

Notice of Public Meeting

San Diego River Conservancy

**A public meeting of the Governing Board of
The San Diego River Conservancy
will be held Thursday,**

**November 4, 2010
1:30 pm – 3:30 pm**

Meeting Location

**San Diego City Hall 202 “C” Street
Closed Session Committee Room, 12th Floor
San Diego, California 92101**

**Tele-Conference Location: 1416 Ninth Street
Resources Agency Conference Room 1305 Sacramento, CA 95814
(877)287-0283/ Pass code 606349**

**Contact: Michael Nelson
(619) 645-3183**

Meeting Agenda

- 1. Roll Call**
- 2. Approval of Minutes**
- 3. Public Comment**
Any person may address the Governing Board at this time regarding any matter within the Board’s authority. Presentations will be limited to three minutes for individuals and five minutes for representatives of organizations.
- 4. Chairperson’s and Governing Board Members’ Report**

5. Executive Officer's Report

The following topics may be included in the Executive Officers Report. The Board may take action regarding any of them:

- 2011 Meeting Schedule
- 2010-2011 Budget
- Strategic Plan Addendum – Trust for Public Land
- Carlton Oaks Golf Course / TY Investments (option agreement, conservation & trail easement, right of first refusal)
- SANDAG/ Environmental Mitigation Program Land Management Grant

6. City of San Diego, Draft San Diego River Park Master Plan

Presentation and Report

Robin Shifflet, City Planning and Community Investment

7. San Diego River Trail: Status of Gaps Analysis

Presentation and Report

Mark Carpenter, KTU+A

8. Election of Officers: Discussion / Possible Action

9. Walker Properties, Santee

Adoption of Resolution ratifying action taken on March 5, 2009.

Recommendation: Adoption Resolution 10-08

10. Adjournment

Accessibility

If you require a disability related modification or accommodation to attend or participate in this meeting, including auxiliary aids or services, please call Michael Nelson at 619-645-3183

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 1

SUBJECT: **ROLL CALL AND INTRODUCTIONS**

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 2

SUBJECT: **APPROVAL OF MINUTES**
The Board will consider adoption of the **September 2, 2010** public meeting minutes.

PURPOSE: The minutes of the **September 2, 2010**
Board Meetings are attached for your review.

RECOMMENDATION: Approve minutes

SAN DIEGO RIVER CONSERVANCY (SDRC)

Minutes of September 2, 2010 Public Meeting

(Draft Minutes for Approval on November 4, 2010)

Chairperson Donna Frye called the September 2, 2010 meeting of the San Diego River Conservancy to order at approximately 1:32 p.m.

1. Roll Call

Members Present

Donna Frye, Chair	Council Member, City of San Diego
Dianne Jacob	Supervisor, Second District (arrived at 1:37 p.m.)
Bryan Cash	Natural Resources Agency, Alternate (via phone)
Miriam Ingenito	Department of Finance, Alternate (via phone arrived at 1:34 p.m.)
Ruth Hayward	Public at Large
Toni Atkins	Public at Large
Ben Clay	Public at Large
Ronie Clark	Department of Parks and Recreation, Alternate (via phone)
Andrew Poat	Public at Large
Ann Miller Haddad	Public at Large (arrived at 1:39 p.m.)

Absent

Jerry Sanders	Mayor, City of San Diego
John Donnelly	Wildlife Conservation Board
David King	San Diego Regional Water Quality Board

Staff Members Present

Michael Nelson,	Executive Officer
Hayley Peterson,	Deputy Attorney General
Julia Richards,	Administrative Services Manager

2. Approval of Minutes

Ruth Hayward made a motion to accept minutes for the July 8, 2010 and August 10, 2010 Special Meeting, which was seconded by **Ben Clay** and approved.

Votes

Donna Frye -Yes	Toni Atkins-Yes
Bryan Cash-Yes	Ben Clay-Yes
Miriam Ingenito-Yes	Ronie Clark-Yes
Ruth Hayward-Yes	Andrew Poat -Yes

3. Public Comment

Any person may address the Governing Board at this time regarding any matter within the Board's authority. Presentations will be limited to three minutes for individuals and five minutes for representatives of organizations. Submission of information in writing is encouraged.

Mark Weston, General Manager, Helix Water District provided an update on their groundwater recharge and a river restoration project in El Monte Valley, he stated that the Water District owns over 3.5 miles in El Monte Valley and that approximately 2 miles will be affected by the project. He said that a Notice of Preparation for an EIR would be forthcoming. He also remarked that a critical element of the project will be trail alignments and that meetings with stakeholders had begun.

4. Chairperson's and Governing Board Members' Report

No Report.

5. Executive Officer's Report

The following topics may be included in the Executive Officers Report. The Board may take action regarding any of them:

- **San Diego River Trail: Status of Gaps Analysis**
- **Walker Acquisition / Santee**
- **Proposition 40 & 84 Project Status**

6. City of San Diego – Carlton Oaks Golf Course: City of San Diego's Proposed Sale of Approximately 65.4 acres (Public and Closed Sessions)

The City of San Diego proposes to sell the approximately 65.4 acres the Public Utilities Department owns at Carlton Oaks Golf Course. The Conservancy has a first right of refusal under the SDRC Act and certain rights under the California Government Code (§§ 54220-54232; Surplus Land) to acquire the property. The City has set September 10, 2010 as the deadline for the Conservancy to exercise these rights. TY Investments, the golf course operator, is interested in purchasing the property. Following a presentation by the Executive Officer and the Chair, the Governing Board will consider whether to pursue acquisition of an interest in the property by purchase or donation. The Governing Board may meet in Closed Session to give instructions to its negotiators regarding the price and terms of payment of an acquisition or may discuss the matter in open session

Closed Session pursuant to Government Code section 11126, subdivision (c) (7)

Property Description: An approximately 65.4 acre portion of Assessor's Parcel Number 383-080-03 which is a portion of Carlton Oaks Golf Course

Negotiators: Michael Nelson, Executive Officer; Ann Van Leer SDRC Consultant, Hayley Peterson, Deputy Attorney General

Presentation

Donna Frye, SDRC Chair

Michael Nelson, Executive Officer

Ann Van Leer SDRC Consultant

Donna Frye stated that this was the third meeting SDRC had conducted on the City of San Diego's sale of approximately 65.4 acres at Carlton Oaks Golf Course; that all of these meetings had been held in open session, and saw no reason not to continue this practice. She said at the last hearing there was request that certain information to be reported back to the Board.

Mike Nelson recalled that two options remained under consideration: (1) a fee simple acquisition and leaseback or (2) the acceptance of a donation of a first right of refusal and conservation and trail easements.

He said the Board had asked that details regarding the acquisition and the donation be defined and placed in legally sufficient frameworks or agreements. He stated that a Letter of Intent, an Option Agreement and revised Resolutions had been prepared and were included in their meeting materials.

He explained that a letter of intent for the lease back and template for the proposed donation had been prepared by a team that included Hayley Peterson (DAG) and Jonathan Gurish (SCC). The Letter of Intent (LOI) set forth the terms of a long term lease, structured as a public-private partnership that would tie the lease back rate to the gross revenues of the golf course. Moreover, an option agreement had been developed that would allow the acceptance of a donation of the first right of refusal and a conservation trail and easement.

Felix Tinkov suggested that over the last month agreements had been negotiated that produced a good deal for both parties, regardless of the decision. He stated his conclusion that he thought TY purchasing the property was a better deal for the Conservancy and his client, but the parties had developed a Letter of Intent (LOI) for a lease, that while not binding, does provide terms that are workable, and that if these terms were in TY's lease with the City of San Diego, they would not be here today because a purchase would not have been necessary.

Donna Frye asked what he had just said.

Felix Tinkov said that if terms found in the Letter of Intent were in effect they would not be here today, but said that was not the case, that the present lease is very onerous. So while the LOI is great, it is not binding, so we would still have to see what happens once the acquisition occurs. He said that on the other hand, the parties had created an option agreement that provided certainty for each party. He added that at the last meeting TY had offered two new things: free conservation and trail easements and a right of first refusal over the entire 170 acres of the property. He said that after speaking with Mike he learned that a major issue was the connection of the trail on either side of the property, so together we have negotiated and are offering proposed linkages so that the Conservancy is able to connect on the east side with Mast Park West and on the west side to Midwest TV. This offering is something the Conservancy would not be able to get by purchasing the City's property. He said he believed a comparison of the options and benefits concluded that best option was for TY to purchase the land. Though the Conservancy is now offering my client a 30-year lease whereby we remain there as golf course, it is necessary for the Conservancy to spend \$3 million. What we are offering instead is to avoid spending any money, plus we are allowing you to do a trail alignment study and appropriate those same funds to pay for actual trail construction. In short, the Private Option is one that provides certainty to both all parties. There will be no development on those 65 acres and when my client wants

to sell the property, the Conservancy can step in and pick up 170 acres instead of 65.

Dianne Jacob said one of the problems with private ownership is that we do a trail study/alignment, and the wildlife agencies insist that the trail has to be built on or near the golf course and the responsibility would fall on the Conservancy to redesign the golf course in order to build the trail. Are you willing to pick up those expenses if that occurs?

Felix Tinkov responded that the way this works out the deal effectively does not take a dollar out of my client's pocket. It is all existing property interest that my client has and can give up without basically affecting cash flow. He said that is the problem today with the golf course, cash flow. We can't put into an agreement. He added that Mike and I have agreed no matter which way things go; we will work together with the resources agencies to ensure the trail stays away from the golf course.

Donna Frye stated that she would like to get public comments and share some comments with the Board after the public has had a chance to speak. We will start with Deanna Spheh, and if I could get an idea of how much time people would need

Deanna Spheh, Policy Director, State Senator Kehoe said that the Senator sent a letter for your last meeting and stands by her position that the Public Option is the best one for the Conservancy and the region; and is ready to do whatever is necessary.

Rob Hutsel, Chair of the San Diego River Coalition ("the Coalition") said the Coalition San Diego River Coalition referenced a letter they provided to the Mayor back in June that there was insufficient information and time to make a decision to sell. If we had more time we could make a good decision and you would not be forced to spend \$3 million. We do have specific comments we would like addressed in the option agreement such as, "the Conservancy desires TY to purchase the subject property." We don't believe that that should be your position, since that is ultimately the City Council's responsibility to make that call. Also, though we recognize the hard work that went into the very generous conservation and trail easement deed, it could be improved if additional access could be provided on the western edge and a connection to Santee Lakes could be made.

Donna Frye clarified for those in attendance who wished to speak that neither of the options presented here today would close down or force the closure of the golf course. She added that there was no document or language to that effect, that it has never been the intention of the Conservancy

Tim Faucett said he worked with Carlton Oaks for 13 years as a supplier of fertilizer, seed, and pesticides. He said he would like to avoid any loss of business. He said he was under the impression that if this deal could not get through the golf course would be closed.

Yvette Lynch, Catering Director, Carlton Oaks Golf Course said that she appreciated that the golf course would not close, but the employees, the public, and vendors would prefer the certainty of knowing the property stays with us.

Donna Frye called the following public speakers who did not approach the podium, but concurred with the previous speaker. **Heidi Herrin, Jerry Dremel, and Colleen Tarantino.**

Curtis Allensworth, a 65 year old resident of Santee and a neighbor of the golf course stated that

TY's management had made the property an asset to the community.

Rick Boster offered his full support for the Resolution that allows TY to purchase the property.

Michael Beck, from Endangered Habitat League and Conservancy supported the Conservancy's purchase and lease back to TY and wished to make two points. The first was that the focus of the conversation over the last 3 hearings was on the economic viability of the golf course and that he understood and respected the perspective of the people on the Board that are representing that view point. He said he also understands that the lease rates would be reduced so the golf course would not go under based on anything that would transpire as a result of public lands staying in public ownership. The second point is if you go back to the first hearing and listened to the tape of the discussion by the Board it is all about trails. He said it seemed to him that when the discussion focused on the biology of the river everything went backwards. He said if this is truly the San Diego River Conservancy, it is a river conservancy, if it needs to be a public use and trails conservancy we should change the statute to reflect that. He said that the Board should not be uncomfortable talking about the living part of this river which is the purpose for the Conservancy's existence. How few options there are to do river restoration, to do something for the river, so that 100 years from now the river can breathe and live a little better than it is now. He said that he was stunned, because he felt it was such an easy decision. He suggested that the same commitment the board has for trails should exist for purchasing a key piece of land like this; to keep what is already in public ownership in public ownership.

Donna Frye said that she had tried to just facilitate the discussions, but since we seem to be having more and more meetings, she wanted to provide some thoughts about where I would like to see this go and how I would like to see this resolved. She also said she would like to report to this Board some of the discussions she had this afternoon, which might hopefully resolve many of everyone's concerns and issues that have been raised. She said that her first issue was what are our goals and responsibilities as members of this Board, and for me to me to make sure we protect and preserve the San Diego River. She said that she believed that one of the first and foremost responsibilities of the Board was to acquire property to protect the river. She continued and said she was very sensitive to the issues raised by folks for the golf course and my colleagues on the Board.

She acknowledged that Mr. Tinkov stood up and maybe had given us the brilliant idea that if it were not for the failure to negotiate a reduced lease rate with the City of San Diego, we would not be here.

She said that is how I would like to preface a proposed motion. She said she would appreciate a member of this Board making and supporting a motion that the entire Board could support, because I think it would address everyone's concerns. She said that she had worked over lunch the Chief Operating Officer, Jay Goldstone and explained the situation and said SDRC would like to get some sort of resolution today and this property in public ownership. She proposed that this Board adopted Resolution 10-06A which would authorize the Executive Officer to notify the City of San Diego of the Conservancy's intent to acquire approximately 65.4 acres of property at the Carlton Oaks Golf Course exercising its first right of refusal to acquire the land and authorizing the use of funds from Proposition 84.

Toni Atkins moved that the Board adopt Resolution 10-06A which would authorize the Executive Officer to notify the City of San Diego of the Conservancy's intent to acquire approximately 65.4 acres of property at the Carlton Oaks Golf Course exercising its first right of refusal to acquire the land and

authorizing the use of funds from Proposition 84

Ruth Hayward seconded the motion.

ROLL CALL VOTE

Donna Frye - Yes

Dianne Jacob - No

Bryan Cash - No

Miriam Ingenito - No

Ruth Hayward - Yes

Toni Atkins- Yes

Ben Clay -Yes

Ronie Clark - No

Andrew Poat - No

Anne Miller Haddad – No

Donna Frye said there were 4 yes's and 6 no's the motion fails.

Donna Frye said she would like to have a Board member make a motion for an extension of time during which the document would not be finalized for 30-days, while the City would work with TY and re-negotiate the lease for the interim period that the San Diego River Conservancy would need to work on the sale. Should there be no agreement between TY and the City after 30 days, we would come back and have another hearing; but, if an agreement were reached, the authority for SDRC to acquire the property would move forward. She stated that this approach, would give us more time to address concerns raised by Mr. Hutsel, Mr. Beck and Supervisor Jacob. She said she had asked the City's COO to toll certain deadlines for 45 days. She asked if there were questions.

Ann Miller Haddad asked if this was the first time that TY Investments had learned of this. She said she felt it was important to know how TY felt about this proposal.

Mr. Tinkov said he felt they would need a couple of minutes to talk about it.

Toni Atkins asked for clarification of the reasons the matter would come back to the Board.

Donna Frye said only if the City and TY did not reach an interim agreement that was satisfactory to both parties for the period of time SDRC would be involved in the purchase which could be up to a year.

Toni Atkins asked what was SDRC's legal recourse if the City and TY did not reach agreement.

Donna Frye stated that SDRC did not have any legal authority or recourse over the City of San Diego.

Mike Nelson responded that SDRC has only two statutory opportunities to intervene in the proposed sale of the property; the City of San Diego made a decision to sell the property and made an offer to sell to TY Investments for \$3 million, our statute contains a first right of refusal and the surplus land code also allows us to negotiate for the property.

Toni Atkins asked whether at some point these lease negotiations were brought to the City Council.

Donna Frye said certain parts of the lease issue will not come before the Council. A sale must be approved by the full City Council.

Dianne Jacob said that while she thought the Conservancy should keep both options on the table. She said she could support the part of her motion, but not willing to adopt, at this time “the public option”, because we don’t know whether lease terms satisfactory to TY and the Conservancy will be acceptable to the City.

Donna Frye said it does give us 30 days.

Dianne Jacob said she supported the motion to continue it for 30 days to allow discussions between TY Investment and the City and see if they can come to agreement, but doesn’t want to close on the private option, I think we should keep them both on the table. The private option has some pretty sweet things in it. If we could get the City to put a recorded trail easement on the property it would take care of SDRC having to pay for redesign of the golf course. On the “public option” side it’s the terms of the lease because we all want to keep the golf course in business. On the private option side, it’s what would be SDRC’s liabilities with the trail easement. She said those were the reasons why she was not prepared to close off the private option. I have tried to look at it at the tax-payers stand point to and the benefits, the positives and negatives of each so I would hope my colleagues would keep both on the table as we go along with the second part of what you were suggesting.

Mr. Tinkov reported that his client would actually prefer that we come to some sort of conclusion today because we are still under the onerous lease. He said while discussing the matter Mr. Sandoval from Real Estate Assets approached us and explained to me that the Real Estate Assets Department had a fiduciary duty to its client, the Water Department and could not go below what they consider a fair market rent. He concluded that he was not sure what a 30 day period could accomplish.

David Sandoval, Deputy Director of Real Estate for the City of San Diego supported Mr. Tinkov’s statement regarding the fair market value that had been established. He said that they have a fiduciary responsibility to the rate payers and if they were to accept anything less they would be abandoning our fiduciary.

Donna Frye said it was her understanding s that was before we had the financial situation occur that we have over the last many years. She also said it was her understanding that the fair market value is different based on the financial situation of the past many years. She wondered whether if a re-evaluation, whether you would find it would be less than is currently being charged.

David Sandoval said it varies from property to property and this is one property that fair market has been established.

Donna Frye asked if he knew what year it was established?

David Sandoval said the last appraisal we had on the property was March 18, 2010. If the value is \$3million and typically the City gets 10 % rate of return on value of the property, so the actual value of the rental based on property would be \$300,000 a year rather than \$250,000.

David Sandoval, Well it is my understanding that the lease was negotiated some time ago and most leases today for golf courses would be on a minimum and a percent. Now the parties who were entered into that lease at the time during the good times they were paying well under market rent. So typically these things have a way of leveling out over a long period of time. Now we understand our leasee is undergoing some problems because they are living with a lease and when the purchase the leasehold interest more than likely what they should have done was extended the lease or made some negotiations at that time. Be that as it may the City is living with many leases that we wish were not negotiated some time ago that were not in the current City's best interest.

