

POINSETTIA PLACE PRESERVE MANAGEMENT PLAN

March 21, 2011

Prepared for:

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Poinsettia Place Preserve Management Plan

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I. INTRODUCTION

A. Purpose of Inclusion of the Preserve Area in the HMP

This Preserve Management Plan (PMP) details the maintenance and management measures necessary to preserve southern maritime chaparral habitat and the sensitive plants it contains within an on-site, 11.5-acre Preserve Area (Figures 1 – 5) on the Poinsettia Place project site. The Preserve Area has been preserved as partial compensatory mitigation for environmental effects of Sierra Linda Development, LLC's Poinsettia Place Project in Carlsbad, California (City). This PMP has been prepared in accordance with requirements of the Mitigated Negative Declaration (MND), the approved Mitigation, Monitoring and Management Program (MMRP; City 2006), the Habitat Management Plan Permit (HMPP 06-08) and the Carlsbad Habitat Management Plan (HMP; City 2004).

B. Preserve Area History

The Preserve Area is part of the larger, 20.42-acre Poinsettia Place property. The Preserve Area has not been developed but contains disturbed portions with pedestrian trails, trash and debris piles, and patches of invasive plant species resulting from colonization exacerbated by human incursion and itinerant uses. The Preserve was created in 2006 as a result of the City's approval of the MND for the Poinsettia Place project.

Trails, trash, debris and invasive plants have degraded some of the underlying habitat services provided by the Preserve Area, but much of the vegetation is still native and undisturbed. Surrounding land uses include residential development to the north and west, cleared agricultural land to the south, and native habitat to the east.

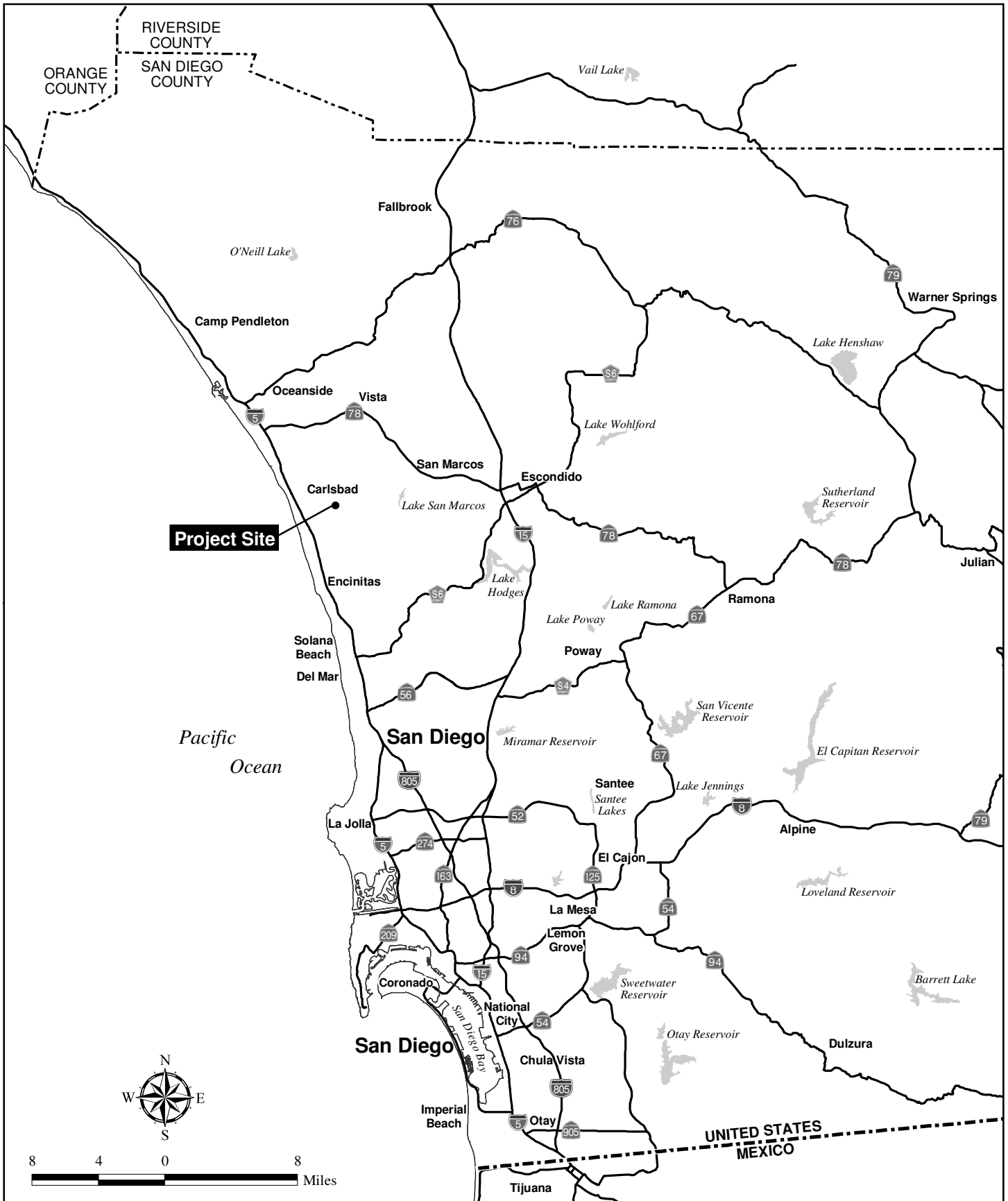
C. Purpose of This Management Plan

This PMP plan guides management of habitats and species described herein to achieve the City's obligation to protect and enhance wildlife values under the MHCP, HMP, and Implementing Agreement. This plan serves as a guide for appropriate public uses of the Preserve Area. It also serves as a descriptive inventory of native plant and wildlife species and habitats, which occur on or use this Preserve Area.

This PMP details the management measures necessary to comply with federal and state Endangered Species acts and the Natural Community Conservation Program (NCCP) including the City's Habitat Management Plan for Natural Communities in the City of Carlsbad (City 2004) and San Diego Association of Governments Multiple Habitat Conservation Program (MHCP) Plan (SANDAG 2003), as well as permits and agreements with the USFWS, CDFG, and City. This PMP identifies the conservation and management measures necessary to protect the Preserve Area and provides the framework for long-term management and monitoring of conserved habitat.

Mitigation measures 1, 2, 3, 5 and 7 from the MND's List Of Mitigating Measures detailed the creation and restoration of southern maritime chaparral, disturbed southern maritime chaparral, southern maritime chaparral habitat/coastal sage scrub habitats within the Preserve, the translocation of 7 Del Mar Manzanita plants to the Preserve Area and the restoration of disturbed and non-native grasslands within the Preserve Area to southern maritime chaparral. Those mitigation measures are the sole responsibility of the permittee and will be accomplished pursuant to the Upland Mitigation Plan (HELIX 2010), for a period of up to five years, or until stipulated success criteria have been attained. The permanent management of the Preserve Area commences immediately.

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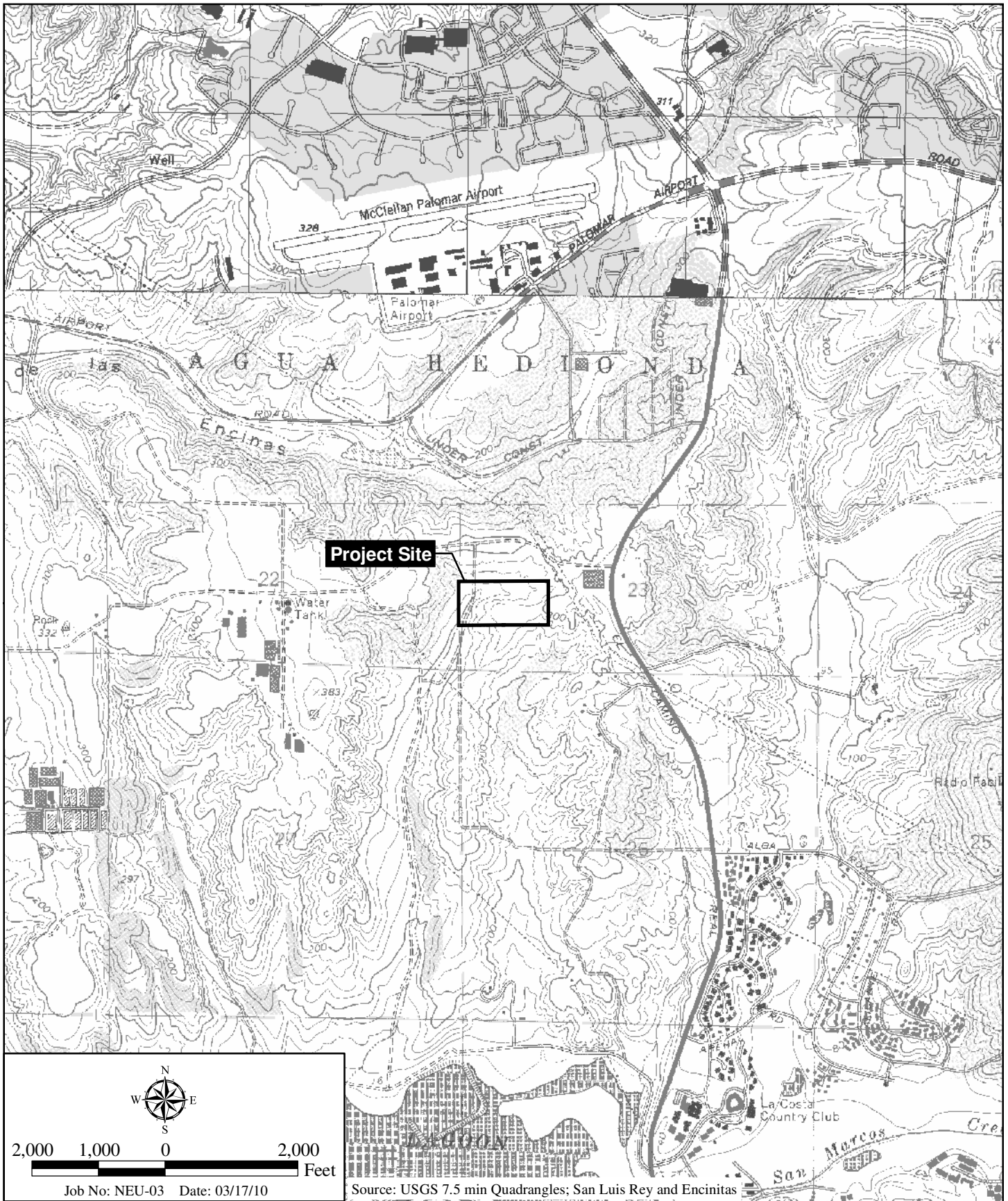


