



THE CITY OF SAN DIEGO

## REPORT TO THE PLANNING COMMISSION

**DATE ISSUED:** November 13, 2014

**REPORT NO. PC-14-070**

**ATTENTION:** Planning Commission, Agenda of November 20, 2014

**SUBJECT:** RANCHO DEL SOL RESTORATION - PROJECT NO. 157399  
PROCESS FOUR

**OWNER:** BARCZEWSKI FAMILY TRUST

**APPLICANT:** Paul Metcalf, Metcalf Development & Consulting

**SUMMARY:**

**Issue(s):** Should the Planning Commission approve the restoration of a portion of a previously graded site developed with a nursery located at 3113 Rancho Santa Fe Farms Road within the Pacific Highlands Ranch Community Planning area?

**Staff Recommendation(s):**

1. **CERTIFY** Mitigated Negative Declaration No. 157399 and **ADOPT** the Mitigation, Monitoring and Reporting Program; and
2. **APPROVE** Site Development Permit No. 560724.

**Community Planning Group Recommendation:** On June 26, 2014, the Carmel Valley Community Planning Board, designated to review projects within the Pacific Highlands Ranch Planning area, voted 10-0-1 to recommend approval with one recommendation for the provision of an on-site pedestrian trail. Reference the Discussion section of the report (Attachment 12).

**Environmental Review:** Mitigated Negative Declaration No. 157399 has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) Guidelines. A Mitigation, Monitoring and Reporting Program has been prepared and will be implemented which will reduce to below a level of significance, any potential impacts identified within the environmental review process.

**Fiscal Impact Statement:** None with this action. All costs associated with the processing of this project are paid in a deposit account maintained by the applicant.

**Code Enforcement Impact:** On June 5, 2001, the Neighborhood Code Compliance Division of the Development Services Department issued a Notice of Violation for un-permitted grading activity. A Stipulation in Full Settlement for Final Judgment of Permanent Injunction (Case No. GIC 801949) was issued on October 8, 2003. The approval and implementation of this Site Development Permit will satisfy compliance terms set forth in the Stipulated Judgment and will correct the violation.

**Housing Impact Statement:** None with this action.

## **BACKGROUND**

The project proposes the habitat restoration of a portion of a previously graded site currently developed with a nursery located at 3113 Rancho Santa Fe Farms Road at its intersection with Caminito Mendiola within the Pacific Highlands Ranch Community Planning Area. The property is zoned AR-1-1 and OC-1-1 (agricultural and open space - conservation). Portions of the property are within the Multiple Habitat Planning Area (MHPA) and the Coastal Overlay Zone. The site is designated as Open Space and MHPA within the community plan (Attachments 1-3).

The site is developed with the Rancho Del Sol Nursery established in 1984. The majority of the site is vacant consisting of areas used for the growing and storage of plants, a narrow unpaved access road and accessory structures including a manager's trailer. A segment of McGonigle Creek is located within the southern portion of the property. A segment of the Carmel Valley Trunk Sewer is also located within the southern portion of the site. Surrounding developments include single-family homes, vacant land owned by Pardee ("Pardee Property") and a mix of open space and undeveloped land. Adjacent to the east is a vacant site that is designated for school use in the community plan (Attachment 4).

The subject property is part of a previously approved Planned Residential Development (PRD) No. 86-0229 and State Coastal Development Permit No. 6-86-699 approved in the late 1980s. The PRD created a 31-lot residential subdivision (Rancho Del Sol) with additional parcels identified as an open space lot and as a "farming easement" lot along with a proposed future trail location. Two of these additional parcels are owned by the applicant and were developed with the nursery. The nursery is an allowable use per the underlying zoning, the community plan, the PRD and the CDP.

As noted above, a Notice of Violation was issued by the Neighborhood Code Compliance Division for grading without required permits which resulted in a Stipulated Judgment in 2003 issued by the State Superior Court, *State Superior Court Stipulated Judgment - Case No. GIC 801949* ("Stipulated Judgment") between the State, the City of San Diego and the owner. Additionally in 2007, the Federal Army Corps of Engineers issued a Restoration Order, *Army Corps of Engineers (ACOE) Restoration Order No. SPL-2002-0667*, ("Restoration Order") to the owner for violation of the Clean Water Act, alleging that dredged or fill material had been illegally discharged into McGonigle Creek and its tributary. This unpermitted work also resulted

in the creation of an off-site pond in the tributary (Pardee Property). The Stipulated Judgment requires that the owner restore the site to pre-existing conditions or that permits are obtained for the as-graded condition. The Stipulated Judgment requires compliance with the Restoration Order issued by the Army Corps of Engineers. The Restoration Order states that the pond must be de-watered and the area returned to its pre-graded topography and condition (Attachments 5 and 6).

The project requires a Process Four Site Development Permit (SDP) for impacts to environmentally sensitive lands (ESL), including a deviation for impacts to wetlands. No new development is proposed with this application. The project would bring the site into compliance with the Notice of Violation, the Stipulated Judgment and the Restoration Order. No amendment is required to the PRD. Subsequent to the approval of the Site Development Permit, the applicant is required to obtain an amendment to the State-issued CDP to incorporate the approval of the Site Development Permit for the grading and biological restoration activities.

**Stipulated Judgment/MND Parcel Identification:** Please note that the Stipulated Judgment describes the subject property and the adjoining Pardee Property as 6 separate parcels based upon their assessor parcel numbers (APNs) issued by the County Assessor's office. The APNs are also referenced in the Stipulated Judgment as "lots" utilizing the last 2 digits of the APN as the lot identifier. The MND utilized these descriptions. For purposes of the Planning Commission Report and draft SDP documents, the subject property is identified by the legal description, although a cross reference to the lot identifier as described in the Stipulated Judgment and the MND has been included in the SDP Permit and Resolution.

## **DISCUSSION**

### **Project Description:**

The project consists of a Site Development Permit for impacts to environmentally sensitive lands and for restoration compliance, including the installation of biological remediation areas, with the Stipulated Judgment and Restoration Order for unauthorized grading. The limits of work involve a 14.3-acre area of the 32-acre subject property. The project includes the creation of an on-site wetland mitigation bank. The unauthorized grading consisted of elevating an approximate 150-foot section of an unpaved access road by the placement of fill on the dirt roadway and by adding a supporting berm within the area where it crossed a pre-existing drainage low point. The project proposes to maintain the existing elevated roadway. The applicant has indicated that the road was raised in order to reduce on-site flooding and to provide improved access through the site. The road provides the only access to the nursery.

Berming of the road blocked an existing ephemeral drainage course that is a tributary to McGonigle Creek on the property and on the adjacent lot to the east (Pardee Property). The berming that occurred to shore the roadway created a dam-like effect and over time, resulted in the creation of a pond on the adjacent Pardee Property. The pond supports sensitive biological resources including open water, southern riparian scrub and emergent freshwater marsh. A Jurisdictional Wetland Delineation and the City's Biology guidelines classify the off-site pond as

both a State and Federal wetland.

In consultations with staff and the wildlife agencies, the owner proposes to bring the site into compliance by de-watering the off-site pond (as required by the Stipulated Judgment and Restoration Order) through the construction of a new lower culvert which would drain the pond, thereby returning the area to its pre-existing condition and restoring the natural hydrology of the tributary. However, as the pond is classified as a wetland, compliance with the Stipulated Judgment and Restoration Order would result in impacts to sensitive biological resources located upstream and off-site of the project area. Although the project proposes impacts to a wetland through the drainage of open water and alteration of upstream vegetation associated with the ponded area, the project also proposes the restoration, creation and enhancement of this area and the area adjacent to McGonigle Creek currently used for the nursery operation, which would be covered with native wetland habitat. Thus the mitigation and bank areas would increase the value of the area to wildlife and result in a net gain of approximately 10 acres of high value biological resources (wetlands).

