result from your Project.

Thank you for working with TEAM RCD. If you have any questions relating to the above or wish for more specifics relating to how the endowment can be set up, please give call Rick Neugebauer at 760-594-1107 or you may reach him at rick.neugebauer@teamrkd.org.

Best Regards,



Rose Corona
President, TEAM RCD

Proposed Endowment -
Benton Creek Channel
10/5/2016

Contact Rose Corona
rose.corona@emarc.org

Fixed Costs - CDFW Requirements						
	1	2	3	4	5	
Invasive Vegetation Removal						
SAWA Crew	\$75.00	\$77.15	\$79.57	\$81.95	\$84.41	\$15,947.41
SAWA Crew Hrs	40	40	40	40	40	
Total	\$3,000.00	\$3,086.00	\$3,182.70	\$3,278.18	\$3,376.53	
Reporting - CDFW						
Project Manager	\$60.00	\$61.80	\$63.65	\$65.56	\$67.53	\$3,822.58
SAWA Crew Hrs	11	11	11	11	11	
Total	\$710.00	\$741.60	\$763.85	\$786.76	\$810.37	
Project Admin						
Admin Assistant	\$31.00	\$31.96	\$32.95	\$33.97	\$35.01	\$3,397.85
AA Hours	20	20	20	20	20	
Total	\$640.00	\$659.20	\$678.98	\$698.35	\$718.33	
Mileage						
SAWA Crew	\$150.00	\$154.50	\$159.14	\$163.91	\$168.83	\$796.37
Herbicide						
SAWA Crew	\$50.00	\$51.50	\$53.05	\$54.64	\$56.28	\$265.46
Grand Total, CDFW Costs						\$14,389.66

		Year 6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	Total Cost	Average Annual Cost	Avg Annual Hours
Quarterly Monitoring																			
Project Manager/Bio																			
		\$70.00	\$71.10	\$72.16	\$73.49	\$74.79	\$76.15	\$77.58	\$78.99	\$80.67	\$81.33	\$82.07	\$82.90	\$83.80	\$84.80	\$85.88			
	FE Hours	18	18	18	18	18	18	18	18	18	18	18	18	18	18	18			
Total		\$1,980.00	\$1,018.80	\$1,079.36	\$1,141.74	\$1,206.00	\$1,272.18	\$1,340.34	\$1,410.55	\$1,481.87	\$1,557.36	\$1,634.08	\$1,713.10	\$1,794.49	\$1,878.33	\$1,964.68	\$36,453.87	\$1,458.18	18
Fund Management																			
Bookkeeper																			
		\$75.00	\$77.15	\$79.57	\$81.95	\$84.41	\$86.95	\$89.55	\$92.24	\$95.01	\$97.86	\$100.79	\$103.81	\$106.93	\$110.14	\$113.44			
	BK Hours	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2			
Total		\$150.00	\$154.50	\$159.14	\$163.91	\$168.83	\$173.89	\$179.11	\$184.40	\$190.02	\$195.72	\$201.59	\$207.64	\$213.86	\$220.28	\$226.89	\$2,789.84	\$115.99	9
Project Admin/Reporting																			
Admin Asst																			
		\$36.00	\$37.08	\$38.19	\$39.34	\$40.51	\$41.73	\$42.99	\$44.28	\$45.60	\$46.97	\$48.38	\$49.83	\$51.33	\$52.87	\$54.45			
	AA Hours	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10			
Total		\$360.00	\$370.80	\$381.92	\$393.38	\$405.18	\$417.34	\$429.86	\$442.75	\$456.04	\$469.72	\$483.81	\$498.31	\$513.27	\$528.67	\$544.53	\$6,695.61	\$446.37	10

Fixed Costs
Initial Assessment \$2,500.00
CDFW 5-year mitigation \$24,209.66
Fixed Cost Total \$26,709.66

Endowment Calculation
Avg Yrly Cost: \$2,296.97
Initial M/M Calculation \$65,627.60
Inflation Protection Factor \$1,509.43
Non-Wasting Formula \$3,806.40
Final M/M Needed \$108,754.30

Potential Cost*

\$135,463.96

All numbers on this initial cost sheet are ESTIMATES only, to be used in further project discussions, and expire 60 days from date listed on worksheet

NEW BUSINESS

Subject **Proposed Culvert Installation in Benton Channel Mitigation Site**
From Bartels, Peggy SPL <Peggy.J.Bartels@usace.army.mil>
To rose.corona@emarcd.org <rose.corona@emarcd.org>
Date 2016-09-23 07:22



Hello Rose,

I wanted to inform you that a developer proposed to install a culvert to allow stormwater drainage flows into Benton Channel. I would like to invite you to a site visit on September 29 at 9am. The meeting place is the intersection of Shrimp Lane and Magdalena. The Corps new South Coast Branch Chief will visit the site on September 29 at 9am, I hope that a representative from your agency will be able to attend.