Ben Clay said he understood the City says it get 10% rate of return on the value of the leases, but the current market conditions, render many of the assumptions that were once used to be incorrect. He said he found it absolutely amazing that the market would be fixed when looking at what is going on.

David Sandoval said he understood that the lease was negotiated some time ago and most leases today for golf courses would be on a minimum and a percent. He said typically these things have a way of leveling out over a long period of time. He said he also understood our leasee is undergoing some problem, but the City is living with many leases that we wish were not negotiated some time ago that were not in the current City's best interest.

Ann Miller Haddad said she knew the lease rate was an issue, but she recalled that the bigger issue was that TY was not able to negotiate a long term lease with the City which prevented them from getting any kind of loan for capital improvement on the property.

Mr. Tinkov said the lease rate is an issue and has created a serious cash flow problem, but the term of the lease is also a big issue no matter what we could or could not agree to with the City. If the Conservancy chooses to move ahead with their purchase, we are stuck between a rock and a hard place because of an interim lease with the City at an unknown rate, which right now, sounds like it won't come down. He continued that another uncertainty was moving into a process two years from now to negotiate the terms of a lease based on a LOI with this Board. We don't know who is going to be there in two years.

Donna Frye asked the Deputy Attorney General if it was possible in such a Letter of Intent to put those terms in as a condition in advance.

Hayley Peterson said she thought she might need clarification on the questions. Part of the reason the letter of intent (LOI) states that it is non binding is that it was drafted before this Board has taken an action. She wasn't certain whether the Board could take an action to make it binding, whether it was the intent of the parties to make it a 30-year lease. She suggested that she would need to get back to the Board on that question.

Dianne Jacob asked when the property was appraised was it done including the development rights on the 65-acres.

David Sandoval said he had not read the entire scope of the appraisal, but typically they take in all the aspects of the property.

Dianne Jacob said her point was that if we slapped a conservation easement on the property to eliminate those development rights it would decrease the value of the property.

Dianne Jacob suggested that we don't know what is the true appraised value, so at some point we need to know what the values are for the sale and the lease.

Mike Nelson said the LOI required obtaining an appraisal, which would determine a fair market rent if the lease rate was tied to the gross revenues of the golf course. He said he was aware that the City that had established lease rates based on fees similar to what Felix and he had worked on. He added that the problem here that I think the Chair is grappling with is the interim period that will exist between the Boards approval to acquire and a closing that could be a year, while during that period TY would have to operate under a lease that was not based on gross revenues.

Donna Frye explained that if this Board was to take action today, to say that under certain conditions and one of those being within 30 days of the Board's approval, the approval is contingent upon the City working with TY to renegotiate TY's lease until sale of the property is complete. If after 30 days they cannot reach an agreement then we come back and start doing this again. Our action would provide instructions to the City that we want to purchase this property provided and not harm the golf course. It would establish the Board's desire to renegotiate the lease.

Dianne Jacob said if you can include language that required "to the satisfaction of TY Investment" that would be an improvement.

Miriam Ingenito said she wanted to raise a couple concerns. She stated that at this point, we don't have a current valid appropriation, nor do we have a budget for the current fiscal year, so when we finally due get a budget it is possible that it could include a re-appropriation. The time frame of one year is optimistic. She suggested that the benefits of the private option are the same as if were to purchase it; the property is going to be used as a golf course and is going to include a trail. The benefit to the State and public is greater by letting this go into private ownership; we get a conservation easement in perpetuity on this property. Should TY cease to exist, we will have another chance at the acquisition and a right of first refusal. Second, SDRC gets the easement options on both sides of the 65 acres which would in fact allow us to make a connected trail without having to incur additional costs to acquire those easements from the golf course. The first right of refusal on the entire property, knowing a good chunk of the property has an existing easement on it would allow us sometime in the future to buy a conservation easement on the rest of the property or to outright acquire the whole property and still end up with the same public purposes everyone seem to want, the golf course and the trail at a hugely reduced cost to the taxpayers.

Ben Clay recalled that under the private proposal we talked about the uncertainty at this point of where that trail might go because of habitat considerations which might expose us to the cost of redesign. Supervisor Jacob said if we could obtain from the City a trail easement on the property would give me more comfort. I would not like to find us at a position down the road of giving up the land and spending an equivalent amount of money to redesign a golf course because we had to put the trail through this property, that uncertainty regarding the private option could represent an unfunded mandate.

Ronie Clark asked whether DFG or US Fish and Wildlife agencies have been consulted regarding

location of the trail and impacts on sensitive species in the area.

Mike Nelson answered that there had not been a consultation and that is one of the uncertainties confronting development of the trail, he said there was substantial documentation of least Bell's vireo; but wetland delineation must occur, buffers established, and then a determination of trail alternatives that could be developed to submit to DFG/US Fish and Wildlife. There have been difficulties getting trail alignments near the river and there is no certainty that we won't impinge on layout of the golf course.

Bryan Cash asked how or whether a purchase changed this fact.

Mike Nelson responded that working with TY as a tenant, the lease could be structured in a way that if there was an impact, the lease would allow for payments in lieu of rent to allow the trail to exist.

Bryan Cash asked about the availability of funds.

Mike Nelson said SCC/SDRC received appropriations of Prop 84 funding over two fiscal years totaling \$6million, but due to the bond freeze one the Fiscal Year's appropriations expired, which would require reallocation. So, after this reallocation occurs there remains \$4 million available to SDRC. The Coastal Conservancy has taken steps to achieve the legislative actions necessary to make the funds available.

Mary Small of the SCC said that of the \$6 million for SDRC, \$2.7million from FY 2007 reverted this June. We have \$3 million FY 2008 money available; some has been reserved for the Walker acquisition, leaving \$1.4 million.

Andrew Poat, stated that everyone wanted to preserve the value of the land, but asked about SDRC's operating costs. We either can do it for \$3 million or for no additional tax dollars. One of my obligations is the taxpayer, and if we can do that without obligating \$3 million, that is the good direction.

Mike Nelson said SDRC would not manage like a park. SDRC would inherit the month-month lease that TY is currently operating under and its revenues until a long term lease that is based on gross revenues could be executed.

Dianne Jacob asked how with the private option we would pursue trail easement encroachment into the golf course area; is there way of limiting our exposure. She added that she thought the public benefits of the private option outweigh the public purchase, but I would like to nail down our exposure.

Donna Frye said there was public benefit by keeping public lands public. She said that if we can get 65 acres kept for future generations as public land, that is the best interest of the public and how we best exercise our duties and obligations as Board members. She said she believes the option I put forward at the beginning of the discussion would accomplish that, and I think that would be in the best interest of the public.

Ben Clay said the Chair suggested an opportunity for TY to return to the City to see if a deal could be worked out. TY has declined and that is a business judgment; but, would your client be able to indemnify the Conservancy of any costs related to trail re-alignment?

Felix Tinkov responded that cash flow is always the issue and that no matter whether it is the public or private option the Conservancy is paying for the redesign, it's just a question of where the funds come from. Neither party has any interest in the trail going anywhere near the golf course. We will work with the Conservancy to make sure it doesn't go on the golf course.

Donna Frye asked what his answer was.

Felix Tinkov said that they couldn't do it.

Dianne Jacob said to ease concerns about taking public lands out of public ownership; I would suggest it might be helpful to look at that issue from a regional perspective. The City and County of San Diego have acquired over 90,000 acres since 1995; 65 acres is a very small percentage. This is a unique situation; I see it differently than if we were dealing with vacant land.

Toni Atkins testified that on the public land issue, she thought it depended on individual circumstances; each government agency has their own set of rules. She said she was sitting today as commissioner of the San Diego River Conservancy, so she must keep that as the frame work for which to look at this issue. She said she believed we should be concerned about the golf course operations, and come back at a later time when all the questions have been answered. It is worth the effort to go through this process because our mandate is to implement the River Park Master Plan. It seems we will not be able to force the City, which is why I support Resolution 10-06A.

Donna Frye asked if the motion would be to support resolution 10-06A, and work with the Chair of the San Diego River Coalition to make sure there issues are addressed in the June 21, 2010 and that the approval is based upon TY and the City of San Diego re-negotiating the current lease until the sale is complete and that this action to occur within 30 days. If TY and the City of San Diego do not reach an agreement that is satisfactory to both within the 30 days, it would then come back to a meeting within 45 days to SDRC. The City's Chief Operating Officer has to expand the terms of the First Right of Refusal and Surplus Land Code for another 45 days.

Bryan Cash asked how long after we tell the City we want to exercise SDRC's Right of First Refusal how long can we take to actually purchase the property; is there a time limit?

Donna Frye said no.

Toni Atkins asked if that would be SDRC's negotiations with the City.

Donna Frye responded that the negotiations would be between the Conservancy and the City.

Mike Nelson said the Surplus Land Code sets forth how the transaction takes place, not the right of first refusal in SDRC's statute. The Code established certain time limits for notification and the ability to request that good faith negotiations begin, while those negotiations can go for a minimum of 60 days, the City as the disposing agency and can extend them and has agreed to work with us to achieve that.

Bryan Cash said that knowing that the funds won't be available for the next 60 days and there is no way it will get through the Public Works Board process for 6 months, is the City going to be willing to

wait that long.

Donna Frye The Mayor of the City of San Diego put forth a letter that was in the board packet last month and I have also been assured by the Chief Operating Officer that they will work with the SDRC and are fully aware of the time frame that it could be a year or longer.

Donna Frye asked Toni Atkins if her previous statement was a motion.

Toni Atkins responded that that was her motion, which was seconded by **Ruth Hayward**.

Ben Clay said as he thought about the motion and what Supervisor Jacob has said and TY concerns. He stated that we have given them an opportunity to go back to try and work out with the City the lease. It is understood that there are some uncertainties for SDRC and TY during the next 30-45 days. If there are no decisions then it comes back to the table, which gives TY an opportunity, if you would have agreed to indemnify, then it would have been a done deal, maybe you out to revisit the indemnification idea again.

Mr. Tinkov asked if he could address the question stating that he just spoke with the City again and that nothing can happen in 30 days.

Donna Frye asked if TY wanted to change their answer on the indemnification clause.

Mr. Tinkov said that cannot change.

Donna Frye stated that the first part was to adopt Resolution 10-06A with the contingencies:

- Executive Officer to work with Chair of River Coalition to incorporate comments of 6/21/10 and 9/2/10 into both options;
- TY and City to renegotiate interim lease terms to allow sale for 65.4 acres to the San Diego River Conservancy;
- Direct Executive Officer to work with TY in the event trail alignment encroaches on the golf course.

Dianne Jacob stated that she was afraid of is the motion precluded the private option because in essence we would be adopting the public option with unknowns. She recommended removing from the motion "adopting today" and give TY time to work with the City. Let's give TY and SDRC staff more time to look at the private option and the liability issue, because I think we are really close to a win-win here.

Donna Frye said her concern is the fact that the renegotiation with the City of San Diego and TY lease is based on the Board's action to purchase the property. It is important that we express our intent to purchase the property and they would look at renegotiating the lease during the interim, without our expressed intent to purchase the property I am not so sure the City will attempt any kind of renegotiation with TY.

Ann Miller Haddad suggested that we look at this as two viable options for a win-win for both parties

each with their own uncertainties. She said it seemed clear that the Board was not ready to take a vote on A or B today. So, could we make a motion to go back again? The public option may work for TY if they are able to renegotiate a lease while SDRC negotiates the purchase. The private option could be favorable to our Board if we had better understanding about what to do with the trail. Instead of voting on either option, why can't we still leave them both on the table.

Donna Frye said some of these questions may not have direct answers that you are looking for certainty that does not exist and it will not exist in 30 days – and I think that is the problem. Some of these things are going to take more time. For example wetlands delineations and trail alignment are not going to happen in 30 days.

Ann Miller Haddad said that we may have in 30 days is to know if the City would renegotiate with TY to support a public option of the purchase of this land; and if they cannot figure it out. It gives us chance to revisit thoroughly the private option.

Dianne Jacob asked if that was a motion and Ann Miller Haddad said it was.

Donna Frye said that there was already a motion and a second on the floor that is under discussion.

Dianne Jacob asked if that was also a motion to amend the motion on the floor?

Ann Miller Haddad said that it was and **Dianne Jacob** seconded it.

Ann Miller Haddad said the motion was to leave both options on the table and should the City and TY not be able to renegotiate in 30 days that both options be reviewed.

Donna Frye asked if that was part of the motion, but added that if the City and TY cannot reach an agreement it comes back automatically.

Ann Miller Haddad questioned whether we could revisit both options.

Donna Frye said yes, and if after 30 days or prior to 30 days City and TY reach agreement, then we would move forward with the public option, because TY issues are addressed. If no lease agreement is renegotiated in 30 days it automatically comes back here and the resolution of the Board is to look at the public and private option. I want to make clear the City of San Diego via COO is tolled for an additional 45 days from today.

Ann Miller Haddad and Dianne Jacob prepared an amendment to the motion that was accepted by the maker of the motion **Toni Atkins and Ruth Hayward** who seconded it.

Donna Frye asked the voting members from Sacramento if they had comments.

Miriam Ingenito said there was concern about supporting motion 10-06A with all these caveats. It would still be better if we did not have "public resolution" at the top. I don't think we are ready to do an acquisition at this point, there are outstanding questions and we need to consider the private option as well as the public one. She would prefer that it be stricken from the top of the motion.

Dianne Jacob agreed with Miriam and asked if she would like to put a motion on the floor to amend the motion to strike those words and that if she did she would second it.

Miriam Ingentio made the motion and **Dianne Jacob**, seconded.

Donna Frye said that the only one that can amend the motion is the maker of the motion, under Roberts's rules.

Andrew Poat said they would have to accept it or it would be voted down or substitute motion introduced.

Dianne Jacob said that there was a motion to amend the motion and she seconded it, so we can vote on it.

Donna Frye said she believed the motion stands unless the maker of the motion accepts the amendment, under Robert's Rules of Order.

Hayley Peterson said she would need to look at SDRC Act to see if it adopts Roberts Rules. She said that we have not encountered this question before, and was sure there are agencies that operate differently and that she said would look at the SDRC Act and come back.

Bryan Cash and Ronie Clark said they would support Miriam's motion.

Donna Frye asked if that meant they would not be supporting the motion on the floor.

Andrew Poat said he would be willing to call for the question if there are no other comments.

Donna Frye said she was going to do a roll call vote on 10-06A with contingencies

- Executive Officer to work with Chair of River Coalition to incorporate comments of 6/21/10 and 9/2/10 into both options;
- TY and City to renegotiate interim lease with terms consistent with sale for 65.4 acres to the San Diego River Conservancy to the satisfaction of TY Investments Direct Executive Officer to work with TY in the event trail alignment encroaches on the golf course.

ROLL CALL VOTE

Donna Frye - Yes

Dianne Jacob - No

Bryan Cash - No

Miriam Ingenito - No

Ruth Hayward - Yes

Toni Atkins- Yes

Ben Clay- Yes

Ronie Clark - No

Andrew Poat - No

Anne Miller Haddad - No

The motion did not pass.

Miriam Ingenito moved for approval of 10-06B.

Ann Miller Haddad seconded.

Andrew Poat announced that he thought the private option is a win for the tax payers, for the Conservancy and a win for the river, so he was ready to support the motion.

Dianne Jacob asked the maker of the motion is she might include a couple of pieces into the motion: Direct the Executive Officer to work with Chair of River Coalition to incorporate comments of 6/21/10 and 9/2/10 into both options; Direct Executive Officer to work with TY to reduce/eliminate liability to San Diego River Conservancy in the event trail alignment encroaches on the golf course;

Miriam Ingenito said she would be fine with that amendment. With one change "Direct the Executive Officer to work with Chair of River Coalition to ~~incorporate~~ address the comments of 6/21/10 and 9/2/10 into both options"

Ann Miller Haddad said, as the second, she accepted.

Donna Frye said she could not support that amendment because we do not know where the trail is going to be.

Dianne Jacob called for the question.

Hayley Peterson commented and addressed the process and what is currently before this Board under this motion. The resolution if approved by the Board it goes to the private option. As of today we do not have a signed agreement, we have a legally binding agreement and it would be my recommendation to include a contingency of what happens if we do not have TY's signature.

Felix Tinkov said by virtue of the Board's approval of that offer, that is an acceptance. Signature or not oral agreements are binding and we will sign this with the amended motion offered. My client is here and will sign the form once it is approved.

Dianne Jacob called for the question.

Donna Frye stated that for the record she was extremely and strongly opposed to the motion on the floor. She said she believed it is the duty and the obligation of this Board and the members to protect public land and do everything we can to make sure it stays in public ownership and that she will continue to do everything she could to make sure that is the case.

Miriam Ingenito moved and Ann Miller Haddad seconded Resolution 10-06B

ROLL CALL VOTE: 10-06B

Donna Frye– No

Dianne Jacob– Yes

Bryan Cash -Yes
Miriam Ingenito-Yes
Ruth Hayward – No
Ben Clay– No
Ronie Clark -Yes
Andrew Poat -Yes
Anne Miller Haddad

Donna Frye announced that there was 6 yes's and 3 no's, the motion passed.

7. Adjournment

Accessibility

In accordance with the Americans with Disabilities Act of 1990, if you require a disability related modification or accommodation to attend or participate in this meeting, including auxiliary aids or services, please call Michael Nelson at 619-645-3183.

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 3

SUBJECT: **PUBLIC COMMENT**

PURPOSE: Any person may address the Governing Board at this time regarding any matter within the Board's authority which is not on the agenda. Submission of information in writing is encouraged. Presentations will be limited to three minutes for individuals and five minutes for representatives of organizations. Presentation times may be reduced depending on the number of speakers.

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: **4**

SUBJECT: **CHAIRPERSON'S AND GOVERNING BOARD
MEMBERS' REPORTS**

PURPOSE: These items are for Board discussion only and the Board
will take no formal action.