The project includes the following components:

1. Maintain the existing access road.
2. Drain the off-site pond via the construction of a new culvert prescribed by the Restoration Order to return the drainage course to its pre-existing elevation and condition. All work would be conducted on the applicant's site.
3. Create, enhance, and restore approximately 4 acres of wetland area for existing and proposed impact mitigation.
4. Create a voluntary on-site wetland mitigation area of approximately 10 acres and allow sale of mitigation credits.
5. Project implementation would occur in two phases. Phase 1 will create, restore and revegetate all the mitigation required to implement the Federal Army Corps of Engineers Restoration Order by excavating and placing 12,500 cubic yards within the Phase 2 area of the site. Phase 2 will excavate an approximate 10-acre area where new excess wetlands will be created.

### **Project Issues:**

#### **Wetland Mitigation Bank**

The project includes a proposal to voluntarily create a formal on-site wetlands mitigation bank totaling approximately 10 acres over that required for mitigation, on portions of the site located within the floodplain of McGonigle Creek and within a tributary to McGonigle Creek. The wetland creation area is currently used for planting and stored landscape materials for the nursery and is within the MHPA. Creation of the wetlands involves excavation of dredged soil within existing agricultural land to a level that would support wetland habitat, removal of invasive species, and replanting the area with wetland container native species. Biological monitoring and maintenance as outlined in Mitigated Negative Declaration No.157399 requires successful restoration within a 5-year monitoring program.



The applicant intends the bank area to be a "for profit" wetland mitigation bank which could be used for future development projects. A Final Wetland Creation Plan, approved by the City and Wildlife Agencies and a Wetland Mitigation Bank Agreement, drafted by the applicant and submitted to the City and Wildlife Agencies, would be required prior to the issuance of grading permits. After creation/enhancement/restoration is achieved, the required mitigation areas for project impacts and the excess wetland mitigation areas would be placed in a covenant of easement and receive appropriate management for preservation in perpetuity or deeded to the City.

The applicant has purposely encompassed the required mitigation into the non-required mitigation as a comprehensive wetland creation effort, such that the two cannot be separated in a manner that would allow the required mitigation to be successful. This is illustrated on submitted grading plans that do not separate out wetland mitigation area and future wetland mitigation bank area. Therefore, onsite wetland creation is considered a comprehensive effort.

#### Multiple Habitat Planning Area Correction

The project includes an MHPA Boundary Line Correction to remove a 0.7-acre portion of developed area from the MHPA and per the Wildlife Agencies, inclusion of a 2.7-acre portion of the property containing sensitive vegetation into the MHPA. The 2.7 acres is within an existing disturbed wetland vegetated portion of McGonigle Creek (Attachment 8).

#### Wetland Impacts/Deviation Analysis

As noted above, the project would impact/drain an off-site wetland (pond) via lowering of an existing culvert as required by the Stipulated Judgment and Restoration Order for the purpose of returning the natural, pre-existing tributary to its original flow lines. The ESL regulations state that impacts to wetlands within the Coastal Overlay Zone shall be avoided and only certain uses identified in Section 143.0130(d) of the ESL regulations shall be permitted. These uses include restoration projects such as the proposed project. Further, the ESL regulations state that the least environmentally damaging feasible alternative shall be allowed and that adequate mitigation must be provided. The proposed restoration activities will mitigate for project impacts caused by draining of the pond and create 10 acres of excess wetland areas over and above what is required. Staff's analysis is that project impacts are unavoidable if the stipulation and restoration orders are to be complied with and there is no feasible alternative. All impacts to biologically sensitive habitats would be reduced to less than significant levels via required full mitigation. The proposed habitat creation/restoration project is consistent with the ESL regulations regarding impacts to wetland areas.

#### Community Plan Analysis:

The Pacific Highlands Ranch Subarea Plan designates the nursery site as MHPA/Resource-based Open Space. An overarching planning policy is the conservation of the MHPA as the foundation for the overall planning of Pacific Highlands Ranch. Policies in the plan protect resources within

the MHPA (which encompasses over 48 percent of planning area) as well as supports restoration and enhancement of resource values. The project is in compliance with the plan as 2.7 acres of existing wetland would be added to the MHPA via a Boundary Line Correction and 10 acres of currently disturbed land would be a wetland creation area.

The majority of the project area proposed for environmental restoration is within the McGonigle Creek floodplain. The community plan acknowledges that McGonigle Creek as well as the McGonigle Canyon landform, are significant natural features in the community and identifies these features for conservation as MHPA/Resource-based Open Space. The Plan further notes that the community contains several major vegetation communities and sensitive species and that the majority of the more sensitive biological resources should be preserved. Much of McGonigle Canyon contains sensitive biological resources although portions of the Canyon, including most of the proposed restoration area, has been disturbed by past agricultural use. Invasive non-native plant species would be removed as a project implementation feature. The proposed restoration project is consistent with the community plan in that it would create, restore, enhance and preserve in perpetuity, biologically sensitive areas within the MHPA Open Space and through the creation of a wetland mitigation bank.

#### **Environmental Analysis:**

A Mitigated Negative Declaration (MND) No. 157399 has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) Guidelines. The City of San Diego conducted an Initial Study which determined that the proposed project could have significant environmental affects to biological resources and historical resources (archaeology and paleontology). Subsequent revisions in the project proposal create the specific mitigation identified in the MND and a Mitigation, Monitoring and Reporting Program has been prepared and will be implemented which will reduce, to a level below significance, any potential impacts identified in the environmental review process.

Biological mitigation is required for existing and proposed impacts to sensitive biological resources, including wetlands. A proposed Wetland Mitigation Bank located entirely within the MHPA would be established for existing and potential project impacts to biological resources and for potential future mitigation for other development projects. Additionally, for proposed impacts to 0.37 acres of southern maritime chapparal that are outside of the MHPA, mitigation would occur off-site at a 1:1 ratio through the purchase of mitigation credits from the Mooradian Property located between Del Mar Mesa Road and Caminito Vista Lujo or other acceptable location prior to issuance of grading permits. Please reference the table below for project impacts to biological resources:

<u>Existing/Proposed Impacts; Within and Outside of the MHPA</u>	<u>Acres Impacted</u>	<u>Mitigation Acres/Ratios Required</u>
Southern Maritime Chaparral (SMC)	0.37	0.37 (1:1)
Southern Riparian Scrub (SRS)	0.73	2.51 (3:1)
Open Water	1.05	2.10 (2:1)

Archaeological monitoring is also required, including Native American monitoring, due to the large amount of excavation proposed and for the potential of encountering sensitive cultural resources within the river alluvium. Additionally, paleontological monitoring is required as the site proposes to excavate to depths of seven feet, where the City's threshold require monitoring in high potential areas for excavation of 1,000 cubic yards to depths of 10 feet or greater. However, if a site has been previously graded, and if there is a possibility of encountering remains during construction activities, paleontological monitoring may be required given the extensive amount of grading. Last, the site is adjacent to the MHPA along the east, south and west of the proposed wetland mitigation area. As such, mitigation has been included pursuant to the MSCP Subarea Plan Land Use Adjacency Guidelines to address issues including drainage, lighting, access, toxins and noise to ensure there will be adverse impacts to MHPA land.

#### **Community Planning Group Vote:**

On October 13, 2009, the Carmel Valley Community Planning Board voted 13-0-1 to recommend approval of the project with the request that consideration be given to installing a pedestrian trail on the site. Due to a project revision in 2013, staff recommended that the applicant obtain an updated vote from the community group. The original project scope included the provision of an off-site receiver site to stockpile dredged soils. In response to nearby citizen's concerns regarding the proximity of the receiver site, the applicant conducted several meetings with the neighbors and subsequently eliminated this component of the project. On-site phasing of dredged soils is now proposed. On June 26, 2014, the community group re-affirmed their 2009 positive recommendation by a vote of 10-0-1 including the recommendation of a future public trail.