There will be stormwater flows entering the mitigation site whether a permit is needed or not. As with the recent request from a developer for funding to place a culvert in the Benton Channel, I believe that the District was able to secure additional funding for maintenance of the channel. The meeting would be a good opportunity to secure additional funding from this developer.

I hope that you are able to attend. Please contact me whether you are able to attend or not.

Thanks so much,

Peggy Bartels
Biologist
USACE
Riverside Field Office
1451 Research Park Drive
Suite 100
Riverside, California 92507-2154
Office phone: 951-276-6624 (ext. 269)
760-707-4123 (cell phone)
Teleworking on Tuesdays and Fridays

Subject 1600-2016-0157-R6 Benton Channel Culvert
Morning Star Ranch outlet (into Mitigation Site
Managed by TEAM-RCD?)



From <Jeff.Brandt@wildlife.ca.gov>
To Martin Rasnick <mrasnick@wetlandpermitting.com>
<Kim.Freeburn@wildlife.ca.gov>,
<Jeff.Brandt@wildlife.ca.gov>,
Cc <Darren.Bradford@waterboards.ca.gov>, Bartels, Peggy SPL
<Peggy.J.Bartels@usace.army.mil>,
<Claire.Ingel@wildlife.ca.gov>, rose.corona@teamrcd.org
<rose.corona@teamrcd.org>
Date 2016-09-28 16:53

Good afternoon Martin.

I understand there will be a site visit to the Morningstar Ranch project site tomorrow. CDFW staff can't attend--and we may have an issue with the impacts. The JD notes ~0.10 acres of impacts in Benton Channel. Is the outlet/outfall site in or does it discharge into a conservation easement held by EMA-RCD (recent name change to TEAM-RCD)? If this isn't a site held by TEAM-RCD please forgive my intrusion. If it is held by TEAM-RCD we need to engage them ASAP. Our goal is to minimize, avoid, and mitigate impacts to the conservation area rather than increase the permanent impacts identified in the JD. I've cc'ed Rose Corona of TEAM-RCD.

If the outfall is within or discharges into a conservation easement--expect to engage the CE manager. If this is a portion of Benton Channel that is under a conservation easement held by TEAM-RCD, we need to look at the reasonably foreseeable effects and impacts to the mitigation/conservation area; ensure the CEQA doc identified, disclosed, and called for appropriate mitigation for the likely effects of additional hydrology in perpetuity; and determine how future maintenance within the CE will be effected and who will do the work associated; determine what are the monitoring and reporting requirements necessary to reasonably address the increased hydrology; and engage TEAM-RCD to determine what they want/need to assume additional hydrology and work at this site.

Claire Ingel is the point of contact for this project and the LSA# is 1600-2016-0157-R6.

Thank you,

Jeff Brandt
Habitat Conservation
California Department of Fish and Wildlife
3602 Inland Empire Blvd, Suite C-220
Ontario, CA 91764
Phone (909) 987-7161
Fax (909) 481-2945
Email jeff.brandt@wildlife.ca.gov

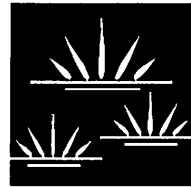
Every Californian should conserve water. Find out how at:

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MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services



PROJECT NUMBER: 0361-0033line

TO: Mr. Adrian Peters
Brookfield Residential
3200 Park Center Drive
Suite 1000
Costa Mesa, California 92626

FROM: Martin Rasnick

DATE: May 31, 2016

SUBJECT: Jurisdictional Delineation of the Maddalena Street Storm Drain Line Improvement Project, Located in the Community of French Valley, Riverside County, California.

Mr. Peters:

This letter report summarizes our preliminary findings of U.S. Army Corps of Engineers (Corps), San Diego Regional Water Quality Control Board (Regional Board), and California Department of Fish and Wildlife (CDFW) jurisdiction for the above-referenced property.¹

The Maddalena Street Storm Drain Line Improvement Project (Project) is located in the unincorporated community of French Valley, Riverside County, California [Exhibit 1 – Regional Map] and is located within Section 4 of Township 7 South, Range 2 West, of the U.S. Geological Survey (USGS) 7.5" quadrangle map Bachelor Mountain (dated 1953 and photorevised in 1973)[Exhibit 2 – Vicinity Map]. The Project site is located southerly of the boundary of the Yates Road Project (Tract 36437) along Maddalena Road/Allegre Vista Road from half way between Yates Road and Jubilee Road to just southerly of Shrimp Lane and adjacent to the Shrimp Lane (Benton Creek) Channel.