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 5

SUBJECT: **EXECUTIVE OFFICER'S REPORT**

The following topics may be included in the Executive Officers Report. The Board may take action regarding any of them:

- 2011 Meeting Schedule
- 2010-2011 Budget
- Strategic Plan Addendum – Trust for Public Land
- Carlton Oaks Golf Course / TY Investments (option agreement, conservation & trail easement, right of first refusal)
- SANDAG/ Environmental Mitigation Program Land Management Grant

Exhibits

2010-2011 Budget
Governor's Appointments
San Diego Reader Article "Carlton Oaks Golf Course, TY Investments, and the San Diego River Conservancy"
California Proposition 21 – The State Park and Wildlife Conservation Trust Fund Act 2010
Final Carlton Oaks Golf Course Agreements between TY Investments and SDRC

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 5

SUBJECT: EXECUTIVE OFFICER'S REPORT

2010-2011 Budget

[Home](#)

Enacted Budget Summary

Enacted Budget Detail

- K thru 12 Education
- Higher Education
- Health and Human Services
- Corrections and Rehabilitation
- Business, Transportation & Housing

Natural Resources

- Environmental Protection
- State and Consumer Services
- Labor and Workforce Development
- General Government
- Legislative, Judicial, and Executive

Budget References

[eBudget Search](#)

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Welcome to California's

Governor's Budget 2010-11

Enacted Budget Detail

[Natural Resources](#) >> [San Diego River Conservancy](#)

Natural Resources

3845 San Diego River Conservancy

The mission of the San Diego River Conservancy is to achieve the goals of the San Diego River Conservancy Act. It will accomplish these statutory objectives by establishing four programs: (1) land conservation, (2) recreation and education, (3) natural and cultural resources preservation and restoration, and (4) water quality and natural flood conveyance. This mission will be accomplished in part by building, with our partners, a San Diego River Park and hiking trail stretching from the headwaters of the River to the Pacific Ocean. [More...](#)

All Funds: 2010-11*

Total Dollars	\$1,322
Total Personnel	
Years	2.0

Expenditures

Detailed Expenditures
Infrastructure Overview

* Dollars in thousands.

EXPENDITURES [Back to Top](#)

The following table presents total enacted fiscal year positions and expenditures. These expenditures include all funding sources that support the state department's programs.

Expenditures	Enacted 2010-11*	
	Positions	Dollars
Totals, Positions and Expenditures (excluding Infrastructure)	2.0	\$322
Infrastructure	-	1,000
Totals, Positions and All Expenditures	2.0	\$1,322

[DETAILED EXPENDITURES BY STATE FUNDS](#) [Back to Top](#)

The following table presents enacted state fund expenditure amounts for the fiscal year by General Fund, special funds, and selected bond funds.

Expenditures	Enacted 2010-11*
General Fund	\$-
Special Funds	322
Selected Bond Funds	-
Totals, State Funds	\$322

Refer to the [Infrastructure Overview](#) for infrastructure expenditure detail.

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State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 5

SUBJECT: EXECUTIVE OFFICER'S REPORT

Governor's Appointments

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PRESS RELEASE

For Immediate Release:
Wednesday, October 20, 2010

Contact: Aaron McLearn
Melinda Malone
916-445-4571

Gov. Schwarzenegger Announces Appointments

Governor Arnold Schwarzenegger today announced the following appointments:

Isabel Barreras, 44, of Madera, has been reappointed to the Madera District Fair Board of Directors (21-A District Agricultural Association), where she has served as a member since 2003. She has been an administrative assistant of special services for Madera Unified School District since 2009, where she was previously an outreach consultant from 2006 to 2009 and an administrative assistant of state and federal projects from 1995 to 2006. She is a member of the California Community College Trustee Board, California Association of Latino Community College Trustees and Madera Hispanic Chamber of Commerce. This position does not require Senate confirmation and there is no salary. Barreras is a Democrat.

Omar Benjamin, 49, of Oakland, has been reappointed to the Commission for Economic Development, where he has served as a member since 2007. He has worked for the Port of Oakland as executive director since 2007, where he previously was deputy executive director in 2006 and director of commercial real estate from 1997 to 2006. Benjamin served as chief operating officer for Al Anwa USA from 1995 to 1996. He is a member of the Oakland Economic Development Corporation. This position does not require Senate confirmation and there is no salary. Benjamin is registered decline-to-state.

Virginia Chang Kiraly, 46, of Menlo Park, has been reappointed to the Commission for Economic Development, where she has served as a member since 2007. She has owned Knitting Girls since 2004. Previously, Chang Kiraly was senior director for the Nasdaq Stock Market from 2000 until her retirement in 2003. She was an investment executive for Paine Webber from 1995 to 2000. Prior to that, Chang Kiraly was a sales associate for institutional fixed income sales and trading for Bear, Stearns and Company from 1993 to 1994 and an account executive for Alex Brown and Sons from 1991 to 1993. She is president of Republicans for Environmental Protection, California Chapter. This position does not require Senate confirmation and there is no salary. Chang Kiraly is a Republican.

Benjamin Clay, 65, of San Diego, has been reappointed to the San Diego River Conservancy Governing Board, where he has served as a member since 2008. He was partner for Carpi and Clay Government Relations from 1984 to 2008. Clay served as vice president of Torrey Enterprises Incorporated from 1982 to 1984 and director of governmental relations for San Diego County from 1976 to 1984. He was a lobbyist for the city of San Diego from 1972 to 1976 and a captain in the Medical Service Corps of the U.S. Army from 1969 to 1972. This position does not require Senate confirmation and the compensation is \$100 per

diem. Clay is a Republican.

David Crane, 56, of San Francisco, has been reappointed to the Commission for Economic Development, where he has served as a member since 2007. He has served as special advisor to Governor Arnold Schwarzenegger for jobs and economic growth since 2004. Crane was partner for Babcock and Brown from 1979 to 2003. He is a member of the California High Speed Rail Authority and Building America's Future, the coalition established by Governor Schwarzenegger, Pennsylvania Governor Rendell and New York City Mayor Bloomberg to promote U.S. infrastructure investment. Crane is a trustee of the Carla and David Crane Foundation and the Jewish Community Center of San Francisco. He is an advisory trustee for Environmental Defense Fund. This position does not require Senate confirmation and there is no salary. Crane is a Democrat.

Daniel Curtin, 62, of Sacramento, has been reappointed to the Commission for Economic Development, where he has served as a member since 2007. He has served as director of the California Conference of Carpenters since 2001 and previously held the same position from 1992 to 1999. Curtin served as chief deputy director of the Department of Industrial Relations from 1999 to 2001 and legislative advocate for the California Conference of Carpenters from 1987 to 1992. He is a member of the State Compensation Insurance Fund Board of Directors, California Water Commission and the Industrial Welfare Commission. This position does not require Senate confirmation and there is no salary. Curtin is a Democrat.

Donald Farnesi, 53, of Madera, has been reappointed to the Madera District Fair Board of Directors (21-A District Agricultural Association), where he has served as a member since 2005. He has owned and been chief executive officer of Schafer Metal Stake since 2006, where he was previously manager from 1989 to 2006. Prior to that, Farnesi worked as a parts manager for Madera Tractor and Implement from 1975 to 1989. He is a member of Madera County Agriculture Boosters, Madera Vino Club, Californian Association of Wine Grape Growers, American Society Relay for Life and Firebaugh Service Clubs. This position does not require Senate confirmation and there is no salary. Farnesi is a Republican.

Lina Fat, 72, of Sacramento, has been reappointed to the California Travel and Tourism Commission, where she has served as member since 2007. Since 1974, she has worked for Fat City Incorporated, where she is currently director of food and public relations. Fat is a member of the California Restaurant Association, Sacramento Convention and Visitors Bureau and Sacramento Metropolitan Chamber of Commerce. This position does not require Senate confirmation and there is no salary. Fat is a Republican.

William Green, 61, of Temecula, has been appointed to the San Diego Regional Water Quality Control Board. He has served as senior vice president and regional manager of RBF Consulting since 1985. Green is an executive board director for Boy Scouts of America and California Inland Empire Council. He is a member of the Temecula Murrieta Group, Valley Action Group of Coachella Valley and Rotary Club of Temecula. This position requires Senate confirmation and the compensation is \$100 per diem. Green is a Republican.

Lois Grow, 51, of Madera, has been reappointed to the Madera District Fair Board of Directors (21-A District Agricultural Association), where she has served as a member since 2006. She has served as office manager for Madera County Economic Development since 2002. Grow was a bookkeeper for Vineyard Growers Supply from 1997 to 2007, office manager for Conifer Paper from 1987 to 1991 and a customer service representative for Inland Container from 1982 to 1986. She is a member of Philanthropic Education Organization. This position does not require Senate confirmation and there is no salary. Grow is a Republican.

Ann Haddad, 47, of San Diego, has been reappointed to the San Diego River Conservancy Governing Board, where she has served as a member since 2006. She served as director of community relations and events for Salk Institute for Biological Studies from 2003 to 2006. Previously, Haddad was director of the philanthropy department for the San Diego Foundation from 2002 to 2003 and vice president of International Development Opportunities from 1992 to 2000. This position does not require Senate confirmation and the compensation is \$100 per diem. Haddad is a Republican.

Jeffrey Hoffman, 50, of Long Beach, has been reappointed to the California Volunteers Commission, where

he has served as a member since 2007. He has owned and been consulting director for Jeff Hoffman and Associates, Global Philanthropy and Civic Engagement since 2010. Hoffman worked for The Walt Disney Company as vice president of Disney Worldwide Outreach from 2000 to 2010, senior member of The Disney University from 1984 to 2000 and theme park operations representative for Adventureland and FrontierLand Merchandise from 1978 to 1983. Hoffman is a member of Business Strengthening America, Volunteer Centers of California and Points of Light Foundation. This position does not require Senate confirmation and there is no salary. Hoffman is a Republican.

Rita Holiday, 52, of San Jose, has been reappointed to the CaliforniaVolunteers Commission, where she has served as a member since 2008. She has worked as a community relations and grants program manager for Intel Corporation since 1999, where she was previously project coordinator from 1997 to 1999. Holiday served as operations manager for NorCal Waste Systems from 1996 to 1997 and marketing manager for Page Net from 1996 to 1997. Previously, she worked for Olsten Staffing Services as branch manager from 1991 to 1993 and staffing coordinator from 1984 to 1991. Holiday is a member of the Second Harvest Food Bank, Corporate Community Relations Consortium, Sacramento Corporate Volunteer Program and Hands On Sacramento Leadership Council. This position does not require Senate confirmation and there is no salary. Holiday is a Democrat.

Paul Jacks, 57, of Sacramento, has been reappointed to the CaliforniaVolunteers Commission, where he has served as a member since 2006. Since 2008, he has worked as a senior emergency management analyst for United Research Services and consultant for Citizen Voice. Prior to that, Jacks worked for the California Office of Emergency Services as deputy director of the Disaster Assistance Division from 2000 to 2008, chief of the Disaster Assistance Resources Branch from 1996 to 2000, program manager I from 1990 to 1993 and emergency services coordinator from 1985 to 1990. Jacks served as staff services manager I for the Employment Development Department from 1993 to 1996. He worked for California Conservation Corps as an associate government program analyst in 1985, conservationist II from 1981 to 1984 and conservationist I from 1977 to 1981. This position does not require Senate confirmation and there is no salary. Jacks is a Democrat.

Jonathan Kaji, 55, of Rancho Palos Verdes, has been appointed to the Commission for Economic Development. Since 1984, he has been president of Kaji and Associates. From 1993 to 1999, Kaji served as director of the California Office of Trade and Investment in Tokyo, Japan. He is a member of the California Association of Realtors and was appointed by President George Bush to the President's Export Council, where he served as a member from 1990 to 1992. This position does not require Senate confirmation and there is no salary. Kaji is a Republican.

Thomas Klein, 58, of San Francisco, has been reappointed to the California Travel and Tourism Commission, where he has served as a member since 2005. He has been proprietor of Rodney Strong Vineyards since 1989 and chairman and chief executive officer for Klein Bros. International from 1984 to 1993. Klein is chair of the Wine Institute Board of Directors, member of the World Presidents Organization and president of the First Tee of San Francisco. This position does not require Senate confirmation and there is no salary. Klein is a Republican.

Anthony Machado, 77, of Chowchilla, has been reappointed to the Madera District Fair Board of Directors (21-A District Agricultural Association), where he has served as a member since 2002, and is chairman of the livestock committee. He has owned Machado Dairy since 1955. Machado is a member of Youth Men's Institute, Veterans of Foreign Wars, Lions Club and the Madera County Farm Bureau. Machado was honored as Madera's "Most Unique Citizen" in 2006. This position does not require Senate confirmation and there is no salary. Machado is a Republican.

Patricia Manfredi, 59, of Madera, has been reappointed to the Madera District Fair Board of Directors (21-A District Agricultural Association), where she has served as a member since 2005. From 1999 to 2010, she served as executive director of Ronald McDonald House Charities. Previously, she served on the Madera County Board of Supervisors from 1996 to 1998 and as executive director of Central California Ministries from 1992 to 1996. Manfredi owned The Confectionery Candy Store and Gift Shop from 1986 to 1992. She is a member of the Fresno and Madera Area Agency on Aging. This position does not require Senate confirmation and there is no salary. Manfredi is a Republican.

Thomas Nassif, 69, of Irvine, has been reappointed to the Commission for Economic Development, where he has served as a member since 2007. He has served as president and chief executive officer for Western Growers Association since 2002. Nassif was founding and managing partner of Aequitas International Consulting from 2001 to 2002. Previously, he served as president and chief executive officer of the Los Alamos Land Company from 1994 to 2001 and chair of Gulf Interstate Engineering from 1988 to 1994. Nassif served as a U.S. Ambassador to the Kingdom of Morocco from 1985 to 1988. He was deputy assistant secretary of state for Near East and South Asia affairs for the Department of the State from 1983 to 1985, chief of protocol (A) for the White House from 1982 to 1983, where he also served as deputy chief of protocol from 1981 to 1982. Prior to that, he was partner for Gray Cary Ames and Frye from 1980 to 1981. He served in the U.S. Army from 1961 to 1969. This position does not require Senate confirmation and there is no salary. Nassif is a Republican.

Harvey Petitt, 57, of Chowchilla, has been reappointed to the Madera District Fair Board of Directors (21-A District Agricultural Association), where he has served as a member since 1992. He has owned Chow II Real Estate Development Management since 1996. Previously, Petitt owned Classic Roasters from 1986 to 1989, was general manager for Don Gragnani Farms from 1984 to 1996 and manager of sales for Western Farm Service from 1974 to 1984. He is a member of the Chowchilla Volunteer Fire Department. This position does not require Senate confirmation and there is no salary. Petitt is a Republican.

Andrew Poat, 50, of San Diego, has been reappointed to the San Diego River Conservancy Governing Board, where he has served as a member since 2006. He has also served as vice president of public policy for the San Diego Economic Development Corporation since 2006. Previously, Poat was director of government relations for the city of San Diego from 2001 to 2006 and vice president of Stoorza, Ziegau and Metzger from 2000 to 2001. Prior to that, he was chief deputy director for the California Department of Transportation from 1995 to 1999. Poat was deputy cabinet secretary for the Office of Governor Pete Wilson from 1993 to 1995 and undersecretary for the State and Consumer Services Agency from 1991 to 1993. This position does not require Senate confirmation and the compensation is \$100 per diem. Poat is a Republican.

David Porges, 47, of Pasadena, has been reappointed to the California Volunteers Commission, where he has served as a member since 2008. Since 1998, he has been senior manager and regional community leader of the Pacific Southwest for Deloitte. Previously, Porges worked for Coast Federal Bank as vice president of public affairs and corporate communications from 1994 to 1998, assistant vice president from 1992 to 1994, public affairs manager from 1992 to 1994 and public affairs officer from 1990 to 1991. He was communications specialist for Home Savings of America from 1987 to 1990. He is a member of the Los Angeles Conservation Corps, Southern California Grant Makers Corporate Council and the United Way of Greater Los Angeles Community Investment Council. This position does not require Senate confirmation and there is no salary. Porges is a Democrat.

George Ricketts, 57, of Madera, has been reappointed to the Madera District Fair Board of Directors (21-A District Agricultural Association), where he has served as a member since 2006. He has owned Pools by Ricketts since 1979. Previously, Ricketts was store manager for Growers Supply from 1976 to 1979 and co-owner of Ricketts Employment Agency from 1973 to 1976. He is a member of the Workforce Development Commission and Madera County Economic Development Commission. This position does not require Senate confirmation and there is no salary. Ricketts is a Republican.

Lisa Spinali, 47, of San Francisco, has been reappointed to the California Volunteers Commission, where she has served as a member since 2008. Since 2006, she has served as executive director of the San Francisco Education Fund. Previously, Spinali worked as an independent consultant in 2005 and vice president of civic engagement for the Omidyar Foundation from 2002 to 2004. She founded and served as partner of Ripple Effect Consulting from 1997 to 2002. Prior to that, Spinali was program director and senior consultant for the Presidio Leadership Center from 1995 to 1997 and senior manager of American Express from 1990 to 1994. She was a business services officer for Wells Fargo Bank from 1985 to 1988. Spinali is a member of the Oversight Committee, Department of Children Youth and Families, and the Jefferson Awards Advisory Board. This position does not require Senate confirmation and there is no salary. Spinali is a Democrat.

Aubry Stone, 66, of Sacramento, has been reappointed to the Commission for Economic Development, where he has served as a member since 2003. He has served as president and chief executive officer for the California Black Chamber of Commerce since 1994. Previously, Stone was branch manager for Metropolitan Life from 1985 to 1994. He served in the U.S. Air Force as superintendent of operations from 1962 to 1984. Stone is a member of the California Department of Transportation Small Business Roundtable, Department of General Services Small Business Council and the California Public Utilities Diversity Council. This position does not require Senate confirmation and there is no salary. Stone is a Democrat.

Gary Strawn, 64, of Santee, has been appointed to the San Diego Regional Water Quality Control Board. He has served as an engineering consultant for Gary Strawn Consulting since 2007. Previously, Strawn was a program manager for Hamilton Sundstrand Power Systems from 1988 to 2006. He served as an officer in the U.S. Navy from 1968 to 1988. Strawn is a member of Trout Unlimited, San Diego Fly Fishers, San Diego River Park Foundation, San Diego Stream Team, California Golden Trout Project and Friends of Santee River Park. This position requires Senate confirmation and the compensation is \$100 per diem. Strawn is a Republican.

Helen Torres, 41, of San Bernardino, has been reappointed to the California Volunteers Commission, where she has served as a member since 2005. Since 2000, she has served as executive director of Hispanics Organized for Political Equality. Previously, Torres was a community relations officer for United Way of Greater Los Angeles from 1997 to 2000. Prior to that, she worked as an account supervisor for Laufer Associates from 1995 to 1997 and account manager for Burson Marsteller from 1993 to 1995. She is a member of the Hispanics Organized for Political Equality, Zero Divide Foundation and an advisory board member of the National Campaign to Prevent Teen Pregnancy. This position does not require Senate confirmation and there is no salary. Torres is registered decline-to-state.