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Regional Location Map

POINSETTIA PLACE

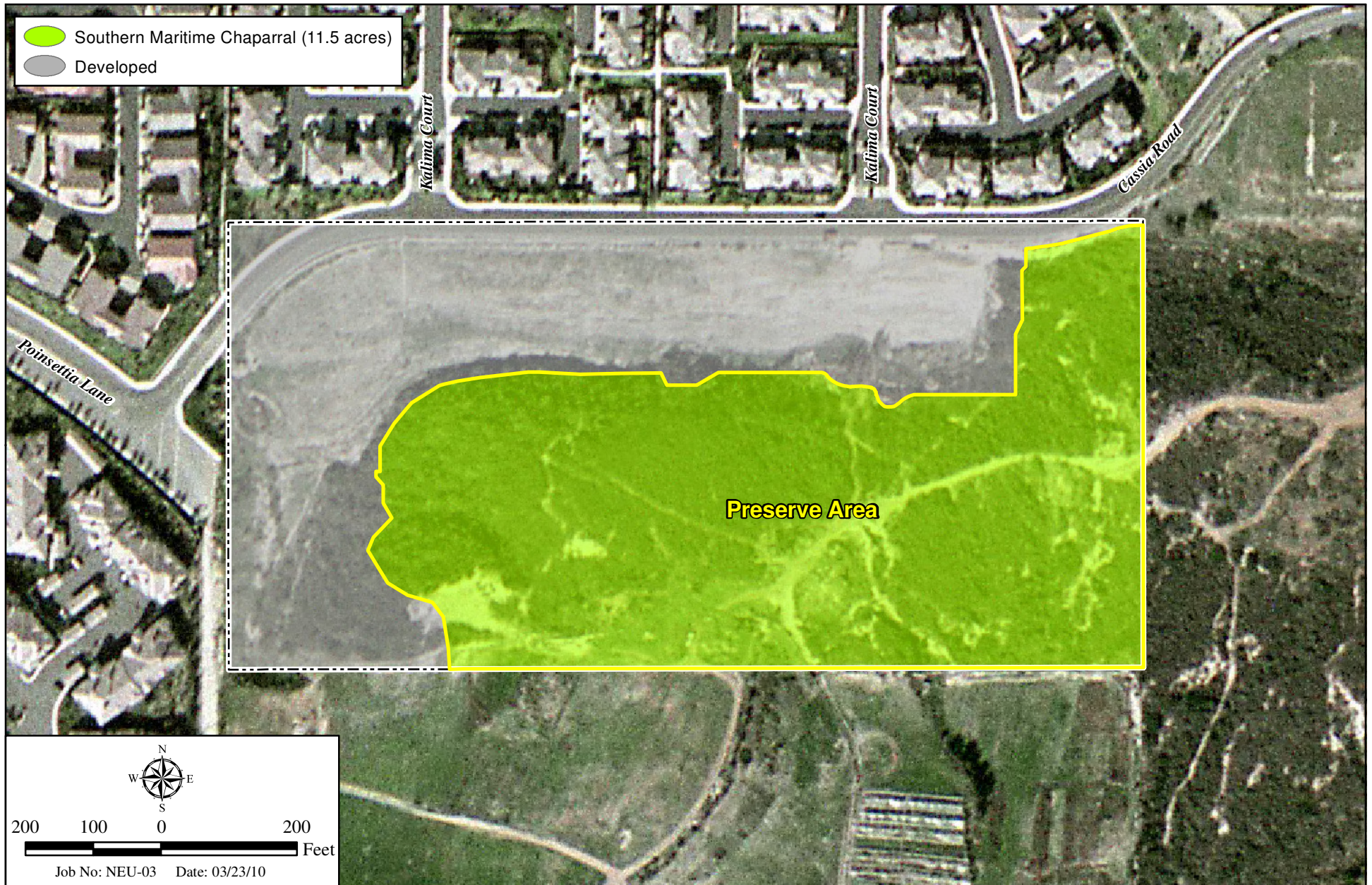
Figure 1



Project Location Map

POINSETTIA PLACE

Figure 2



Preserve Area Vegetation Map

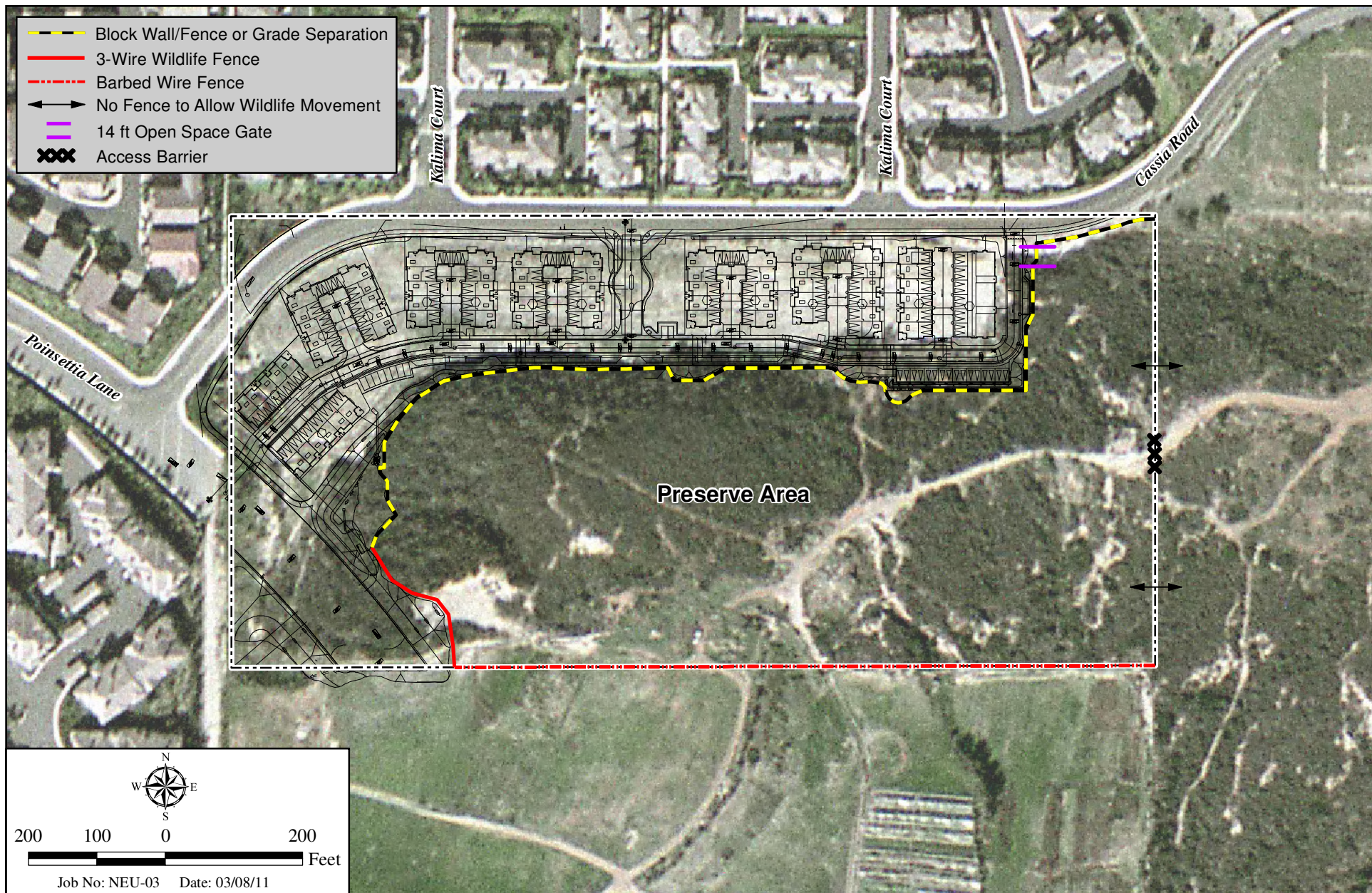
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Preserve Area Vegetation and Sensitive Resources

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Figure 4



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Preserve Area Fences

POINSETTIA PLACE

Figure 5

This PMP addresses mitigating measures 6 and 9e from the MND's List Of Mitigating Measures (City 2006). Mitigating Measure 5 requires translocation of 7 Del Mar Manzanita plants to the Preserve Area. A permanent Preserve Manager will manage the Preserve Area in perpetuity. Following attainment of the success criteria stipulated by the Upland Mitigation Plan (HELIX 2010), the habitat and sensitive plants will have been restored to self-sustaining, southern maritime chaparral.

Measure 9e from the MND's List Of Mitigating Measures (City 2006) requires that "Prior to the issuance of a grading permit, the applicant shall prepare a Management Plan". This PMP provides a cost analysis and identifies the funding mechanism to ensure management and monitoring in perpetuity, provides management measures to sustain the viability of the protected habitat and species, identifies timing for implementing the management and conservation measures, provides a permanent protection mechanism, details annual reporting requirements, and addresses all other requirements contained in the MND and its MMRP (City 2006).

One of the purposes of the Preserve Area is to try to preserve sensitive plant populations on the project site, including Nuttall's scrub oak (*Quercus dumosa*), Del Mar manzanita (*Arctostaphylos glandulosa* ssp. *crassifolia*), summer holly (*Comarostaphylis diversifolia*), and wart-stemmed ceanothus (*Ceanothus verrucosus*). The focus of this PMP is the preservation of southern maritime chaparral and the sensitive plants it contains through adaptive, protective management.

The Preserve Manager shall be the San Diego Urban Corps Habitat Services.

Director of Environmental Services
Urban Corps of San Diego County
3127 Jefferson Street
San Diego CA, 92110
619-235-6884

II. PRESERVE AREA DESCRIPTION

A. Geographical Setting

The 11.5-acre Poinsettia Place Preserve Area is located at the eastern terminus of Poinsettia Lane south of Palomar Airport Road, and west of El Camino Real in central Carlsbad (Figure 1). The project site is in the northeast corner of Section 7, Township 12 South, Range 4 West on the U.S. Geological Survey 7.5-minute Encinitas Quadrangle (Figure 2). The Preserve Area is more specifically defined by its Legal Description (Appendix A), Plat Map (Appendix B) and current Title Report (Appendix C).

The approved Poinsettia Place Project is an urban in-fill development comprised of 90 condominiums on approximately 5 acres to the north of the Preserve Area and would also include the extension of Poinsettia Lane (approximately 3 acres) from the western boundary to the southern boundary of the site (Figures 1 – 5).

B. Geology, Soils, Climate, Hydrology

A low ridge rises to the south of the developed portion of the site and predominates the Preserve Area. Soil types present on site are comprised of loamy alluvial land-Huehuero complex (LvF3; Bowman

1973). On-site elevations range from 200 feet above mean sea level (AMSL) in the southwest to 300 feet AMSL in the southeast of the Preserve Area.

The climate of the Preserve Area is Mediterranean with temperatures in Carlsbad range from 33 to 96 °F and rainfall in Carlsbad varies from 2.95 to 8.3 (inches/month). The average warmest month is August. The highest recorded temperature was 108 °F in 1985. January is the average coolest month. The lowest recorded temperature was 20°F in 1988. The maximum average precipitation occurs in January.

The Preserve Area does not contain any surface water or aquatic resource. A detention basin is present to the west, outside of the Preserve and it holds runoff from the surrounding development. The detention basin is completely outside of the Preserve area and the Preserve Manager has no responsibility for its management.

C. Preserve Area Boundaries and Historic/Adjacent Land Use

The Preserve Area is specifically defined by its Legal Description (Appendix A), Plat Map (Appendix B).

The fences shown on Figure 5 physically define the boundary of the Preserve Area. The boundary of the Poinsettia Place development and the Preserve Area is physically partitioned by grade separation and fencing along their shared border provided by the Permittee. The southern boundary of the Preserve Area is fenced by barbed wire. A total of 234 ft. of 3-wire wildlife fence connects to the development fence to complete the western border. The eastern boundary of the Preserve Area shall remain unfenced to allow wildlife movement, but a barrier is needed to block an existing pedestrian trail.

The Preserve Area has been partially disturbed and contains several pedestrian trails, trash and debris piles, and patches of invasive plant species, but much of the vegetation is still native and undisturbed. The Preserve Area is bordered by residential development to the north and west and by agriculture to the south and natural open space to the east.

D. Ownership and Legal Description

The Poinsettia Place Home Owners Association (HOA) will own the Preserve Area. The Legal Description of the Preserve Area is provided in Appendix A and a Plat Map is provided in Appendix B.

E. Conservation Easement Compliance

The Preserve Area will be permanently conserved and protected by a Restrictive Covenant (RC) with the City, the California Department of Fish and Wildlife and the United States Fish and Wildlife Service as third party beneficiaries. The RC shall be substantially similar to the draft text included as Appendix D. Compliance with this requirement shall be demonstrated by provision of a recorded copy to the City.

The Restrictive Covenant (RC; Appendix D) provides a list of permitted and prohibited uses of the land. Any activity on or use of the Preserve Area inconsistent with the Purpose of the Restrictive Covenant (Appendix D) is prohibited. The following are expressly prohibited, except as specifically provided for in the Permit, Mitigation Plan, and any easement and reservation of rights recorded in the chain of title to the Preserve Area:

- ◆ Use of herbicides, pesticides, rodenticides, biocides, fertilizers, or other agricultural chemicals or except weed abatement activities necessary to control or remove invasive plants;

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- ◆ Incompatible fire protection activities, except fire prevention activities approved or directed by the Fire Marshall;
- ◆ Use of off-road vehicles and use of any other motorized vehicles except as necessary to restore native plant communities;
- ◆ Grazing or other agricultural activity of any kind;
- ◆ Recreational activities including, but not limited to, hiking, horseback riding, cycling, hunting or fishing;
- ◆ Residential, commercial, retail, institutional, or industrial uses;
- ◆ Any legal or de facto division, subdivision or portioning of the Preserve Area;
- ◆ Construction, reconstruction or placement of any building or other improvement;
- ◆ Depositing, dumping or accumulating soil, trash, ashes, refuse, waste, bio-solids or any other material except as necessary to restore native plant communities;
- ◆ Planting, introduction or dispersal of non-native or exotic plant or animal species;
- ◆ Filling, dumping, excavating, draining, dredging, mining, drilling, exploring or extracting minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Preserve Area;
- ◆ Altering the general topography of the Preserve Area, including but not limited to building of roads, trails, and flood control structures, and
- ◆ Removing, destroying, or cutting of trees, shrubs or other vegetation, except as necessary for (1) emergency fire protection as required by fire safety officials, (2) controlling invasive, exotic plants which threaten the integrity of the habitat, (3) preventing or treating disease and (4) completing the Upland Mitigation Plan.

III. HABITAT AND SPECIES DESCRIPTION

A. Vegetation Communities

Since the entire 11.5 acre-Preserve will be restored to southern maritime chaparral (SMC) in accordance to the Upland Mitigation Plan (HELIX 2010), this MMP considers the Preserve to be entirely comprised of southern maritime chaparral (SMC) habitat (Figures 3 and 4).

Southern maritime chaparral is a sensitive vegetation community that occurs within the coastal fog belt on coastal bluffs and sandstone areas that are relatively nutrient poor. Plant components include several endemic shrubs, many of which are listed by federal or state agencies. Predominant species of this vegetation type may include wart-stemmed ceanothus (*Ceanothus verrucosus*), mission manzanita (*Xylococcus bicolor*), chamise (*Adenostoma fasciculatum*), Del Mar manzanita, Nuttall's scrub oak and

summer holly (*Comarostaphylis diversifolia* ssp. *diversifolia*). Southern maritime chaparral is considered a sensitive vegetation community by several resource agencies, including the USFWS, CDFG (Holland 1986), and City (2004) because it supports many endemic sensitive plant species and is declining as a result of development. Southern maritime chaparral is considered sensitive by CDFG (Holland 1986) and is characterized as a Group B – Rare Upland habitat type in the City’s HMP (City 2004).

B. Plant Species

A total of 63 plant species have been observed within the Preserve Area (Appendix E). The Preserve Area contains 11.5 acres of southern maritime chaparral. The Preserve’s southern maritime chaparral community is predominated by Nuttall’s scrub oak and chamise. Other species present include Del Mar manzanita, mission manzanita, California buckwheat (*Eriogonum fasciculatum*), and summer holly and black sage (*Salvia mellifera*).

One listed plant species, Del Mar manzanita (*Arctostaphylos glandulosa* ssp. *crassifolia*), and three sensitive plant species, Nuttall’s scrub oak (*Quercus dumosa*), summer holly (*Comarostaphylis diversifolia*) and wart-stemmed ceanothus (*Ceanothus verrucosus*) are present within the Preserve Area and are further described below in Section 3.4.

C. Wildlife Species

The Preserve Area supports a variety of animal species typical of the region’s coastal southern California location and habitats. A total of 19 animal species were observed on site (Appendix F). One sensitive animal species addressed in the City’s HMP was located on site: the coastal California the (*Polioptila californica californica*), which is federally listed as threatened and an HMP-covered species.

Coastal California gnatcatcher (*Polioptila californica californica*)

Listing: FT/CSC; HMP-covered Species, critical and major population

Distribution: Southern Los Angeles, Orange, western Riverside, and San Diego counties into Baja

Habitat(s): Coastal sage scrub

Status on site: Two individuals were located in the central portion and southeastern corner of the Preserve Area during general surveys

D. Species Covered by the HMP and Other Sensitive Species

One HMP-covered, sensitive plant species, Nuttall’s scrub oak (*Quercus dumosa*) is present within the Preserve Area. One listed plant species, Del Mar manzanita (*Arctostaphylos glandulosa* ssp. *crassifolia*) is present. In addition, the sensitive plants summer holly (*Comarostaphylis diversifolia*) and wart-stemmed ceanothus (*Ceanothus verrucosus*) are also present within the Preserve Area.

A brief description of the four sensitive species present is provided below.

Del Mar manzanita (*Arctostaphylos glandulosa* ssp. *crassifolia*)

Listing: FE/--; CNPS List 1B.1; HMP List 3 Species, critical population, Narrow Endemic Species

Distribution: Coastal San Diego County

Habitat(s): Southern maritime chaparral on sandy mesas and bluffs

Status on site: Fifty-eight individuals are present in the northeast portion of the Preserve Area, including seven that will be translocated from the affected portion of the larger property as part of the Upland Mitigation Plan (HELIX 2010).

Wart-stemmed ceanothus (*Ceanothus verrucosus*)

Listing: --/--; CNPS List 2.2; HMP List 2 Species, major population

Distribution: Western San Diego County and adjacent Baja

Habitat(s): Chaparral

Status on site: Eleven individuals are present in the central portion of the Preserve Area.

Summer holly (*Comarostaphylis diversifolia* ssp. *diversifolia*)

Listing: --/--; CNPS List 1B.1; HMP List 3 Species, major population

Distribution: Scattered locations below approximately 2,300 feet from the foothills to the coast in Orange and San Diego counties and south into Baja California, Mexico (Baja)

Habitat(s): North-facing slopes and drainages in chaparral

Status on site: Eleven individuals were observed: seven plants in the west and four plants in the southeast portion of the Preserve Area

Nuttall's scrub oak (*Quercus dumosa*)

Listing: --/--; CNPS List 1B.1; HMP-covered Species, critical and major population

Distribution: San Diego, Orange, and Santa Barbara counties and Baja

Habitat(s): Chaparral, coastal scrub with sandy or clay loam soils

Status on site: One hundred forty seven individuals are scattered throughout the Preserve Area, to make it a co-dominant species in the southern maritime chaparral habitat.

Additionally, 24 sensitive plant species that were not observed have the potential to occur on site (HELIX 2006).

E. Fire History

While it is likely that the Preserve Area has burned in the past, we are unaware of any fire in its recent history.

F. Threats

The major threats to the habitat and sensitive species within the Preserve Area are unauthorized human access and trash and debris, as described herein. Initial site cleanup by the Permittee at start of construction shall include the ripping and removal of existing trails, other than those used for restoration and Preserve management. In addition, the existing trail in the center of the eastern border shall also be signed and blocked by a barrier to discourage human access but not preclude wildlife movement.

