

Departmental Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

844
A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
April 16, 2015

SUBJECT: Memorandum of Understanding between the County of Riverside and the San Jacinto Basin Resource Conservation District; Resolution No. 2015-091, Notice of Intention to Convey a Conservation Easement Interest in Real Property Located in the Unincorporated Juniper Flats Area of the County of Riverside, State of California, Portions of Land with Assessor's Parcel Numbers 457-270-011 and 457-030-011. District 5; [\$40,800 Total Cost]; San Jacinto Basin Resource Conservation District 100%

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Memorandum of Understanding between the County of Riverside and the San Jacinto Basin Resource Conservation District and authorize the Chairman of the Board to execute the Memorandum of Understanding on behalf of the County of Riverside; and
2. Adopt Resolution No. 2015-091, Notice of Intention to Convey Conservation Easement Interests in Real Property Located in the Unincorporated Juniper Flats Area of the County of Riverside, State of California, Portions of Land, Portions of Assessor's Parcel Numbers 457-270-011 and 457-030-011, to the San Jacinto Basin Resource Conservation District; and
3. Direct the Clerk of the Board to give notice pursuant to Government Code Section 6061.

Patricia Romo
Patricia Romo
Assistant Director of Transportation

Juan C. Perez
Juan C. Perez
Director of Transportation and Land Management

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (Per Exec. Office)
COST	\$ 40,800	\$ 0	\$ 40,800	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: San Jacinto Basin Resource Conservation District (100%). No General funds are used. **Budget Adjustment:** No
For Fiscal Year: 2014/2015

C.E.O. RECOMMENDATION:

APPROVE

BY:

County Executive Office Signature

Tina Grande
Tina Grande

MINUTES OF THE BOARD OF SUPERVISORS

- ☐ A-30 ☐ Positions Added ☐ Change Order
☐ 4/5 Vote

Prev. Agn. Ref.:

District: 5

Agenda Number:

3-37

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Memorandum of Understanding between the County of Riverside and the San Jacinto Basin Resource Conservation District; Resolution No. 2015-091, Notice of Intention to Convey a Conservation Easement Interest in Real Property Located in the Unincorporated Juniper Flats Area of the County of Riverside, State of California, Portions of Land with Assessor's Parcel Numbers 457-270-011 and 457-030-011. District 5; [\$40,800]; San Jacinto Basin Resource Conservation District 100%
DATE: April 16, 2015
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BACKGROUND:

Summary

Construction projects (both private and public) frequently involve obtaining mitigation that meets the requirements of the environmental regulatory agencies (Corps of Engineers, regional water quality control boards, and the California Department of Fish and Wildlife). An extremely limited number of mitigation banks and mitigation in-lieu fee programs exist, and those available may not meet the requirements of all of the permitting agencies for any single project.

Resource Conservation Districts are charged with enhancing wildlife habitat and water conservation and may fulfill the role of managing mitigation lands. The San Jacinto Basin Resource Conservation District (District) is requesting certain rights and interests in order to enhance a portion of Transportation Department (Department) owned land adjacent to the Department's Juniper Flats sand and gravel borrow site for mitigation purposes. The portion of the property that would be enhanced (removal of non-native plants and establishment of native plants) is a streambed and is not suitable for use as borrow site, but is a viable mitigation site. The County of Riverside (County) is willing to grant a conservation easement over this portion of property, and, in exchange, the District will allow the Department to utilize the mitigation acreage as mitigation for future road projects.

In order for the property to be accepted as a mitigation site by the regulatory agencies, a conservation easement must be in place. The District and the Department have mutually developed terms and conditions for use of the property as a mitigation site that would be encumbered with a conservation easement, which are recommended for approval in the attached Memorandum of Understanding (MOU).

Pursuant to Government Code Section 25365, the County may convey an interest in real property belonging to the County to a special district upon such terms and conditions as are agreed upon between the parties and without complying with any other provisions of the Government Code if the property to be conveyed is not presently required for County use.

A separate action will need to be brought forth to the Board of Supervisors to request the authorization to convey the conservation easement interests in real property described in the MOU and to approve the conservation easement deed form to convey such interests.

The MOU and Resolution No. 2015-091 have been approved as to form by County Counsel.

Project Number: ZSU 10014

Impact on Residents and Businesses

The property to be covered by the conservation easement is located along Juniper Flats Road and is an undeveloped streambed, which separates the sand and gravel borrow site from the road. Land uses in the area are rural residential on large lots and undeveloped lands.