Gillian Zucker, 41, of Los Angeles, has been reappointed to the California Travel and Tourism Commission, where she has served as a member since 2005. She has been president of the Autoclub Speedway since 2005. Zucker was vice president of business operations and development at Daytona International Speedway from 2001 to 2005 and vice president of operational development for the Kansas Speedway from 1998 to 2001. She is a member of the Los Angeles Sports Council. This position does not require Senate confirmation and there is no salary. Zucker is a Republican.

Governor Arnold Schwarzenegger

State Capitol Building
Sacramento, CA 95814

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State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 5

SUBJECT: EXECUTIVE OFFICER'S REPORT

**San Diego Reader Article "Carlton Oaks Golf Course, TY
Investments, and the San Diego River Conservancy"**



Carlton Oaks Golf Course, TY Investments, and the San Diego River Conservancy

By Joe Deegan | Published Wednesday, Oct. 27, 2010

A Florida company has been trying since 2008 to buy a chunk of land along the north bank of the San Diego River. The property is situated on a little finger of eastern San Diego that pokes into Santee. The 65.4-acre parcel is part of the Carlton Oaks Golf Course. **Half of the course's fairways lie in Santee and half in San Diego. TY Investments, LLC, of Melbourne, Florida, bought the golf course in 2007 and has been leasing the property from San Diego's Public Utilities Department for \$250,000 per year.** The company said that buying the property would make it easier in the long run to finance needed improvements at the clubhouse and other golf course facilities. But the City was refusing to sell. Until last April, that is.

Mike Nelson is the executive officer of the San Diego River Conservancy, a California state agency created by the legislature to protect the river. On May 6, Nelson told a meeting of his governing board that the City had just notified him of an offer it made to TY Investments. The City would sell the parcel at Carlton Oaks for \$3 million. That was the first time Nelson had even heard of negotiations between the parties. The silence could not last longer, however, for state law gives the conservancy a first right of refusal over the property. In order to exercise the right, the conservancy would have to buy the property.

What to do? During its next bimonthly meeting on July 8, the conservancy's board listened to arguments over which is better, a "private option" or a "public option." The private option would allow TY Investments to buy the land, while promising to keep it in use for golf or similar recreation only. TY Investments would also grant the **conservancy an easement for a public river trail and rights to protect the land's** environment. In choosing the public option, the conservancy would buy the land in order to guarantee its protection. The conservancy could then rent the parcel to the golf course, as the City has been doing all along.

To complicate matters, the City's Real Estate Assets Department began giving the conservancy short deadlines to make its decision. The conservancy complained that the issue was much too complex and was able to get the first two deadlines postponed. It also scheduled a special meeting in its off-month of August. The last meeting it held

was on September 2, with a final deadline of September 10. If the deadline had not been met or postponed, the conservancy would have lost its first right of refusal.

Minutes of the September meeting were not yet available, so I emailed Mike Nelson to **learn what the decision was. He wrote back, indicating that the conservancy “chose not to intervene in the proposed sale of the property and to accept a donation of a Conservation and Trail Easement Deed, as well as a Right of First Refusal Agreement, from TY Investments, once the sale is completed.” So if TY Investments ever decides to sell, the conservancy will again be in a position to control the property’s future. But** first, the current sale must be approved by the San Diego City Council, which as of this writing has yet to schedule deliberations.

The outward simplicity of the decision belies how intense debate became. TY Investments sent to the three summer conservancy meetings its attorney Felix Tinkov and Scott Alevy, a former Chula Vista city councilman who advertises himself on the Web as **“the consummate public relations professional.” According to minutes of the July 8 meeting, Alevy argued that “what was really at issue” was the golf course’s survival. In this economy, he argued, “if favorable funding to do improvements necessary to remain competitive was not available, the golf course will not remain open and more than 100 people could lose their jobs.” Alevy asked, “Do you want to establish a beachhead here on the backs of the citizens who might lose their jobs and thousands of people who use the place for recreational relief? Is [the public option] the best use of some precious state funds?” And he pointed out that “golf courses are excellent stewards of the environment and that you could not find a more benign land use next to a river than a golf course.”**

Tinkov followed by noting that if the conservancy purchased the 65.4-acre parcel, there would be no access to it. It is surrounded by golf course property and by another City parcel, 36 acres in size, that lies immediately adjacent to the river. The conservancy, **said Tinkov, “would never have physical access except through TY Investments property, short of building a bridge.” Originally, he said, TY Investments wanted to buy both parcels from the City and donate the smaller one to the conservancy. Because it is riparian land, “to be honest, it is more of a hassle and a liability for us to maintain and we were aware that the conservancy has an interest in running a trail through it.”**

These comments appeared to anger Michael Beck of the Endangered Habitats League. **According to the meeting minutes, Beck said that “this property represents an opportunity to let the river breathe a little, to move a little.” The prospective buyers’ point of view, he said, is that “the riparian area along the river is a hassle, a liability, it is a problem....”**

Robin Rierdan, a resident of Santee, encouraged the conservancy to exercise the public option. **In enhancing the river environment, “we are going to be confronted with problems like this at every turn,” she said. “Lakeside’s River Park Conservancy** purchased 100 acres that was zoned for heavy industry. We removed 40 acres out of the tax base, but the park today has become a tremendous amenity to the community, a real legacy.”

But Santee’s city manager Keith Till worried about the possible loss of the golf course, which has a Santee business address. “Santee would like to see this course operating,” said Till. “It is a real asset to the community.”

On a Sunday, I went out to see what all the fuss is about. There were few golfers playing the course, but the club’s facilities, including a lodge for players wanting to stay overnight, look to be in fine condition. What glimpses I could get of the river, without trespassing to cross the fairways, revealed a narrow passage of water whose banks are infested with the invasive *Arundo donax*, a species of giant cane. The conservancy has already received over \$900,000 in state and local funds for a habitat restoration project adjacent to the golf course on the east.

This section of water has been crucial in the plans of the San Diego River Park Foundation, a nonprofit organization whose mission is “to give the river its own voice.” Those are the words of Rob Hutsel, the foundation’s executive director. During an interview at Hutsel’s office on Pacific Highway slightly north of the river, he elaborates. The foundation establishes green belts and trail systems all along the 52-mile-long river, from its headwaters near Santa Ysabel to its entrance into the sea at Ocean Beach’s Dog Beach.

Carlton Oaks Golf Course lies between Santee’s Mast Park on the east and Mission Trails Regional Park to the west. The San Diego River Park Foundation wants to build a trail system that connects the two parks. Where exactly to place the trail on or along the golf course still awaits decision. Hutsel believes that his organization, the golf course, the San Diego River Conservancy, and the cities of Santee and San Diego should all participate in deciding the best route. Some participants in the discussion so far have assumed the trail will run on top of a berm along the river that reduces its overflows. **But that’s squarely in the riparian environment and would affect its ecology. “The trail needs to be placed a ways away from the river so that doesn’t happen,” Hutsel tells me. “But how would that affect the golf course? Would it need to be redesigned? Would fences need to be built to protect trail users from being hit with golf balls? And who would pay for these things? All these are questions that still need to be decided.”**

Hutsel seems to wish San Diego's Real Estate Assets Department had not moved so quickly to sell the crucial parcel of land to the golf course owners. He believes the City should now take another six months to get the trail planning right ahead of finalizing the sale. **"The City of San Diego has a unique** responsibility to the river. The U.S. Supreme Court gave them its water rights [in 1930]. Since they were given the water rights, we believe they need to be stewards of the river and its environment.

"There's no other place except next to the Carlton Oaks Golf Course to have the river park trail connection we need. And once you sell that City property to a private owner, there'll be no more public leverage over the trails. Sure, the golf course operator says, 'Hey, we'll work with you on trails,' but we don't know where the trail needs to be, so until that's decided, this sort of loose language that says we'll work with you isn't satisfactory."

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 5

SUBJECT: EXECUTIVE OFFICER'S REPORT

**California Proposition 21 – The State Park and Wildlife
Conservation Trust Fund Act 2010**



Proposition 21: The State Parks and Wildlife Conservation Trust Fund Act of 2010 Initiative Text

The People of the State of California find and declare all of the following:

(1) California's natural resources and wildlife must be preserved and protected for future generations.

(2) The California State Park System is essential to protecting these resources for the people of California. Along with the wildlife protection and conservation agencies of the state, the State Park System is responsible for preserving the state's unique wildlife, natural lands and ocean resources.

(3) Persistent underfunding of the State Park System and wildlife conservation has resulted in a backlog of more than a billion dollars in needed repairs and improvements, threatens the closure of parks throughout the state and the loss of protection for many of the state's most important natural and cultural resources, recreational opportunities and wildlife habitat.

(4) California's State Park System benefits all Californians by providing opportunities for recreation, nature education, preservation of cultural and historic landmarks, and by protecting natural resources that improve the state's air and water quality.

(5) Californians deserve a world-class State Park System that will preserve and protect the unique natural and cultural resources of the state for future generations.

(6) Rebuilding the State Park System and protecting the state's wildlife resources will grow California's economy and create jobs by drawing millions of tourists each year to contribute to the state's multibillion dollar tourism economy.

(7) It is the intent of the People in enacting this measure to protect the state's resources and wildlife by establishing a stable, reliable, and adequate funding source for the State Park System and for wildlife conservation, and to provide increased and equitable access to those resources for all Californians.

(8) It is further the intent of the People that the State Park System be operated and maintained at a level of excellence, allow increased access to state parks for all Californians while continuing to charge out of state visitors for the use of state parks, and protect the state's natural and cultural resources, recreational opportunities, and wildlife for future generations.

Chapter 1.21 is added to the Public Resources Code, to read:

Chapter 1.21 State Parks and Wildlife Conservation Trust Fund Act

Article 1. Trust Fund

5081. There is hereby established the State Parks and Wildlife Conservation Trust Fund in the State Treasury. All money deposited in the fund shall be held in trust for the People of the State of California and used solely for the purposes of this chapter. The moneys in the fund shall be available for appropriation only for the following purposes:

(a) Operation, maintenance, and repair of facilities, including visitor centers, restrooms, campsites, and ranger stations, in the State Park System.

(b) Wildlife conservation and protection of natural resources, including forests, other natural lands, and lands that provide clean water, clean air and protect the health of people and nature.

(c) Expanding public access to the State Park System and natural areas through outreach, public education, improved transportation access and providing for the safety and security of park visitors.

(d) Development, management and expansion of state park units and facilities as needed to provide and enhance public access and recreational opportunities.

(e) Protecting rivers, lakes, streams, coastal waters and marine resources.

(f) Grants to local agencies that operate units of the State Park System to offset the loss of day use revenues as provided in this chapter, and to state and local agencies that manage river parkways.

(g) Protecting and restoring state park cultural and historical resources.

(h) Auditing and oversight of the implementation of this act to ensure that funds are only spent in accordance with the provisions of this act and are not diverted or misspent.

(i) Other costs related to the operation and management of the State Park System.

(j) Collection costs for the State Park Access Pass.

5082. The Department of Parks and Recreation shall prepare a strategic plan to improve access to the State Park System that addresses the needs of each region of the state and identifies programs and policies consistent with this act to improve access to state parks and state park services and benefits to underserved groups and regions.

5082.5. For the purposes of this chapter “fund” means the State Park and Wildlife Conservation Trust Fund.

5082.6. For the purposes of this chapter “department” means the Department of Parks and Recreation.

5082.7. For the purposes of this chapter, “wildlife” has the same meaning as provided in Section 711.2 of the Fish and Game Code.

Article 2. Fiscal Accountability and Oversight

5085. (a) The State Parks and Wildlife Conservation Trust Fund shall be subject to an annual independent audit by the State Auditor that shall be released to the public, placed on the department’s website, and submitted to the Legislature for review as part of the State Budget.

(b) Up to 1% of the annual revenues of the fund may be used for auditing, oversight and administrative costs for this article and costs for collection of the State Parks Access Pass.

(c) The Secretary of Natural Resources shall establish a Citizens Oversight Committee to review the annual audit and issue a public report on the implementation of the this act and its effectiveness at protecting state parks and natural resources. Members shall include citizens with expertise in business and finance, park management, natural resource protection, cultural and historical resource protection, and other disciplines as may be deemed necessary by the Secretary.

5085.5. Funds deposited into the State Parks and Wildlife Conservation Trust Fund, together with any interest earned by the fund, shall be used solely for the purpose of this chapter and shall not be subject to appropriation, reversion, or transfer for any other purpose, may not be loaned to the General Fund or any other fund for any purpose and shall not be used for the payment of interest, principal or other costs related to general obligation bonds.

5086. Notwithstanding any other provision of law, all state park fee and concession revenues shall be deposited into the State Parks and Recreation Fund pursuant to Section 5010, and, together with any interest earned thereon, shall be available for appropriation only to the Department of Parks and Recreation for operation, management, planning and development of the State Park System and shall not be subject to appropriation, reversion, or transfer for any other purpose, may not be loaned to the General Fund or any other fund for any purpose and shall not be used for the payment of interest, principal or other costs related to general obligation bonds.

5086.5. It is the intent of the people in enacting this chapter to provide a stable and adequate level of funding to the Department of Parks and Recreation. General Fund monies used to support the department may be reallocated to other uses if the Legislature determines that the financial resources provided from the State Parks and Wildlife Conservation Trust Fund and the State Parks and Recreation Fund are adequate to fully maintain and operate the State Park System.

Article 3. State Park Access Pass

5087. (a) All California vehicles subject to the State Park Access Pass shall have free admission to all units of the state park system and to designated state lands and wildlife areas as provided in this chapter.

(b) For the purposes of this section “free admission” means free vehicle admission, parking and day use at all units of the State Park System and shall be subject only to those limitations as the department deems necessary to manage the State Park System to avoid overcrowding and damage to natural and cultural resources and for public health and safety. Other state and local agencies shall designate those lands whose management and operation is funded pursuant to this chapter for free vehicle access where such access is consistent with the management objectives of the land. As used in this subdivision, free admission does not include camping, tour fees, swimming pool fees, the use of boating facilities, museum and special event fees, any supplemental fees, or special event parking fees.

5087.1. The department shall issue rebates of the State Park Access Pass surcharge to veterans who qualify for a park fee exemption pursuant to Section 5011.5.

Article 4. Allocation of State Park and Wildlife Conservation Trust Fund Revenues

5088. Except for the costs pursuant to Article 2 of audits, oversight and collection costs, all funds deposited in the State Park and Wildlife Conservation Trust Fund shall be allocated only to the following agencies and as provided in this section:

(a) Eighty five percent (85%) shall be available for appropriation from the fund to the Department of Parks and Recreation. Except for costs for grants and grant management pursuant to Section 5088.1., all funds allocated for appropriation to the Department of Parks and Recreation shall be used only for operation, management, planning and development of the State Park System.

(b) Seven percent (7%) shall be available for appropriation from the fund to the Department of Fish and Game for the management and operation of wildlife refuges, ecological reserves and other lands owned or managed by the Department of Fish and Game for wildlife conservation.

(c) Four percent (4%) shall be available for appropriation from the fund to the Ocean Protection Council for marine wildlife conservation and the protection of coastal waters, with first priority given to the development, operation, management, and monitoring of marine protected areas.

(d) Two percent (2%) shall be available for appropriation from the fund to state conservancies for management, operation and wildlife conservation on state lands that are managed for park and wildlife habitat purposes by those conservancies. A state conservancy may provide grants to a local agency that assists the conservancy in managing state owned lands under that conservancy’s jurisdiction.

(e) Two percent (2%) shall be available for appropriation from the fund to the Wildlife Conservation Board for grants to local public agencies for wildlife conservation.

5088.1. The department shall develop and administer a program of grants to public agencies to enhance the operation, management and restoration of urban river parkways providing recreational benefits and access to open space and wildlife areas to underserved urban communities. The department shall allocate each year an amount equal to four percent (4%) of the funds deposited in the State Park and Wildlife Conservation Trust Fund from the funds the department receives pursuant to subdivision (a) of Section 5088. For the purposes of this section, "public agencies" means state agencies, cities, counties, cities and counties, local park districts, and joint powers authorities. In consultation with the California River Parkway Program (Chapter 3.8 (commencing with Section 5750) of Division 5), the department shall adopt best management practices for stewardship, operation, and management of urban river parkways. The department shall consider those best management practices and providing continuity of funding for urban river parkways when allocating grant funds pursuant to this section. The department shall give highest priority for grants to urban river parkways that benefit the most underserved communities.

5088.2. The department shall provide grants to local agencies operating units of the State Park System to assist in the operation and maintenance of those units. The department shall first grant available funds to local agencies operating units of the State Park System that, prior to the implementation of this chapter, charged entry or parking fees on vehicles, and shall allocate any remaining funds, on a pro-rated basis, to local agencies to assist in the operation and maintenance of state park units managed by local agencies, based on the average annual operating expenses of those units over the three previous years, as certified by the Chief Financial Officer of such local agency. Of the funds provided in subdivision (a) of Section 5088, an amount equal to five percent (5%) of the amount deposited in the fund shall be available for appropriation for the purposes of this section. The department shall develop guidelines for the implementation of this section.

5089. For the purposes of this chapter, eligible expenditures for wildlife conservation include direct expenditures and grants for operation, management, development, restoration, maintenance, law enforcement and public safety, interpretation, costs to provide appropriate public access, and other costs necessary for the protection and management of natural resources and wildlife including scientific monitoring and analysis required for adaptive management.

5090. Funds provided pursuant to this chapter, and any appropriation or transfer of those funds, shall not be deemed to be a transfer of funds for the purposes of Chapter 9 (commencing with Section 2780) of Division 3 of the Fish and Game Code.

SEC. 2. Section 10751.5 is added to the Revenue and Taxation Code, to read:

10751.5. (a) Except as provided in subdivision (b), in addition to the license fee imposed pursuant to

Section 10751, for licenses and renewals on or after January 1, 2011, there shall also be imposed an annual surcharge, to be called the State Parks Access Pass, in the amount of eighteen dollars (\$18) on every vehicle subject to the license fee imposed by that section. All revenues from the surcharge shall be deposited into the State Parks and Wildlife Conservation Trust Fund pursuant to subdivision (a) of Section 5081 of the Public Resources Code.

(b) The surcharge established in subdivision (a) shall not apply to the following vehicles:

(1) Vehicles subject to the Commercial Vehicle Registration Act (Section 4000.6 of the Vehicle Code).

(2) Trailers subject to Section 5014.1 of the Vehicle Code.