Unauthorized human access and illegal occupancy is a common problem in preserves. The Preserve Manager will survey the Preserve Area for humans and encampments during general site visits and report them to the City and applicable law enforcement agencies.

The Preserve Manager will remove trash and debris from the Preserve Area when it is observed and no less frequently than once per year.

Removal of any plants, animals, rocks, minerals, or other natural resources will be prohibited within the Preserve Area. Anyone found removing natural resources would be informed in a non-confrontational manner that these activities are illegal. The Preserve Manager will maintain a log of all incidences of collecting within the Preserve Area. Should a situation turn confrontational or if requests to discontinue

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illegal activities are ignored, the Preserve Manager shall report the offender(s) to the City and applicable law enforcement agencies.

At his/her discretion, the Preserve Manager may allow seed collection and plant cuttings to be used for revegetation efforts within or outside of the Preserve Area. Any such activities will take place under the direct supervision of the Preserve Manager, and the amount of collected plant materials will be limited to ensure protection of on-site resources.

IV. MANAGEMENT AND MONITORING GOALS AND ASMDS

A. Biological Goals

The Preserve Area will remain in a natural condition and be preserved in its natural, scenic, open condition to maintain its ecological, historical, visual and educational values. Natural condition means the condition of the Preserve Area at the time the Restrictive Covenant (Appendix D) is executed, as well as future enhancements or changes to the Preserve Area that occur directly as a result of approved restoration and management activities.

Permitted activities allowed within the Preserve Area include:

- ◆ Reasonable access through the Preserve Area to perform obligations or other activities detailed in this PMP and those permitted by the Restrictive Covenant. In addition, police and other public safety organizations and their personnel may enter the Preserve Area to address any legitimate public health or safety matter.
- ◆ Enhancement of native plant communities, including the planting of native trees and shrubs, so long as such activities do not harm the southern maritime chaparral community.
- ◆ Prevention of erosion, and restoration of areas damaged by natural events or by the acts of persons wrongfully damaging the natural condition of the Preserve Area.
- ◆ Removal or trimming of vegetation downed or damaged as a result of natural disaster, removal of man-made debris, removal of non-native parasitic vegetation and removal of non-native or exotic plant or animal species.
- ◆ Erection and maintenance of signage and other notification features saying “Protected Natural Area,” that informs persons of the nature and restrictions on the Preserve Area.
- ◆ The right, in an emergency situation only, to maintain firebreaks (defined as a strip of plowed or cleared land made to check the spread of a fire), trim or remove brush, otherwise perform preventative measures required by the fire department to protect structures and other improvements from encroaching fire.

The primary goal of this PMP is to preserve sensitive plants and animals within southern maritime chaparral in the Preserve Area through active management. The listed and sensitive plant species, Del Mar Manzanita, Nuttall’s scrub oak, summer holly and wart-stemmed ceanothus, shall be protected through the management of the Preserve Area in accordance with the HMP to minimize edge effects, prevent disturbance, and protect against frequent or catastrophic fires.

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The Preserve Area is intended to conserve native habitat and species in perpetuity and as such is compatible with few uses as detailed in the RC. Activities specifically prohibited include hiking, off-road vehicle use (including bicycles, dirt bikes, and ATVs), pet access (including leashed pets), dumping, construction, vegetation clearing, and removal of natural resources. Exceptions to these prohibitions include habitat management activities and selective hand-clearing of vegetation to the extent required by written order of fire authorities for the expressed purpose of reducing an identified fire hazard.

Table 1
PRESERVE MANAGEMENT AND MONITORING AND TASKS

Purpose of Visit	Task Description	Number and Timing of Visits	Responsible Party
Biological monitoring	<ul style="list-style-type: none"> • Monitor the health of native vegetation • Identify invasive, non-native plant or animal species • Monitor the status of rare plant populations • Photo monitoring 	Annually (Spring)	Preserve Manager
Coastal California gnatcatcher monitoring	<ul style="list-style-type: none"> • Conduct a USFWS protocol survey 	Annually for first three years, then every 3 years	Preserve Manager
General monitoring	<ul style="list-style-type: none"> • Monitor for trash and/or debris • Report any issues with unauthorized access, vandalism, or encampments • Monitor and replace signs as needed • Monitor and repair perimeter fences • Monitor compliance with the RC 	Quarterly (Jan, Apr, Aug and Oct)	Preserve Manager
Trash removal	<ul style="list-style-type: none"> • Removal of accumulated trash and debris 	Biannually (Jan and Aug)	Preserve Manager
Habitat maintenance	<ul style="list-style-type: none"> • Remove invasive species as needed • Remedial restoration as needed 	Annually as needed (Apr and Aug)	Preserve Manager
Annual report	<ul style="list-style-type: none"> • Record results of annual monitoring and management activities 	Annually (due by Oct 31)	Preserve Manager

The purpose of this PMP is to maintain the functions and services of the habitat and its sensitive plants within the Preserve Area. To fulfill this goal, the Preserve Manager shall conduct long-term management in perpetuity within the Preserve Area that will include those tasks described in Table 1.

Maintaining the health and diversity of habitat contained within the Preserve Area is the basis for successful management. To assist the Preserve Manager in prioritizing management tasks and to provide information to the general public, City, researchers, etc. regarding the overall state of the Preserve Area, the Habitat Biologist will monitor and document vegetation communities and conditions once each year during the month of August (Table 1).

Vegetation communities and/or their boundaries may change over time as a result of natural processes such as fire, flood, and succession. In addition, the Preserve Area could be susceptible to indirect impacts from adjacent development, particularly along the development/Preserve Area margins. Any changes within the Preserve Area may affect the functions and services of the protected habitat; therefore, monitoring and documenting such changes is important to successful long-term management. Specifically, documenting information obtained from annual monitoring and subsequent delivery of an Annual Report (Table 1) will assist the Preserve Manager in determining and prioritizing future management tasks.

The Preserve Area is not infested with significant amounts invasive species and those present at the start of the Upland Mitigation Plan will be removed during that 5-year program. In addition, habitats adjacent to the Preserve Area also have a relatively low cover of invasive species. Any significant colonization of the Preserve Area by invasive species shall be identified during biological and general monitoring tasks, detailed in the Annual Report and then removed as needed during the next year (Table 1). Other than access routes for restoration activities, all trails will be removed.

The population of the coastal California gnatcatcher shall be monitored every year for the first three years and then every three years using the USFWS' approved protocol (Table 1). While coastal sage scrub is the preferred habitat type for the coastal California gnatcatcher, the Preserve Area will be managed to conserve its southern maritime chaparral habitat.

The itinerant dumping of trash should be minimized through the restricted access provided by the perimeter fencing of the Preserve Area. Nevertheless, some trash and debris may be dumped within the Preserve Area. Accumulated trash and debris shall be removed from the Preserve Area biannually, in January and August of each year (Table 1).

The Preserve Manager shall monitor the condition and placement of signs and barriers and replace them as necessary to minimize edge effects (Table 1). During routine monitoring visits, the Preserve Manager shall monitor the Preserve Area to ensure that the landowner is not violating the conditions of the RC. The Preserve Manager shall perform a review each year of the status of the Preserve Area and, the HOA's full compliance with the terms of the Restrictive Covenant (Appendix D).

The Preserve Manager will visually inspect the Preserve Area for changes during the annual biological monitoring visit as well as during the other quarterly general monitoring visits and record all observations on log sheets (Table 1). Such visits shall include, but not be limited to, observations of the spread of non-native plant species or the presence of non-native pest animal species, and accumulation of trash/debris. Any substantial changes will be examined more closely to determine the need for additional measures. Any recommendations will be submitted to the City for review and approval prior to implementation. An annual report summarizing the status of the Preserve Area will be submitted to the City by October 31 of each year (Table 1).

B. Public Use Goals

The Preserve Area is protected from all uses other than its maintenance and management. There shall be no public access or use of the Preserve Area. Acceptance of the Preserve as a valuable amenity by the local community is an important consideration for the long-term viability of associated Preserve Area resources. It is therefore a goal of this PMP to encourage interact with the HOA and encourage community members to take pride in the maintenance and protection of the Preserve. As such, the

Preserve Manager will take the following measures to maximize public awareness and acceptance of the Preserve Area:

- Permanent signs to inform citizens of the status of the Preserve Area will be installed at approximately 300-foot intervals around the Preserve Area boundary. All signs will be corrosion-resistant (e.g., steel), 8- by 11-inch minimum size, at least 3 feet above ground level on a metal post, and provide notice in both English and Spanish that the area is an ecological Preserve Area with trespassing prohibited.
- Signs will be installed and replaced by the Preserve Manager (Table 1). The signs shall state the following or other specific wording provided by the City:

Environmentally Sensitive Resources
City of Carlsbad Protected Preserve Area
Disturbance Beyond this Point is Restricted

NO TRESPASSING
Violators May Be Prosecuted
For Additional Information Contact:
“PRESERVE MANAGER”
(*current cell phone number*)

C. Fire Management Goals

Fire is an important element in the ecology of southern California but presents a potential hazard to buildings located adjacent to Preserve Area areas. Clearing of vegetation and brush management for fire prevention is not allowed within the Preserve Area. A minimum buffer width of 20 feet for native habitats has been provided. No clearing of vegetation, may occur in the buffer area with 2 exceptions: Zone 3 fuel modification may occur to a maximum of 20 feet for upland habitat provided it is consistent with the preservation goals of the Preserve Area and appropriate measures are taken for physical separation from sensitive areas.

When requested, the Preserve Manager and City will coordinate with the local fire marshal to discuss appropriate access locations and measures to minimize impacts to sensitive biological resources in the event of fire. In the event of wildfire within the Preserve Area, natural recovery is assumed. If deemed necessary, erosion control measures and hydro-seeding may be implemented as funds permit.

V. ADAPTIVE MANAGEMENT

Management of ecosystems requires a management structure, that responds to perpetual change. Preserve areas that are managed for conservation objectives are affected by changing conditions from biological (e.g., normal population dynamics, climate change) legal (e.g., resident species being down-listed, de-listed, or listed) and social conditions (e.g., increasing pressures for recreational use). Adaptive management, as defined by Atkinson (Atkinson et al. 2004), is a method to respond to those challenges.

As a component of each Annual Report, the Preserve Manager shall evaluate the monitoring program based on the principle of adaptive management and identify revised management measures to address those challenges. Adaptive management embraces not only new scientific information but also the

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possibility of new management objectives. New objectives could be the result of a change in the legal status of resident species, the need to consider a different restoration goal for the preserve because of changing climatic conditions, or a change in the Preserve Area.

Adaptive management for the Preserve Area includes: analysis and interpretation of data gathered from the Preserve Area and the review and revision of the PMP and relevant monitoring data every five years to review relevant information, evaluate progress and determine if different or additional management actions or necessary to ensure the biological integrity of the Preserve Area. The Preserve Manager shall use the best conservation management practices of the time based on a review of the appropriate and current scientific literature.

VI. ADMINISTRATION AND REPORTING

A. Annual Reports, Work Plans, and Preserve Management Plan

The Preserve Manager will prepare an annual report by October 31 following the end of the preceding calendar year for submittal to the City for review and approval (Table 1). This annual report will include an assessment of the condition and integrity of the Preserve Area and covered species, a list of management and maintenance activities performed during the previous year, status of any restoration activity and recommendations for future management and maintenance activities as further described below. Specifically, the annual report will contain the following information:

- Summary of management and maintenance actions taken during the prior year;
- The distribution and abundance of plants and animals recorded during the prior-year monitoring;
- Problems and challenges encountered;
- A Work Plan for the next year that lists management actions to be taken to address identified threats, and
- A list of names, titles, and companies who prepared the content of the Annual Report and participated in the monitoring activities.
- A financial summary including endowment accounting of expenditures and revenues and projected budgeted for the next year.

B. Data Management

The Preserve Manager shall maintain and submit electronic copies of all monitoring data sheets, GIS baseline topography and vegetation maps and Annual Reports for City and Agency use as well as adaptive management measures as needed.

C. Communication and Coordination

The Habitat Manger shall coordinate with the City's Habitat Steward as needed and meet and Discuss Preserve Area management issues with the City, Preserve Steward, other Preserve Managers, Wildlife Agencies and the general public, as needed.

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D. Budget and Endowment Management

The annual operating budget and the one-time, non-wasting endowment needed to fund that annual budget has been calculated using a Property Analysis Record (PAR; Appendix D). That endowment shall be deposited and held by the San Diego Foundation in an earmarked account prior to any construction of the Poinsettia Place Project. The endowment will cover all anticipated maintenance costs. The Permittee is responsible for provision of the one-time endowment to fund the perpetual management of the Preserve Area. The Permittee is also solely responsible for the Upland Mitigation Plan.

Specific initial tasks start-up provided by the permittee at the start of construction, include all initial capital costs comprised of trash removal, trail removal, fences (including the entire development/Preserve boundary and 234 feet of 3-wire wildlife fence on the western border), maintenance entry gates, eastern entry barrier and 6 Preserve signs. Those initial costs are expected to cost between \$15,000 and \$20,000. None of those initial costs are the responsibility of the Preserve Manager. The only initial costs provided through the PAR are the Years 1 and 2 of protocol gnatcatcher surveys. It is anticipated that it will take five years to attain the stipulated success criteria of the Upland Mitigation Plan and for the Preserve Manager to assume the full cost of management responsibility.

The Permittee shall provide full funding of the perpetual maintenance in the form of a non-wasting endowment in the amount of \$167,935 calculated using a Property Analysis Record (PAR; Appendix G), to be held by The San Diego Foundation (Foundation) in a separate fund. The Foundation shall make disbursements to the Preserve Manager.

The Foundation is a community resource for receiving, managing, and distributing charitable funds to support organizations within the San Diego region. Its mission is to improve the quality of life in our communities by providing leadership for effective philanthropy that builds enduring assets and by promoting community solutions through research and actions that advance the common good.

E. Operations and Staffing

The Preserve Manager shall actively manage the Preserve Area in perpetuity. The Preserve Manager must satisfy the criteria for a Preserve Manager as described below. It is anticipated that the perpetual Preserve Manager will be the San Diego Urban Corps Habitat Services (“San Diego Habitat Services”).

The Preserve Manager will notify the City of any illegal activities inconsistent with the PMP that may occur in the Preserve Area, coordinate with the City on issues, concerns, and questions related to the PMP, and obtain approval from the City on proposed changes related to the PMP. The Preserve Manager will have ultimate responsibility for PMP implementation.

The Preserve Manager shall retain a City-approved biologist to monitor and manage the Preserve Area and be responsible for maintaining its biological integrity and shall abide by all management and monitoring measures identified in the Management and Monitoring Plan.

The person(s) actively managing the Preserve Area must individually satisfy criteria for a Preserve Manager, as follows:

- Possess a B.S. or B.A. degree in wildlife management, natural resources, ecology, zoology, botany, biology, or similar degree;

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- Have a minimum of two years of experience in field biology in southern California (preferably San Diego County);
- Have demonstrated experience in similar projects, or in projects requiring similar skills; and
- Have experience in working with community groups.

The Preserve Manager will be responsible for monitoring and documenting implementation of this PMP and providing recommendations that will carry out this PMP's requirements and objectives.