The community plan identifies a trail alignment within McGonigle Canyon that would serve as a major east-west component of the regional trail system within or in the vicinity of the existing sewer easement. The trail is also identified as a Capital Improvement Project (CIP) in the Pacific Highlands Ranch Public Facilities Financing Plan with funding through the Facilities Benefit Assessment.

In order to align with planned/existing trails and keep biological impacts to a minimum, the most likely location for a trail would be within the existing sewer easement required for the Carmel Valley Trunk Sewer. The sewer easement is on site within McGonigle Canyon just south of the proposed restoration area. The existing permit for the trunk sewer replacement project acknowledges future trail planning and development efforts within the sewer easement to include

a cooperative process between the Public Utilities Department, the Park and Recreation Department and the Carmel Valley Community Planning Board for procurement of a recreation easement and construction of a sewer maintenance road that could be acceptable to the Park and Recreation department for use as a trail. Staff therefore worked with the applicant to include a condition which addresses the community group's request by requiring the owner to execute an Irrevocable Offer to Dedicate (IOD) a recreational easement for trail purposes in favor of the City within the existing sewer alignment on-site. The condition would allow a future CIP project to exercise the IOD and obtain a trail easement within the sewer alignment as part of a separate public trail project development application subject to additional environmental review. The community group is in concurrence with this condition (Attachment 10, Condition No. 31).

**Conclusion:**

Staff has reviewed the proposed project and all issues identified through the review process have been resolved in conformance with adopted City Council policies and regulations of the Land Development Code. Staff has provided draft findings to support approval of the proposed development and draft conditions of approval. Staff recommends that the Planning Commission approve the project as proposed.

**ALTERNATIVES**

1. **Approve Site Development Permit No. 560724, with modifications.**
2. **Deny Site Development Permit No. 560724, if the findings required to approve the project cannot be affirmed.**

Respectfully submitted,

  
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Mike Westlake  
Assistant Deputy Director  
Development Services Department

  
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Sandra Teasley, Project Manager  
Development Services Department

VACCHI/SMT

Attachments:

1. Aerial
2. Community Plan Land Use Map
3. Location Map



4. Aerial Maps of Site
5. Stipulated Judgment
6. Army Corp of Engineer Restoration Order
7. Graphics (Tech Report/MND Info of Wetlands/Existing Improvements)
8. MHPA Boundary Line Adjustment
9. Draft Permit Resolution with Findings
10. Draft Permit with Conditions
11. Draft MMRP Resolution
12. Community Planning Group Recommendation
13. Ownership Disclosure Statement
14. Project Plans

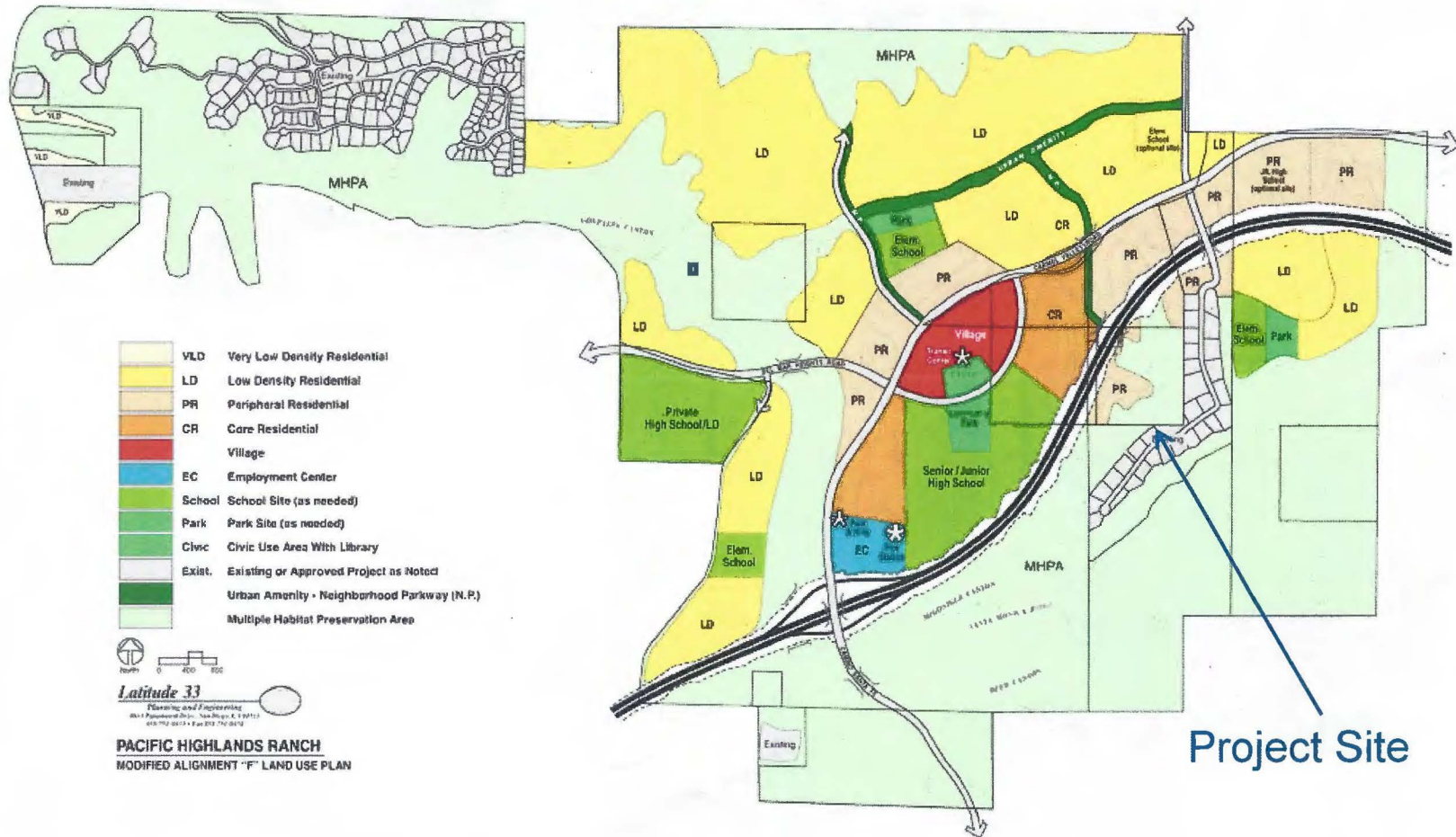


North









Latitude 33

Planning and Engineering  
3011 Piedmont Drive, San Diego, CA 92108  
(619) 594-1100 Fax (619) 770-0870