GLA secured regulatory permits and agreements for the Yates Road (Tract 36437) Development Project (Yates Road Project) in January and February 2014, and the County of Riverside (County) formally approved the Yates Road Project pursuant to the California Environmental Quality Act (CEQA) as part of Environmental Assessment Number 42561 in April 2014.

¹ This report presents our best effort at estimating the subject jurisdictional boundaries using the most up-to-date regulations and written policy and guidance from the regulatory agencies. Only the regulatory agencies can make a final determination of jurisdictional boundaries. If a final jurisdictional determination is required, GLA can assist in getting written confirmation of jurisdictional boundaries from the agencies.

The Yates Road Project included CEQA approval, biological surveys and reporting, as well as a jurisdictional delineation for the portion of the Project area within the Maddalena Street (also known as Allegra Vista Street) storm drain easement from the southwestern boundary of the Yates Road Project to the storm drain connection point within Shrimp Lane just north of the Shrimp Lane (also known as Benton Creek) Channel.

GLA understands that Brookfield Residential (Brookfield) must complete the connection of the Maddalena Street storm drain to the Shrimp Lane Channel as part of their Tract 30069 Development Project (Tract 30069) located immediately north of the Yates Road (Tract 36437) Project. GLA also understands that the proposed storm drain connection will occur adjacent to the Shrimp Lane Channel and not within the channel itself, as an existing conservation easement currently limits work from occurring within the Shrimp Lane Channel.

Regulatory specialists of Glenn Lukos Associates, Inc. (GLA) examined the portion of the Project area located south of Shrimp Lane during November 2015 and April 2016 to determine the limits of jurisdiction of (1) Corps jurisdiction pursuant to Section 404 of the Clean Water Act (CWA), (2) Regional Board jurisdiction pursuant to Section 401 of the CWA and Section 13260 of the California Water Code (CWC) and the Porter-Cologne Act, and (3) CDFW jurisdiction pursuant to Division 2, Chapter 6, Section 1600-1616 of the Fish and Game Code. Areas north of Shrimp Lane were not included as part of this jurisdictional delineation as they were already incorporated as part of the regulatory permits for the Yates Road Project.

Enclosed is a 40-scale map [Exhibit 3] that depicts the areas of jurisdiction associated with the Project impact area. Photographs to document the topography, vegetative communities, and general widths of each of the waters are provided as Exhibit 4.

No Corps or Regional Board jurisdiction is associated with the Project impact area.

CDFW jurisdiction associated with the Project impact area totals 0.10-acre, all of which consists of riparian habitat.

I. METHODOLOGY

Prior to beginning the field delineation a color aerial photograph, a topographic base map of the property, and the previously cited USGS topographic map were examined to determine the locations of potential areas of Corps/Regional Board/CDFW jurisdiction. Suspected jurisdictional areas were field checked for the presence of definable channels and/or wetland vegetation, soils and hydrology. Potential wetland habitats at the subject site were evaluated using the methodology set forth in the U.S. Army Corps of Engineers 1987 *Wetland Delineation*

*Manual*² ("Wetland Manual") and the 2008 *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)* ("Arid West Supplement")³. The presence of an Ordinary High Water Mark (OHWM) was determined using the 2008 *Field Guide to Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States*⁴ in conjunction with the *Updated Datasheet for the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States*.⁵ While in the field the limits of the OHWM, wetlands, and CDFW jurisdiction were recorded using GPS technology and/or on copies of the aerial photography.

II. JURISDICTION

A. Corps Jurisdiction Under the August 28, 2015 Clean Water Rule

Pursuant to Section 404 of the CWA, the Corps regulates the discharge of dredged and/or fill material into waters of the United States. The term "waters of the United States" is defined in Corps regulations at 33 CFR Part 328.3(a)⁶ as:

- (1) *All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;*
- (2) *All interstate waters, including interstate wetlands;*
- (3) *The territorial seas;*
- (4) *All impoundments of waters otherwise identified as waters of the United States under this section;*
- (5) *All tributaries, as defined in paragraph (c)(3) of this section, of waters identified in paragraphs (a)(1) through (3) of this section;*

² Environmental Laboratory. 1987. *Corps of Engineers Wetlands Delineation Manual*, Technical Report Y-87-1, U.S. Army Engineer Waterways Experimental Station, Vicksburg, Mississippi.