(3) Trailer coaches as defined by Section 635 of the Vehicle Code.

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*Paid for by Yes on 21, Californians for State Parks and Wildlife Conservation,
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State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 5

SUBJECT: EXECUTIVE OFFICER'S REPORT

**Final Carlton Oaks Golf Course Agreements
Between TY Investments and the SDRC**

**OPTION AGREEMENT
FOR THE TRANSFER OF AN INTEREST IN REAL PROPERTY**

This option agreement (the "Agreement") is made this 7TH day of September 2010 by and between the State of California, acting by and through its San Diego River Conservancy, a California State agency acting pursuant to its authority under Public Resources Code Section 32630 *et seq.* (the "Conservancy"), and TY Investment, Inc., a California corporation ("TY"), with reference to the following:

RECITALS

WHEREAS, TY operates the Carlton Oaks Country Club, located at 9200 Inwood Drive, in the City of Santee, State of California, and owns approximately one hundred four and ninety five hundredths (104.95) acres, comprising a portion of a golf course, a pro shop and dining facilities (the "TY Property") as further described in Exhibit "A" attached hereto, and currently leases approximately one hundred one and six tenths (101.6) acres of adjacent property, bounding a portion of the San Diego River and lying within Subarea 3 of the Mission Trails Design District and the East Elliot Community Plan, from the City of San Diego (the "City"), for golf course purposes (the "Leased Land") as further described in Exhibit "B" attached hereto;

WHEREAS, the City has offered to sell to TY and TY has agreed to purchase, for the sum of THREE MILLION DOLLARS (\$3,000,000.00), approximately sixty-five and four tenths (65.4) acres of the Leased Land, comprising the balance of the Carlton Oaks Country Club golf course (the "Subject Property"), as generally depicted in the attached Exhibit "C", with the City keeping the balance of the Leased Land;

WHEREAS, the Conservancy possesses a right of first refusal to purchase the Subject Property, pursuant to Public Resources Code Section 32646 (the "First Right"), as well as a right to negotiate in good faith for the purchase of surplus land, pursuant to Government Code Section 54222(b)(4) (the "Second Right"), relating to the Subject Property;

WHEREAS, in lieu of exercising the First Right and/or the Second Right (collectively, the "Rights") on the Subject Property, the Conservancy desires TY to purchase the Subject Property, to limit development and uses on the Subject Property, to provide an easement permitting the development of a public trail on the Subject Property and a portion of the TY Property generally depicted in Exhibit "2", and to provide the Conservancy with a right of first refusal over both the Subject Property and the TY Property (collectively, the "Entire Property"), upon TY's purchase of the Subject Property from the City;

WHEREAS, TY desires to ensure that the Conservancy does not exercise the Rights, so that TY may purchase the Subject Property directly from the City without interference from the Conservancy; and

WHEREAS, TY wishes to grant a conservation easement over the Subject Property a trail easement over the Subject Property and a portion of the TY Property as well as a right of first refusal over the Entire Property in consideration of the Conservancy waiving its First and Second Rights.

NOW THEREFORE, the parties agree as follows:

1. Option to Receive Property Interests. In consideration of an option price of ten dollars (\$10.00) (the "Option Price"), the Conservancy's waiver of the Rights, and other good and valuable consideration, TY grants to the Conservancy an option to receive, at no additional cost: (a) conservation and trail easements over the Subject Property, as described in the attached Exhibit "D", with attachments (the "Easement"), and (b) a right of first refusal, as further described in Exhibit "E" with attachments (the "Right of First Refusal Agreement"), over the Entire Property. It is understood by the parties that the Subject Property has not been surveyed and defined by a metes and bounds legal description, nor has the exact acreage been determined, at the time of the execution of this Agreement. A legal description of the Subject Property will be attached to Exhibit "D" and a legal description of the Entire Property will be attached to Exhibit "E" prior to recordation of said documents.
2. Option Commencement Date. The Conservancy and TY recognize that TY's successful completion of the purchase of the Subject Property from the City, signified by recording an executed grant deed (the "Deed") from the City, as grantor, to TY, as grantee, for fee simple title interest in the Subject Property, is a condition precedent to the Conservancy's ability to exercise its option to receive and record the Easement and Right of First Refusal Agreement (collectively, the "Gifts"). Upon the date this Agreement is executed (the "Effective Date"), the Conservancy shall pay the Option Price to TY, and TY shall:
 - a. open an escrow account which shall be used to: i) complete the purchase of the Subject Property from the City, ii) record the Deed, and iii) convey the Gifts to the Conservancy;
 - b. execute and place a Notice of Option, in the form attached as Exhibit "F", in the escrow account with instructions for recordation of same immediately after recordation of the Deed. The escrow instructions shall incorporate this Agreement and contain such other standard and usual provisions as may be requested by the escrow company and approved by TY and the Conservancy, in writing. The parties may submit separate escrow instructions provided that such escrow instructions shall not modify or amend any provision of this Agreement.
3. Closing Documents. The following shall be deposited in escrow prior to the close:
 - a. TY's Deliveries. TY shall deposit the following items:
 - (1) A duly signed and acknowledged Easement, in substantially the form attached as Exhibit "D";
 - (2) A duly signed and acknowledged Right of First Refusal Agreement, in substantially the form attached as Exhibit "E";
 - (3) A California state tax withholding certificate satisfying the requirements of California Revenue and Taxation Code Section 18805(d) and 26131;
 - (4) A non-foreign certification satisfying the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder; and
 - (5) TY's form W-9, Request for Taxpayer Identification and Certification.

- b. Conservancy's Deliveries. The Conservancy shall deposit:
 - i. the Conservancy's share of closing costs and prorations as provided in Section 11; and
 - ii. A signed and acknowledged certificate of acceptance acknowledging the State's acceptance of the Easement and the Right of First Refusal Agreement, or an agreement assigning the Conservancy's rights under this Agreement, Easement, and Right of First Refusal Agreement to a nonprofit environmental organization qualified under IRC § 501(c)(3) pursuant to Section 14.
- 4. Additional Instruments. TY and Conservancy shall each deposit such other instruments as are reasonably required by the escrow company or otherwise required to proceed to the close of escrow and consummate the conveyance of the Gifts in accordance with the terms of this Agreement.
- 5. Covenants of the Conservancy. As partial consideration for the Agreement, the Conservancy acknowledges the desire and intention of TY to pursue the purchase of the Subject Property from the City without the direct involvement of the Conservancy or any of its agents, employees, independent contractors, consultants, attorneys, or other persons under its control or sway, except as necessary to ensure the conveyance of the Gifts. This covenant of non-involvement shall not apply to the City's Mayor or Councilmember(s) who sit on the Board of the Conservancy. The Conservancy further agrees to:
 - a. waive its Rights to the Subject Property;
 - b. not enter into any arrangements, discussions, dealings, or negotiations relating to any interest in the Subject Property directly with the City, except as required to hold open and closed Conservancy board meetings, or exercise its rights under this Agreement and as may be required in the Easement; and
 - c. upon TY's request, to cooperate, as reasonably necessary and in a timely fashion, with TY and all other entities, public and private agencies, including, but not limited to, federal, state, county and city bodies, and individuals involved in the determination of the economic value of the Gifts and the purchase of the Subject Property, at TY's sole expense.
- 6. Covenants of TY. TY hereby covenants and agrees to:
 - a. diligently and in good faith complete the negotiations and documents required to purchase the Subject Property from the City upon the Conservancy's waiver of the Rights;
 - b. refrain from entering into any agreements, encouraging or in any way supporting third parties to negotiate and/or purchase the Subject Property from the City without the Conservancy's prior approval, which approval shall not be unreasonably withheld, denied or delayed;

- c. refrain from marketing or listing the Subject Property to any other prospective purchaser during the term of the option;
 - d. not take any action with respect to the Subject Property, nor permit activities to occur on the Subject Property, during the term of the option, if within the reasonable control of TY, and excepting those conditions and activities currently on the Subject Property, that would diminish or adversely affect the Easement;
 - e. operate the Subject Property, or cause it to be operated, in substantially the same manner as it has been operated before the Effective Date and maintain and keep the Subject Property, such that at the close of escrow the Subject Property is in at least as good condition and repair as on the Effective Date, reasonable wear and tear excepted. TY shall not make any material alterations to the Subject Property during the term of the option without the Conservancy's prior written consent;
 - f. cooperate with the Conservancy in modifying this Agreement, and/or the terms of the Gifts, if reasonably necessary, in order to accommodate legal, regulatory and technical requirements of the State of California, so long as the intent of the parties and the substantial terms of the Agreement and the Gifts remain unchanged;
 - g. make available to the Conservancy, during the term of the option, all existing data in its possession regarding encroachments, boundary line matters, and prescriptive or adverse interests, copies of all subleases, rental or occupancy agreements, estoppel certificates, contracts, including without limitation any recorded agreements and unrecorded agreements, road maintenance agreements, correspondence, notices, studies, reports including without limitation, copies of any and all archeological, soils, geotechnical and environmental reports and materials, tests, surveys, maps, plans engineering drawings, permits, water rights certificates, permits, licenses, well and drilling reports, and filings and other information that would assist in the identification and transfer of water rights, applications for development and other entitlements, correspondence or reports from the County or other public agencies, and any and all other information or documents in possession or control of TY related to the title, condition, development, operation, or ownership of and relating to the Subject Property.
7. Term. The Conservancy shall have the right to exercise its option to receive the Gifts until ninety (90) days after the recordation of the Deed (the "Option Expiration Date").
8. Right of Inspection. Conservancy's representatives, agents, and designees shall have the right at reasonable times, until the close of escrow, to enter and verify the condition of the Subject Property and conduct such inspections, surveys, and other tests as are necessary to assess the Easement to be acquired.
9. Early Termination of Option. In the event: (a) TY does not purchase the Subject Property, or (b) the Conservancy determines that it will not accept the Gifts, for any reason, this Agreement shall immediately terminate, and neither party shall have any further obligation to the other under this Agreement, except that any cloud on title relating to the Subject Property, TY Property, or the Entire Property, shall be released by the Conservancy upon TY's written request.

10. Notice of Intent to Exercise Option. Pursuant to Section 15850 *et. seq.* of the Government Code (the "Property Acquisition Law"), the Conservancy may not enter into a contract for an interest in real property without approval by the Director of General Services and authorization from the State Public Works Board. Therefore, unless an assignment of the option to an entity not subject to the State Property Acquisition Law has been made pursuant to Section 14 of this Agreement, the provisions of this Section shall apply in the event the Conservancy elects to exercise the option. The Conservancy shall provide written notice to TY of its intent to exercise the option, and TY shall promptly execute and return all necessary documentation to the Conservancy for presentation to the Department of General Services/State Public Works Board and execution by the State. Said notice shall be a condition precedent to the Conservancy's receipt of the Gifts. In the event the Conservancy exercises its option to receive the Gifts, the parties expressly acknowledge and agree that the Property Acquisition Law and all regulations flowing therefrom shall be binding on both TY and the Conservancy.
11. Exercise of Option. The Conservancy may exercise its option to accept the Gifts by providing notice as permitted by Section 10. The Parties shall endeavor to close escrow within one year of the Conservancy's exercise of the option. The Conservancy shall pay for all escrow, recordation, and title insurance costs. The parties agree to work together in good faith to agree upon title exceptions to which the Gifts shall be subject and to develop mutually acceptable escrow instructions consistent with the terms of this Agreement so that the transfer of interests can be completed in a timely manner.
12. Warranties and Representations. Each representation and warranty in this section (a) is material and being relied on by the party to which the representation and warranty is made; (b) is true in all respects as of the Effective Date; (c) shall be true in all respects on the closing date; and (d) shall survive the close of escrow.
- a. TY warrants and agrees, to the best of its knowledge:
- i. that during the term of the option, upon TY's purchase of the Subject Property from the City of San Diego, TY will meet the terms of all liens, and pay all sums due against the Subject Property and thereby prevent the default and foreclosure of any such liens. This warranty shall not apply to liens against the Subject Property incurred by the Conservancy, or their agents or contractors. TY shall use reasonable commercial efforts, at the Conservancy's request, to subordinate all encumbrances upon the Subject Property to the Gifts;
 - ii. that documents that are to be delivered to the Conservancy at the close of escrow are (or on the closing date shall be) duly authorized, executed, and delivered by TY, and are (or at the closing date shall be) legal, valid, and binding obligations of TY, and do not violate any provision of any agreement or judicial order to which TY is a party or to which TY or the Subject Property is subject. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, government agency, or other party is required for TY to enter into or to perform TY's obligations under this Agreement, except as has already been obtained. TY is a corporation organized, validly existing, in good standing and is qualified to do

business under the laws of the State of California;

- iii. that TY has not received notice of any currently outstanding violations of any federal, state, county, or municipal law, ordinance, order, regulation, or requirement with respect to the Subject Property;
- iv. that there is no action, suit, proceeding, litigation or arbitration pending or threatened against the Subject Property or any portion thereof relating to or arising out of the ownership or use of the Subject Property, or any portion thereof, in any court or before or by any federal, state, or county commission, board, bureau or agency;
- v. that except for such matters of record that may be disclosed in a preliminary title report: (i) there are no leases (except for the currently existing lease between the City and TY), licenses (except for the currently existing license agreement between TY and the Conservancy), easements, tenancies, parties in possession, rights of way, or other rights to use or occupy any portion of the Subject Property, prescriptive or otherwise, not of record with respect to the Property, and no disputes, claims or actions involving the location of any fence or other monumentation of the real property's boundary nor any claims or actions involving the location of any fences or boundaries; (ii) there are no outstanding contracts made by TY for any improvements to the Property that have not been fully paid for or will survive the close of escrow; (iii) there will be no actual or impending mechanics' or materialperson's liens arising from any labor or materials furnished to the Property and no unpaid bills or claims; and (iv) other than this Agreement, there are no rights (including option rights) to purchase or lease the Property or any portion thereof that are held or claimed by any person or entity;
- vi. that there are no construction, management, leasing, service, equipment, supply, maintenance or concession agreements with respect to the Subject Property, other than those matters of record as are disclosed in the preliminary title report;
- vii. that there are not now nor have there been any: (i) hazardous wastes, materials or substances (as said terms are defined in any applicable federal, state or county laws) (collectively, "Hazardous Materials") located on or within any portion of the Subject Property; (ii) enforcement, clean-up, removal or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any applicable federal, state or local laws or ordinances relating to any Hazardous Materials and affecting the Subject Property, or any portion thereof; (iii) claims made or Purchase Agreement threatened by any person or entity against TY or the Subject Property, or any portion thereof, relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iv) Hazardous Materials occurrence or condition on any real property adjoining the Subject Property and owned by TY; or (v) underground storage tanks located on the Subject Property and now or formerly used for the storage or containment of any Hazardous Materials, including any petroleum products or by-products;

viii. that TY is not a foreign person and is a “United States Person” as that term is defined in §7701(a)(30) of the Internal Revenue Code of 1986, as amended;

ix. that the Subject Property is not enrolled in an agricultural preservation program, a conservation or wetland reserve program or any other program of the United States Departments of Agriculture, Interior or Commerce or departments of the State of California. The Subject Property is not subject to any government cost-share contracts or other agreements that restrict either the use of the Subject Property or the modification of any improvements on the Subject Property, other than documents that may be shown in exceptions from coverage in the preliminary title report for the Subject Property.

b. The Conservancy warrants and represents that documents that are to be delivered to TY at the close of escrow are (or on the closing date shall be) duly authorized, executed, and delivered by Conservancy, and are (or at the closing date shall be) legal, valid, and binding obligations of state, and do not violate any provision of any agreement or judicial order to which the Conservancy is a party.

13. Notices. All notices required under this Agreement may be delivered via certified first class mail, return receipt requested, personal delivery, or a nationally recognized courier service via overnight delivery service. All notices to TY or the Conservancy shall be delivered at the following addresses:

TO TY: TY Investment, Inc.
Carlton Oaks Country Club
9200 Inwood Dr.
Santee, CA 92071
Attn: Toru “Ben” Mise, President

With a copy to: Felix M. Tinkov, Esq.
Lounsbery Ferguson Altona & Peak, LLP
401 West A Street, Suite 1825
San Diego, CA 92101

To The Conservancy: San Diego River Conservancy
1350 Front Street, Suite 3024
San Diego, CA 92101
Attn: Michael J. Nelson, Executive Officer

With a copy to: Hayley Peterson, Deputy Attorney General
Office of the California Attorney General
110 West A Street, 11th Floor
San Diego, CA 92101

14. Assignments. Conservancy may freely assign its interest in this Agreement or the underlying Gifts to any agency of the State of California or local public agency approved by the Conservancy upon written notice to TY. The Conservancy may also assign its rights under this

Agreement and the Easement to a nonprofit environmental corporation that is: (a) incorporated under the laws of the State of California as a tax-exempt public charity as described in Section 815.3 of the California Civil Code and IRC Sections 501(c)(3) and 509(a)(1); (b) organized to protect and conserve natural areas and ecologically significant land for scientific, ecological, scenic, aesthetic, charitable, recreational, and educational purposes; and (c) a “qualified organization” within the meaning of that term in IRC Section 170(h), qualified to acquire and hold conservation easements; provided that TY shall have the right to approve the assignment based upon a review of the nonprofit assignee’s: (a) financial condition; and (b) willingness to provide not less than \$1,000,000 in general commercial liability coverage for any claim or occurrence arising out of the construction, maintenance and use of the trail. TY’s approval of said assignment shall not be unreasonably denied withheld or delayed.

15. Time. Time is of the essence with respect to this Agreement and all of its terms.
16. Possession. Right of possession shall remain with TY, subject to Conservancy's right of reasonable entry for its employees, contractors, agents, and/or designees to conduct surveys or investigations only for purposes related to this Agreement.
17. Successors and Assigns. All of the terms, covenants, and conditions herein contained shall inure to the benefit of and be binding upon the heirs, successors, and assigns of the parties hereto. Once TY takes possession of the Subject Property, the terms of this Agreement shall be deemed covenants running with the land unless this Agreement is terminated.
18. Entire Agreement. This Agreement, together with all Exhibits hereto, constitute the final expression and contains the entire agreement between the Conservancy and TY with respect to the subject matter hereof, and supersedes and replaces any and all prior and contemporaneous understandings or agreements with respect thereto, including those understandings and agreements in letters, correspondence, memoranda or other expressions of intent from either party hereto or its agents that are prior to or contemporaneous in time to this Agreement. This Agreement may be modified only by a writing signed by both parties. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement.
19. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.
20. Choice of Law. This Agreement and each related document are to be governed by, and construed in accordance with, the laws of the State of California.
21. Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall

not exclude any other consistent remedies unless they are expressly excluded. Unless otherwise expressly provided, all covenants and obligations of the parties set forth in this Agreement shall survive the close of escrow.