**PACIFIC HIGHLANDS RANCH**  
MODIFIED ALIGNMENT "F" LAND USE PLAN

**Modified Alignment "F" Land Use Plan** 2-1  
Pacific Highlands Ranch Subarea Plan EXHIBIT

ATTACHMENT 2



# Land Use Map

Rancho Del Sol

PROJECT NO.157399



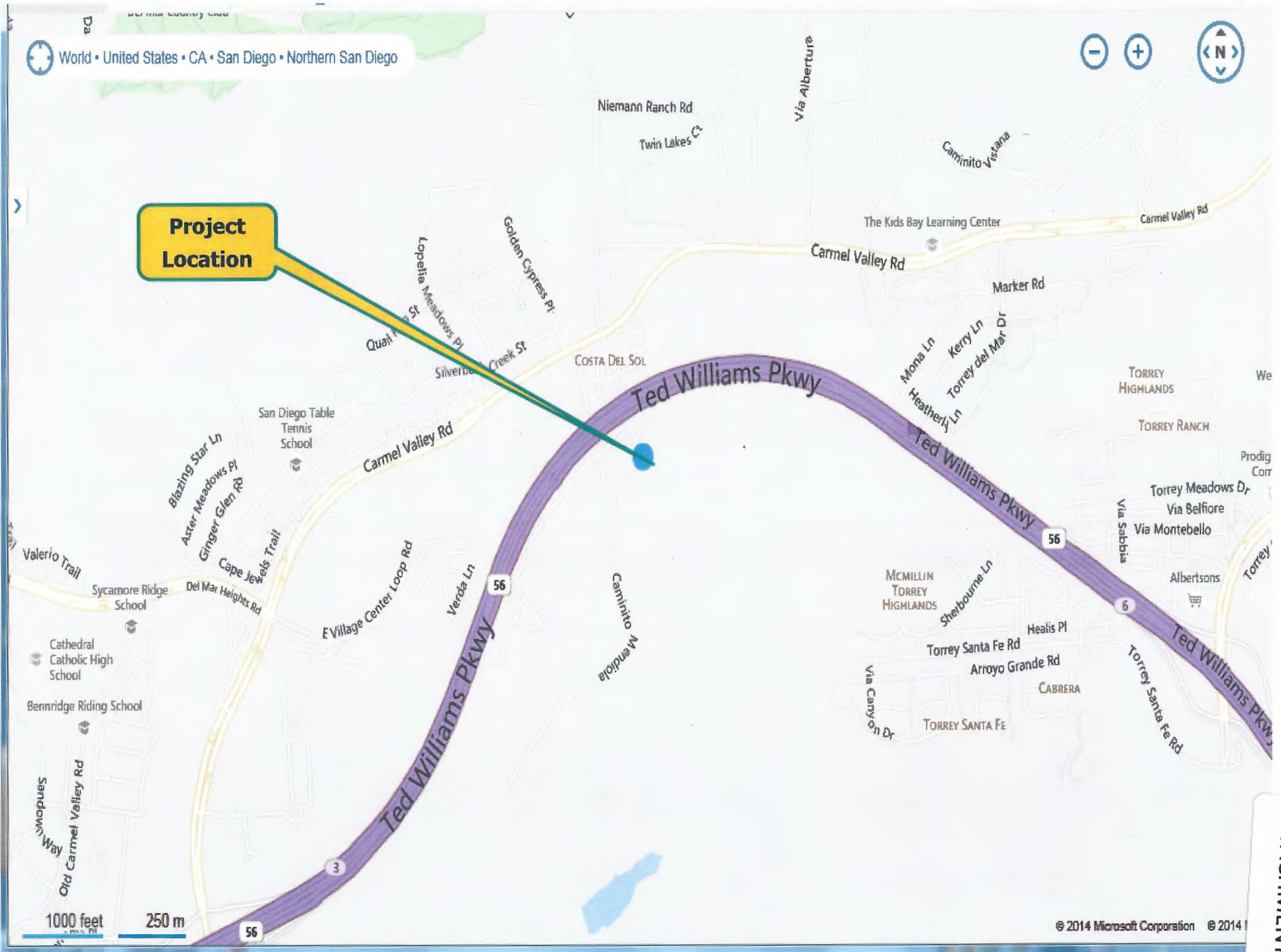




World • United States • CA • San Diego • Northern San Diego



**Project  
Location**

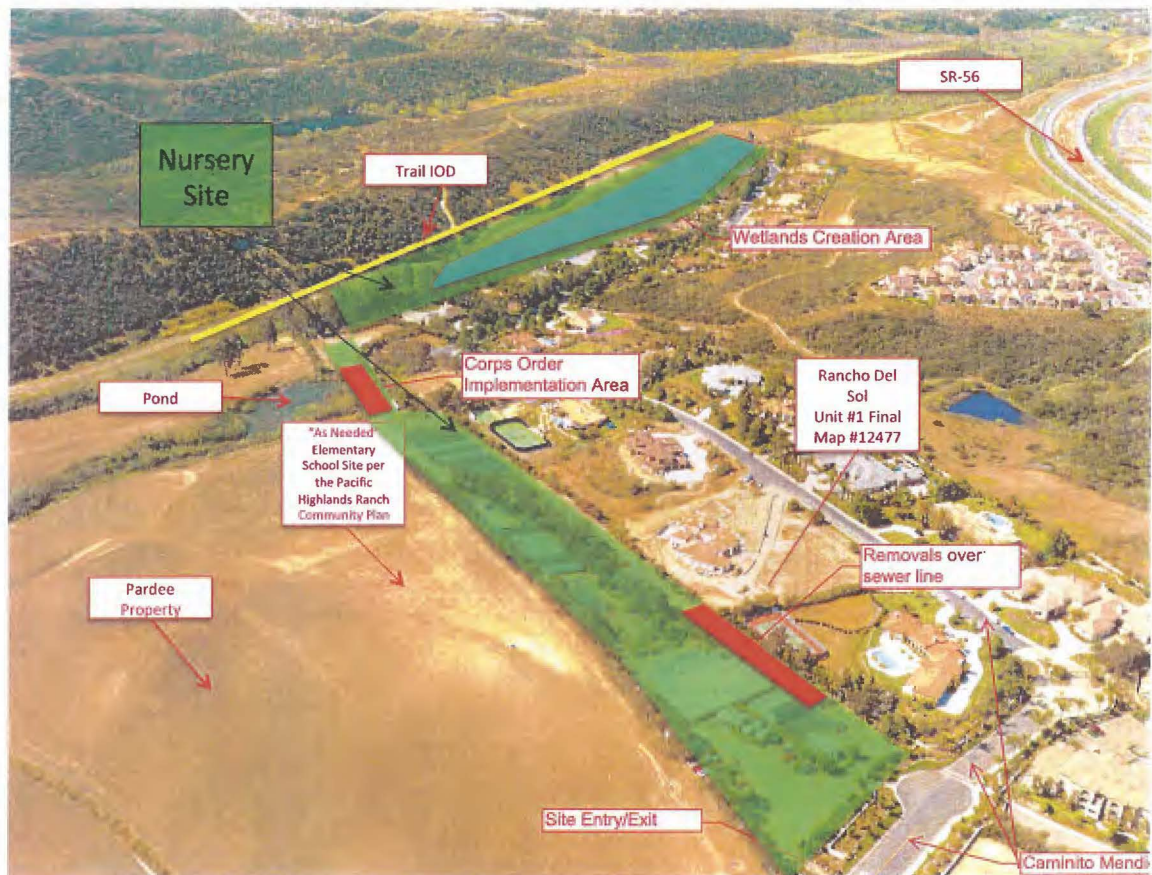














SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF  
CALIFORNIA; and THE CITY OF SAN  
DIEGO, a municipal corporation,

Plaintiffs,

v.

ROBERT D. BARCZEWSKI, individually, as  
Trustee Under Declaration of Trust Dated  
August 10, 1977, as President of RANCHO  
DEL SOL NURSERIES, INC., and as President  
of ZERO ENERGY SYSTEMS, INC.;  
RANCHO DEL SOL NURSERIES, INC., a  
California corporation; ZERO ENERGY  
SYSTEMS, INC., a California corporation; and  
DOES I through XX, inclusive,

Defendants.

ROBERT D. BARCZEWSKI, as Trustee Under  
Declaration of Trust Dated August 10, 1977, as  
President of RANCHO DEL SOL NURSERIES,  
INC., a California corporation; and DOES 1  
through 100, inclusive,

Cross-Complainants,

v.