³ U.S. Army Corps of Engineers. 2008. *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Supplement Version 2.0*. Ed. J.S. Wakeley, R.W. Lichevar, and C.V. Noble. ERDC/EL TR-06-16. Vicksburg, MS: U.S. Army Engineer Research and Development Center.

⁴ Lichvar, R. W., and S. M. McColley. 2008. *A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States*. ERDC/CRREL TR-08-12. Hanover, NH: U.S. Army Engineer Research and Development Center, Cold Regions Research and Engineering Laboratory. (<http://www.crrel.usace.army.mil/library/technicalreports/ERDC-CRREL-TR-08-12.pdf>).

⁵ Curtis, Katherine E. and Robert Lichevar. 2010. *Updated Datasheet for the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States*. ERDC/CRREL TN-10-1. Hanover, NH: U.S. Army Engineer Research and Development Center, Cold Regions Research and Engineering Laboratory.

⁶ As revised by the Corps and EPA, "Clean Water Rule: Definition of 'Waters of the United States'; Final Rule," 80 Federal Register 124 (29 June, 2015), pp. 37054-37127.

- (6) *All waters adjacent to a water identified in paragraphs (a)(1) through (5) of this section, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;*
- (7) *All waters in paragraphs (a)(7)(i) through (v) of this section where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1) through (3) of this section. The waters identified in each of paragraphs (a)(7)(i) through (v) of this section are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (a)(1) through (3) of this section. Waters identified in this paragraph shall not be combined with waters identified in paragraph (a)(6) of this section when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (a)(6), they are an adjacent water and no case-specific significant nexus analysis is required.*
- (i) Prairie potholes. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.*
 - (ii) Carolina bays and Delmarva bays. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.*
 - (iii) Pocosins. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.*
 - (iv) Western vernal pools. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.*
 - (v) Texas coastal prairie wetlands. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.*
- (8) *All waters located within the 100- year floodplain of a water identified in paragraphs (a)(1) through (3) of this section and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (a)(1) through (5) of this section where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1) through (3) of this section. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100- year floodplain of a water identified in paragraphs (a)(1) through (3) of this*

section or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (a)(6) of this section when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (a)(6), they are an adjacent water and no case-specific significant nexus analysis is required.

In the absence of wetlands, the limits of Corps jurisdiction in non-tidal waters, such as intermittent streams, extend to the OHWM which is defined at 33 CFR 328.3(e) as:

...that line on the shore established by the fluctuation of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

The term “wetlands” (a subset of “waters of the United States”) is defined at 33 CFR 328.3(b) as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support...a prevalence of vegetation typically adapted for life in saturated soil conditions.” In 1987 the Corps published a manual to guide its field personnel in determining jurisdictional wetland boundaries. The methodology set forth in the 1987 Wetland Delineation Manual and the Arid West Supplement Version 2.0 generally require that, in order to be considered a wetland, the vegetation, soils, and hydrology of an area exhibit at least minimal hydric characteristics. While the manual and Supplement provide great detail in methodology and allow for varying special conditions, a wetland should normally meet each of the following three criteria:

- more than 50 percent of the dominant plant species at the site must be typical of wetlands (i.e., rated as facultative or wetter in the National Wetland Plant List⁷);
- soils must exhibit physical and/or chemical characteristics indicative of permanent or periodic saturation (e.g., a gleyed color, or mottles with a matrix of low chroma indicating a relatively consistent fluctuation between aerobic and anaerobic conditions); and
- Whereas the 1987 Manual requires that hydrologic characteristics indicate that the ground is saturated to within 12 inches of the surface for at least five percent of the growing season during a normal rainfall year, the Arid West Supplement does not include a quantitative criteria with the exception for areas with “problematic hydrophytic vegetation”, which require a minimum of 14 days of ponding to be considered a wetland.

⁷ Lichvar, R.W., M. Butterwick, N.C. Melvin, and W.N. Kirchner. 2014. *The National Wetland Plant List: 2014 update of wetland ratings*. Phytoneuron 2014-41: 1–42.

B. Corps Jurisdiction Pursuant to the Regulations Existing Prior to August 28, 2015

On October 9, 2015, the U.S. 6th District Circuit Court of Appeals ordered a nationwide stay on the Corps and U.S. Environmental Protection Agency's (EPA) definition of waters of the United States under the Clean Water Rule. As a result, the Corps' regulations that was in effect prior to the August 28, 2015 Clean Water Rule is again in effect until such a time as the Court order is satisfied, if this occurs.