22. Captions and Exhibits. The caption headings in this Agreement are for convenience only and shall be of no force and effect in construing terms. All Exhibits attached to this Agreement are hereby incorporated in the Agreement by reference.
23. Counterparts. This Agreement and any amendment may be executed in counterparts, and each such counterpart shall be considered as an original of the Agreement or any amendment upon all counterparts being so executed, and all counterparts shall be considered as one (1) agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date and year first above written.

OPTIONOR:

TY Investment, Inc., a California corporation

By: 
Toru "Ben" Mise

Its: President

OPTIONEE:

STATE OF CALIFORNIA
SAN DIEGO RIVER CONSERVANCY

By: _____
Michael J. Nelson

Its: Executive Officer

List of Exhibits:

- A. TY Property description and map
- B. Leased Property description and map
- C. Subject Property description and map
- D. Conservation and Trail Easement Deed and Exhibit 1 (property description and map) and 2 (trail connection areas)
- E. Right of First Refusal Agreement and Exhibit 1 (Owner's property description)
- F. Notice of Option Form and Exhibit 1 (Conservation and Trail Easement Deed with exhibits)

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IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date and year first above written.

OPTIONOR:

TY Investment, Inc., a California corporation

By: _____
Toru "Ben" Mise

Its: President

OPTIONEE:

STATE OF CALIFORNIA
SAN DIEGO RIVER CONSERVANCY

By: Hayley Peterson
for Michael J. Nelson

Its: Executive Officer

List of Exhibits:

- A. TY Property description and map
- B. Leased Property description and map
- C. Subject Property description and map
- D. Conservation and Trail Easement Deed and Exhibit 1 (property description and map) and 2 (trail connection areas)
- E. Right of First Refusal Agreement and Exhibit 1 (Owner's property description)
- F. Notice of Option Form and Exhibit 1 (Conservation and Trail Easement Deed with exhibits)

EXHIBIT “A”

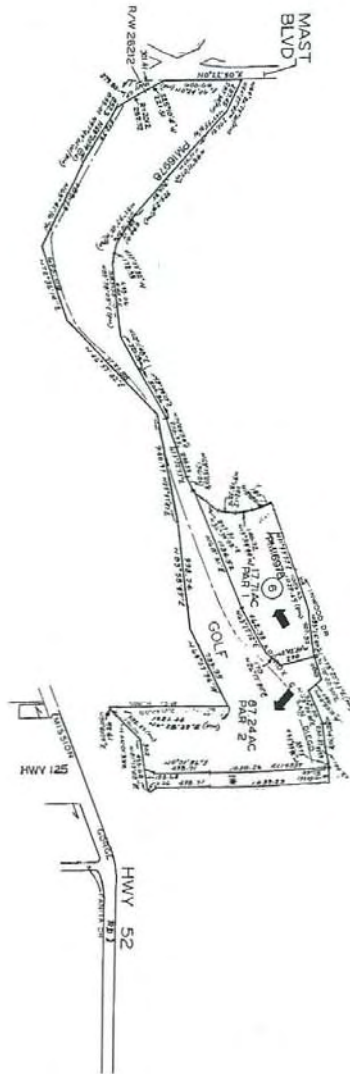
TY Property Description

PARCELS 1 AND 2 OF PARCEL MAP NO. 16978, IN THE CITY OF SANTEE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 19, 1992 AS FILE/PAGE NO. 1992-0665040 OF OFFICIAL RECORDS.

APNs: 383-071-06-00 and 383-071-07-00

TY Property Map

(TO FOLLOW ON THE NEXT PAGE)



MAP 1703 - FANITA RHO RESUB OF PART - POR LOT 1
ROS 16019



EXHIBIT "B"

Leased Property Description

ALL THAT PORTION OF LOT 7 OF FANITA RANCHO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 790, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 21, 1984, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1 OF THE RESUBDIVISION OF FANITA RANCHO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1703, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 28, 1918; THENCE SOUTH 0°22'50" WEST (RECORD SOUTH 0°04'00" EAST) 2430.50 FEET TO A POINT SAID POINT BEING CORNER 12 ON CITY OF SAN DIEGO ENGINEERING DEPARTMENT DRAWING NO. 3159-D; THENCE SOUTH 57°49'37" EAST, 852.67 FEET (RECORD SOUTH 58°20'00" EAST, 852.30 FEET) TO CORNER NO. 13 ON SAID DRAWING NO. 3159-D; THENCE SOUTH 63°41'37" EAST, 783.00 FEET (RECORD SOUTH 64°12'00" EAST) TO CORNER 14 ON SAID DRAWING, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 72°35'41" EAST, 694.93 FEET (RECORD NORTH 72°09'00" EAST, 693.80 FEET) TO CORNER 15; THENCE NORTH 46°56'57" EAST, 1131.79 FEET (RECORD NORTH 46°29'00" EAST, 1131.6 FEET) TO CORNER 16; THENCE NORTH 79°58'57" EAST, 941.09 FEET (RECORD NORTH 79°31'00" EAST, 940.70 FEET) TO CORNER 17; THENCE NORTH 83°59'57" EAST, 998.87 FEET (RECORD NORTH 83°32'00" EAST, 998.90 FEET) TO CORNER 18; THENCE NORTH 64°11'12" EAST, 739.43 FEET (RECORDED NORTH 63°42'00" EAST, 739.30 FEET) TO CORNER 19; THENCE SOUTH 0°29'12" WEST (RECORD-SOUTH) 1021.46 FEET; THENCE SOUTH 50°41'33" WEST, 335.67 FEET; THENCE SOUTH 60°28'33" WEST, 155.35 FEET; THENCE SOUTH 73°43'28" WEST, 302.71 FEET; THENCE SOUTH 63°13.08" WEST, 287.73 FEET; THENCE SOUTH 76°28'08" WEST, 245.28 FEET; THENCE NORTH 87°46'52" WEST, 676.62 FEET; THENCE NORTH 75°17'02" WEST, 626.26 FEET; THENCE SOUTH 86°57'48" WEST, 948.81 FEET; THENCE SOUTH 78°57'33" WEST, 670.25 FEET; THENCE NORTH 7°37'58" WEST, 5.28 FEET TO SAID CORNER 14 BEING THE TRUE POINT OF BEGINNING.

APN: 383-080-03-00 (PORTION)

Leased Property Map

(TO FOLLOW ON THE NEXT PAGE)

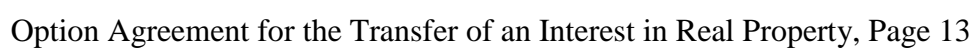


EXHIBIT "C"

Subject Property Description

LEGAL DESCRIPTION: Portion of FANITA RHO TRACT T LT 7

LOCATION: Property is located in the City of San Diego and is adjacent to 9200 Inwood Dr Santee, CA 92071

THOMAS BROS MAP: 1230 - J6

ACREAGE: Approximately 65.4 acres, exact size to be determined.

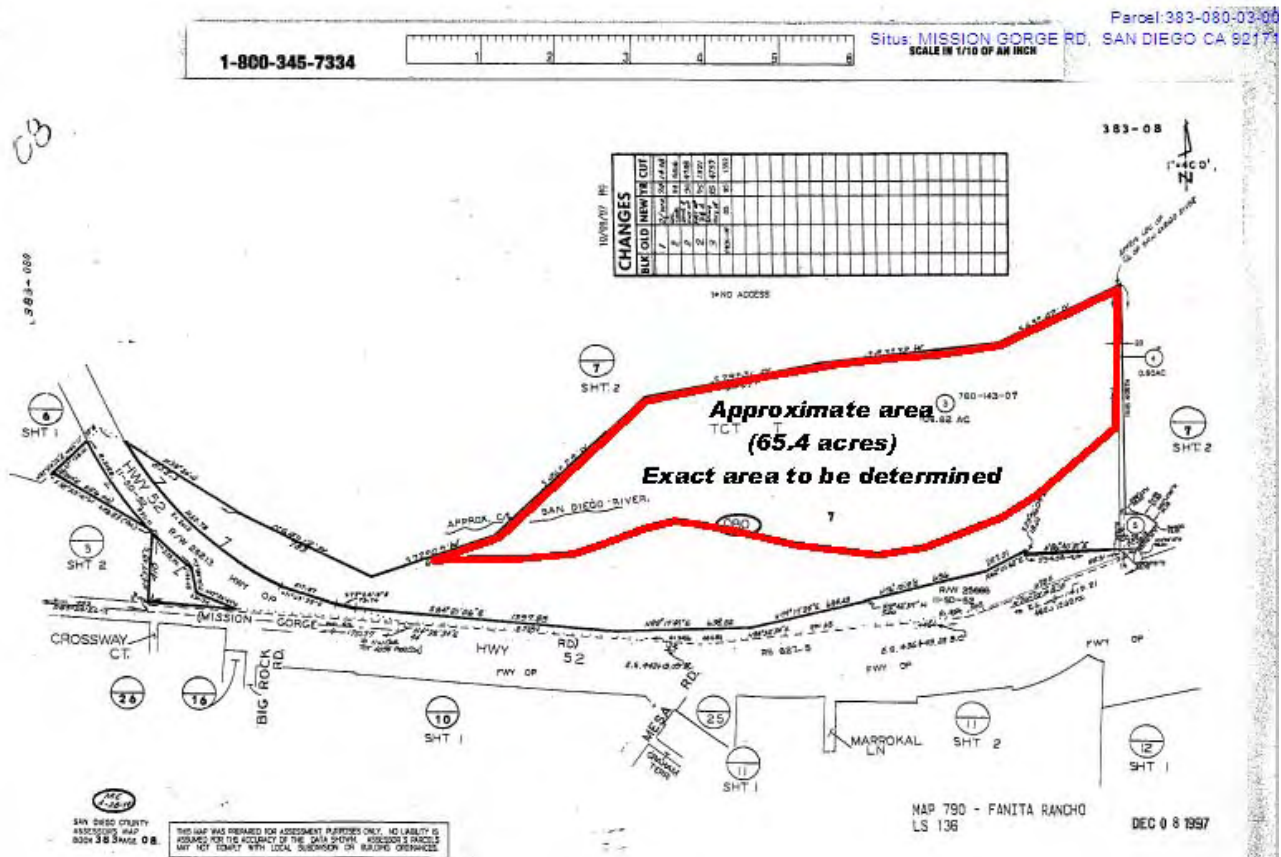
ASSESSOR'S PARCEL NO.: Portion of 383-080-03

EXISTING ZONING: R-1-40

IMPROVEMENTS: A portion of the Carlton Oaks Golf Course

COMMUNITY PLAN DESIGNATION: East Elliott

MAP SHOWING APPROXIMATE PROPERTY BOUNDARIES IN RED INK (Not To Scale)



This page is to be replaced by a legal description and map of the Subject Property, defined by metes and bounds, pursuant to Section 1 of the attached Option Agreement for the Transfer of an Interest in Real Property between TY Investment, Inc. and the San Diego River Conservancy.

EXHIBIT “D”

Conservation and Trail Easement Deed

(TO FOLLOW ON NEXT PAGE)

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
State of California)
San Diego River Conservancy)
Attention: Michael Nelson)
1350 Front Street, Suite 3024)
San Diego, CA 92101-3604)

Space Above Line for Recorder's Use Only

CONSERVATION AND TRAIL EASEMENT DEED

THIS CONSERVATION AND TRAIL EASEMENT DEED ("Easement") is made this _____ day of _____, 20____, by TY Investment, Inc., a California corporation, ("Grantor"), in favor of THE STATE OF CALIFORNIA, acting by and through its San Diego River Conservancy, a subdivision of the California Natural Resources Agency, ("Grantee") with reference to the following facts:

RECITALS

- A. Grantor is the sole owner in fee simple of certain real property in the County of San Diego State of California, as more particularly described in **Exhibits "1"** attached hereto and incorporated herein by this reference (the "Property"), currently operated as a portion of a golf course within the Carlton Oaks Country Club;
- B. The Property lies within the East Elliot Community Plan and the Mission Trails Design District and possesses scenic, aesthetic, recreational, and open space, historic, archaeological, hydrologic, wildlife habitat and ecological values, (collectively, "Conservation Values") of great importance to Grantee and the people of the State of California;
- C. Grantee has jurisdiction, pursuant to the Public Resources Code (commencing with Section 32630) over the San Diego River to acquire and manage lands within the San Diego River Area and provide recreational opportunities, open space, wildlife habitat and species restoration and protection as well as protection and maintenance of the waters and the Grantee is authorized to hold easements for these purposes pursuant to Public Resources Code Section 32645, and other provisions of California law; and
- D. The parties wish to extinguish and reserve certain development rights on the Property and preserve the Conservation Values of the Property in order to enhance the neighboring San Diego River riparian area pursuant to the enabling statute of the San Diego River Conservancy found as Public Resources Code Section 32630.
- E. As used in this document the following definitions apply:
 - 1. "Low-intensity commercial recreational use" means for profit, privately operated , low-intensity recreational and educational outdoor facilities and/or uses such as golfing, non-motorized boating, canoeing, swimming, bicycling, photography, hiking, gatherings, picnicking, panning,

athletics and sporting activities, running, wildlife viewing, camping, horseback riding, nature study, hunting, fishing, and other such uses similar in nature and intensity provided that such commercial activities do not impair the Conservation Values of the Subject Property. Activities such as motor home and RV camping, paint ball, shooting ranges, off-roading, motorized vehicle racing, or other activities that involve leaving debris or excessive noise are not low-intensity commercial recreational activities.

2. "Baseline Monitoring Report" means a detailed report (including a baseline map) prepared prior to Closing which documents the important existing Conservation Values to be protected and enforced under this Easement on the Property and the tentative alignment of an approximately east-west trail between Mast Park West to the east and parcels owned by Midwest Television, Inc. to the west as well as a north-south trail to Santee Lakes to the north over the Property and Parcel 2 as shown on Exhibit "2" of this Easement. In no case shall Grantor be responsible for the provision of additional land or other property rights beyond those described in this Easement in order to achieve connectivity of said trail areas.

NOW THEREFORE, the parties agree as follows:

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

Pursuant to the common and statutory law of the State of California including the provisions of Civil Code sections 815 to 816, inclusive, Grantor hereby grants and conveys to Grantee for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and Grantee accepts a conservation easement in and over the Property in perpetuity and a trail easement in and over the Property and the property shown in Exhibit "2" in perpetuity. Grantor hereby irrevocably assigns to Grantee all development rights associated with the Property specified herein, except those rights which are specifically reserved by Grantor through this Easement and described herein.

1. Purpose. It is the purpose of this Easement to: (a) provide for the Grantee's right to construct and maintain a contiguous FOURTEEN FOOT (14') wide public path located on a portion of the Property and the property shown in Exhibit "2" in an area to be more specifically determined as described Section 2(g) below; and (b) preserve and protect the Conservation Values of the Property for the benefit of the public generally and to prevent any uses of the Property that will significantly impair or interfere with those Conservation Values through extinguishment of the development rights on the Property. The existing use of the Property as a golf course is consistent with the Conservation Values and it is the purpose of this Agreement to continue such use until the Grantor, or its successors in interest, determine otherwise, as permitted by the terms of this Easement.
2. Grantee's Rights. To accomplish the purposes of this Easement, Grantor hereby grants and conveys the following rights and interests to Grantee:
 - a) To identify and further refine the Conservation Values of the Property through the development of a Baseline Monitoring Report attached to this Easement. The Baseline Documentation Report which will be maintained on file with Grantee and is intended to serve as an objective baseline for monitoring compliance with the terms of this Easement. The parties agree to cooperate with one another, as may be necessary, to complete the

Baseline Monitoring Report. Prior to finalization of the Baseline Monitoring Report, each party shall approve in writing said report and agree that the Baseline Documentation Report provides an accurate representation of the Property at the time of the execution of this Easement. Neither party may unreasonably withhold, deny and delay such approval.