PARDEE HOMES, a California corporation;  
THE CITY OF SAN DIEGO, a municipal  
corporation; and ROES 1 through 100, inclusive,

Cross-Defendants.

Case No. GIC 801949  
I/C JUDGE E. MAC AMOS

STIPULATION IN FULL SETTLEMENT  
FOR FINAL JUDGMENT OF  
PERMANENT INJUNCTION;  
JUDGMENT THEREON  
[CCP § 664.6]



1           Plaintiffs/Cross-Defendant ("Plaintiffs"), the PEOPLE OF THE STATE OF  
2 CALIFORNIA; and the CITY OF SAN DIEGO, a municipal corporation, appearing through their  
3 attorney, Casey Gwinn, City Attorney, by Michael D. Neumeyer, Deputy City Attorney, and  
4 Defendants/Cross-Complainant ("Defendants"), ROBERT D. BARCZEWSKI, individually, as  
5 Trustee Under Declaration of Trust Dated August 10, 1977, as President of RANCHO DEL SOL  
6 NURSERIES, INC., and as President of ZERO ENERGY SYSTEMS, INC.; RANCHO DEL  
7 SOL NURSERIES, INC., a California corporation; ZERO ENERGY SYSTEMS, INC., a  
8 California corporation (currently RANCHO DEL SOL NURSERIES, INC., a California  
9 corporation), by and through their attorney, John W. Millar, enter into the following agreement in  
10 full and final settlement of the above-captioned case without trial or adjudication of any issue of  
11 fact or law, and agree that final judgment may be so entered.

12           1.       This Stipulation in Full Settlement for Final Judgment of Permanent Injunction;  
13 Judgment Thereon ("Stipulated Judgment") is executed as of October 8, 2003, between and  
14 among Plaintiffs, the PEOPLE OF THE STATE OF CALIFORNIA; and the CITY OF SAN  
15 DIEGO, a municipal corporation, and Defendants, ROBERT D. BARCZEWSKI, individually, as  
16 Trustee Under Declaration of Trust Dated August 10, 1977, as President of RANCHO DEL SOL  
17 NURSERIES, INC., and as President of ZERO ENERGY SYSTEMS, INC.; RANCHO DEL  
18 SOL NURSERIES, INC., a California corporation; ZERO ENERGY SYSTEMS, INC., a  
19 California corporation (currently RANCHO DEL SOL NURSERIES, INC., a California  
20 corporation).

21           2.       The Parties to this Stipulated Judgment are Parties to a civil suit pending in the  
22 Superior Court of the State of California for the County of San Diego, entitled:

23                   *THE PEOPLE OF THE STATE OF CALIFORNIA; and THE*  
24                   *CITY OF SAN DIEGO, a municipal corporation, Plaintiffs, v.*  
25                   *ROBERT D. BARCZEWSKI, individually, as Trustee Under*  
26                   *Declaration of Trust Dated August 10, 1977, as President of*  
27                   *RANCHO DEL SOL NURSERIES, INC., and as President of*  
28                   *ZERO ENERGY SYSTEMS, INC.; RANCHO DEL SOL*  
                    *NURSERIES, INC., a California corporation; ZERO ENERGY*  
                    *SYSTEMS, INC., a California corporation; and DOES I through*  
                    *XX, inclusive, Defendants.*

Civil Case No. GIC 801949.

4. This action is brought under California law, and this Court has jurisdiction of its subject matter and the Parties.

Regarding the five parcels of land located southeast of the intersection of Black Mountain Road and Rancho Santa Fe Farms Road in the Carmel Valley Area of the City of San Diego, County of San Diego, State of California, more specifically, Assessor Parcel Nos. 305-060-20 ("Lot 20"), 305-040-21 ("Lot 21"), 305-021-16 ("Lot 16"), 305-041-01 ("Lot 01"), which is owned by PARDEE HOMES, however, limited to the first 350 feet from the west property line, or that area east of the west property line allegedly graded and or impacted by Defendants, whichever is greater, and 305-021-18 ("Lot 18"), which is owned by PARDEE HOMES, however, limited to the first 30 feet from the west property line, or that area east of the west property line allegedly graded and or impacted by Defendants, whichever is greater, hereinafter, the "PROPERTIES":

5. Defendants, and any of their directors, officers, partners, agents, employees, and representatives acting within the course and scope of their agency and employment, and all persons, corporations, or other entities acting by, through, under, on behalf of, or in concert with

1 Defendants, with actual or constructive knowledge of this Stipulated Judgment, shall be  
2 permanently enjoined from engaging in or performing, directly or indirectly, any of the following  
3 acts:

4           a.       Beginning any development at the PROPERTIES, provided  
5 Environmentally Sensitive Lands are determined to exist thereon, without first submitting  
6 required documentation and obtaining a Site Development Permit, in violation of San Diego  
7 Municipal Code section 143.0112;

8           b.       Maintaining, using, or developing the PROPERTIES without a Site  
9 Development Permit, if such a permit is required for the use or development, or maintaining,  
10 using, or developing the PROPERTIES contrary to the requirements or conditions of an existing  
11 Site Development Permit, in violation of San Diego Municipal Code section 126.0505.

12           c.       Maintaining, using, or undertaking any coastal development on the  
13 PROPERTIES without a Coastal Development Permit (if such a permit is required for the use or  
14 development), or maintaining, using, or developing the PROPERTIES contrary to the  
15 requirements or conditions of an existing Coastal Development Permit, or existing amendment to  
16 said permit, in violation of San Diego Municipal Code section 126.0723.

17           d.       Substantially diverting or obstructing the natural flow, or substantially  
18 changing the bed, channel, or bank of any river, stream, or lake on the PROPERTIES, without  
19 first notifying the California Department of Fish and Game of that activity, and 1) obtaining a  
20 ruling from the Department that the activity will not substantially adversely affect an existing fish  
21 or wildlife resource, or 2) the Department's proposals, or the decisions of a panel of arbitrators,  
22 have first been incorporated into the activity, in violation of California Fish and Game Code  
23 section 1603.

24           e.       Conducting any grading work at the PROPERTIES without the required  
25 Grading Permit, in violation of San Diego Municipal Code sections 129.0602 et seq.

26           f.       Operating a Horticulture Nursery on the PROPERTIES, when such nursery  
27 employs the use of buildings other than greenhouses, maintenance equipment storage buildings,  
28 . . . . .

1 and one building with a maximum area of 300 square feet for sales transactions, in violation of  
2 San Diego Municipal Code section 131.0322/131.0323(b)(3).

3 g. Erecting, constructing, enlarging, repairing, improving, converting,  
4 permanently relocating, or partially demolishing any building or structure at the PROPERTIES,  
5 without first obtaining a separate Building Permit for each building or structure from the Building  
6 Official, in violation of San Diego Municipal Code section 129.0202(a).

7 h. Installing, altering, adding to, or replacing any new or existing plumbing  
8 system, or portion thereof, within or on the PROPERTIES, without first obtaining a  
9 Plumbing/Mechanical Permit, in violation of San Diego Municipal Code section 129.0402(a).

10 i. Installing, altering, adding to, or replacing any new or existing electrical  
11 wiring, device, appliance, or equipment within or on the PROPERTIES, without first obtaining an  
12 Electrical Permit, in violation of San Diego Municipal Code section 129.0302.

13 j. Maintaining or using the PROPERTIES in violation of any of the  
14 provisions of the Land Development Code, without a required permit, or contrary to permit  
15 conditions, in violation of San Diego Municipal Code section 121.0302(a).