Pursuant to Section 404 of the CWA, the Corps regulates the discharge of dredged and/or fill material into waters of the United States. The term "waters of the United States" is defined in Corps regulations at 33 CFR Part 328.3(a) as⁸:

- (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters, which are subject to the ebb and flow of the tide;*
- (2) All interstate waters including interstate wetlands;*
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect foreign commerce including any such waters:*
 - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or*
 - (ii) From which fish or shell fish are or could be taken and sold in interstate or foreign commerce; or*
 - (iii) Which are used or could be used for industrial purpose by industries in interstate commerce...*
- (4) All impoundments of waters otherwise defined as waters of the United States under the definition;*
- (5) Tributaries of waters identified in paragraphs (a) (1)-(4) of this section;*
- (6) The territorial seas;*
- (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1)-(6) of this section.*

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

⁸ On October 9, 2015, the U.S. Court of Appeals for the 6th Circuit ordered a nationwide stay on the Agency's new definition.

(8) Waters of the United States do not include prior converted cropland.⁹ Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding CWA jurisdiction remains with the U.S. Environmental Protection Agency (EPA).

In the absence of wetlands, the limits of Corps jurisdiction in non-tidal waters, such as intermittent streams, extend to the ordinary high water mark (OHWM) which is defined at 33 CFR 328.3(e) as:

...that line on the shore established by the fluctuation of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

1. Corps Preliminary Jurisdictional Determination

A *Corps Preliminary Jurisdictional Determination Form* may be used to concede Corps jurisdiction where all streambeds within the project area are considered Corps jurisdictional waters. The project would be able to move forward pursuant to Corps Regulatory Guidance Letter (RGL) 08-02, issued on June 26, 2008, which allows the Corps to issue preliminary jurisdictional determinations (Preliminary JD) for a project. A Preliminary JD allows a project to move forward by setting aside/voluntarily waiving questions regarding CWA jurisdiction over drainages onsite in the interest of allowing expeditiously obtaining a Section 404 Permit.

As stated in RGL 08-02:

While a landowner, permit applicant, or other affected party can elect to request and obtain an approved JD, he or she can also decline to request an approved JD, and instead obtain a Corps individual or general permit authorization based on either a preliminary JD, or, in appropriate circumstances (such as authorizations by non-reporting nationwide general permits), no JD whatsoever. The Corps will determine what form of JD is appropriate for any particular circumstance based on all the relevant factors, to include, but not limited to, the applicant's preference, what kind of permit authorization is being used (individual permit versus general permit), and the nature of the proposed activity needing authorization. The Corps typically completes Preliminary JDs within 60 days of receipt of the request for such a determination. If

⁹ The term "prior converted cropland" is defined in the Corps' Regulatory Guidance Letter 90-7 (dated September 26, 1990) as "wetlands which were both manipulated (drained or otherwise physically altered to remove excess water from the land) and cropped before 23 December 1985, to the extent that they no longer exhibit important wetland values. Specifically, prior converted cropland is inundated for no more than 14 consecutive days during the growing season...." [Emphasis added.]

the Corps project manager cannot complete the Preliminary JD within the 60-day timeframe, they must provide their supervisor, who would also provide the applicant, with a schedule to complete the determination (i.e., unlike the Rapanos significant nexus guidelines, there is a specific timeframe to complete the Preliminary JD and move forward with the jurisdictional determination, without uncertainty, and the EPA will not be involved with the Preliminary JD process as the Corps is not required to coordinate with the EPA to review Preliminary JDs).

2. Wetland Definition Pursuant to Section 404 of the Clean Water Act

The term “wetlands” (a subset of “waters of the United States”) is defined at 33 CFR 328.3(b) as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support...a prevalence of vegetation typically adapted for life in saturated soil conditions.” In 1987 the Corps published a manual to guide its field personnel in determining jurisdictional wetland boundaries. The methodology set forth in the 1987 Wetland Delineation Manual and the Arid West Supplement generally require that, in order to be considered a wetland, the vegetation, soils, and hydrology of an area exhibit at least minimal hydric characteristics. While the manual and Supplement provide great detail in methodology and allow for varying special conditions, a wetland should normally meet each of the following three criteria:

- more than 50 percent of the dominant plant species at the site must be typical of wetlands (i.e., rated as facultative or wetter in the National List of Plant Species that Occur in Wetlands¹⁰);
- soils must exhibit physical and/or chemical characteristics indicative of permanent or periodic saturation (e.g., a gleyed color, or mottles with a matrix of low chroma indicating a relatively consistent fluctuation between aerobic and anaerobic conditions); and
- Whereas the 1987 Manual requires that hydrologic characteristics indicate that the ground is saturated to within 12 inches of the surface for at least five percent of the growing season during a normal rainfall year, the Arid West Supplement does not include a quantitative criteria with the exception for areas with “problematic hydrophytic vegetation”, which require a minimum of 14 days of ponding to be considered a wetland.