The Preserve Manager's primary goal will be to maintain the integrity of all preserved habitat. In order to fulfill that responsibility, the Preserve Manager shall:

- Be an active manager of the Preserve Area;
- Be knowledgeable of this PMP and any supporting documentation;
- Be responsible for all actions identified in this PMP and the RC, within his/her responsibility or judgment, as discussed in applicable sections of this document;
- Maintain all documents transferred by the Permittee (as previously noted) and be knowledgeable about the resources addressed in these reports;
- Educate the surrounding community about the presence and need for the Preserve Area and be responsive to any related community concerns or problems;
- Provide direction to the community on the importance of Preserve Area maintenance, and
- Provide an Annual Report and any relevant data, including biological and general condition monitoring of Preserve Area, to the City status that includes all concerns, problems, and suggested solutions.

VII. REFERENCES

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- 2008b. State and Federally Listed Endangered and Threatened Animals of California. State of California, The Resources Agency, Department of Fish and Game, Biogeographic Data Branch, California Natural Diversity Database. URL: <http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/TEAnimals.pdf>. January.
- 2008c. Special Vascular Plants, Bryophytes, and Lichens List. Quarterly publication. URL: <http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/SPPlants.pdf>. January.
- 2008d. Special Animals (865 taxa). State of California, The Resources Agency, Department of Fish and Game, Biogeographic Data Branch, California Natural Diversity Database. URL: <http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/spanimals.pdf>. January.
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- 2006a. Environmental Impact Assessment Form – Initial Study. CASE No. GPA 04-12/ZC 04-08/LCPA 04-08/CT 04-10/CP 05-05/HDP 04-05/SDP 04-07/CDP 04-23. March 21.
- 2006b. Notice of Intent to Adopt a Mitigated Negative Declaration. Poinsettia Place, CASE No. GPA 04-12/ZC 04-08/LCPA 04-08/CT 04-10/CP 05-05/HDP 04-05/SDP 04-07/CDP 04-23/HMPP 06-08. April 7.

RESOURCE BALANCE, INC.

2006c. (NOD) Resolution No. 2006-370. A Resolution of the City Council of the City of Carlsbad, California, Adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and Approving a General Plan Land Use Designation From Residential Low Medium Density (RLM) and Residential Medium Density (RM) to Residential High Density (RH), Residential Medium-High Density (RMH), and Open Space (OS); a Local Coastal Program Amendment (LCPA 04-08) to Change the Coastal Program Land Use and Zoning Designations to be Consistent with the City's General Plan and Zoning; a Tentative Tract Map (CT 04-10), Condominium Permit (CP 04-05), Hillside Development Permit (HDP 04-05), Site Development Plan (SDP 04-07) and Habitat Management Plan (HMPP 06-08) to Subdivide a 20.4 Acre Site into two Residential Lots on Property Generally Located Southeast of the Intersection of Cassia Road and Poinsettia Lane in the Mello II Segment of the Local Coastal Program and Local Facilities Management Zone 21. CASE NAME: Poinsettia Place, CASE NO. GPA 04-12/LCPA 04-08/CT 04-10/CP 04-05 HDP 04-05/SDP 04-07/HMPP 06-08. December 19.

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2007b. California Coastal Commission Letter to Claude Lewis - Certification of City of Carlsbad Major LCP Amendment No. 3-06 (Poinsettia Place. November 27.

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APPENDIX A

Exhibit A - Legal Description of the Preserve Area

EXHIBIT 'A'
LEGAL DESCRIPTION
PROPOSED LOT 3 -CONSERVATION EASEMENT
POINSETTIA PLACE CARLSBAD TRACT 04-10(A)

BEING A PORTION OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 12 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID NORTH HALF;

THENCE ALONG THE SOUTH LINE OF SAID NORTH HALF SOUTH 89°34'04" EAST, A DISTANCE OF 326.22 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE LEAVING SAID SOUTH LINE NORTH 02°46'10" WEST, A DISTANCE OF 30.84 FEET;

THENCE NORTH 08°12'44" WEST, A DISTANCE OF 46.92 FEET;

THENCE NORTH 36°44'56" WEST, A DISTANCE OF 27.01 FEET;

THENCE NORTH 73°54'49" WEST, A DISTANCE OF 38.24 FEET;

THENCE NORTH 57°15'58" WEST, A DISTANCE OF 34.35 FEET;

THENCE NORTH 30°58'43" WEST, A DISTANCE OF 56.43 FEET;

THENCE NORTH 23°15'49" EAST, A DISTANCE OF 20.81 FEET;

THENCE NORTH 44°16'19" EAST, A DISTANCE OF 39.36 FEET;

THENCE NORTH 29°20'18" WEST, A DISTANCE OF 25.27 FEET;

THENCE NORTH 00°34'14" EAST, A DISTANCE OF 27.13 FEET;

THENCE NORTH 41°13'29" WEST, A DISTANCE OF 16.07 FEET;

THENCE NORTH 00°34'14" EAST, A DISTANCE OF 7.86 FEET;

THENCE NORTH 89°56'55" EAST, A DISTANCE OF 6.54 FEET;

THENCE NORTH 00°03'05" WEST, A DISTANCE OF 36.97 FEET;

THENCE NORTH 32°13'22" EAST, A DISTANCE OF 39.10 FEET;

THENCE NORTH 41°09'29" EAST, A DISTANCE OF 40.93 FEET;

THENCE NORTH 58°26'15" EAST, A DISTANCE OF 47.66 FEET;

THENCE NORTH 77°19'35" EAST, A DISTANCE OF 27.82 FEET;

THENCE NORTH 81°56'46" EAST, A DISTANCE OF 34.64 FEET;

THENCE NORTH 84°03'34" EAST, A DISTANCE OF 69.84 FEET;

THENCE SOUTH 89°31'19" EAST, A DISTANCE OF 15.98 FEET;

THENCE SOUTH 86°40'43" EAST, A DISTANCE OF 60.52 FEET;

THENCE NORTH 89°30'48" EAST, A DISTANCE OF 59.42 FEET;

THENCE NORTH 89°31'24" EAST, A DISTANCE OF 59.79 FEET;

THENCE SOUTH 24°52'48" EAST, A DISTANCE OF 20.26 FEET;

THENCE SOUTH 89°25'46" EAST, A DISTANCE OF 44.02 FEET;

THENCE NORTH 61°02'56" EAST, A DISTANCE OF 37.40 FEET;

THENCE SOUTH 89°31'14" EAST, A DISTANCE OF 150.53 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 11.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 10.30 FEET THROUGH A CENTRAL ANGLE OF 53°38'21" TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 38.00 FEET;

THENCE SOUTHEASTERLY AND EASTERLY ALONG SAID CURVE, A DISTANCE OF 48.81 FEET THROUGH A CENTRAL ANGLE OF 73°35'38;

THENCE SOUTH 89°29'18" EAST, A DISTANCE OF 28.53 FEET;

THENCE SOUTH 00°30'35" WEST, A DISTANCE OF 15.27 FEET;

THENCE SOUTH 89°25'46" EAST, A DISTANCE OF 206.09 FEET;

THENCE NORTH 00°31'29" EAST, A DISTANCE OF 89.35 FEET;

THENCE NORTH 26°30'18" EAST, A DISTANCE OF 22.77 FEET;

THENCE NORTH 00°28'28" EAST, A DISTANCE OF 73.65 FEET;

THENCE NORTH 45°35'24" EAST, A DISTANCE OF 8.31 FEET;

THENCE NORTH 00°29'05" EAST, A DISTANCE OF 37.34 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF AN EASEMENT FOR ROAD AND INCIDENTAL PURPOSES IN FAVOR OF CITY OF CARLSBAD, A MUNICIPAL CORPORATION, RECORDED OCTOBER 22, 1997 AS FILE NO. 1997-0527956 OF OFFICIAL RECORDS, BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 330.00 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 02°16'38" EAST;

THENCE NORTHEASTERLY ALONG SAID CURVE AND SAID SOUTH LINE OF AN EASEMENT, A DISTANCE OF 125.93 FEET THROUGH A CENTRAL ANGLE OF 21°51'49" TO THE INTERSECTION WITH THE NORTH LINE OF SAID NORTH HALF;

THENCE ALONG SAID NORTH LINE SOUTH 89°31'15" EAST, A DISTANCE OF 50.45 FEET TO THE NORTHEAST CORNER OF SAID NORTH HALF;

THENCE ALONG THE EAST LINE OF SAID NORTH HALF SOUTH 00°33'10" WEST, A DISTANCE OF 658.99 FEET TO THE SOUTHEAST CORNER OF SAID NORTH HALF;

THENCE ALONG THE SOUTH LINE OF SAID NORTH HALF NORTH 89°34'04" WEST, A DISTANCE OF 1021.81 FEET TO THE **TRUE POINT OF BEGINNING**.

DESCRIBED PARCEL CONTAINS 11.543 ACRES MORE OR LESS AND AS SHOWN ON ATTACHED EXHIBIT "B" AND BY THIS REFERENCE MADE A PART HEREOF.

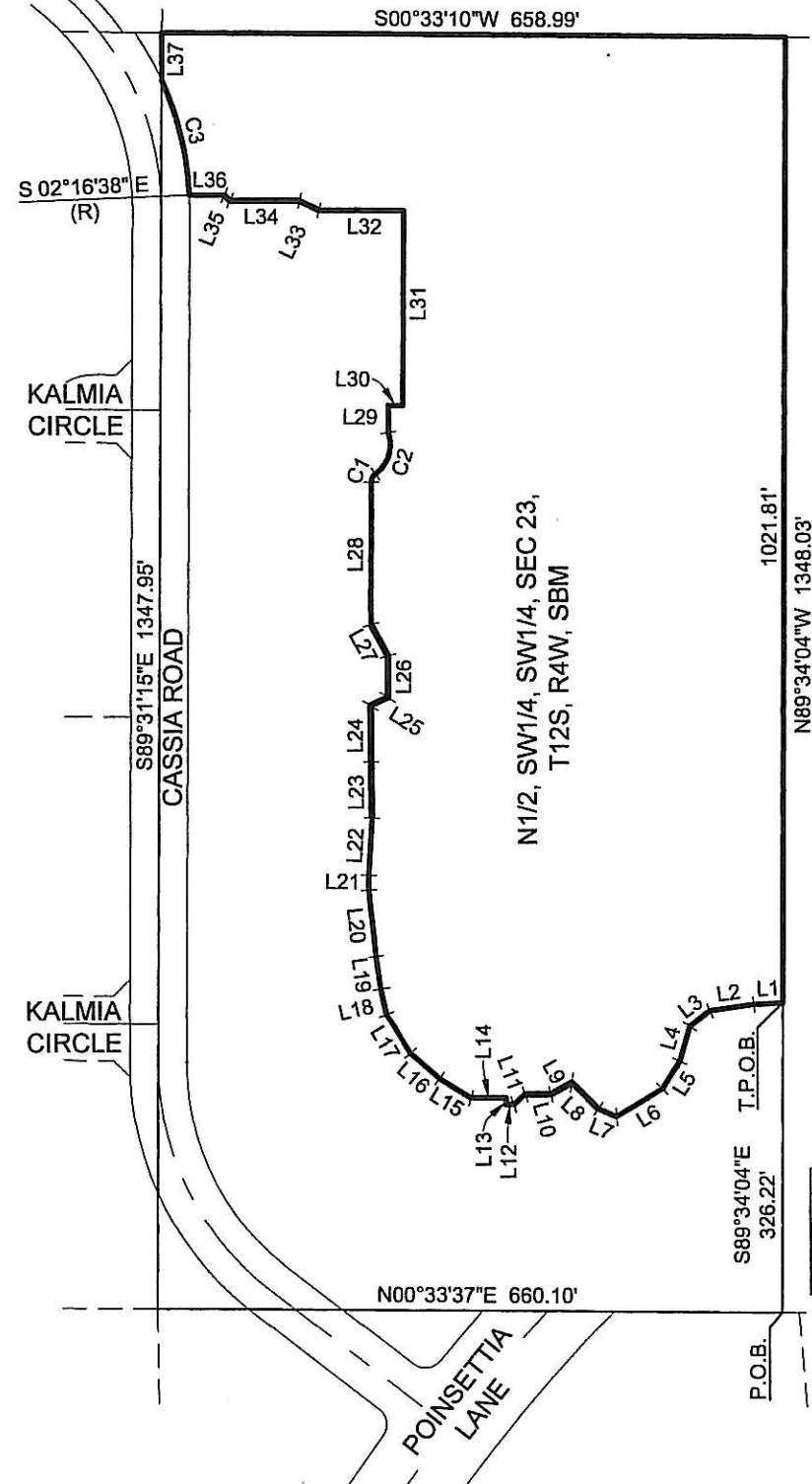
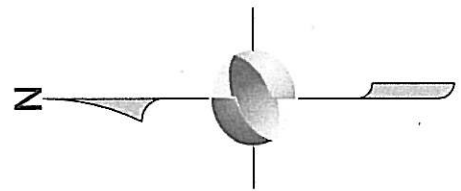
 5/12/10
LORNE L. DaPRON, P.L.S. 7824 DATE



APPENDIX B

Exhibit B - Plat Map of the Preserve Area

EXHIBIT 'B'



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 02°46'10" W	30.84'
L2	N 08°12'44" W	46.92'
L3	N 36°44'56" W	27.01'
L4	N 73°54'49" W	38.24'
L5	N 57°15'58" W	34.35'
L6	N 30°58'43" W	56.43'
L7	N 23°15'49" E	20.81'
L8	N 44°16'19" E	39.36'
L9	N 29°20'18" W	25.27'
L10	N 00°34'14" E	27.13'
L11	N 41°13'29" W	16.07'
L12	N 00°34'14" E	7.86'
L13	N 89°56'55" E	6.54'
L14	N 00°03'05" W	36.97'
L15	N 32°13'22" E	39.10'
L16	N 41°09'29" E	40.93'
L17	N 58°26'15" E	47.66'
L18	N 77°19'35" E	27.82'
L19	N 81°56'46" E	34.64'
L20	N 84°03'34" E	69.84'
L21	S 89°31'19" E	15.98'
L22	S 86°40'43" E	60.52'
L23	N 89°30'48" E	59.42'
L24	N 89°31'24" E	59.79'
L25	S 24°52'48" E	20.26'
L26	S 89°25'46" E	44.02'
L27	N 61°02'56" E	37.40'
L28	S 89°31'14" E	150.53'
L29	S 89°29'18" E	28.53'
L30	S 00°30'35" W	15.27'
L31	S 89°25'46" E	206.09'
L32	N 00°31'29" E	89.35'
L33	N 26°30'18" E	22.77'
L34	N 00°28'28" E	73.65'
L35	N 45°35'24" E	8.31'
L36	N 00°29'05" E	37.34'
L37	S 89°31'15" E	50.45'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	$\Delta=53^{\circ}38'21''$	R=11.00'	L=10.30'
C2	$\Delta=73^{\circ}35'38''$	R=38.00'	L=48.81'
C3	$\Delta=21^{\circ}51'49''$	R=330.00'	L=125.93'

DATE: 05/11/10

SCALE: 1" = 200'

DR BY: JWG

CK BY: LLD

PROPOSED LOT 3 - CONSERVATION EASEMENT

POINSETTIA PLACE CARLSBAD TRACT 04-10(A)

GEOCENTRIC LAND SURVEYING
2150 N CENTER CITY PKWY SUITE B
ESCONDIDO, CA 92082
PH(760) 207-7824 FAX(760) 745-7824

SHEET

1

OF 1 SHEETS

APPENDIX C

Title Report

Updated 02/01/2010



First American Title Insurance Company

**411 Ivy Street
San Diego, CA 92101**

Paul G. Marx
Sierra Land Company LLC
2834 La Mirada Drive #E
Vista, CA 92081
Phone: (760)598-8988
Fax: (760)598-8288

Customer Reference:	Poinsettia Heights HOA
Order Number:	2604840 (06)
Title Officer:	Dianne Livingston
Phone:	(858)509-2113
Fax No.:	(866)559-1843
E-Mail:	dslivingston@firstam.com
Buyer:	
Owner:	Carlsbad Poinsettia Land Co., LLC.
Property:	Vacant Land Carlsbad, 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.