16 k. Depositing, permitting to pass into, or placing where it can pass into, the  
17 waters of the State of California on (or adjacent to) the PROPERTIES, or abandoning, disposing  
18 of, or throwing away, within 150 feet of the high-water mark of said waters, any cans, bottles,  
19 garbage, motor vehicle or parts thereof, rubbish, or viscera or carcass of any dead mammal, or the  
20 carcass of any dead bird, in violation of California Fish and Game Code section 5652.

21 l. Maintaining any public nuisance at the PROPERTIES, in violation of San  
22 Diego Municipal Code section 121.0302(b)(4)/11.0210 or California Civil Code section  
23 3479/3480.

24 m. Engaging in any form of unfair competition at the PROPERTIES, as  
25 defined in California Business and Professions Code sections 17200 et seq.

26 n. Maintaining any violation of the San Diego Municipal Code, California  
27 Civil Code, California Fish and Game Code, and California Business and Professions Code at  
28 . . . . .



1 the PROPERTIES, or at any other property owned or occupied by Defendants, individually or  
2 collectively, within the City of San Diego.

3         6.       Within 30 days from the date of this Stipulated Judgment, Defendants shall  
4 obtain a Letter of Permission from Pardee Homes, a California corporation, thereby authorizing  
5 Defendants, their agents and/or contractors, to enter onto the subject portions of Lots 01 and 18,  
6 for the purpose of complying with the terms and conditions of this Stipulated Judgment.

7         7.       Within 45 days from the date of this Stipulated Judgment, Defendants shall  
8 remove any and all automobile tires, large metal pipes, piles of fertilizer, and any other  
9 miscellaneous trash, junk, and/or debris from within and along the McGonigle Canyon Creek and  
10 its tributary drainage on the PROPERTIES. Defendants shall contact the California Department  
11 of Fish and Game ("CDFG") before commencing the work, and shall complete the work as  
12 directed and/or supervised by CDFG. The 45-day time period may be extended by mutual  
13 agreement of the Parties.

14         8.       Defendants authorize the City of San Diego to enter onto the PROPERTIES, for  
15 the purpose of televising the trunk sewer on Lot 20, and the 10-inch local main on Lots 21 and 16,  
16 at twelve month intervals, or at shorter intervals if said televising is determined to be reasonably  
17 necessary by the City of San Diego to assess the current condition of the sewer mains. The  
18 Parties agree to negotiate, in good faith, how the cost of said televising will be allocated between  
19 the Parties. However, if the Parties are unable to agree upon the allocation of said cost, then  
20 Defendants shall pay for that percentage of the televising cost which the Court determines is  
21 attributable to Defendants' acts, omissions, and/or the conditions on the PROPERTIES which  
22 required said televising. In either event, Defendants shall pay Plaintiff, the City of San Diego,  
23 that percentage of the televising cost, agreed to by Defendants or ordered by the Court, within 30  
24 days of invoice.

25         9.       In the event the televising (described in Paragraph 8 above) reveals damage to the  
26 trunk sewer and/or local main in an area impacted by increased fill depths and/or use of heavy  
27 equipment; and said damage is determined by the City of San Diego to present a significant risk  
28 of pipe failure and/or sewage spill:

1           a. Defendants hereby authorize the City of San Diego to enter onto the  
2 PROPERTIES, for the purpose of repairing and/or replacing the damaged portion of the sewer  
3 main;

4           b. If it is determined by the Court that said damage to the sewer main was  
5 caused, in whole or in part, by Defendants' unpermitted grading activity and/or use of heavy  
6 equipment on that portion of the main, then Defendants shall pay Plaintiff, the City of San Diego,  
7 that percentage of the cost for any such repair and/or replacement of the damaged main, which the  
8 Court determines is attributable to Defendants' unpermitted grading activity and/or use of heavy  
9 equipment.

10       10.   **Within 45 days from the date of this Stipulated Judgment**, Defendants shall  
11 submit an Erosion Control Plan, prepared by a licensed Professional Engineer, to the City of San  
12 Diego Development Services Department ("DSD") for approval. The Erosion Control Plan must  
13 conform with, among other things, each of the following:

14           a. The Plan must address all areas on the PROPERTIES containing any  
15 exposed or uncompacted dirt or fill material whatsoever, as well as any uncontrolled  
16 embankments;

17           b. The Plan must be designed to stabilize these areas, thereby controlling both  
18 erosion and runoff onto adjacent properties, as well as any erosion and/or sediment transport into  
19 the McGonigle Canyon Creek, its tributary drainage, and downstream into the Los Penasquitos  
20 Lagoon;

21           c. The Plan must involve an appropriate combination of erosion control  
22 measures, which may include, but are not limited to, hydro-seeding (native species only), silt  
23 fencing, fiber rolls, sandbags, and/or hay bales;

24           d. The Plan must utilize Best Management Practices, in accordance with  
25 Regional Water Quality Control Board and City of San Diego standards.

26       Note: Defendants shall provide an additional copy of the Erosion Control Plan to CDFG  
27 and the United States Department of the Army, Corps of Engineers ("Corps"), for their review  
28 and comment.

1           11. In the event DSD requests corrections to Defendants' Erosion Control Plan  
2 (described in Paragraph 10 above), then **within 30 days from the date of any such request**,  
3 Defendants shall resubmit their corrected Plan to DSD, CDFG, and the Corps.

4           12. Upon DSD's approval of Defendants' Erosion Control Plan (described in  
5 Paragraph 10 above), Defendants shall **immediately** implement the erosion control measures in  
6 accordance with the approved Plan, and obtain all necessary inspections and final approvals from  
7 the City of San Diego. These erosion control measures must remain in place on the  
8 PROPERTIES prior to, during, and after the permitting process described in this Stipulated  
9 Judgment.

10           13. In the event of a large storm event, which causes any significant erosion or runoff  
11 from the PROPERTIES onto adjacent properties, and/or causes any significant erosion or  
12 sediment transport from the PROPERTIES into the McGonigle Canyon Creek, its tributary  
13 drainage, and/or downstream into the Los Penasquitos Lagoon, Defendants shall hold harmless,  
14 and indemnify, the City of San Diego (as well as all County, State, and Federal agencies) for any  
15 resulting damage, injury, and/or loss caused by said erosion and/or runoff, but only to the extent  
16 the Court determines that said damage, injury, and/or loss are attributable to Defendants' acts,  
17 omissions, and/or the conditions on the PROPERTIES, taking into consideration Defendants'  
18 implementation of the Erosion Control Plan approved by the City of San Diego (described in  
19 Paragraphs 10 through 12 above).

20           14. **Within 150 days from the date of this Stipulated Judgment**, Defendants shall  
21 submit each of the following reports to DSD:

22           a. A report, prepared by a licensed professional, which documents all  
23 discretionary approvals and construction permits for the PROPERTIES, from July 1983 to the  
24 present. The report must also include documentation of any and all agricultural use on the  
25 PROPERTIES, from July 1983 to the present. Defendants shall attach to this report all  
26 documents (including approved maps, drawings, and photographs), which establish and/or  
27 corroborate each and every discretionary approval and construction permit for, and any  
28 agricultural use on, the PROPERTIES during this time period:

1           b.     A Biological Report, prepared by a licensed professional, which complies  
2 with the requirements of the City of San Diego's Biological Guidelines, dated July 2002. This  
3 report must address all prior (actual) impacts to biological resources on the PROPERTIES from  
4 1983 to the present, and separately address any and all future (proposed) impacts to said resources  
5 on the PROPERTIES. In addition, this report must include a Jurisdictional Delineation of waters  
6 of the United States (prepared in accordance with Corps standards), as well as an analysis of past  
7 and present Jurisdictional Wetlands (City, State, and Federal) impacted on the PROPERTIES;

8           c.     A Hydrology Report/Analysis, prepared by a licensed Professional  
9 Engineer, which contains each of the following:

10                   1)     A Hydrology Study of the McGonigle Canyon Creek Watershed, to  
11 determine the Base Flood Quantities for the Creek (and surrounding tributary drainage) on the  
12 PROPERTIES; and,

13                   2)     Three Hydraulic Models, using the information from the Hydrology  
14 Study (described above), which demonstrates the flow quantities of the Base Flood through the  
15 PROPERTIES, for each of the following: i. the conditions on the PROPERTIES prior to the  
16 alleged unpermitted grading activity, ii. the current conditions on the PROPERTIES, and iii. the  
17 proposed project;

18           d.     A Steep Slopes Analysis, prepared by a licensed Professional Engineer,  
19 which complies with the Steep Hillside regulations set forth in San Diego Municipal Code  
20 section 143.0142. This report must address the condition of all Steep Hillside on the  
21 PROPERTIES prior to the alleged unpermitted grading activity, the current condition of said  
22 hillside, and any future impacts to said hillside in connection with the proposed project.