¹⁰ Reed, P.B., Jr. 1988. National List of Plant Species that Occur in Wetlands. U.S. Fish and Wildlife Service Biological Report 88(26.10).

C. Regional Water Quality Control Board

Section 401 of the CWA requires any applicant for a Section 404 permit to obtain certification from the State that the discharge (and the operation of the facility being constructed) will comply with the applicable effluent limitation and water quality standards. In California this 401 certification is obtained from the Regional Board. The Corps, by law, cannot issue a Section 404 permit until a 401 certification is issued or waived.

Subsequent to the SWANCC decision, the Chief Counsel for the State Water Resources Control Board issued a memorandum that addressed the effects of the SWANCC decision on the Section 401 Water Quality Certification Program.¹¹ The memorandum stating that for waters that are no longer considered subject to federal jurisdiction pursuant to Section 404 of the Clean Water Act, but which remain "waters of the state", the State will continue to regulate discharges under the Porter-Cologne Act. In such cases the applicant must apply for and obtain a Waste Discharge Requirement from the Regional Board.

D. California Department of Fish and Wildlife

Pursuant to Division 2, Chapter 6, Sections 1600-1616 of the California Fish and Game Code, the CDFW regulates all diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake, which supports fish or wildlife.

CDFW defines a "stream" (including creeks and rivers) as "a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation." CDFW's definition of "lake" includes "natural lakes or man-made reservoirs."

CDFW jurisdiction within altered or artificial waterways is based upon the value of those waterways to fish and wildlife. The CDFW Legal Advisor has prepared the following opinion:

- Natural waterways that have been subsequently modified and which have the potential to contain fish, aquatic insects and riparian vegetation will be treated like natural waterways...
- Artificial waterways that have acquired the physical attributes of natural stream courses and which have been viewed by the community as natural stream courses, should be treated by [CDFW] as natural waterways...

¹¹ Wilson, Craig M. January 25, 2001. Memorandum addressed to State Board Members and Regional Board Executive Officers.

- Artificial waterways without the attributes of natural waterways should generally not be subject to Fish and Game Code provisions...

Thus, CDFW jurisdictional limits closely mirror those of the Corps. Exceptions are CDFW's exclusion of isolated wetlands (those not associated with a river, stream, or lake), the addition of artificial stock ponds and irrigation ditches constructed on uplands, and the addition of riparian habitat supported by a river, stream, or lake regardless of the riparian area's federal wetland status.

III. RESULTS/IMPACTS

A. Corps Jurisdiction

The Project impact area is located upland of, and adjacent to, the Shrimp Land Channel. The Project impact area does not exhibit any sign of flow and is dominated by mulefat (*Baccharis salicifolia*) scrub habitat with facultative (FAC) or drier species. As such, there are no jurisdictional streambeds or wetlands associated with the Project impact area and no Corps jurisdiction is present.

B. Regional Water Quality Control Board Jurisdiction

As noted above in Section IIIA above, there are no jurisdictional streambeds or wetlands associated with the Project impact area. As such, no Regional Board jurisdiction is present.

C. CDFW Jurisdiction

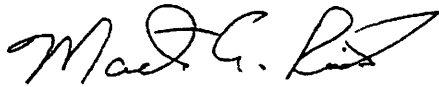
As noted above in Section IIIA above, there are no jurisdictional streambeds or wetlands associated with the Project impact area; however, the Project impact area supports riparian habitat (mulefat scrub) that is associated with the adjacent Shrimp Lane Channel. As a result, CDFW jurisdiction associated with the Project impact area totals approximately 0.10-acre, all of which consists of riparian habitat.

Mr. Adrian Peters
Brookfield Residential
May 31, 2016
Page 11

Should you have questions regarding the information noted above, please call me at (949) 837-0404, Ext. 20 at the office or (714) 323-6221 on my cellular telephone. Thank you.

Sincerely,

GLENN LUKOS ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "Martin Rasnick". The signature is fluid and cursive, with the first name "Martin" and last name "Rasnick" clearly distinguishable.