- b) To hold and utilize, consistent with the Easement, all mineral, air and water rights and interests, except as otherwise specified in this Easement;
- c) To prohibit the use of those development rights on the Property identified in Section 3;
- d) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and to otherwise enforce the terms of this Easement for the purposes of (i) identifying the current activities and uses thereon and the condition thereof, (ii) monitoring the activities and uses thereon to determine whether they are consistent with the terms of this Easement, (iii) enforcing the terms of this Deed, and (iv) exercising its other rights under this Easement. Such entry shall be permitted at reasonable times, upon twenty-four hours' prior written notice to Grantor, and shall be made in a manner that will not unreasonably interfere with Grantor's and its customers', agents', employees', independent contractors', consultants', representatives', attorneys', or other persons', under Grantor's control or sway, use and quiet enjoyment of the Property pursuant to the terms and conditions of this Easement. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of this Easement. The rights of entry provided by this subsection shall extend to the officers, agents, consultants, and volunteers of Grantee;
- e) To prevent any activity on or use of the Property that is inconsistent with the terms of this Easement by any legal means available to the Grantee and to require the party found to be at fault to restore such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the terms of this Easement;
- f) To erect and maintain a sign or other appropriate marker in a location on the Property and the property depicted in Exhibit "2" acceptable to Grantor, visible from a public road, bearing information indicating the location of a trail and that the Property is protected by Grantee and acknowledging the sources of Grantee's funding for the acquisition of this Deed. The wording of the information shall be determined by Grantee, with Grantor's approval, which shall not be unreasonably withheld, delayed or denied, and Grantee shall be responsible for the cost of erecting and maintaining such sign or marker in an attractive, neat, and orderly fashion. Grantee shall be responsible for obtaining governmental approval for such signage, if necessary, at its sole cost; and
- g) To construct a public trail and related improvements such as utilities, fencing, signs, drainage and surfacing material, no greater than FOURTEEN FEET (14') in width, on the Property and on the adjoining land east and west of the Property in Grantor's control, within the areas depicted in Exhibit "2", such that said trail may connect and provide access on the eastern side of the Property with Mast Park West and on the western side of the Property with West Hills Parkway and run generally north-south towards Santee Lakes on the eastern side of the Property, subject to the following:

1. In no case shall pets, including, but not limited to dogs, be allowed on the trail or adjoining Property without being leashed and under the control of their owner. Further, no motorized vehicles or other conveyances are to be permitted on the trail at any time, excepting maintenance, fire, police, and emergency vehicles.
 2. Said trail shall be planned by Grantee, at its sole expense, and Grantee shall use best efforts to locate the trail in such a manner as not interfere with the utilization and enjoyment of the then-current use of the Property. No such trail plan shall be implemented without the prior written approval of Grantor, which approval shall not be unreasonably withheld, denied or delayed. It is agreed by the parties that in the event said trail cannot be located in such a manner as to not interfere with the utilization and enjoyment of the then-current use of the Property, planning for the trail shall be developed in cooperation with Grantor to minimize any such interference to the greatest extent possible and Grantee shall be required to pay Grantor for all costs, expenses, fees, and other expenditures relating to the reconfiguration, redesign, redevelopment and revision of the then-current use on the Property to suit the ultimate location of said trail.
 3. Grantee agrees to bear all costs and liabilities related to the operation, upkeep, and maintenance of the area of the trail. Grantee shall be liable for all lawsuits, claims, and damages, arising from the construction, maintenance and use of the trail and shall defend Grantor from same. Grantee shall use best efforts to minimize trespasses and nuisances on the balance of the Property and the adjoining Carlton Oaks Country Club, or the then-existing use, arising from the construction, maintenance and use of the trail. Grantee shall install and maintain safety features, devices and/or improvements (e.g. fencing or netting) to substantially reduce the risk of injury to users of the trail from golf balls traversing and/or landing on, in or near the trail concurrent with the construction of said trail.
 4. Any such trail constructed shall be built in accordance with all applicable local, state and federal regulations and laws and shall be maintained in an attractive, neat and orderly fashion, at the sole expense of the Grantee, for so long as the trail exists on the Property.
 5. Once said trail is constructed, Grantee's right to construct a public trail shall be deemed to have been executed and extinguished such that no additional trails may be constructed, nor can the existing trail be enlarged or modified without the prior written approval of the Grantor.
3. Grantor's Prohibited Uses. The following uses by Grantor, Grantor's agents, and third parties, are expressly prohibited on the Property:
- a) Unseasonal watering practices which would interfere with the maintenance and preservation of the Conservation Values of the Property;
 - b) The use of chemicals or products applied in a manner inconsistent with best management practices or which result in harm to the Conservation Values of the Property;

- c) Grazing or other agricultural activity of any kind;
- d) The removal of trees adjacent to the ultimate location of the trail;
- e) Construction, reconstruction or placement of any building, or other structure, except as permitted by Section 5(a), without the Grantee's prior approval, which approval shall not be unreasonably withheld, denied or delayed. Development for commercial, industrial, agricultural or residential uses, excepting low-intensity commercial recreational uses;
- f) Any legal or de facto division, subdivision or partitioning of the Property, unless required by threat or act of eminent domain or court order;
- g) Depositing or accumulation of trash, ashes, refuse, waste, or bio-solids;
- h) Excavating, removing, destroying or selling archaeological artifacts;
- i) The introduction or active propagation of invasive non-native plant species as defined by the California Invasive Plant Control Council, or its successor, or invasive non-native animal species as defined by the California Department of Fish and Game or the U.S. Fish and Wildlife Service;
- j) Extraction, excavation, dredging, drilling, mining, removing or exploration for/of minerals, sand, gravel, rock or other materials on or below the surface for any purpose outside of the Property boundary;
- k) Permanent outdoor storage, for more than six months, of any materials; and
- l) Use of off-road vehicles (excepting golf carts and similar conveyances), except on paved paths and roads.

4. Grantor's Duties. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Value of the Property. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 3 of this Easement. Grantor agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property, excepting the area of the trail. Without limiting the foregoing, Grantor agrees to pay any and all real property taxes, fees, exactions and assessments levied or imposed by local, state or federal authorities on the Property. Grantor shall be solely responsible for any costs related to the acquisition and maintenance of general liability insurance, flood insurance and any other insurance normally kept in the course of Grantor's business, covering acts on the Property, excepting the area of the trail. Grantee shall have no responsibility whatever for the operation of the Property or the monitoring of hazardous conditions thereon, except with respect to the public trail, as described in Section 2(g). For so long as the Property remains in use as a golf course, and upon Grantee's written demand, Grantor shall, within sixty (60) days, enroll the Property into, and use commercially reasonable efforts to acquire certification in the Audubon Cooperative Sanctuary Program for Golf Courses, or such other similar program for the environmentally sensitive management of golf course properties mutually acceptable to both the Grantor and Grantee, at Grantee's sole expense for all

such efforts involved in the certification and enrollment, including, but not limited to membership, certification and registration costs, site assessment, environmental planning, redesign and construction/development costs, increased maintenance costs, education and classes for a minimum period of FIVE (5) years, which period shall commence upon receipt of Grantee's written demand.

5. Grantor's Reserved Rights. Grantor explicitly reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are consistent with the purposes of this Easement. The following uses by Grantor, Grantor's agents, and third parties, are allowed as follows:
 - a) Golf: Golf course use, including, but not limited to the maintenance, upkeep, renovation, installation, construction, development, replacement, design and redesign of the golf course and/or features, vegetation, paths, roads, areas, fixtures, structures, utilities, amenities and improvements on the Property, as deemed appropriate by the Grantor and/or other such recreational uses similar in nature and intensity to said golf course use, so long as such use or development does not significantly impair the Conservation Values of the Property. These uses and structures include small structures, features or improvements, such as benches, bathrooms, utilities, signs, poles, irrigation, golf ball cleaning stations, trees, plants, bushes, or such other features as would normally be found on a golf course or other low-intensity commercial recreational use.
 - b) Mitigation Banking: Development of the Property as a mitigation bank (or for other similar environmental or conservation purposes), where a mitigation bank is an operation in which wetlands, uplands and/or other natural habitat resources are restored, created, enhanced, or preserved by a mitigation bank operator, for the purpose of providing compensatory mitigation for disturbances to natural habitat including wetlands elsewhere, provided that mitigation banking does not significantly impair the existing Conservation Values of the Property. To create such a mitigation bank, Grantor reserves the right to undertake conservation and restoration of biotic and natural resources, including, but not limited to, bank and soil stabilization, practices to reduce erosion, enhancement of plant and wildlife habitat; and activities which promote biodiversity in accordance with sound, generally accepted practices and all applicable laws, ordinances and regulations and in accordance with sound, generally accepted biological and riparian enhancement practices.
 - c) Contouring: Use of soils, sand, and gravel found on or under the Property for fill or similar purposes for onsite development or revision of the topography of the golf course or the then-current use on the Property. Any such activities proposed by Grantor for onsite use shall not significantly alter the flow of water on or over the Property or materially impair the existing Conservation Values of the property.
6. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation. If Grantor fails to cure the violation within SIXTY (60) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than SIXTY (60) days to complete and Grantor fails to begin the cure

within the SIXTY (60) day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Grantor with the terms of this Easement, to recover any damages to which Grantee may be entitled for violation by Grantor of the terms of this Easement or for any injury to the Conservation Values of the Property, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury. Without limiting Grantor's liability therefore, Grantee shall apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement.

- a) Costs of Enforcement. The prevailing party in any action to enforce the terms of this Easement shall be entitled to the costs of suit and attorneys' and experts' fees, and any costs of restoration.
- b) Grantee's Discretion. Enforcement of the terms of this Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- c) Acts beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, erosion, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by Grantee or its employees.
- d) Conservancy Enforcement. All rights and remedies conveyed to Grantee under this Easement shall extend to and are enforceable by the Conservancy or its successor.

7. Access. This Easement does not convey a general right of access to the public over the entire Property or the balance of the Carlton Oaks Country Club or the then-existing use of this adjoining property.

8. Assignment. The Conservancy shall have the right to transfer or assign its right, title and interest in and to the Easement to a governmental entity or a nonprofit entity or organization authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 (or any successor provision then applicable) or qualified under the IRC to hold conservation easements and which agrees to enforce the terms of this Easement, provided that TY shall have the right to approve the assignment to a nonprofit entity based upon a review of the assignee's:

(a) financial condition; and (b) willingness to provide not less than \$1,000,000 in general commercial liability coverage for any claim or occurrence arising out of the construction, maintenance and use of the trail. TY's approval of said assignment shall not be unreasonably withheld, denied or delayed. Any such assignee shall record an assignment in the Official Records of San Diego County, California.

- a) The nonprofit grantee shall be solely responsible for any costs related to the acquisition and maintenance of general liability insurance, flood insurance and such other insurance as may be desired by Grantee covering the area of the trail. In the event of an assignment to a nonprofit entity, Assignee shall indemnify and hold Grantee harmless from all lawsuits, claims, and damages arising from the construction, maintenance and use of the trail and shall defend Grantor from same, except for arising from Grantor's own fraud, or willful injury to the person or property of another, or violation of law.
- b) After acceptance of the conservation and trail easement and before construction of the trail, the nonprofit grantee shall maintain liability insurance to cover claims and occurrences arising from the construction, maintenance and use of the trail commensurate with generally accepted levels of coverage for operations of a similar nature and intensity.

9. 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 recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Grantor: TY Investment, Inc.
Carlton Oaks Country Club
9200 Inwood Dr.
Santee, CA 92071
Attn: Toru "Ben" Mise, President

With a copy to: Felix M. Tinkov, Esq.
Lounsbery Ferguson Altona & Peak, LLP
401 West A Street, Suite 1825
San Diego, CA 92101

To Grantee: San Diego River Conservancy
1350 Front Street, Suite 3024
San Diego, CA 92101
Attn: Michael J. Nelson, Executive Officer

With a copy to: Hayley Peterson
Office of the Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101

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 delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

10. General Provisions.

- a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state.
- b) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Easement, such action shall not affect the remainder of this Easement.
- c) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement.
- d) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- e) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property. All obligations, terms, conditions, and restrictions imposed by this offer shall be deemed covenants and restrictions running with the land, shall be effective limitations on the use of the real property from the date of recordation of this document, and shall bind the Grantor and all its successors and assigns.
- f) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- g) Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, so as to terminate this Easement in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their respective interests so taken or purchased, and all direct or incidental damages resulting therefrom. In any such event wherein the Grantee is entitled to receive any proceeds, whether by agreement or court order, Grantee shall provide to the Conservancy, or its successor, a share of the proceeds proportionate to the Conservancy's interest in the Easement. If only a portion of the Property is subject to such exercise of eminent domain, this Easement shall remain in effect as to all other portions of the Property.

- h) Valuation. This Easement constitutes a real property interest immediately vested in Grantee. The Parties stipulate that this Easement has a fair market value which may be determined by a qualified appraiser. This value may be used by Grantor to calculate any permissible deductions for federal income tax purposes allowable by reason of this Easement pursuant to Section 170(h) of the Internal Revenue Code of 1986, as amended, for property assessment and other tax purposes, as may be applicable, and for determination of sums required pursuant to Section 10(g) above. Grantee shall cooperate with Grantor's reasonable requests for provision of documents, statements and other materials, as necessary, relating to said appraisal and deductions, at Grantor's sole cost.
- i) Abandonment. If the Grantee should abandon the Easement without first transferring its interest to another entity pursuant to Section 8, or if any of the essential terms of this Easement are violated, except as permitted to be cured by the terms of this Easement, then Grantee's right, title and interest in the Easement shall automatically vest in the State of California for the benefit of the Coastal Conservancy or its successor, upon recordation of a certificate of acceptance of the Easement following approval by the Coastal Conservancy and the State Department of General Services and/or the State Public Works Board, if required by law, unless the executive officer of the Coastal Conservancy, or its successor, designates another public agency to accept the right, title and interest, in which case vesting shall be in that agency. In no case may this Easement vest in, or be conveyed in any manner, in part or wholly, to a nonprofit organization.
- j) 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 its construction or interpretation.
- k) Despite any contrary provision of this Easement, the parties do not intend this Easement to be, and shall not be, construed such that it creates in or gives to Grantee any of the following:
- i. 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
 - ii. The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or
 - iii. The obligations of a responsible person under any applicable Environmental Laws; or
 - iv. The right to investigate and remediate any Hazardous Materials associated with the Property; or
 - v. Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

- vi. 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 Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *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 Easement.
- vii. 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. Grantor represents, warrants and covenants to Grantee that Grantor's activities upon and use of the Property will comply with all Environmental Laws.

- l) Amendment. No change in this Easement shall be valid unless made in writing, signed by the Grantor and Grantee, and recorded in the Official Records of San Diego County, California.

IN WITNESS WHEREOF Grantor has executed this Easement the day and year first above written.

TY INVESTMENT, INC.:

BY: _____
Toru "Ben" Mise

ITS: President

State of California)
) ss.
County of _____)

On _____, before me, _____, Notary Public,
personally appeared _____

_____, who
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.

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

WITNESS my hand and official seal.

Notary Public in and for said State

[seal]

EXHIBIT "1"

Property Description

LEGAL DESCRIPTION: Portion of FANITA RHO TRACT T LT 7

LOCATION: Property is located in the City of San Diego and is adjacent to 9200 Inwood Dr Santee, CA 92071

THOMAS BROS MAP: 1230 - J6

ACREAGE: Approximately 65.4 acres, exact size to be determined.

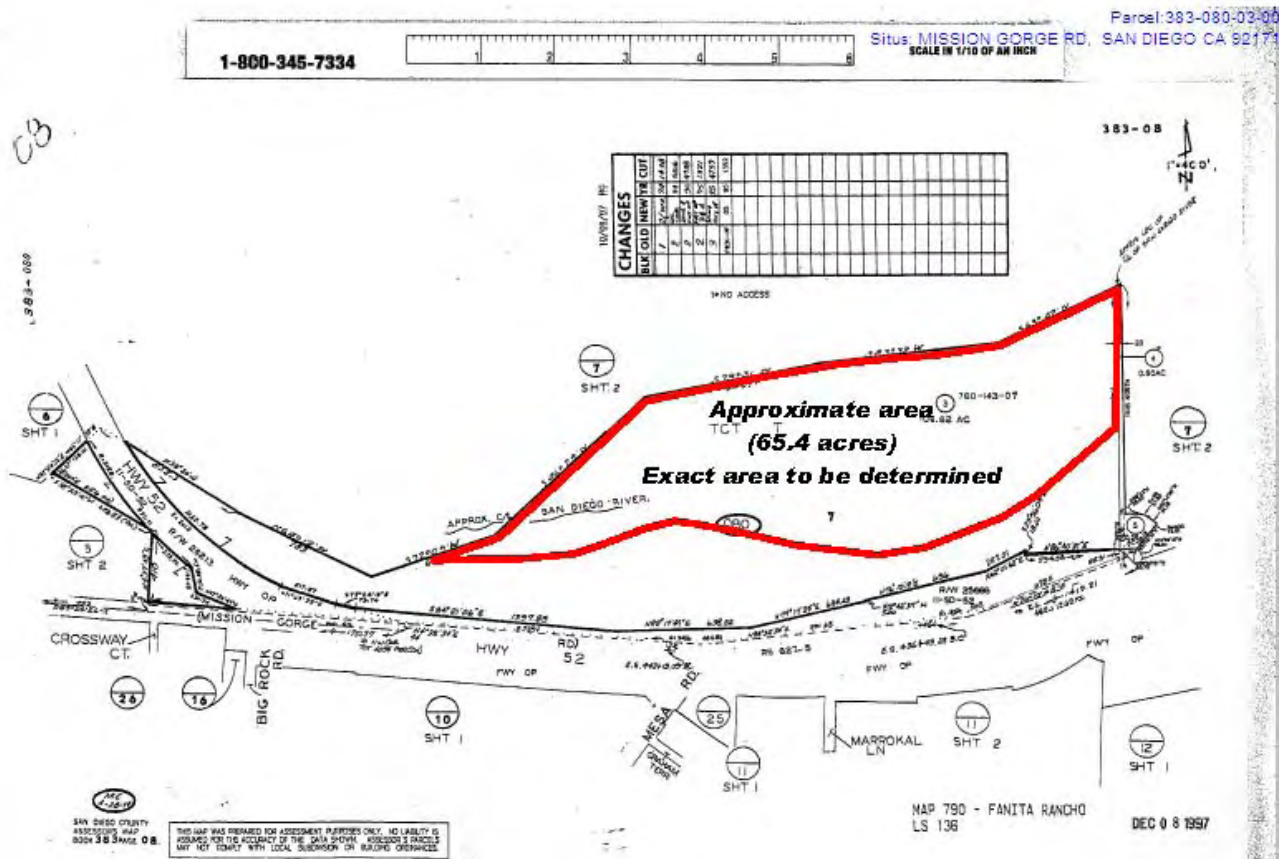
ASSESSOR'S PARCEL NO.: Portion of 383-080-03-00

EXISTING ZONING: R-1-40

IMPROVEMENTS: A portion of the Carlton Oaks Golf Course

COMMUNITY PLAN DESIGNATION: East Elliott

MAP SHOWING APPROXIMATE PROPERTY BOUNDARIES IN RED INK (Not To Scale)

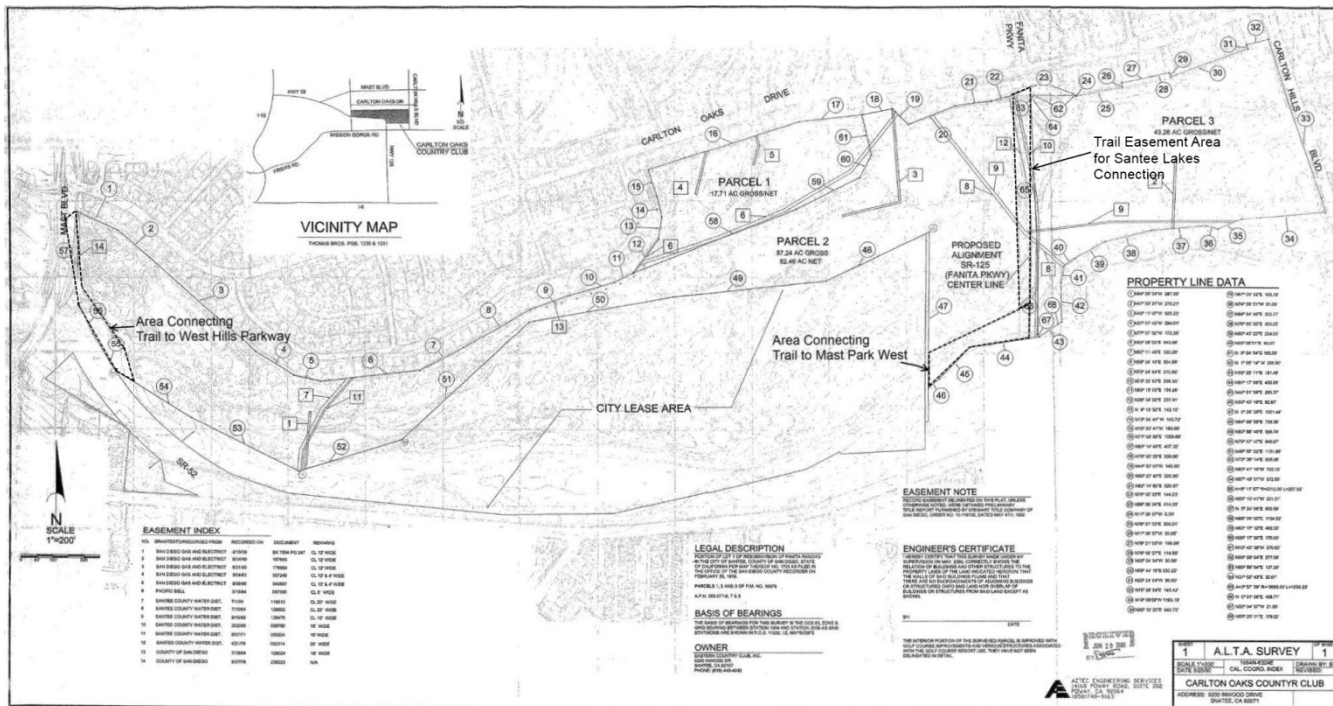


Note: Prior to recordation, this page is to be replaced by a legal description and map of the Property, defined by metes and bounds, pursuant to Recital A of the attached Conservation and Trail Easement between TY Investment, Inc. and the San Diego River Conservancy.