23           15.     Within 60 days from the date of DSD's written response to Defendants'  
24 submittal (described in Paragraph 14 above), Defendants shall submit a complete set of plans  
25 (including all necessary drawings, photographs, calculations, reports, and fees), prepared by a  
26 licensed Professional Engineer, to DSD, for the purpose of obtaining either of the following  
27 permits:  
28 . . . . .



1           a.     A Site Development Permit, to maintain Defendants' use and development  
2 of Lots 20, 21, and 16 as a horticulture nursery, and to restore those portions of Lots 01 and 18,  
3 which were previously graded and/or impacted by Defendants, to their original (pre-graded)  
4 topography and condition, provided said restoration of Lots 01 and 18 is agreed to by DSD  
5 (without objection by any County, State, and/or Federal agency). The plans for this permit must  
6 address the alleged presence of Sensitive Biological Resources, the 100-Year Floodplain, and  
7 Steep Hillsides on the PROPERTIES, and must incorporate all areas on the PROPERTIES which  
8 have been (or will be) graded, cleared, grubbed, excavated, filled, terraced, and/or developed; or

9           b.     A Grading Permit to restore those areas on the PROPERTIES, which were  
10 previously graded, cleared, grubbed, excavated, filled, terraced, and/or developed, to their  
11 original (pre-graded) topography and condition.

12           16.    In the event DSD requests corrections to Defendants' plans regarding the Site  
13 Development Permit (described in Paragraph 15(a) above), then **within 45 days from the date of**  
14 **any such request**, Defendants shall resubmit their corrected plans to DSD.

15           17.    **Within 60 days from the date of DSD's written response to Defendants'**  
16 **submittal (described in Paragraph 14 above)**, Defendants shall submit a complete set of plans  
17 (including all necessary drawings, photographs, calculations, reports, and fees), prepared by a  
18 licensed Professional Engineer, to the California Coastal Commission ("CCC"), for the purpose  
19 of obtaining an amendment to the previously issued Coastal Development Permit for Lots 20, 21,  
20 and/or 16, to maintain Defendants' use and development of said Lots as a horticulture nursery.  
21 The plans for this permit must incorporate all areas on the PROPERTIES (within CCC's  
22 jurisdiction) which have been (or will be) graded, cleared, grubbed, excavated, filled, terraced,  
23 and/or developed.

24           18.    In the event CCC requests corrections to Defendants' plans regarding the  
25 amendment to the Coastal Development Permit (described in Paragraph 17 above), then **within**  
26 **45 days from the date of any such request**, Defendants shall resubmit their corrected plans to  
27 CCC.

28 . . . . .

1           19.     **Within 60 days from the date the Site Development and Coastal Development**  
2 **Permits (described in Paragraphs 15(a) and 17 above) are issued by DSD and CCC,**  
3 **respectively, Defendants shall submit a complete set of plans (including all necessary drawings,**  
4 **photographs, calculations, reports, and fees), prepared by a licensed Professional Engineer, to**  
5 **DSD, for the purpose of obtaining each of the following permits:**

6               a.     A Grading Permit to maintain those areas on Lots 20, 21, and 16, which  
7 have been (or will be) graded, cleared, grubbed, excavated, filled, terraced, and/or developed,  
8 provided the Grading Plans are consistent with the requirements and conditions set forth in said  
9 Site Development and Coastal Development Permits;

10              b.     A Grading Permit to restore those portions of Lots 01 and 18, which were  
11 previously graded, cleared, grubbed, excavated, filled, terraced, and/or developed by Defendants,  
12 to their original (pre-graded) topography and condition, provided said restoration of Lots 01 and  
13 18 is agreed to by DSD (without objection by any County, State, and/or Federal agency); and

14              c.     A Building Permit to maintain any and all green houses, shade structures,  
15 commercial coaches, trailers, and/or accessory structures on Lots 20, 21, and 16.

16           20.     In the event DSD requests corrections to Defendants' plans regarding the Grading  
17 and/or Building Permits (described in Paragraph 19 above), then **within 30 days from the date**  
18 **of any such request, Defendants shall resubmit their corrected plans to DSD.**

19           21.     **Within 90 days from the date DSD issues the Grading and Building Permits**  
20 **(described in Paragraph 19 above), Defendants shall obtain all necessary inspections and final**  
21 **approvals from the City of San Diego for each of these permits.**

22           22.     If at any time DSD and/or CCC denies the Site Development and/or Coastal  
23 Development Permits (described in Paragraphs 15(a) and 17 above), or the Court determines that  
24 Defendants have failed to comply with Paragraphs 16, 18, and/or 20 above (requiring Defendants  
25 to resubmit their corrected plans to DSD and CCC by their respective deadlines), then **within 60**  
26 **days of either occurrence, Defendants shall apply for a Grading Permit to restore those portions**  
27 **of the PROPERTIES which were previously graded, cleared, grubbed, excavated, filled, terraced,**  
28 **and/or developed to their original (pre-graded) topography and condition**

1           23.     In the event DSD requests corrections to Defendants' plans regarding the Grading  
2 Permit (described in Paragraphs 15(b) and 22 above), then **within 30 days from the date of any**  
3 **such request**, Defendants shall resubmit their corrected plans to DSD.

4           24.     **Within 90 days from the date DSD issues the Grading Permit (described in**  
5 **Paragraphs 15(b) and 22 above)**, Defendants shall obtain all necessary inspections and final  
6 approvals from the City of San Diego for the Grading Permit.

7           25.     **Within 180 days from the date of this Stipulated Judgment**, Defendants shall  
8 submit a complete set of plans (including all drawings, photographs, calculations, reports, and  
9 fees) to the appropriate State and/or Federal agencies, for the purpose of obtaining all necessary  
10 permits for Defendants' alleged unpermitted development of the PROPERTIES, including but not  
11 limited to, the following agencies and permits:

12           a.     To the California Department of Fish and Game ("CDFG"), to obtain a  
13 Streambed Alteration Agreement ("Agreement") in accordance with California Fish and Game  
14 Code section 1603, which addresses any and all alterations to the McGonigle Canyon Creek and  
15 its tributary drainage on the PROPERTIES, caused by Defendants' alleged unpermitted grading  
16 activity within and along the Creek, as well as any and all impacts to alleged wildlife resources on  
17 the PROPERTIES, including but not limited to, songbirds, raptors, rodents, reptiles, amphibians,  
18 insects, and invertebrates. Defendants shall submit their plans to CDFG with a Complete  
19 Notification Package and Notification Fee. In addition, Defendants shall complete all of the  
20 required work in the Creek in accordance with the terms and conditions of the Agreement;

21           b.     To the United States Department of the Army, Corps of Engineers  
22 ("Corps"), to obtain a Corps of Engineers Permit, which addresses the alleged discharge of  
23 dredged and/or fill material into the McGonigle Canyon Creek and adjacent riparian wetland  
24 areas on the PROPERTIES (within Corps jurisdiction), as well as the alleged inundation of  
25 riparian vegetation on or adjacent to the PROPERTIES.