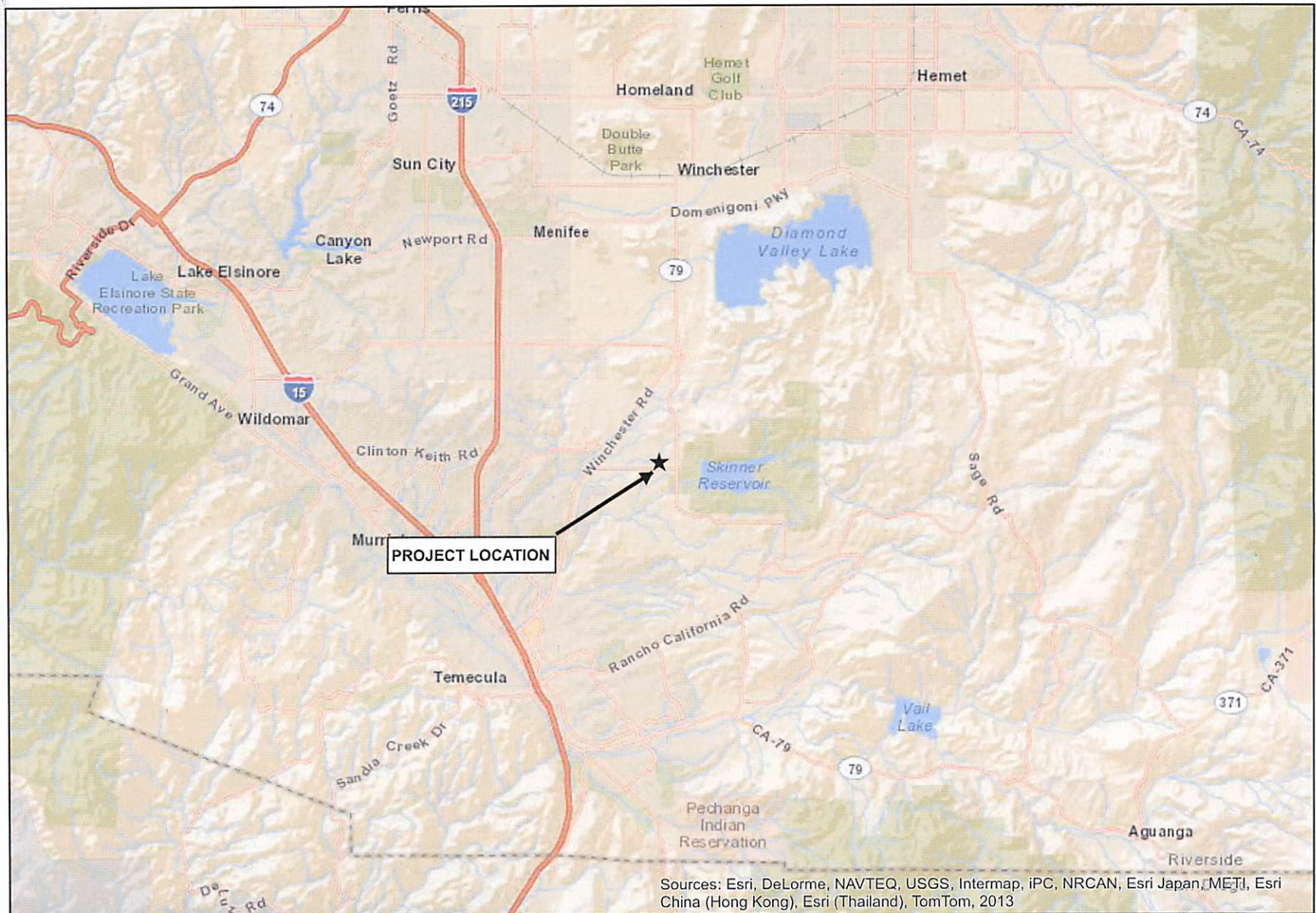
Martin Rasnick
Senior Regulatory Specialist

s:0361-33a.memo.CDFW.JD_052316.docx

Source: ESRI World Street Map



0 2 4 8
Miles



Sources: Esri, DeLorme, NAVTEQ, USGS, Intermap, IPC, NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, 2013