EXHIBIT “2”

Trail Connection Areas

MAP SHOWING THE APPROXIMATE LOCATIONS OF THE TRAIL EASEMENT FOR
CONNECTING THE PUBLIC TRAIL ACROSS TY INVESTMENT, INC's "PARCEL 2" TO MAST
PARK WEST ON THE EASTERN EDGE AND TO WEST HILLS PARKWAY ON THE WESTERN
EDGE, AS WELL AS THE PUBLIC TRAIL AREA TO BE USED FOR CONNECTING TO SANTEE
LAKES
(Not To Scale)



Note: The above map is only to be used for approximating the parties' goal of trail alignment in the area depicted as "Parcel 2". Prior to recordation, this page is to be replaced by a legal description and map of the trail areas on Parcel 2 connecting to Mast Park West and West Hills Parkway, as well as a trail area running on the eastern edge of Parcel 2, generally north-south towards Santee Lakes, defined by metes and bounds, pursuant to the terms of Section 2(g) of the attached Conservation and Trail Easement between TY Investment, Inc. and the San Diego River Conservancy. It is understood by the parties that there are intervening properties between "Parcel 2" and Santee Lakes not controlled or offered by TY Investment, Inc. in this transaction.

EXHIBIT “E”

Right of First Refusal Agreement

(TO FOLLOW ON NEXT PAGE)

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
State of California)
San Diego River Conservancy)
Attention: Michael Nelson)
1350 Front Street, Suite 3024)
San Diego, CA 92101-3604)

Space Above Line for Recorder's Use Only

RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT (the **"First Refusal Agreement"**) is made and entered into as of _____, 20__ by and between TY Investment, Inc., a California corporation (the **"Owner"**), and the State of California (the **"State"**), acting through the San Diego River Conservancy (the **"Conservancy"**).

RECITALS

- A. Owner possesses and controls approximately one hundred seventy and thirty-five hundredths (170.35) acres of property in both the Cities of Santee and San Diego, State of California as described in the attached Exhibit "1" (the **"Owner's Property"**); and
- B. The Conservancy desires to obtain a right of first refusal over the Owner's Property and Owner desires to grant the same to the Conservancy; and
- C. The Conservancy and Owner desire to enter into this First Refusal Agreement to set forth the terms of the right of first refusal for the Owner's Property.

NOW, THEREFORE, in light of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the above Recitals as follows:

1. Right of First Refusal. Owner shall not sell the Owner's Property or any portion thereof to any person that is not an affiliate of Owner without first giving to the Conservancy a right of first refusal (the **"Right of First Refusal"**) to purchase the Owner's Property on the following terms and conditions:

(a) Notice. Within five (5) business days after Owner enters into a sales agreement (or, alternatively, a term sheet specifying the conditions for a sales agreement) for the Owner's Property, or any portion thereof, to a third party not affiliated with Owner (the **"Third-Party Purchase Agreement"**), Owner shall give the Conservancy written notice (the **"Sale Notice"**) of the execution thereof, together with a copy of the Third-Party Purchase Agreement.

(b) Exercise of Right of First Refusal. The Conservancy shall have the right to exercise the Right of First Refusal at any time on or before the last day of the Refusal Period. The **"Refusal Period"** shall be the period ending ninety (90) days after the date the Sale Notice is delivered. Exercise of the Right of First Refusal shall consist of authorization by the Conservancy at a noticed

public hearing and by the State Public Works Board, pursuant to provisions of law (specifically, Division 22.9 of the California Public Resources Code, and the Property Acquisition Law), subject to approval by the Director of General Services pursuant to Section 11005 of the California Government Code, and provision to Owner of written notice of exercise of the Right of First Refusal on or before the date of expiration of the Refusal Period (the **“Purchase Notice”**). Within five (5) business days after exercise of the Right of First Refusal (the **“Execution Period”**), the State (acting through the Conservancy with the approval of the Director of General Services) and Owner shall enter into a definitive purchase agreement on substantially the same terms and conditions as set forth in the Third-Party Purchase Agreement for sale of the Owner’s Property, or applicable portion thereof, to the Conservancy including, without limitation, purchase price, method of payment, good faith deposit(s), representations, warranties, closing conditions and closing date (the **“Definitive Agreement”**); provided, however, that the Definitive Agreement shall provide (i) the Conservancy with a due diligence period of no less than thirty (30) days, and (ii) the closing date shall be modified in the Definitive Agreement to the extent necessary to permit the Conservancy (A) to exercise its Right of First Refusal and execute the Definitive Agreement as provided above and (B) to have ten (10) business days to close the transaction after the end of the due diligence period.

Alternatively, the Conservancy, after it has timely exercised the Right of First Refusal, executed the Definitive Agreement, and executed any and all indemnities, releases, deeds and other documents, the execution of which are conditions to closing under the Definitive Agreement (collectively, the **“Closing Documents”**), may assign the rights under the Definitive Agreement and Closing Documents to a local public agency or nonprofit organization to which the Conservancy has authorized a grant for acquisition of the Owner’s Property in accordance with the requirements of Division 21 of the Public Resources Code (the **“Permitted Assignee”**); provided, however, that the State shall not be released from its obligations under the Definitive Agreement or Closing Documents. In that event, the Conservancy shall identify the Permitted Assignee in its Purchase Notice.

If the Right of First Refusal is not exercised as provided above within the Refusal Period, if the State does not execute and deliver the Definitive Agreement within the Execution Period, or if the State does not close on the Owner’s Property as required by the Definitive Agreement, the Conservancy’s rights under this Agreement shall expire and be of no further force or effect; provided, however, that such rights shall be revived and reinstated in favor of Conservancy if Owner does not consummate the sale of the Owner’s Property, or applicable portion thereof, on substantially the same terms and conditions as set forth in the Third-Party Purchase Agreement within one-hundred eighty (180) days after the later of (i) the expiration of the Conservancy’s rights hereunder and (ii) the latest date the buyer under the Third-Party Purchase Agreement has the right to consummate the purchase of the Owner’s Property, or applicable portion thereof; provided, however, that if there has been an extension of such date after the Third-Party Purchase Agreement was submitted to the Conservancy to determine whether to exercise the First Right of Refusal, such extension shall be ignored in establishing the date from which such 180-day period shall run.

At the end of the 180-day period provided above for consummation of the sale of the Property or applicable portion thereof, Owner shall provide the Conservancy with either (i) evidence that the sale has been consummated on substantially the same terms and conditions as set forth in the Third-Party Purchase Agreement, and subject to any environmental indemnity or release agreements required of the buyer under the Third-Party Purchase Agreement, or (ii) notice that the Conservancy’s

Right of First Refusal has been revived and reinstated as provided above. The Conservancy shall have the right to seek all remedies available at law or in equity (i) to require disclosure of any and all non-privileged documents necessary to establish whether a transaction has been consummated on substantially the same terms and conditions as set forth in the Third-Party Purchase Agreement in the event Owner fails to provide such evidence in a timely manner, and (ii) in the event a transaction is consummated on terms other than as permitted by this Agreement.

The Right of First Refusal shall not run with the land. The Right of First Refusal shall run solely with TY Investment, Inc.'s ownership (or an affiliate's ownership) of the Owner's Property. The Right of First Refusal shall be terminated upon the Conservancy's exercise, or failure to exercise, the Right of First Refusal pursuant to the terms of this Section. The Conservancy shall cooperate with Owner to remove the First Refusal Agreement from the title record upon such an occurrence.

The parties acknowledge that a portion of the Owner's Property may be conveyed, transferred, dedicated or otherwise removed from the Owner's possession and/or control to the Conservancy or its assignee prior to the exercise of the Right of First Refusal. In this event, the parties will cooperate with one another to revise the First Refusal Agreement to reflect an accurate description of the Owner's Property.

(c) Definitions. The term **"person"** shall mean any natural person, corporation, partnership, association, trust or other organization. The term **"affiliate"** shall mean any and all corporations, partnerships, individuals and other entities directly or indirectly controlled by, controlling, having a familial relationship, or subject to direct or indirect common control of an entity or person. The term **"local public agency"** shall mean a city, county, city and county, district, association of governments or joint powers agency (or other public entity eligible for a Conservancy grant pursuant to Division 22.9 of the Public Resources Code. The term **"nonprofit organization"** shall mean any private, nonprofit organization, that qualifies under Section 501(c)(3) of the United States Internal Revenue Code.

2. Addresses for Notices. All notices, demands, requests or replies provided for or permitted by this Agreement shall be in writing and may be delivered by any one (1) of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; (3) by prepaid telegram; or (4) by prepaid deposit with an overnight express delivery service. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service. Notice by telegram or overnight express delivery service shall be deemed effective one (1) business day after transmission to the telegraph company or after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery. Notice also may be given by means of electronic facsimile transmission ("fax") however, that in order for a fax notice to be deemed effective, the party giving notice by fax shall provide a "hard copy" of the faxed notice thereafter to the other party pursuant to one (1) of the four (4) methods of "hard copy" delivery specified in this Section. The parties' addresses for notice under this Agreement are as follows:

Owner: TY Investment, Inc.
Carlton Oaks Country Club

9200 Inwood Dr.
Santee, CA 92071
Attn: Toru "Ben" Mise, President

With a copy to: Felix M. Tinkov, Esq.
Lounsbery Ferguson Altona & Peak, LLP
401 West A Street, Suite 1825
San Diego, CA 92101

Conservancy: San Diego River Conservancy
1350 Front Street, Suite 3024
San Diego, CA 92101
Attn: Michael J. Nelson, Executive Officer

With a copy to: Hayley Peterson, Deputy Attorney General
Office of the California Attorney General
110 West A Street, 11th Floor
San Diego, CA 92101

Each party shall have the right to designate a different address within the United States of America by the giving of notice to the other parties hereto in conformity with this Section.

3. Other Documents. Each of the parties agrees to execute any and all documents reasonably necessary to carry out the intention of this Agreement.

4. Amendment. No amendment or modification of this Agreement shall be valid unless that amendment or modification is in writing and signed by all parties.

5. Enforceability of any Provision. If any agreement, condition, obligation, covenant, warranty or other provision of this Agreement shall be determined to be unenforceable, invalid, or void, such determination shall not affect, impair, invalidate or render unenforceable any other agreement, condition, obligation, covenant, warranty, or other provision of this Agreement.

6. Attorneys' Fees. If any action, suit or proceeding is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to receive from the losing party reasonable attorneys' fees and costs.

7. Counterparts. This Agreement and any amendment may be executed in counterparts, and each such counterpart shall be considered as an original of the Agreement or any amendment upon all counterparts being so executed, and all counterparts shall be considered as one (1) agreement.

8. Effect of Section Titles. The titles of the Sections of this Agreement are solely for the purpose of convenience and shall not be relied upon in construing any provision of this Agreement.

9. Applicable Law. The laws of the State of California shall be applied in interpreting and enforcing this Agreement.

10. Benefit of Agreement. Owner and the Conservancy and their respective successors and assigns are the only parties who shall benefit from this Agreement and there are no third party beneficiaries.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

STATE OF CALIFORNIA, acting by and through the SAN DIEGO RIVER CONSERVANCY	TY Investment, Inc.
By: _____ Name: Michael Nelson Title: Executive Officer	By: _____ Name: Toru "Ben" Mise Title: President

State of California)
) ss.
County of _____)

On _____, before me, _____, Notary Public,
personally appeared _____,
_____, who
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.

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

WITNESS my hand and official seal.

State of California)
) ss.
County of _____)

On _____, before me, _____, Notary Public,
personally appeared _____,
_____, who
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.

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

WITNESS my hand and official seal.

EXHIBIT “1”

Owner’s Property Description

PARCELS 1 AND 2 OF PARCEL MAP NO. 16978, IN THE CITY OF SANTEE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 19, 1992 AS FILE/PAGE NO. 1992-0665040 OF OFFICIAL RECORDS.

AND

An approximately 65.4 acre portion of FANITA RHO TRACT T LT 7, located in the City of San Diego, State of California, exact size and location to be determined prior to recordation of this document.

APNs: 383-071-06-00, 383-071-07-00, and portion of 383-080-03-00

Note: This page is to be replaced by a legal description and map of the approximately 170.35 acre Owner’s Property, pursuant to Recital A of the attached Right of First Refusal Agreement between TY Investment, Inc. and the San Diego River Conservancy.

EXHIBIT “F”

Notice of Option Form

(TO FOLLOW ON NEXT PAGE)

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
State of California)
San Diego River Conservancy)
Attention: Michael Nelson)
1350 Front Street, Suite 3024)
San Diego, CA 92101-3604)

Space Above Line for Recorder's Use Only

NOTICE OF OPTION AGREEMENT TO TRANSFER REAL PROPERTY

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

TY Investment, Inc., a California corporation, as Optionor,

has granted to

THE STATE OF CALIFORNIA, acting by and through the San Diego River Conservancy, as Optionee

an option to receive certain real property interests in the County of San Diego, State of California, more particularly described in Exhibit 1, attached hereto and incorporated by reference. Said option is effective for a term starting on the date of recordation of this Notice, and it will expire ninety (90) days thereafter, unless said Optionee exercises the option before said time and date. If the option is exercised by the Optionee, the parties shall endeavor to close escrow within one year of the Optionee's exercise of the option. Unless a memorandum extending the option and/or close of escrow date is executed by the parties thereto or their successors in interest, and recorded on the public record on or before the date on which escrow shall close, this Notice of Option shall be considered invalid and shall not constitute a lien in any manner whatsoever on or against said real property.

Dated: September 7, 2010

TY Investment, Inc.:

BY: 

Tom "Ben" Mise

ITS: President

Exhibit 1 (Conservation and Trail Easement Deed with Exhibits)

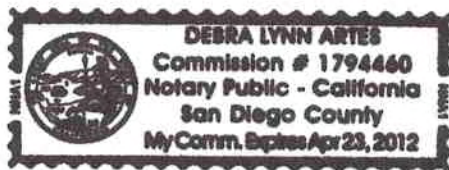
State of California)
) ss.
County of San Diego)

On September 7, 2010, before me, Debra Lynn Artes, Notary Public, personally appeared Toru Mise, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Debra Lynn Artes
Notary Public in and for said State



[seal]

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 6

SUBJECT: **CITY OF SAN DIEGO – DRAFT SAN DIEGO RIVER
PARK MASTER PLAN**

Presentation and Report
Robin Shifflet, City Planning and Community Investment

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 7

SUBJECT: **SAN DIEGO RIVER TRAIL: STATUS OF GAPS
ANALYSIS**

Presentation and Report
Mark Carpenter, KTU+A

The GAPS Analysis is posted on
<ftp://ftp.ktua.com>

username: sdrt
password: sdrt

There are low resolution versions (low) and full
print resolution versions.

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 8

SUBJECT: **ELECTION OF OFFICERS: DISCUSSION/
POSSIBLE ACTION**

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 9

SUBJECT: **WALKER PROPERTIES, SANTEE**

Adoption of Resolution ratifying action taken on March 5, 2009.

Recommendation: Adoption Resolution 10-08

Resolution No: 10-08

**RESOLUTION OF THE GOVERNING BOARD OF THE SAN DIEGO RIVER
CONSERVANCY**

**Authorizing The Executive Officer To Pursue Purchase Of The Walker Properties
And Approval of Use of Funds from
The Safe Drinking Water, Water Quality and Supply, Flood
Control, River and Coastal Protection Bond Act of 2006
(Proposition 84)**

WHEREAS, the Legislature and Governor of the State of California have provided funds to the California Coastal Conservancy for projects approved by the San Diego River Conservancy (SDRC); and

WHEREAS, the Governing Board of the San Diego River Conservancy at its March 5, 2009, meeting found that the expenditure of funds for acquiring the Walker Properties is consistent with its enabling statute, which directs the Conservancy: "to acquire and manage public land within the San Diego River Area."; and

WHEREAS, this project is consistent with SDRC's Program 1: Land Conservation of the Conservancy's Strategic Plan and also responds to the Conceptual Plan for the San Diego River Park; and

WHEREAS, The Governing Board in closed session discussed the status of real estate negotiations with its negotiators, Executive Officer Michael Nelson, Bob Flewelling and Virginia Lorne of the Trust for Public Lands; and

WHEREAS, the Governing Board unanimously resolved and authorized the Executive Officer to:

1. Subject to the approval of the California Coastal Conservancy, utilize Proposition 84 funding set aside for SDRC to acquire as many of the Walker Properties as possible at fair market value;
2. Participate in or prepare applications to all potential funding programs to accomplish the acquisition;
3. Continue to partner with the Trust for Public Land to put the Walker Properties under an option and purchase agreement; and
4. Pursue discussions with the City of Santee and the Lakeside River Park Conservancy to accept title to the property and management responsibility for it.

I, Michael J. Nelson, Executive Officer, do hereby certify that the forgoing is a full, true and correct copy of a Resolution adopted by the San Diego River Conservancy on November 4, 2010.

Michael J. Nelson
Executive Officer

State of California
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT
Meeting of November 4, 2010

ITEM: 10

SUBJECT: ADJOURNMENT