Establishment of a conservation easement would mean that the property would be preserved for conservation purposes; non-native plants would be removed, native plants would be planted, temporary irrigation may be installed, and debris would be removed. The District would manage the streambed portion of the property and would be responsible for monitoring the growth of the native plants in meeting the criteria of the regulatory agencies.

There would be a positive long-term impact on area residents and businesses, because the local watershed and ecosystem would be improved. The streambed that exists would remain in place and would be enhanced. In the

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FORM 11: Memorandum of Understanding between the County of Riverside and the San Jacinto Basin Resource Conservation District; Resolution No. 2015-091, Notice of Intention to Convey a Conservation Easement Interest in Real Property Located in the Unincorporated Juniper Flats Area of the County of Riverside, State of California, Portions of Land with Assessor's Parcel Numbers 457-270-011 and 457-030-011. District 5; [\$40,800]; San Jacinto Basin Resource Conservation District 100%

DATE: April 16, 2015

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short-term, local residents may observe removal of non-native trees and planting of native vegetation. The MOU provides for the Department to utilize the mitigation acreage as mitigation for future road projects.

SUPPLEMENTAL:

Additional Fiscal Information

The District will reimburse the Department for costs incurred establishing the easement, including preparation of plats and legals, appraisal, title report, staff costs, and the value of the easement. Department costs are estimated at \$31,800, and the appraised value of the 9.58 acre conservation easement is \$9,000.

Contract History and Price Reasonableness

The value of the conservation easement has been determined by an appraisal of fair market value, as set forth in the MOU.

ATTACHMENTS:

- Memorandum of Understanding
- Resolution No. 2015-091

Board of Supervisors

County of Riverside

RESOLUTION NO. 2015-091

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE
NOTICE OF INTENTION TO CONVEY A CONSERVATION EASEMENT INTEREST IN REAL
PROPERTY LOCATED IN THE UNINCORPORATED JUNIPER FLATS AREA OF THE COUNTY
OF RIVERSIDE, STATE OF CALIFORNIA, OVER PORTIONS OF LAND
WITH ASSESSOR'S PARCEL NUMBERS 457-270-011 and 457-030-011
TO THE SAN JACINTO BASIN RESOURCE CONSERVATION DISTRICT
BY CONSERVATION EASEMENT DEED

WHEREAS, the County of Riverside ("County") is the owner in fee simple of real property located in the unincorporated Juniper Flats area of the County of Riverside, State of California, containing approximately 9.58 acres of land, designated as portions of Assessor's Parcel Numbers 457-270-011 and 457-030-011 ("Property") that has been identified as a viable site for a conservation easement; and

WHEREAS, pursuant to Government Code Section 25365, the County may convey an interest in real property belonging to the County to a special district upon such terms and conditions as are agreed upon between the parties and without complying with any other provisions of the Government Code, if the property to be conveyed is not presently required for County use; and

WHEREAS, while the Property is adjacent to County owned property that is currently used as a surface mine for sand and gravel for Transportation purposes, this Property is not being used and is not presently required for County uses; and

WHEREAS, the San Jacinto Basin Resource Conservation District ("SJBRC") desires to acquire from the County and the County desires to convey a conservation easement interest in the Property; and

WHEREAS, the SJBRC and the County intend to enter into a Memorandum of Understanding to provide the terms and conditions for this proposed transaction and to enable the County to receive consideration for the conservation easement interest and reimbursement for the costs associated with this transaction; now, therefore,

BE IT RESOLVED, DETERMINED AND ORDERED by the Board of Supervisors of the County

1 of Riverside, California, in regular session assembled on May 12, 2015, that the Board finds that the
2 property to be conveyed is not presently required for County use and:

3 NOTICE IS HEREBY GIVEN that the Board of Supervisors of County of Riverside intends to
4 authorize the conveyance of conservation easement interests in real property to the San Jacinto Basin
5 Resource Conservation District the following described real property pursuant to a Memorandum of
6 Understanding: County to convey to SBJRCD a conservation easement over vacant land with Assessor's
7 Parcel Numbers 457-270-011 and 457-030-011, consisting of approximately 9.58 acres of vacant land as
8 shown on Exhibit "A", attached hereto and by this reference incorporated herein. The County and
9 SBJRCD intend to consummate the conveyance by recordation of a conservation easement deed and
10 pursuant to a Memorandum of Understanding whereby the County conveys the above described county-
11 owned real property.