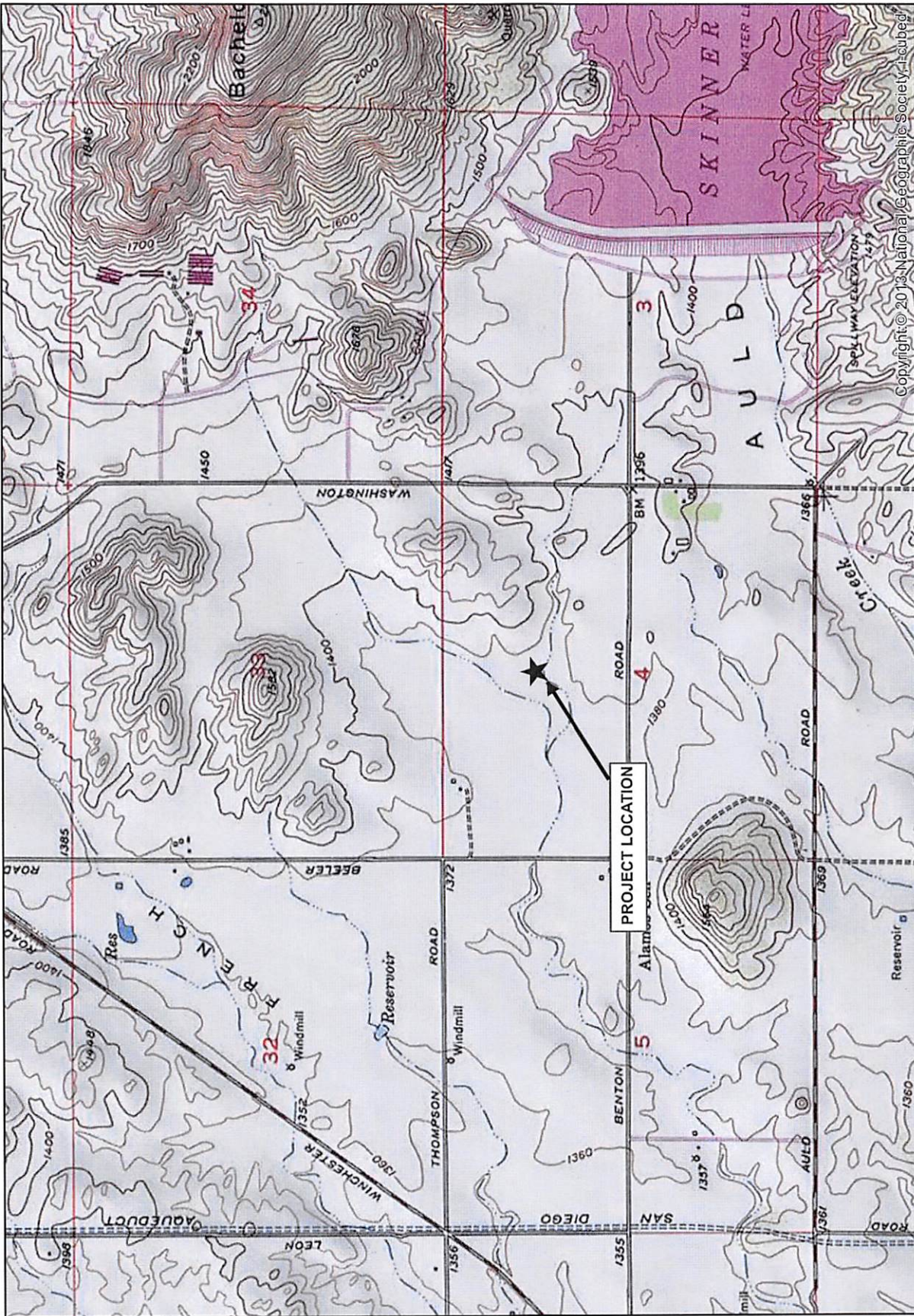
MADDALENA STREET STORM DRAIN LINE IMPROVEMENT PROJECT

Regional Map

GLENN LUKOS ASSOCIATES

Exhibit 1





MADALENA STREET STORM DRAIN LINE IMPROVEMENT PROJECT

Vicinity Map



Legend

- Project Limits
- CDFW Jurisdictional Impacts - 0.10ac.



0 20 40 80
Feet

1 inch = 40 feet

**MADDALENA STREET STORM DRAIN LINE
IMPROVEMENT PROJECT**

CDFW Jurisdictional Delineation/Impact Map



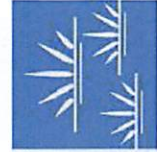
GLENN LUKOS ASSOCIATES

Exhibit 3

X:\00 - CDS\ONLY\001-33\LINE\0361-33_GIS\Impacts\GIS\0361-33_CDFW_Impacts.mxd



Photograph 1: November 2015. View depicting Project impact area located upland of the Shrimp Lane Channel.



GLENN LUKOS ASSOCIATES

Exhibit 4



Photograph 2: November 2015. Additional view depicting Project impact area located upland of the Shrimp Lane Channel.

MADDALENA STREET STORM
DRAIN LINE IMPROVEMENT PROJECT

Site Photographs