Dated as of February 01, 2010 at 7:30 A.M.

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

To be determined

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:

CARLSBAD POINSETTIA LAND CO., LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

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 2010-2011, a lien not yet due or payable.
- 1a. General and special taxes and assessments for the fiscal year 2009-2010.

First Installment:	\$15,161.93, PAID
Penalty:	\$0.00
Second Installment:	\$15,161.93, DUE
Penalty:	\$0.00
Tax Rate Area:	09164
A. P. No.:	215-020-23-00
2. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
3. An easement for pipeline and incidental purposes, recorded May 21, 1963 as Instrument No. 88649 of Official Records.

In Favor of:	Carlsbad Municipal Water District
Affects:	The land

4. An easement for to construct, erect, reconstruct, replace, repair, maintain and use a pipeline or pipelines and appurtenances and incidental purposes, recorded March 25, 1964 as Instrument Nos. 54230 and 54231, both of Official Records.

In Favor of: Carlsbad Municipal Water District

Affects: The land

5. The Terms, Provisions and Easement(s) contained in the document entitled Grading and Slope Easement Agreement recorded June 27, 1997 as Instrument No. 1997-0303493 of Official Records.

Document(s) declaring modifications thereof recorded June 27, 1997 as Instrument No. 1997-0303494 of Official Records.

Partial Releases of the Grading and Slope Easement Agreement recorded January 26, 2006 as instrument no. 2006-0059496 and June 15, 2006 as instrument no. 2006-0424940, both of Official Records.

6. An easement for access, grading, slope and maintenance and incidental purposes, recorded June 27, 1997 as Instrument No. 1997-0303493 of Official Records.

In Favor of: Western Pacific Housing - Poinsettia, L.P., a California Limited Partnership and Michael F. Sfregola, Trustee of the Sfregola Family Trust, as to an undivided 4/16th interest, Terry Reiter and Margaret Reiter, husband and wife, as community property, as to an undivided 3/16th interest, Robert L. Whitney and William (Bill) Armstrong, Co-Trustees of the Robert L. Whitney and Nina M. Whitney Trust, as to an undivided 5/16th interest and William Bowen and Marjorie Bowen, husband and wife, as joint tenants, as to an undivided 4/16th interest

Affects: The route or location of said easement cannot be determined from the record

7. The terms and provisions contained in the document entitled Certified Copy of Resolution NC. 97-528 Overruling and Denying Protests and Establishing Bridge and Thoroughfare District No. 2 (Aviara Parkway-Poinsettia Lane) to Finance the Costs of Major Public Improvements in Said City recorded July 22, 1997 as Instrument No. 1997-0349124 of Official Records.

8. The Terms, Provisions and Easement(s) contained in the document entitled Reimbursement and Reciprocal Easement Agreement recorded August 1, 1997 as Instrument No. 1997-0370228 of Official Records.

9. An easement for access, temporary construction, slope and maintenance, and grading and incidental purposes, recorded August 1, 1997 as Instrument No. 1997-0370228 of Official Records.
- In Favor of: Western Pacific Housing - Poinsettia, L.P., a California Limited Partnership and Michael F. Sfregola, Trustee of the Sfregola Family Trust, as to an undivided 4/16th interest, Terry Reiter and Margaret Reiter, husband and wife, as community property, as to an undivided 3/16th interest, Robert L. Whitney and William (Bill) Armstrong, Co-Trustees of the Robert L. Whitney and Nina M. Whitney Trust, as to an undivided 5/16th interest and William Bowen and Marjorie Bowen, husband and wife, as joint tenants, as to an undivided 4/16th interest
- Affects: The route or location of said easement cannot be determined from the record
10. The terms and provisions contained in the document entitled Sewer, Storm Drain, Grading and Access Easement executed by and between Western Pacific Housing - Poinsettia, L.P., a California Limited Partnership and Michael F. Sfregola, Trustee of the Sfregola Family Trust, as to an undivided 4/16th interest, Terry Reiter and Margaret Reiter, husband and wife, as community property, as to an undivided 3/16th interest, Robert L. Whitney and William (Bill) Armstrong, Co-Trustees of the Robert L. Whitney and Nina M. Whitney Trust, as to an undivided 5/16th interest and William Bowen and Marjorie Bowen, husband and wife, as joint tenants, as to an undivided 4/16th interest recorded August 1, 1997 as Instrument No. 1997-0370229 of Official Records.
11. An easement for access, temporary construction, drainage, inundation, slope and maintenance, and grading and incidental purposes, recorded August 1, 1997 as Instrument No. 1997-0370229 of Official Records.
- In Favor of: Western Pacific Housing - Poinsettia, L.P., a California Limited Partnership and Michael F. Sfregola, Trustee of the Sfregola Family Trust, as to an undivided 4/16th interest, Terry Reiter and Margaret Reiter, husband and wife, as community property, as to an undivided 3/16th interest, Robert L. Whitney and William (Bill) Armstrong, Co-Trustees of the Robert L. Whitney and Nina M. Whitney Trust, as to an undivided 5/16th interest and William Bowen and Marjorie Bowen, husband and wife, as joint tenants, as to an undivided 4/16th interest
- Affects: Portions of said land
12. An easement for road purposes and incidental purposes, recorded October 22, 1997 as Instrument No. 97-527956 of Official Records.
- In Favor of: City of Carlsbad, a Municipal Corporation
- Affects: The land
13. A deed of trust to secure an original indebtedness of \$(None shown) recorded July 21, 2005 as Instrument No. 2005-0616063 of Official Records.
- Dated: June 24, 2003
- Trustor: Carlsbad Poinsettia Land Company, LLC
- Trustee: Lawyers Title Company a California Corporation
- Beneficiary: Terry Reiter & Margaret Reiter

Notes:

a. If this deed of trust is to be eliminated in the policy or policies contemplated by this report/commitment, we will require all of the following prior to the recordation of any documents or the issuance of any policy of title insurance:

i. Original note and deed of trust.

ii. Payoff demand statement signed by all present beneficiaries.

iii. Request for reconveyance signed by all present beneficiaries.

b. If the payoff demand statement or the request for reconveyance is to be signed by a servicer, we will also require a full copy of the loan servicing agreement executed by all present beneficiaries.

c. If any of the beneficial interest is presently held by trustees under a trust agreement, we will require a certification pursuant to Section 18500.5 of the California Probate Code in a form satisfactory to the Company

14. Intentionally Deleted

Prior to the issuance of any policy of title insurance, the Company will require:

15. With respect to Carlsbad Poinsettia Land Co., LLC., a limited liability company:

a. A copy of its operating agreement and any amendments thereto;

b. If it is a California limited liability company, that 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) be recorded in the public records;

c. If it is a foreign limited liability company, that a certified copy of its application for registration (LLC-5) be recorded in the public records;

d. 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, that such document or instrument 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 document 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.

e. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.

INFORMATIONAL NOTES

Note: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American 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.

WIRE INSTRUCTIONS

for

**First American Title Company, Demand/Draft Sub-Escrow Deposits
San Diego County, California**

First American Trust, FSB

5 First American Way
Santa Ana, CA 92707

ABA 122241255

**Credit to First American Title Company
Account No. 2000013101**

Reference Title Order Number 2604840, and Title Officer Dianne Livingston

Please wire the day before recording.

LEGAL DESCRIPTION

Real property in the City of Carlsbad, County of San Diego, State of California, described as follows:

THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 12 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

APN: 215-020-23-00

NOTICE

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

If you have any questions about the effect of this new law, please contact your local First American Office for more details.

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 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 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; 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.

**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

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:
 - * 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:

<ul style="list-style-type: none"> a. building c. land use e. land division 	<ul style="list-style-type: none"> b. zoning d. improvements on the land 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. SECOND GENERATION EAGLE LOAN POLICY AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)

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. This exclusion

does not limit the coverage provided under Covered Risks 12, 13, 14 and 16 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 Covered Risks 12, 13, 14 and 16 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 does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); 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 usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8 (e) and 26.
7. 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 in Covered Risk 8.
8. 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 in Covered Risk 8.
9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy 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 Date of 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. The following existing statutes, reference to which are made part of the ALTA 8.1 Environmental Protection Lien Endorsement incorporated into this Policy following item 28 of Covered Risks: NONE.

13. SECOND GENERATION EAGLE LOAN POLICY AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01) 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.
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. The following existing statutes, reference to which are made part of the ALTA 8.1 Environmental Protection Lien Endorsement incorporated into this Policy following item 28 of Covered Risks: None.

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 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.

APPENDIX D

Declaration of Restrictive Covenants

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)

)
City Clerk)
CITY OF CARLSBAD)
1200 Carlsbad Village Drive)
Carlsbad, California 92008-1989)

Space above this line for Recorder's use

Assessor's Parcel Number 215-020-23

Project Number and Name CT 04-10 Poinsettia Place

DECLARATION OF RESTRICTIVE COVENANTS

This DECLARATION OF RESTRICTIVE COVENANTS ("**Restrictive Covenant**") is made this ____ day of March, 2011 by Carlsbad Poinsettia Land Company, LLC, a California corporation (hereinafter "**Declarant**").

RECITALS

A. Declarant is the developer of that certain real property in Carlsbad, County of San Diego, State of California, commonly referred to as the Poinsettia Place Project CT 04-10 (the "**Project**").

B. Declarant is the sole owner in fee simple of those portions of the Project located in [describe] and as further described in legal descriptions attached hereto as **Exhibit "A"** and depicted on **Exhibit "B"** and attached hereto and incorporated by this reference (the "**Restricted Property**"), which consists of approximately 11.5 acres.

C. This Restrictive Covenant provides mitigation for certain impacts of the Project, pursuant to requirements of Carlsbad Planning Commission Resolution No. 6650 and Carlsbad City Council Resolution 2010-027 for the Project. This Restrictive Covenant is intended and shall be deemed to satisfy such requirements as to the Restricted Property. The amount of southern maritime chaparral habitat to be preserved within the Restricted Property is 11.5 acres.

D. The Restricted Property possesses wildlife 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 condition to maintain its ecological, historical, visual and educational values (collectively, "**Conservation Values**").

E. Declarant desires to preserve and protect the Restricted Property pursuant to the Poinsettia Place Preserve Management Plan (Resource Balance 2011) ("**Management Plan**"), an adaptive habitat management plan which may be revised from time to time and which is incorporated herein by this reference.

F. 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 USC, Section 661-666c and other applicable federal laws.

G. California Department of Fish and Game (“**CDFG**”) 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 Department of Fish and Game 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.

H. The City of Carlsbad (“**City**”) is a municipal corporation with a Habitat Management Plan for Natural Communities in the City of Carlsbad (“**HMP**”) adopted by its City Council in November 2004, with the overall goal of contributing to regional biodiversity and the viability of rare, unique or sensitive biological resources throughout the City and the larger region while allowing public and private development to occur consistent with the Carlsbad General Plan and Growth Management Plan.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

NOW THEREFORE, Declarant hereby declares the Restricted Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding on Declarant's heirs, successors in interest, administrators, assigns, lessees, or other occupiers and users of the Restricted Property or any portion of it.

1. Purpose.

(a) The purpose of this Restrictive Covenant is to ensure the Restricted Property will be retained in perpetuity in a Natural Condition, defined below, and to prevent any use of the Restricted Property that will impair or interfere with the Conservation Values of the Restricted Property (the “**Purpose**”). Declarant intends that this Restrictive Covenant will confine the use of the Restricted Property to such activities, including without limitation, those involving the preservation and enhancement of native species and their habitat in a manner consistent with the habitat conservation purposes of this Restrictive Covenant.

(b) The term “**Natural Condition**,” as referenced in the preceding paragraph and other portions of this Restrictive Covenant, shall mean the condition of the Restricted Property as it exists at the time this Restrictive Covenant is executed, as well as future enhancements or changes to the Restricted Property that occur directly as a result of the following activities:

(1) Habitat creation or restoration, including implementation, maintenance and monitoring activities, required by City of Carlsbad Planning Commission Resolution No. 2010-027 for the Project.

(2) Compensatory mitigation measures, including implementation, maintenance and monitoring activities as described in the "Poinsettia Place Upland Mitigation Plan" prepared by HELIX Environmental Planning, Inc. dated 15 December 2010 ("**Mitigation Plan**"), the Cover, Table of Contents and Introduction of which are attached as **Exhibit "C"** (collectively, "**Compensatory Mitigation**");

(3) In-perpetuity maintenance ("**Long-Term Maintenance, Management, and Monitoring**"), that occurs on the Restricted Property as described in the Management Plan and Section 6 herein; or

(4) Activities described in Section 4 herein.

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

(d) If a controversy arises with respect to the Natural Condition of the Restricted Property, City, CDFG, and USFWS shall not be foreclosed from utilizing any and all other relevant documents, surveys, photographs or other evidence or information to assist in the resolution of the controversy.

(e) The term "**Biological Monitor**" shall mean an independent third-party consultant with knowledge of upland resources in the San Diego County area and expertise in the field of biology.

2. Declarant's Duties.

Declarant, its successors and assigns shall:

(a) Undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities would be inconsistent with the Conservation Values and would violate the permitted uses of the Restricted Property set forth in this Restrictive Covenant; and

(b) Post and maintain signage in or adjacent to the boundary areas of the Restricted Property as described in Section 4(d); and

(c) Comply with the terms of this Restrictive Covenant and cooperate with City, CDFG, and USFWS in the protection of the Conservation Values; and

(d) Repair and restore damage to the Restrictive Property directly or indirectly caused by Declarant, Declarant's guests, representatives or agents and third parties; provided, however, Declarant, its successors or assigns shall not engage in any repair or restoration work in the Restricted Property without first consulting with City, CDFG, and USFWS pursuant to Section 6; and

(e) Undertake construction, maintenance and monitoring of mitigated areas pursuant to the Mitigation Plan until receipt of final approval of the success of the mitigation from City, ("**City Final Approval**"); and

(f) Obtain any applicable governmental permits and approvals for any activity or use permitted by this Restrictive Covenant, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements;

(g) Perform in-perpetuity Long-Term Maintenance, Management, and Monitoring set forth in Section 6 below; and

(h) Perform an annual compliance inspection of the Restricted Property, prepare an inspection report and shall make reports available to City, CDFG, and USFWS and the City upon request.

3. Prohibited Uses.

Any activity on or use of the Restricted Property inconsistent with the Purpose of this Restrictive Covenant and not reserved as set forth in Section 4 hereof is prohibited. Without limiting the generality of the foregoing, the following uses by Declarant, and its respective guests, agents, assigns, employees, representatives, successors and third parties, are expressly prohibited, except as otherwise provided herein or unless specifically provided for in the, Mitigation Plan, Management Plan and any easements and reservations of rights recorded in the chain of title to the Restricted Property at the time of this conveyance (as set forth in **Exhibit D** hereto):

(a) Supplemental watering except for habitat enhancement activities described in Section 4(b);

(b) Use of herbicides, pesticides, rodenticides, biocides, fertilizers, or other agricultural chemicals or weed abatement activities, 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;

(c) Incompatible fire protection activities, except the fire prevention activities set forth in Section 4(f);

(d) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways and as necessary to restore native plant communities consistent with Section 4.