12 The Board of Supervisors intend to meet to conclude the proposed transaction on or after June 2,
13 2015, at or after 9:00 am, at the meeting room of the Board of Supervisors located on the 1st floor of the
14 County Administrative Center, 4080 Lemon Street, Riverside, California.

15 BE IT FURTHER RESOLVED AND DETERMINED that the Clerk of the Board of Supervisors
16 is directed to give notice hereof as provided in Section 6061 of the Government Code.

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
SAN JACINTO BASIN RESOURCE CONSERVATION DISTRICT
AND THE COUNTY OF RIVERSIDE**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and effective _____, 2015 ("Effective Date") by and between the SAN JACINTO BASIN RESOURCE CONSERVATION DISTRICT, a special district created pursuant to California Public Resources Code Division 9, Chapter 3 ("SJBRCD") and the COUNTY OF RIVERSIDE, a political subdivision of the State of California (the "County"). SJBRCD and the County are sometimes collectively referred to herein as the "Parties."

RECITALS

- A. SJBRCD is a Resource Conservation District formed for the control of runoff, the prevention or control of soil erosion, and the improvement of land capabilities pursuant to California Public Resources Code sections 9151 et seq.; and
- B. SJBRCD is authorized pursuant to Public Resource Code section 9403 to accept money from any source whatsoever to carry out its purposes; sections 9404 and 9408 to enter into contracts with other public agencies to further RCD purposes, and section 9409 to conduct operations on public land with the cooperation of the agency administering and having jurisdiction over that land to, among other things, enhance wildlife habitat and for water conservation purposes; and
- C. SJBRCD is authorized to hold conservation easements pursuant to Public Resources Code sections 9405 and 9406 and Civil Code Section 815.3. Specifically, SJBRCD is an entity identified in Civil Code Section 815.3 and otherwise authorized to acquire and hold title to real property; and
- D. County is the owner in fee simple of certain real property containing approximately 9.58 acres of land, located in the County of Riverside State of California, designated as portions of Assessor's Parcel Number(s) 457-270-011 and 457-030-011 ("Property"); and
- E. SJBRCD anticipates receiving funds from various sources to preserve and restore the County's Juniper Flats property (the "Property") for use as valuable habitat conservation land (the "Project"); and
- F. The County is willing to grant a conservation easement to SJBRCD over a portion of the Property ("Conservation Easement") provided the County receives consideration in

value for the conservation easement interest in real property and has been determined to not be required for County use or purposes; and

- G. Pursuant to California Government Code Section 25365, the County may convey an interest in real property to any special district in the county upon such terms and conditions as are agreed upon by the parties and without complying with any other provisions of this code if the interest to be conveyed is not required for county use; and
- H. The Parties desire to enter into this MOU to provide for the rights and responsibilities of the Parties for the conveyance of the Conservation Easement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereby agree as follows:

I. SJBRCD'S DUTIES.

A. Subject to Section I.E. herein, SJBRCD desires to acquire the Conservation Easement from County, including all the responsibilities associated therewith, for the purpose of implementing the Project. The Parties shall work cooperatively to negotiate and draft a Conservation Easement deed that shall fulfill the purposes of the Project.

B. As consideration and material to County in conveying the Conservation Easement over the Property to SJBRCD, County shall have rights and SJBRCD shall provide to County the value in consideration as described below:

1. For the 9.58-acre Conservation Easement, County shall receive the appraised (fair market) value consideration in the form of legal tender in the amount of NINE THOUSAND AND NO/100'S DOLLARS (\$9,000.00) ("Consideration") prior to such date and time the proposed conveyance of the Conservation Easement is set for consideration by the Board of Supervisors of the County of Riverside; provided, however, that the County shall refund the Consideration to SJBRCD if the Board of Supervisors fails to approve the conveyance of the Conservation Easement; and

2. The Parties acknowledge that a 5.34-acre portion of the Property ("Mitigation Parcel") is comprised of up to 0.25 acres that could be "enhanced," up to 0.26-acres that could be "restored," and up to 4.83 acres that could be "preserved" as shown in Exhibit "A" attached herein and incorporated by this reference. SJBRCD agrees to work with the County to use the Mitigation Parcel to satisfy future mitigation for either a County mitigation project or a mitigation project by a third-party. The Parties will agree to the scope of work for the future mitigation project when the details of such future mitigation project become available.

C. SJBRCD will provide the County with copies of all final documents related to the Project, and any other relevant documentation, including but not limited to the documents referenced in Sections D. and E. herein, required to implement this MOU.

D. During the course of negotiating and processing the proposed Conservation Easement until the recordation of the Conservation Easement contemplated by this MOU ("Transaction"), SJBRCD will reimburse the County for all costs that it incurs as a result of this Transaction. At the time of entering into this MOU, the County has estimated that it expects to incur a cost of approximately THIRTY ONE THOUSAND EIGHT HUNDRED DOLLARS (\$31,800) to process and finalize the Conservation Easement approvals and conveyance. Should the County's costs exceed such amount, the County agrees to notify SJBRCD as soon as reasonably possible so that the Parties may address such issue and SJBRCD can reimburse the County. SJBRCD agrees to pay the invoices associated with reimbursement for costs to the County in a timely and reasonable manner provided such payment is made no later than fifteen business days from the date that the proposed Conservation Easement may be approved by the Board of Supervisors of the County of Riverside.

E. In the event the Parties determine during this Transaction that the Project will create ongoing monitoring and review obligations on the Property burdening the County, the Parties will negotiate and determine the terms for reimbursement of associated costs to the County by SJBRCD.

F. SJBRCD will conduct and fund the due diligence regarding the portion of the Property to be subject to the Conservation Easement including, but not limited to, providing the legal description and plat maps, and ordering and reviewing a preliminary title report ("Due Diligence").

G. Provided that (i) SJBRCD still desires to acquire the Conservation Easement after completing its Due Diligence and (ii) funding is still available, SJBRCD will accept the Conservation Easement from the County and implement the Project. In the event that this Transaction is not finalized by the Parties, including but not limited to, execution and recordation of the Conservation Easement, SJBRCD shall reimburse County for costs expended by it up to the time the Transaction processing terminated.

H. As part of SJBRCD's duties pursuant to the Conservation Easement deed, SJBRCD will, at least annually, report on the management and monitoring activities performed in the Conservation Easement area. Reports shall address the source and amount of funds received for the Project, the type of activities performed, success of restoration efforts and the amount of funds expended on the Conservation Easement area. The Report will be sent to the County no later than 90 days following the end of SJBRCD's fiscal year (currently, June 30th).

II. COUNTY'S DUTIES.

A. Subject to approval by the Board of Supervisors for the County of Riverside and provided the Due Diligence review proves satisfactory and the Parties have come to an

agreement pertaining to the terms of conveyance, the County will grant and convey a Conservation Easement to SJBRCD in a form agreed upon by the Parties consistent with the Project.

B. The County will conduct its own environmental review in conjunction with considering this MOU and potentially granting the Conservation Easement to SJBRCD.

C. The County will submit invoices to SJBRCD to obtain reimbursement of the costs associated with processing this MOU and the Transaction.

III. COOPERATION.

The Parties agree to cooperate with each other in the implementation of this MOU and to perform any and all acts necessary to carry out the intent of the MOU. Without limiting the foregoing, the Parties agree to provide necessary approvals, and execute, acknowledge, and deliver any and all additional papers, documents and other assurances as may be necessary to carry out the intent of the MOU. The Parties intend that execution and delivery of the Conservation Easement deed by the County to SJBRCD will occur within a reasonable time after the Parties have performed all the necessary activities to proceed with the conveyance and have obtained authorization from their respective governing bodies.

To the extent that the Parties agree that the County should be compensated for all or a portion of the Property, the Parties agree to cooperate with each other in determining the value of the Property, including the possibility of acquiring an appraisal, if necessary.

IV. TERM; TERMINATION.

This MOU shall commence on the Effective Date and shall continue until the Conservation Easement is executed and recorded or terminated by the Parties. During the term, this MOU may be terminated by either Party upon giving the other Party sixty (60) days prior written notice. If this MOU is terminated prior to the execution and recordation of the Conservation Easement, SJBRCD will reimburse the County for any outstanding expenses that have not yet been reimbursed that are directly related to this Transaction.

V. CHANGES OR MODIFICATIONS.

No part of this MOU may be modified, altered, amended, waived, or changed without the express written consent of the Parties hereto. The Parties recognize that the potential for similar projects may arise in the future and will negotiate in good faith to amend this MOU to include those projects at the appropriate time.