(e) Livestock grazing or other agricultural activity of any kind;

(f) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing, except as allowed in the Management Plan;

(g) Residential, commercial, retail, institutional, or industrial uses;

(h) Any legal or de facto division, subdivision or portioning of the Restricted Property, except transfers in accordance with Section 17 below;

(i) Construction, reconstruction or placement of any building or other improvement, billboard, or signs except signs permitted in Section 2(b) and Section 4(d);

(j) Depositing, dumping or accumulating soil, trash, ashes, refuse, waste, bio-solids or any other material;

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

(l) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Restricted Property;

(m) Altering the general topography of the Restricted Property, including but not limited to building of roads, trails, and flood control work;

(n) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as necessary for (1) emergency fire protection as required by fire safety officials as set forth in Section 4(f), (2) controlling invasive, exotic plants which threaten the integrity of the habitat, (3) preventing or treating disease, (4) completing the Mitigation Plan, or (5) activities described in Section 2, Section 4 and Section 13;

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

(p) Fuel modification zones (defined as a strip of mowed land or the planting of vegetation possessing low combustibility for purposes of fire suppression).

4. Reserved Rights.

Declarant reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Restricted Property, including the right to engage in or to permit or invite others to engage in all uses of the Restricted Property that are consistent with the Purpose of this Restrictive Covenant, including the following uses:

(a) Access. Reasonable access through the Restricted Property to adjacent land over existing roads, or to perform obligations or other activities permitted by this Restrictive Covenant or that are required under the Management and Mitigation Plans. In addition, police and other public safety organizations and their personnel may enter the Restricted Property to address any legitimate public health or safety matter.

(b) Habitat Enhancement Activities. Enhancement of native plant communities, including the right to plant trees and shrubs of the same type as currently existing on the Restricted Property, so long as such activities do not harm the habitat types identified in the Management and Mitigation Plans. For purposes of preventing erosion and reestablishing native vegetation, the Declarant shall have the right to revegetate areas that may be damaged by the permitted activities under this Section 4, naturally occurring events or by the acts of persons wrongfully damaging the Natural Condition of the Restricted Property. Prior to any habitat enhancement activities, Declarant shall have its Biological Monitor submit detailed plans to City, CDFG, and USFWS for review and approval. Habitat enhancement activities shall not be in direct or potential conflict with the preservation of the Natural Condition of the Restricted Property or the Purpose of this Restrictive Covenant and shall be performed in compliance with all applicable laws, regulations, permitting requirements and Management Plan.

(c) Vegetation, Debris, and Exotic Species Removal. Removal or trimming of vegetation downed or damaged due to natural disaster, removal of man-made debris, removal of parasitic vegetation (as it relates to the health of the host plant) and removal of non-native or exotic plant or animal species. Vegetation, debris, and exotic plant species removal shall not be in direct or potential conflict with the preservation of the Natural Condition of the Restricted Property or the Purpose of this Restrictive Covenant and shall be performed in compliance with all applicable laws, regulations, permitting requirements, and Management Plan.

(d) Erection and Maintenance of Informative Signage. Erection and maintenance of signage and other notification features saying "Natural Area Open Space," "Protected Natural Area," or similar descriptions that inform persons of the nature and restrictions on the Restricted Property. Prior to erection of such signage, the Declarant shall submit detailed plans showing the location of such signs to City, CDFG, and USFWS for review and approval. The erection and maintenance of informative signage shall not be in direct or potential conflict with the preservation of the Natural Condition of the Restricted Property or the Purpose of this Restrictive Covenant and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

(e) No Interference with Development of Adjoining Property. Notwithstanding anything set forth herein to the contrary, nothing in this Restrictive Covenant is intended nor shall be applied to in any way limit Declarant or any of Declarant's successors and assigns from (1) constructing, placing, installing, and/or erecting any improvements upon the portions of the Project not constituting the Restricted Property, (2) installing and/or maintaining the subsurface infrastructure improvements, utility lines, landscaping (including irrigation and runoff), landscape mitigation, and/or similar non-structural improvements within the Restricted Property, and/or (3) developing adjoining property for any purposes, except as limited by any local, state or federal permit requirements for such development and provided that for all of the above clauses (1), (2), and (3) neither such activity nor any effect resulting from such activity amounts

to a use of the Restricted Property, or has an impact upon the Restricted Property, that is prohibited by Section 3 above.

(f) Fire Protection. The right, in an emergency situation only, to maintain firebreaks (defined as a strip of plowed or cleared land made to check the spread of a fire), trim or remove brush, otherwise perform preventative measures required by the fire department to protect structures and other improvements from encroaching fire. All other brush management activities shall be limited to areas outside the Restricted Property.

5. Access.

This Restrictive Covenant does not convey a general right of access to the public or a general right of access to the Restricted Property. In accordance with Section 4(d), Declarant shall install signage at all likely points of entry informing persons of the nature and restrictions on the Restricted Property. This Restrictive Covenant will allow for access to the Restricted Property by City, CDFG, and USFWS, City and third-party easement holders of record at the time of this conveyance at locations designated in easements and reservations of rights recorded in the chain of title to the Restricted Property at the time of this conveyance

6. Long-Term Maintenance, Management, and Monitoring.

In addition to the other terms contained herein, Declarant, its successor or assign shall be responsible for the maintenance/repair of the Restricted Property in perpetuity. Such long-term maintenance shall consist of the following activities: (a) annual removal, by hand, 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 on the Restricted Property pursuant to Section 2(b), (c) implement its responsibilities under the Management Plan and any amendments thereto, and (d) annual restoration of the Restricted Property damaged by any activities prohibited by Section 3 herein. Declarant, its successors and assigns shall prepare a monitoring and maintenance report documenting activities performed under subsections (a) through (c) above, and shall make reports available to City/CDFG/USFWS upon request. When activities are performed pursuant to subsection (d) above, Declarant shall retain a qualified Biological Monitor to prepare a Restoration Plan and to oversee/monitor such restoration activities. Declarant shall have its Biological Monitor submit a draft Restoration Plan to City/CDFG/USFWS for review and approval prior to its implementation. Upon completion of restoration as specified in the City/CDFG/USFWS -approved Restoration Plan, Declarant shall have its Biological Monitor prepare a detailed monitoring report, and Declarant shall make the report available to City/CDFG/USFWS within thirty (30) days of completion of restoration activities. Declarant, its successors or assigns and the Biological Monitor shall sign the monitoring report, and the report shall document the Biological Monitor's name and affiliation, dates Biological Monitor was present on-site, activities observed and their location, Biological Monitor's observations regarding the adequacy of restoration performance by the Declarant, its successors or assigns, or its contractor in accordance with the City/CDFG/USFWS -approved Restoration Plan, corrections recommended and implemented.

7. Endowment

Declarant shall establish an endowment fund to be held in trust, invested and the interest disbursed therefrom to provide sufficient funds for the perpetual management, maintenance, and monitoring of the Property as required under this Restrictive Covenant. City, CDFG, and USFWS shall have the right to review and approve the terms of the endowment agreement, and shall be a third party beneficiary of that agreement with the right to review and approve any amendments.

(a) Include the following principles of fiduciary duty in the endowment fund agreement:

- (1) The endowment holder shall have a fiduciary duty to hold the endowment funds in trust for the Property.
- (2) The endowment holder shall not commingle the endowment funds with other funds. Funds may be pooled for investment management purposes only.
- (3) The endowment holder shall have a duty of loyalty and shall not use the endowment funds for its own personal benefit.
- (4) The endowment holder shall act as a prudent investor of the endowment funds.
- (5) The endowment holder shall not delegate the responsibility for managing the funds to a third party, but may delegate authority to invest the funds with Declarant's oversight. The endowment holder shall act with prudence when delegating authority and in the selection of agents.
- (6) The endowment holder shall have annual audit of the endowment performed by a licensed CPA, and shall submit the auditor's written report to City, CDFG, and USFWS upon completion.
- (7) Endowment funds set aside for the management of the Property shall not be used to pay any damages for liability due to acts or omissions of the endowment holder or any other party.

8. City, CDFG, and USFWS Rights.

To accomplish the Purpose of this Restrictive Covenant, Declarant hereby grants and conveys the following rights to City, CDFG, and USFWS (but without obligation of the City, CDFG, and USFWS):

(a) A non-exclusive easement on and over the Restricted Property to preserve and protect the Conservation Values of the Restricted Property; and

(b) A non-exclusive easement on and over the Restricted Property to enter upon the Restricted Property to monitor Declarant's compliance with and to otherwise enforce the terms of this Restrictive Covenant; and

(c) A non-exclusive easement on and over the Restricted Property to prevent any activity on or use of the Restricted Property that is inconsistent with the Purpose of this Restrictive Covenant and to require the restoration of such areas or features of the Restricted Property that may be damaged by any act, failure to act, or any use that is inconsistent with the Purpose of this Restrictive Covenant; and

(d) All present and future development rights allocated, implied, reserved or inherent in the Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property, nor any other property adjacent or otherwise; and

(e) The right to enforce by means, including, without limitation, injunctive relief, the terms and conditions of this Restrictive Covenant.

9. Enforcement.

(a) Right to Enforce. Declarant, its successors and assigns, grant to City, CDFG, USFWS, Department of Justice, and the State Attorney General, as well as the City, a discretionary right to enforce these restrictive covenants in a judicial or administrative action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title. The U.S. Department of Justice, CDFG, State Attorney General and City shall have the same rights, remedies and limitations as under this Section 9. The rights under this Section are in addition to, and do not limit rights conferred in Section 8 above, the rights of enforcement against Declarant, or any rights of the various documents created thereunder or referred to therein.

(b) Notice.

(1) If City, CDFG, and/or USFWS determines Declarant is in violation of the terms of this Restrictive Covenant or that a violation is threatened, City/CDFG/USFWS may demand the cure of such violation. In such a case, City/CDFG/USFWS shall issue a written notice to Declarant (hereinafter “**notice of violation**”) informing Declarant of the violation and demanding cure of such violation.

(2) Declarant shall cure the noticed violation within fifteen (15) days of receipt of said written notice from City, CDFG, and USFWS. If said cure reasonably requires more than fifteen (15) days, Declarant shall, within the fifteen (15) day period submit to City/CDFG/USFWS for review and approval a plan and time schedule to diligently complete a cure. Declarant shall complete such cure in accordance with the approved plan. If Declarant disputes the notice of violation, it shall issue a written notice of such dispute (hereinafter “**notice of dispute**”) to the City/CDFG within fifteen (15) days of receipt of written notice of violation.

(3) If Declarant fails to cure the noticed violation(s) within the time period(s) described in Section 9(b)(2) above, or Section 9(c) below, City/CDFG/USFWS may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Declarant with the terms of this Restrictive Covenant. In

such action, the City/CDFG/USFWS may (i) recover any damages to which they may be entitled for violation by Declarant of the terms of this Restrictive Covenant, (ii) enjoin the violation, *ex parte* if necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or (iii) pursue other equitable relief, including, but not limited to, the restoration of the Restricted Property to the condition in which it existed prior to any such violation or injury. City/CDFG/USFWS may apply any damages recovered to the cost of undertaking any corrective action on the Restricted Property.

(4) If Declarant provides City/CDFG/USFWS with a notice of dispute, as provided herein, City/CDFG/USFWS shall meet and confer with Declarant at a mutually agreeable place and time, not to exceed thirty (30) days from the date that City/CDFG/USFWS receives the notice of dispute. City/CDFG/USFWS shall consider all relevant information concerning the disputed violation provided by Declarant and shall determine whether a violation has in fact occurred and, if so, whether the notice of violation and demand for cure issued by City/CDFG/USFWS is appropriate in light of the violation.

(5) If, after reviewing Declarant's notice of dispute, conferring with Declarant, and considering all relevant information related to the violation, City/CDFG/USFWS determines that a violation has occurred, City/CDFG/USFWS shall give Declarant notice of such determination in writing. Upon receipt of such determination, Declarant shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, Declarant shall, within the fifteen (15) day period submit to City/CDFG/USFWS for review and approval a plan and time schedule to diligently complete a cure. Declarant shall complete such cure in accordance with the approved plan.

(c) Immediate Action. If City/CDFG/USFWS, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Restricted Property, City/CDFG/USFWS may immediately pursue all available remedies, including injunctive relief, available pursuant to both this Restrictive Covenant and state and federal law after giving Declarant at least twenty four (24) hours' written notice before pursuing such remedies. So long as such twenty four (24) hours' notice is given, City/CDFG/USFWS may immediately pursue all available remedies without waiting for the expiration of the time periods provided for cure or notice of dispute as described in Section 9(b)(2). The written notice pursuant to this paragraph may be transmitted to Declarant by facsimile. The rights of City/CDFG/USFWS under this paragraph apply equally to actual or threatened violations of the terms of this Restrictive Covenant. Declarant agrees that the remedies at law for City/CDFG/USFWS for any violation of the terms of this Restrictive Covenant are inadequate and that City/CDFG/USFWS shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which City/CDFG/USFWS may be entitled, including specific performance of the terms of this Restrictive Covenant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Section 9(c) shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(d) Costs of Enforcement. Any costs incurred by City/CDFG/USFWS in enforcing the terms of this Restrictive Covenant against Declarant including, but not limited to, costs of suit and, any costs of restoration necessitated by Declarant's violation or negligence under the terms of this Restrictive Covenant shall be borne by Declarant, subject to California Civil Code section 815.

(e) Enforcement Discretion. Enforcement of the terms of this Restrictive Covenant shall be at the discretion of City/CDFG/USFWS. Any forbearance by City/CDFG/USFWS to exercise rights under this Restrictive Covenant in the event of any breach of any term of this Restrictive Covenant by Declarant shall not be deemed or construed to be a waiver by City/CDFG/USFWS of such term or of any subsequent breach of the same or any other term of this Restrictive Covenant or of any of the rights of City/CDFG/USFWS under this Restrictive Covenant. No delay or omission by City/CDFG/USFWS in the exercise of any right or remedy upon any breach by Declarant shall impair such right or remedy or be construed as a waiver.

(f) Acts Beyond Declarant's Control. Nothing contained in this Restrictive Covenant shall be construed to entitle City/CDFG/USFWS to bring any action against Declarant for any injury to or change in the Restricted Property resulting from:

(1) Any natural cause beyond Declarant's control, including without limitation, fire, flood, storm, and earth movement; or

(2) Any prudent action taken by Declarant under emergency conditions to prevent, abate, or mitigate significant injury to persons and/or the Restricted Property resulting from such causes.

(g) Notwithstanding the foregoing, even actions undertaken during emergency conditions must receive prior authorization from the City.

10. Costs and Liabilities.

Declarant, or its successor or assign retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Restricted Property. Declarant agrees City, CDFG, and USFWS shall not have any duty or responsibility for the operation, upkeep, or maintenance of the Restricted Property, the monitoring of hazardous conditions thereon, or the protection of Declarant, the public or any third parties from risks relating to conditions on the Restricted Property. Declarant, its successor or assign remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Restrictive Covenant, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

11. Taxes.

Declarant, its successors or assigns shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Restricted Property by competent authority, including any taxes imposed upon, or incurred as a result of, this

Restrictive Covenant, and agrees to furnish City, CDFG, and USFWS with satisfactory evidence of payment upon request.