VI. NOTICE.

As used in this MOU, notice includes but is not limited to, the communication of any notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment. All notices must be in writing. Notice is given either (i) when delivered in

person to the person or company named below, (ii) when delivered via facsimile with confirmation from the receiving party via return fax; or (iii) when sent via reputable overnight courier (such as Federal Express), addressed by name and addressed to the party or persons intended, as follows, until such time as a party gives notice of a change of address in accordance with the terms of this section:

COUNTY

Riverside County Transportation Dept.
Attn: Russell Williams
Environmental Division Manager
4080 Lemon St. 8th Flr
Riverside, CA 92501
Phone: (951) 955-2016
Fax: (951) 955-3198

With a copy to:

COUNTY COUNSEL

Attn: Synthia M. Gunzel
Office of the County Counsel
3960 Orange Street, Suite 500
Riverside, CA 92501

SJBRCD

Attn: District Manager

950 N. Ramona Blvd., Suite 6
San Jacinto, CA 92582
Phone: (951) 654-7733
Fax: (951) 654-6296

With a copy to:

SJBRCD GENERAL COUNSEL

Attn: Steven M. Anderson
Best Best & Krieger LLP
3390 University Avenue, Suite 500
Riverside CA 92501

VII. CONFLICT OF INTEREST.

No member, official or employee of the County or SJBRCD shall have any personal interest, direct or indirect, in this MOU nor shall any such member, official or employee participate in any decision relating to this MOU which affects his or her personal interests or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

VIII. NO THIRD PARTY BENEFICIARIES.

This MOU is made and entered into for the sole protection and benefit of the Parties hereto. No other person or entity shall have any right of action based upon the provisions of this MOU.

IX. ASSIGNMENT.

This MOU shall not be assigned by either Party, either in whole or in part, without the prior written consent of the non-assigning Party. Any assignment or purported assignment of

this MOU without the prior written consent of the non-assigning Party will be deemed void and of no force or effect.

X. GOVERNING LAW AND JURISDICTION.

The Parties agree that in the exercise of this MOU, the Parties shall comply with all applicable federal, state, county and local laws, and regulations in connection with the Project. The existence, validity, construction, operation and effect of this MOU and all of its terms and provisions shall be determined in accordance with the laws of the State of California. Any action at law or in equity brought by either of the Parties hereto for the purpose of enforcing a right or rights provided for by this MOU shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the Parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

XI. PARAGRAPH TITLES.

The paragraph titles of this MOU are (i) inserted only for the convenience of the Parties, (ii) are not intended to describe, define, limit, or otherwise affect the provisions in the portions of the MOU to which they pertain, and (iii) in no way describe, define, limit, or otherwise affect the scope or intent of this MOU or in any way affect the agreement of the Parties set out in this MOU.

XII. ENTIRE AGREEMENT.

This MOU embodies the entire agreement between the Parties hereto in relation to the subject matter hereof, and no other agreement or understanding, verbal or otherwise, relative to this subject matter exists between the Parties at the time of execution of this MOU. This MOU may only be modified or amended by the mutual consent of the Parties in writing.

XIII. AUTHORITY TO EXECUTE.

The individuals executing this MOU and the instruments referenced herein each represent and warrant that they have the legal power, right and actual authority to bind their respective Parties to the terms and conditions hereof and thereof.

XIV. COUNTERPARTS.

The Parties may execute duplicate originals (counterparts) of the MOU or any other documents that they are required to sign or furnish pursuant to the MOU.

**SIGNATURE PAGE FOR THE MEMORANDUM OF UNDERSTANDING BY AND
BETWEEN SAN JACINTO BASIN RESOURCE CONSERVATION DISTRICT AND
THE COUNTY OF RIVERSIDE**

IN WITNESS WHEREOF, the Parties have caused this MOU to be signed as of the date first above written.

COUNTY OF RIVERSIDE

By: _____
Marion Ashley, Chairman
Board of Supervisors

**SAN JACINTO BASIN
RESOURCE CONSERVATION
DISTRICT**

By: Roy Mason
Roy Mason
President of the Board

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: _____
Deputy

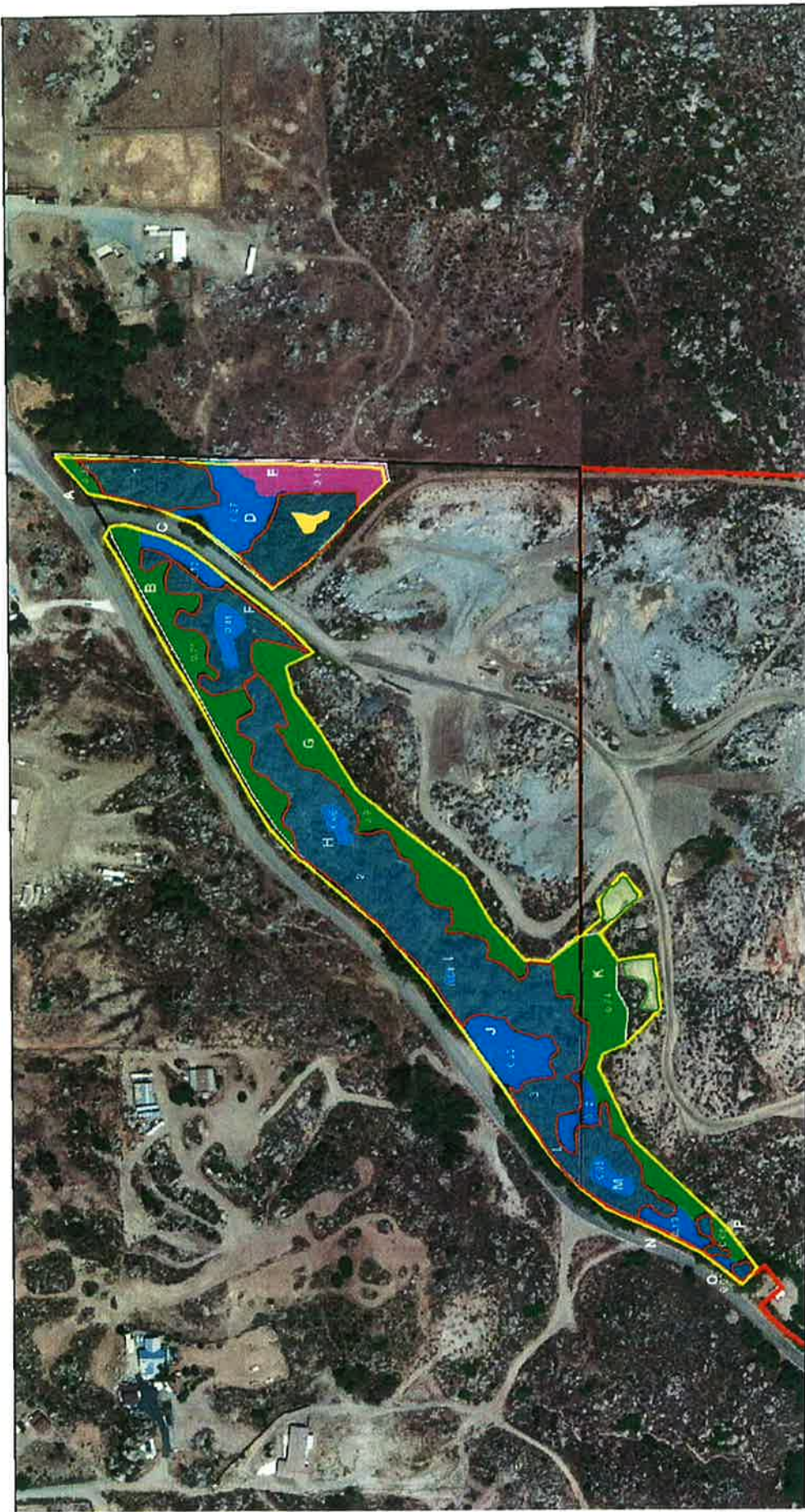
APPROVED AS TO FORM:
Gregory P. Priamos
County Counsel

By: Synthia M. Gunzel
Synthia M. Gunzel
Deputy County Counsel

APPROVED AS TO FORM:

By: _____
SJBRCD General Counsel
Best Best & Krieger LLP

EXHIBIT A



Legend:

SJBRCDC Conservation Easement Boundary:

Riverside Sage Scrub =	0.41ac (GLA)
Sycamore-Elderberry Woodland =	1.37ac (GLA)
Transitional Riparian Scrub =	2.46ac (GLA)
Potential Sycamore-Willow Woodland Preservation =	4.83ac (SJB)
Potential Depressional Riparian Scrub Restoration =	.26ac (SJB)
Potential Riparian Enhancement =	.25ac (SJB)
Total Easement Area =	9.58ac

1" = Approx. 300'