12. No Hazardous Materials Liability.

(a) Declarant represents and warrants that it has no knowledge of any release or threatened release of Hazardous Materials (defined below) in, on, under, about or affecting the Restricted Property.

(b) Despite any contrary provision of this Restrictive Covenant, the parties do not intend this Restrictive Covenant to be, and this Restrictive Covenant shall not be, construed such that it creates in or gives City, CDFG, and USFWS any of the following:

(1) The obligations or liabilities of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.; hereinafter, "CERCLA"); or

(2) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or

(3) The obligations of a responsible person under any applicable Environmental Laws; or

(4) The right to investigate and remediate any Hazardous Materials associated with the Restricted Property; or

(5) Any control over Declarant's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Restricted Property.

(c) The term "**Hazardous Materials**" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Restrictive Covenant.

(d) The term "**Environmental Laws**" includes, without limitation, any federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Declarant represents, warrants and covenants to City, CDFG, and USFWS that activities upon

and use of the Restricted Property by Declarant, its agents, employees, invitees and contractors will comply with all Environmental Laws.

13. Additional Easements.

Declarant shall not grant any additional easements, rights of way or other interests in the surface or subsurface of the Restricted Property (other than a security interest that is subordinate to this Restrictive Covenant), or grant or otherwise abandon or relinquish any water rights relating to the Restricted Property, without first obtaining the written consent of City, CDFG, and USFWS. City, CDFG, and/or USFWS may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the Purpose of this Restrictive Covenant or will impair or interfere with the Conservation Values of the Restricted Property. This Section shall not prohibit transfer of a fee or leasehold interest in the Restricted Property that is subject to this Restrictive Covenant and complies with Section 17 below. Declarant, its successors and assigns shall record any additional easements or other interests in the Restricted Property approved by the City, CDFG, and USFWS in the official records of San Diego County, California and provide a copy of the recorded document to the City, CDFG, and USFWS.

14. Hold Harmless.

Declarant shall hold harmless, protect and indemnify City and its officials, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "City Indemnified Party" and, collectively, "City's Indemnified Parties") and CDFG its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them a "CDFG Indemnified Party" and, USFWS and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (a "USFWS Indemnified Party") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Restricted Property, regardless of cause, except that (a) this indemnification shall be inapplicable to City's Indemnified Parties with respect to any Claim due solely to the negligence of City or any of its employees and (b) this indemnification shall be inapplicable to CDFG and USFWS Indemnified Parties with respect to any Claim due solely to the negligence of CDFG and USFWS or any of their employees; (2) the Declarant's obligations specified in Sections 2, 3 and 6; and (3) the existence or administration of these Restrictive Covenants. If any action or proceeding is brought against any of the City, CDFG and USFWS Indemnified Parties by reason of any such Claim, Declarant shall, at the election of and upon written notice from City, CDFG and USFWS, defend such action or proceeding by counsel reasonably acceptable to the Indemnified Party or reimburse the party for all charges incurred for services of the Attorney General or other counsel in defending the action or proceeding.

15. Amendment.

Declarant may amend this Restrictive Covenant only after written concurrence by City, CDFG, and USFWS. Any such amendment shall be consistent with the Purpose of this

Restrictive Covenant and shall not affect its perpetual duration. Declarant shall record any amendments to this Restrictive Covenant approved by City, CDFG, and USFWS in the official records of San Diego County, California, and shall provide a copy of the recorded document to City, CDFG, and USFWS.

16. Recordation.

Declarant, its successor or assign shall promptly record this instrument in the official records of San Diego County, California, and provide a copy of the recorded document to City, CDFG, and USFWS.

17. Assignment and Subsequent Transfers.

(a) Declarant agrees to incorporate the terms of this Restrictive Covenant in any deed or other legal instrument by which Declarant divests itself of any interest in all or a portion of the Restricted Property. Declarant, its successor or assign agrees to (i) incorporate by reference to the title of and the recording information for this Restrictive Covenant in any deed or other legal instrument by which each divests itself of any interest in all or a portion of the Restricted Property, including, without limitation, a leasehold interest and (ii) give actual notice to any such transferee or lessee of the existence of this Restrictive Covenant. Declarant, its successor or assign agrees to give written notice to City, CDFG, and USFWS of the intent to transfer any interest at least thirty (30) days prior to the date of such transfer. Any subsequent transferee shall be deemed to have assumed the obligations of this Restrictive Covenant and to have accepted the restrictions contained herein. The failure of Declarant, its successor or assign to perform any act provided in this Section shall not impair the validity of this Restrictive Covenant or limit its enforceability in any way.

(b) From and after the date of any transfer of all or any portion of the Restricted Property by Declarant and each transfer thereafter, (i) the transferee shall be deemed to have assumed all of the obligations of Declarant as to the portion transferred, as set forth in this Restrictive Covenant, (ii) the transferee shall be deemed to have accepted the restrictions contained herein as to the portion transferred, (iii) the transferor, as applicable, shall have no further obligations hereunder except for the obligations set forth above in this paragraph and pursuant to Section 24, and (iv) all references to Declarant in this Restrictive Covenant shall thereafter be deemed to refer to such transferee.

18. Notices.

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Declarant: Carlsbad Poinsettia Land Company, LLC
219 Meadow Vista Way
Encinitas, CA 92024

To: City of Carlsbad
1635 Faraday Avenue

Carlsbad, CA 92008

Department of Fish and Game, Region 5
4949 Viewridge Avenue
San Diego, CA 92123

US Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92009
FAX 760-431-5902

or to such other address as either party shall designate by written notice to the other. Notice shall be deemed effective upon delivery in the case of personal delivery or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

19. Controlling Law.

The laws of the United States and the State of California shall govern the interpretation and performance of this Restrictive Covenant.

20. Liberal Construction.

Any general rule of construction to the contrary notwithstanding, this Restrictive Covenant shall be liberally construed in favor of the deed to effect the purpose of this Restrictive Covenant and the policy and purpose California Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Restrictive Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

21. Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Restrictive Covenant, such action shall not affect the remainder of this Restrictive Covenant. If a court of competent jurisdiction voids or invalidates the application of any provision of this Restrictive Covenant to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

22. No Forfeiture.

Nothing contained herein will result in a forfeiture or reversion of Declarant's title in any respect.

23. Successors.

The covenants, terms, conditions, and restrictions of this Restrictive Covenant shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Restricted Property.

24. Termination of Rights and Obligations.

A party's rights and obligations under this Restrictive Covenant terminate upon transfer of the party's interest in the Restrictive Covenant or Restricted Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

25. Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

26. City, CDFG, and USFWS Benefited Parties

Except for Section 23, the terms of this Restrictive Covenant are for the benefit of the City, CDFG, and USFWS only and are not for the benefit of any other parties

IN WITNESS WHEREOF Declarant has executed this Restrictive Covenant the day and year first above written.

"Declarant"

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

RONALD R. BALL, City Attorney

By: _____

Assistant City Attorney

STATE OF CALIFORNIA)
COUNTY OF) ss.

On _____, 200____, before me, the undersigned, a
Notary Public in and for said State, personally appeared:

_____,
[] Personally known to me - **OR** - [] Proved to me on the basis of satisfactory evidence to
be the 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(ies), and that by
his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

LEGAL DESCRIPTION

EXHIBIT C

MITIGATION PLAN

EXHIBIT D

TITLE REPORT

APPENDIX E

Plants Present Within The Preserve Area

APPENDIX E
PLANTS PRESENT WITHIN THE PRESERVE AREA

<u>FAMILY</u>	<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
Aizoaceae	<i>Aptenia cordifolia</i>	red apple ice plant
	<i>Carpobrotus edulis</i>	hottentot-fig
	<i>Mesembryanthemum nodiflorum</i>	slender-leaved iceplant
Anacardiaceae	<i>Malosma laurina</i>	laurel sumac
	<i>Rhus integrifolia</i>	lemonadeberry
Apiaceae	<i>Foeniculum vulgare</i>	fennel
Asteraceae	<i>Artemisia californica</i>	California sagebrush
	<i>Arctostaphylos glandulosa</i> ssp. <i>crassifolia</i>	Del Mar manzanita
	<i>Baccharis pilularis</i>	coyote brush
	<i>Baccharis sarothroides</i>	broom baccharis
	<i>Centaurea melitensis</i>	star thistle
	<i>Deinandra fasciculata</i>	fascicled tarplant
	<i>Encelia californica</i>	California encelia
	<i>Eriophyllum confertiflorum</i>	golden yarrow
	<i>Gazania linearis</i>	gazania
	<i>Gnaphalium</i> sp.	everlasting
	<i>Heterotheca grandiflora</i>	telegraph weed
	<i>Picris echioides</i>	bristly ox-tongue
	<i>Silybum marianum</i>	milk thistle
	<i>Solidago californica</i>	California goldenrod
	<i>Sonchus asper</i>	prickly sow thistle
	<i>Xanthium strumarium</i>	cocklebur
Boraginaceae	<i>Heliotropium curassavicum</i>	salt heliotrope
Brassicaceae	<i>Brassica nigra</i>	black mustard
	<i>Brassica</i> sp.	mustard
	<i>Raphanus sativus</i>	wild radish
Cactaceae	<i>Opuntia littoralis</i>	prickly pear
	<i>Opuntia</i> sp.	cactus
Caprifoliaceae	<i>Sambucus mexicana</i>	blue elderberry
Caryophyllaceae	<i>Spergularia</i> sp.	sand spurrey
Cryptantha	<i>Cryptantha</i> sp.	cryptantha
Cucurbitaceae	<i>Marah macrocarpus</i>	wild cucumber

RESOURCE BALANCE, INC.

PLANTS PRESENT WITHIN THE PRESERVE AREA (*continued*)

<u>FAMILY</u>	<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
Dryopteridaceae	<i>Polystichum munitum</i>	sword fern
Ericaceae	<i>Comarostaphylis diversifolia ssp. diversifolia</i> <i>Xylococcus bicolor</i>	summer holly mission manzanita
Euphorbiaceae	<i>Chamaesyce polycarpa</i>	desert sand mat
Fabaceae	<i>Acacia Cyclops</i> <i>Lotus scoparius</i> <i>Melilotus alba</i> <i>Melilotus officinalis</i>	acacia deerweed sweet clover yellow sweet clover
Fagaceae	<i>Quercus dumosa</i>	Nuttall's scrub oak
Lamiaceae	<i>Salvia mellifera</i>	black sage
Lilaceae	<i>Yucca schidigera</i>	Mohave yucca
Malvaceae	<i>Malacothamnus fasciculatus</i> var. <i>fasciculatus</i>	bush mallow
Myoporaceae	<i>Myoporum laetum</i>	myoporum
Plumbaginaceae	<i>Limonium perezii</i>	statice
Poaceae	<i>Bromus hordeaceus</i> <i>Bromus madritensis</i> <i>Bromus</i> spp. <i>Cortaderia jubata</i> <i>Phalaris</i> sp.	soft chess foxtail bromes Pampas grass canary grass
Polygonaceae	<i>Eriogonum fasciculatum</i> <i>Rumex crispus</i>	California buckwheat curly dock
Portulacaceae	<i>Claytonia perfoliata</i>	miner's lettuce
Primulaceae	<i>Anagallis arvensis</i>	scarlet pimpernel
Rhamnaceae	<i>Ceanothus verrucosus</i>	wart-stemmed ceanothus
Rosaceae	<i>Adenostoma fasciculatum</i> <i>Heteromeles arbutifolia</i>	chamise toyon
Scrophulariaceae		

PLANTS PRESENT WITHIN THE PRESERVE AREA (*continued*)

<u>FAMILY</u>	<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
Solanaceae	<i>Mimulus aurantiacus</i>	monkey flower
	<i>Nicotiana glauca</i>	tree tobacco
	<i>Solanum</i> sp.	nightshade
Urticaceae	<i>Urtica</i> sp.	nettle

Bold face = sensitive species

APPENDIX F

Animals Present Within The Preserve Area

APPENDIX F
ANIMALS PRESENT THE PRESERVE AREA

SCIENTIFIC NAME

COMMON NAME

Reptiles

Sceloporus occidentalis

western fence lizard

Birds

Corvus brachyrhynchos

American crow

Calypte anna

Anna's hummingbird

Thryomanes bewickii

Bewick's wren

Pipilo crissalis

California towhee

Poliophtila californica californica

coastal California gnatcatcher, FT

Corvus corax

common raven

Carduelis psaltria

lesser goldfinch

Zenaida macroura

mourning dove

Buteo jamaicensis

red-tailed hawk

Stelgidopteryx serripennis

northern rough-winged swallow

Unidentified sparrow

unidentified sparrow

Pipilo maculatus

spotted towhee

Aphelocoma californica

western scrub jay

Chamaea fasciata

wrentit

Mammals

Thomomys bottae

Botta's pocket gopher

Spermophilus beecheyi

California ground squirrel

Canis latrans

coyote

Sylvilagus auduboni

desert cottontail

Bold face = sensitive species, FT = federally listed as threatened

APPENDIX G

Property Analysis Record (PAR)

PAR

Habitat Planning In Perpetuity

The Property Analysis Record

Title Poinsettia Place On-site Preserve
Dataset CA005
ID PP FINAL
Prepared by Stephen Neudecker, Ph.D.
Date 03/18/2011

The Center for Natural Lands Management prepared this software to assist conservation planners develop the management tasks and costs of long-term stewardship. While the sources are thought to be reliable, the Center makes no representations about the accuracy of cost estimates. The date of the cost information is 2000. The operation of the program is not guaranteed by the Center. Management requirements are determined by the user. Users should consult with their own financial advisors before relying on the results of their analysis.

Section 1 - Project Information

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL

03/18/2011

U.S.G.S.Quad 1: Encinitas
U.S.G.S.Quad 2:
U.S.G.S.Quad 3:
U.S.G.S.Quad 4:
Management type: Contract
Prepared by Stephen Neudecker, Ph.D.
Date 03/18/2011
Address 313 Glen Creek Drive, Suite
City, State, Zip Bonita, CA 91902
Phone 619-992-3395
Location/Jurisdiction San Diego County
County San Diego
Acres 12

Project Status	Start Date	Completion	Status/Notes
Construction	01/15/2011	12/01/2012	
Restoration	02/15/2011	02/15/2016	
Stewardship	02/15/2011	/ /	In perpetuity

	Owner	Proponent
Name	David Jacinto	
Organization	Sierra Linda Development,	
Address	219 Meadow Vista Way	
City, State, Zip	Encinitas, CA 92024	
Phone	760-809-7473	
Fax		
E-Mail address		

	Consultant #1	Consultant #2
Name	Stephen Neudecker, Ph.D	
Organization	Resource Balance, Inc.	
Address	331 Glen Creek Drive, Suite	
City, State, Zip	Bonita, CA 91902	
Phone	619-992-3395	
Fax	916-462-0552	
E-Mail address	Steve@ResourceBalance.co	
Specialty	Ecology & Conservat□	

Section 1 - Project Information

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL

03/18/2011

Cost Year 0

Date of site visit: / /

Development Project

Name

Acres 0

Stage of planning

Conserved acres 0f,

Mitigation Bank

Log No MBCR: 0

Credit basis

Stage of planning

Notes

The Poinsettia Place Project is a multi-family residential development Project, in the City of Carlsbad, California.

Section 2 - Contacts

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL 03/18/2011

Relation Consultant
Name Dr. Stephen Neudecker
Street 313 Glen Creek Drive, Suite 100
Organization Resource Balance, Inc.
City, State & Zip Bonita, CA 91902-4279

Phone 619-992-3395
Fax
E-mail Steve@ResourceBalance.com

Relation Client
Name Mr. David Jacinto
Street 219 Meadow Vista Way
Organization Sierra Linda Develop., LLC
City, State & Zip Encinitas, CA 92024

Phone 760-809-7473
Fax
E-mail

Relation Preserve Manager
Name San Diego Urban Corps
Street 3127 Jefferson Street
Organization Habitat Services
City, State & Zip San Diego, CA 92110

Phone 619-235-6884
Fax 619-571-5560
E-mail Slopez@urbancorps.org

Section 3 - Purposes for Preservation

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL

03/18/2011

Purposes for Preservation	Goals and Objectives
Open Space	<p>Permanent conservation and active management of an urban 11.5-acre Preserve adjacent to a multifamily residential subdivison. The Preserve is comprised of southern maritime chaparral. The Preserve contains the federal listed as threatened coastal California gnatcatcher (<i>Polioptila californica californica</i>) and four sensitive plant species: the federal listed as endangered Del Mar manzanita (<i>Arcostaphylos glandulosa</i>), Nuttall's scrub oak (<i>Quercus dumosa</i>), summer holly (<i>Comarostaphylos diversifolia</i>) and wart-stemmed ceanothus (<i>Ceanothus verrucosus</i>). The Preserve management is focused on habitat management, biological monitoring and protection from incursion and degradation.</p> <p>This PAR and the Poinsettia Place Preserve Mangement Plan (PMP; Resource Balance 2011) recognize that the entire 11.5 acres of the Preserve will be restored to southern maritime chaparral. The Preserve is bordered by urban development to the north and west, agriculture to the south and native habitat to the east. The purpose of the Preserve is to preserve the southern maritime chaparral habitat and the sensitive plant and animal species it supports. The focus of the management is the preservation of habitat through active, protective management.</p> <p>This PAR recognizes that the Preserve will be enhanced by the permittee until it attains the 5-year success criteria stipulated by the Upland Mitigation Plan (HELIX 2010). Nonetheless, management of the balance of the Preserve will begin immediately by the San Diego Urban Corps Habitat Services, the Preserve Manager.</p> <p>This PAR is based on the Poinsettia Place PMP (Resource Balance 2011). It assumes that perpetual management of the 11.5-acre Preserve will be done by the an Diego Urban Corps Habitat Service. Since the Urban Corps has external funding for office expenses, equipment and overhead, only miscellaneous supplies and incidentals are provided by the PAR.</p> <p>This PAR also acknowledges that all inital capital costs to prepare the Preserve for management by the San Diego Urban Corps Habitat Services, will be provided by the permitte. Those initial costs include all fences and gates, signs, trash removal, removal of invasive plants, ripping of trails and disturbed areas prior to revegetation. Those initial costs also include all costs of Upland Mitigation Plan and its associated 5 years of maintenance monitoring and reporting. The only initial and start-up cost provided by the PAR is for the initial, Years 1 and 2, protocol surveys of coastal California gnatcatcher, preparation of a Fire Management Plan and associated admistrative costs and contingencies.</p>

Endangered Species

The federal listed as threatened, coastal California gnatcatcher (*Poliophtila californica californica*) is present in the Preserve.

The federal listed as endangered, Del Mar Manzanita (*Arctostaphylos glandulosa*) is present in the Preserve.

Section 4 - Documents and References

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL

03/18/2011

Document & Reference	Contact	Phone/Fax/Email	Date Rcv'd
0 Aerial Photographs	Resource Balance, Inc.	619-992-3395	/ /
0 CEQA	MND - City of Carlsbad		12/19/2006
0 CDFG 1601/1603	Resource Balance, Inc.	619-992-3395	/ /
0 Revegetation/Restoration Plan	HELIX Environmental Planning	619-462-1515	12/15/2010
0 Title Report with Survey Map	Sierra Linda Development, LLC	760-809-7473	/ /
0 Other	Habitat Management Plan	Resource Balance	/ /

Section 5 - Requirements Summary

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL

03/18/2011

Permits

Agency Permit Army Corp of Engineers 404

Permit Purpose

Date 05/07/2010

Issued Yes Reporting No

Standards No Restoration No

PAR No Monitoring No

When Scheduled

Monitoring Schedule

Standards for Success

Comments Determination of no waters of the U.S. on site - SPL-2010-00474-MBS

Agency Permit State Dept. of Fish and Game

Permit Purpose 1602 SAA

Date 06/14/2007

Issued Yes Reporting No

Standards No Restoration No

PAR No Monitoring No

When Scheduled

Monitoring Schedule

Standards for Success

Comments Affects 0.2 acre of SWS waters of the state - 1600-2010-0070-R5

Agency Permit State Dept. of Resources

Permit Purpose SDRWQCB

Date 06/18/2007

Issued Yes Reporting No

Standards No Restoration No

PAR No Monitoring No

When Scheduled

Monitoring Schedule

Standards for Success

Comments Report of Waste Discharge - 10C-021i

Agency Permit City Requirement

Permit Purpose MND, 12/19/2006

Date 01/12/2006

Issued Yes Reporting Yes

Standards Yes Restoration Yes

PAR No Monitoring Yes

When Scheduled

Monitoring Schedule

Standards for Success The Permittee will salvage and translocate some of the narrow endemic plants from the affected project site to the Preserve to enhance its vegetation community.

Comments City CEQA Approval - SCH# 2006041049

Permits

Agency Permit	HCP/NCCP Agreement		
Permit Purpose	HMPP		
Date	/ /		
Issued	No	Reporting	Yes
Standards	Yes	Restoration	Yes
PAR	Yes	Monitoring	Yes
When Scheduled			
Monitoring Schedule			
Standards for Success	The permittee shall provide the restoration, maintenance, monitoring and reporting detailed in the approved Poinsettia Place Upland Mitigation Plan (HELIX 2010).		
Comments	HMPP 0608		

Agency Permit	Mitigation Bank Implementation		
Permit Purpose			
Date	08/14/2007		
Issued	Yes	Reporting	No
Standards	No	Restoration	No
PAR	No	Monitoring	No
When Scheduled			
Monitoring Schedule			
Standards for Success			
Comments	0.6 acre of SWS credit in North County Habitat Mitigation Bank		

Agency Permit	Other		
Permit Purpose	LCPA 04-08		
Date	/ /		
Issued	No	Reporting	No
Standards	No	Restoration	No
PAR	No	Monitoring	No
When Scheduled			
Monitoring Schedule			
Standards for Success			
Comments	Local Coastal Plan Amendment		

Section 5 - Requirements Summary

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL

03/18/2011

Contract Requirements

Item	Requirement	Requirement
Management Agreements		Preserve to be managed by San Diego Urban Corps

Division of Responsibilities

Item	Type	Notes
Debris Removal	M	Biannually
Interpretative Program	M	As needed, interface with HOA and neighbors
Monitoring, Plant	M	Annually monitor the health of native plants and id presence of invasive
Monitoring, Wildlife	M	Annually monitor the health of wildlife, CAGN on Years 1, 3 and then every third
Patrolling	M	Quarterly
Signs, Access Control	M	Monitor biannually, repair annually
Trash Collection, Initial	O	Provided by Permittee (Owner)
Trash Collection, Ongoing	M	Biannually
Other	M	Non-native plant control, Annually, Mar/Apr

Physical / Legal

Item	Description	Notes
Access Points	Yes	There is a locked gate to access the Preserve
Easements	Yes	See Title Report
Existing Structures	No	
Trails	No	There will be no public trail or access to the Preserve

Section 6 - Site Conditions

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL

03/18/2011

Property Uses Item	Permitted/ Legal	Problem	Notes
Access Points	Y	None	There is gated access to this property for management and emergencies
Agricultural	N	None	
Equestrian	N	None	
Fishing	N	None	
Hiking Trails	N	None	
Livestock Grazing	N	None	
Mountain Bikes	N	None	
Oil/Mineral Extract.	N	None	
ORV	N	None	
Passive Recreation	N	None	
Roads	N	None	
Shooting/Hunting	N	None	
Snowmobiles	N	None	
Timber Harvest	N	None	
Other	N	None	

Adjacent Land Use Item	Permitted/ Legal	Problem	Notes
Agricultural	N	Medium	Agricultural uses to the south need to be monitored to prevent incursion
Commercial	N	None	
Dedicated Preserve	N	None	
Industrial	Y	None	
Major Roads	N	None	
Minor Roads	Y	None	
Oil/mineral extraction	N	None	
Open Space	N	None	
Recreational	N	None	
Residential - High Density	Y	Medium	Potential incursion from miscreants
Residential - Low Density	Y	None	
Timber Harvest	N	None	
Other	Y	None	Emergency fire access as needed.

Degraded Features

Item	Notes
Other Degraded Features	Presence of non-native vegetation

Invasive Exotics

Item	Notes
Brome	Red brome is present
Fennel, Wild	Present
Mustard, Black	Present

Section 7 - Biological Assessment

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL

03/18/2011

Natural Communities	Acres	Notes (Location condition & Rec.)
-CALIFORNIA		
Other (Other Natural Communities)	11.50	Southern maritime chaparral with 4 sensitive plant species and CAGN

Section 7 - Biological Assessment

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL

03/18/2011

Animal Survey Species Name	Notes (Location condition & Rec.)
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-BIRDS

Gnatcatcher, California

(Polioptila californica)

Status: R

State: None

Federal: PS

Global: G3

Other Birds

(Other)

Buteo linelatus - redshouldered hawk

Status: P

State:

Federal:

Global:

Other Birds

(Other)

Elanus leucurus - white-tailed kite

Status:

State:

Federal:

Global:

Section 7 - Biological Assessment

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL

03/18/2011

Plant Species Name	Acres	Notes (Location condition & Rec.)
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LANTS

Other Plants
(Other) 0.00 Summer holly, Nutall's scrub oak and Wart-stemmed
ceanothus
Status: State:Sensit Global: Federal:

Other Plants
(Other) 0.00 Del Mar manzanita
Status: State:Endang Global: Federal:

Section 8 - Initial & Capital Tasks and Costs

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL

03/18/2011

Budget: PAR

Task list	Specificaton	Unit	Number of Units	Cost / Unit	Annual Cost	Times Years	Total Cost
BIOTIC SURVEYS							
Ornithologist	CAGN Survey & Report	L. Hours	16.00	75.00	1,200.00	1.0	1,200.00
Ornithologist	Yr. 2 CAGN Survey & Report	L. Hours	14.00	75.00	1,050.00	1.0	1,050.00
Sub-Total							2,250.00
REPORTING							
Fire Management Plan	Prepare Fire Management	L. Hours	8.00	65.00	520.00	1.0	520.00
Sub-Total							520.00
CONTINGENCY & ADMINISTRATION							
Contingency							221.60
Administration							448.74
Sub-Total							670.34
Total							3,440.34

Section 9 - Ongoing Tasks and Costs

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL

03/18/2011

Budget: PAR

Task list	Specificaton	Unit	Number of Units	Cost / Unit	Annual Cost	Divide Years	Total Cost
SITE CONSTRUCTION/MAINT.							
Fence - Installed	3-wire wildlife fence	Lin. Ft.	234.00	11.60	2,714.40	20	135.72
Fence	Barbed-wire, 2 strd	Lin. Ft.	1,022.00	0.24	245.28	20	12.26
Sub-Total							147.98
BIOTIC SURVEYS							
Project Management	Supervise/coordinate	L. Hours	5.00	75.00	375.00	1	375.00
Plant Ecologist	Field Svy. & Reports	L. Hours	6.00	75.00	450.00	1	450.00
Wildlife Biologist	Field Svy. & Reports	L. Hours	10.00	75.00	750.00	1	750.00
Ornithologist	CAGN Survey & Report	L. Hours	16.00	75.00	1,200.00	3	400.00
Sub-Total							1,975.00
HABITAT RESTORATION							
Organic Debris Removal	Dump fee	Unit	1.00	150.00	150.00	1	150.00
Non-organic Debris Removal	Dump fee	Unit	1.00	150.00	150.00	1	150.00
Seed Collection	Native seeds	Lb.	0.25	80.00	20.00	3	6.67
Seeding	Hand seeding	Acre	0.25	700.00	175.00	5	35.00
Other	Trash removal	L. Hours	16.00	20.00	320.00	1	320.00
Sub-Total							661.67
HABITAT MAINTENANCE							
Plant Procurement	Trees, shrubs	Tree Pot	12.00	11.00	132.00	2	66.00
Supplemental Planting	Plant Replacement	L. Hours	16.00	20.00	320.00	2	160.00
Exotic Plant Control	Hand Removal, Labor	L. Hours	16.00	20.00	320.00	1	320.00
Exotic Plant Control	Herbicide 41% con.	Gal.	0.50	108.60	54.30	1	54.30
Exotic Plant Control	Backpack Spray	L. Hours	4.00	35.00	140.00	1	140.00
Sub-Total							740.30
PUBLIC SERVICES							
Sign, Aluminum	Aluminum 12" X 12"	Item	6.00	20.00	120.00	4	30.00
Community Outreach	Meetings	L. Hours	2.00	75.00	150.00	1	150.00
Community Outreach	Carlsbad Preserve Managers	L. Hours	2.00	75.00	150.00	1	150.00
Sub-Total							330.00

Task list	Specificaton	Unit	Number of Units	Cost / Unit	Annual Cost	Divide Years	Total Cost
REPORTING							
Database Management	Data Input & GIS work	L. Hours	6.00	65.00	390.00	1	390.00
Annual Reports	Summary	L. Hours	12.00	65.00	780.00	1	780.00
Management Plan	Review & Revise PMP	L. Hours	8.00	65.00	520.00	5	104.00
Sub-Total							1,274.00
OPERATIONS							
Other	Field & Admin Exps &	Item	1.00	500.00	500.00	1	500.00
Sub-Total							500.00
CONTINGENCY & ADMINISTRATION							
Contingency							450.32
Administration							911.89
Sub-Total							1,362.21
Total							6,991.16

Section 10 - Financial Summary

Property Title: Poinsettia Place On-site Preserve

Dataset: CA005

PAR ID: PP FINAL

03/18/2011

PAR(12 ac.)	Rate %	Total \$
INITIAL FINANCIAL REQUIREMENTS		
I & C Revenue		0
I & C Management Costs		2,770
I & C Contingency Expense	8.00	222
Total I & C Management Costs		2,992
I & C Administrative Costs of Total I & C Management Costs	15.00	449
Total I & C Costs		3,441
Net I & C Management and Administrative Costs		3,441
ANNUAL ONGOING FINANCIAL REQUIREMENTS		
Ongoing Costs		5,628
Ongoing Contingency Expense	8.00	450
Total Ongoing Management Costs		6,079
Ongoing Administrative Costs of Total Ongoing Management costs	15.00	912
Total Ongoing Costs		6,991
ENDOWMENT REQUIREMENTS FOR ONGOING STEWARDSHIP		
Endowment to Provide Income of \$ 6,991		164,494
Endowment per Acre is \$ 14,304.		
Ongoing Management Costs Based on 4.25% of Endowment per Year.		
Ongoing Management Funding is \$ 6,991 per Year Resulting in \$608 per Acre per Year.		
TOTAL CONTRIBUTION		167,935