26           26.     In the event the State and/or Federal agencies request corrections to Defendants'  
27 plans regarding the State and/or Federal permits (described in Paragraph 25 above), then **within**  
28 . . . . .

do1  
?

1 30 days from the date of any such request, Defendants shall resubmit their corrected plans to  
2 the appropriate agencies.

3 27. Within 90 days from the date the State and Federal permits (described in  
4 Paragraph 25 above) are issued, Defendants shall obtain all necessary inspections and final  
5 approvals from the appropriate agencies for these permits.

6 28. Defendants shall provide an additional copy of all plans and corrected plans  
7 (described in Paragraphs 10, 11, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, and 27 above) to Pardee  
8 Homes, for their review and comment.

9 29. The Parties understand that Defendants seek to maintain their development and use  
10 of Lots 20, 21, and 16, as permitted and approved by DSD, and that costs have been incurred to  
11 date, are being incurred hereunder, and will continue to be incurred, in connection with the  
12 permitting process, as required herein. Defendants agree to perform their obligations under  
13 Paragraphs 6 through 35 of this Stipulated Judgment both timely and in good faith. Likewise,  
14 Plaintiff, the City of San Diego, shall process any and all preliminary or actual permit  
15 applications both timely and in good faith, with the understanding that Defendants shall be  
16 afforded the opportunity to enjoy the highest and best use of Lots 20, 21, and 16, as allowed  
17 under the San Diego Municipal Code.

18 30. Defendants agree that any act, intentional or negligent, or any omission or failure  
19 by their contractor or agent to comply with the requirements set forth in Paragraphs 6 through 28  
20 above will be deemed to be the act, omission, and/or failure of Defendants, and shall not  
21 constitute a defense to a failure to comply with any part of this Stipulated Judgment. Further,  
22 should any dispute arise between any contractor or agent and Defendants for any reason,  
23 Defendants agree that such dispute shall not constitute a defense to any failure to comply with  
24 any part of this Stipulated Judgment, nor justify a delay in executing the requirements herein.

25 31. Defendants shall allow inspectors from the City of San Diego access to all areas on  
26 Lots 20, 21, and 16 to inspect and take photographs, for the purpose of monitoring Defendants'  
27 compliance with the terms and conditions of this Stipulated Judgment:  
28 . . . . .



- 1           a.     Time: 8:00 a.m. - 4:00 p.m.;
- 2           b.     Notice: 48 hours is required (notice to Defendants' attorney and to
- 3 Defendants' on-site manager for the Rancho Del Sol Nursery is sufficient).

4                                   **MONETARY PAYMENTS**

5           32.    On the date this Stipulated Judgment is filed with the Court, Defendants shall

6 pay Plaintiffs the amount of \$221,000.00 (two hundred twenty-one thousand dollars and no

7 cents) as follows:

- 8                   a.     A payment of \$23,516.25 (twenty-three thousand five hundred sixteen
- 9 dollars and twenty-five cents), in costs, payable to the "City Treasurer";
- 10                  b.     A payment of \$176,483.75 (one hundred seventy-six thousand four
- 11 hundred eighty-three dollars and seventy-five cents), payable to the "City Treasurer";
- 12                  c.     A payment of \$21,000 (twenty-one thousand dollars and no cents),
- 13 payable to the "California Department of Fish and Game."

14           33.    In the event Defendants fail to comply with any of the terms and conditions set

15 forth in Paragraphs 5 through 32 above, Defendants shall pay Plaintiffs civil penalties in the

16 amount of \$2,500 (two thousand five hundred dollars and no cents) per day, for each day

17 Defendants fail to comply with any of the terms and conditions set forth in Paragraphs 5 through

18 32 above. Such civil penalties, however, shall not accrue unless and until Defendants, or their

19 attorney of record, have been served with a Notice of Non-Compliance, providing Defendants a

20 grace period of 21 days to comply with the Paragraph(s) in question.

21           34.    Any and all payments required under Paragraphs 32 and 33 (above) shall be in the

22 form of a cashier's check. Each payment shall be payable to the "City Treasurer," except for the

23 \$21,000 payment described in Paragraph 32(c) above, which shall be payable to the "California

24 Department of Fish and Game." All payments shall be delivered to the Office of the City

25 Attorney, Code Enforcement Unit, 1200 Third Avenue, Suite 700, San Diego, California 92101-

26 4103, Attention: Michael D. Neumeyer.

27 . . . . .

28 . . . . .

1           35. In the event of default by Defendants as to any amount due under this Stipulated  
2 Judgment, Defendants shall pay Plaintiffs interest at the prevailing legal rate, from the date of  
3 default to the date of final payment.

4                           **ENFORCEMENT OF THIS STIPULATED JUDGMENT**

5           36. Nothing in this Stipulated Judgment shall prevent any Party from pursuing any  
6 remedy as provided by law, to subsequently enforce this Judgment and/or the provisions of the  
7 San Diego Municipal Code (or any other law), including but not limited to, civil contempt, civil  
8 penalties, and/or criminal prosecution.

9                           **RETENTION OF JURISDICTION**

10          37. Jurisdiction is retained for the purpose of enabling any Party to this Stipulated  
11 Judgment to apply to this Court at any time for such further orders or directions as may be  
12 necessary or appropriate for the enforcement, construction, operation, and/or modification of this  
13 Judgment, or to assess monetary penalties in the event any of the Parties violate this Stipulated  
14 Judgment.

15                           **DISMISSAL OF DOES AND ROES**

16          38. All allegations as to Does I through XX, inclusive, and ROES 1 through 100,  
17 inclusive, are dismissed.

18                           **RECORDATION OF JUDGMENT**

19          39. Plaintiff shall record a copy of this Stipulated Judgment against Defendants'  
20 properties (Assessor Parcel Nos. 305-060-20 (Lot 20), 305-040-21 (Lot 21), and 305-021-16 (Lot  
21 16)) with the San Diego County Recorder's Office, the legal descriptions of which are as follows:

22   Lot 20

23                           LOT 1 OF RANCHO DEL SOL UNIT 1, IN THE CITY OF SAN  
24                           DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA,  
25                           ACCORDING TO MAP THEREOF NO. 12477, FILED IN THE  
26                           OFFICE OF THE COUNTY RECORDER OF SAN DIEGO  
27                           COUNTY ON OCT 18, 1989.

28   Lot 21

PARCEL 3 OF PARCEL MAP NO. 12337, IN THE CITY OF  
SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF  
CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY  
RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 24, 1982  
AS FILE NO. 82-296204 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM LOTS 1 THROUGH 31,  
INCLUSIVE, AND LOT 32 OF RANCHO DEL SOL UNIT 1, IN  
THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE  
OF CALIFORNIA, ACCORDING TO MAP THEREOF NO.  
12477, FILED IN THE OFFICE OF THE COUNTY RECORDER  
OF SAN DIEGO COUNTY ON OCTOBER 18, 1989.

Lot 16

PARCELS 3 AND 4 OF PARCEL MAP NO. 12337, IN THE  
CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF  
CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY  
RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 24, 1982  
AS FILE NO. 82-296204 OF OFFICIAL RECORDS.

40. Upon verification by Plaintiffs that Defendants have fully complied with  
Paragraphs 5 through 35 above, Plaintiffs shall record an Acknowledgement of Satisfaction  
against Defendants' properties (Lots 20, 21, and 16) with the San Diego County Recorder's  
Office, wherein Plaintiffs shall acknowledge that the terms of this Stipulated Judgment are  
satisfied in full.

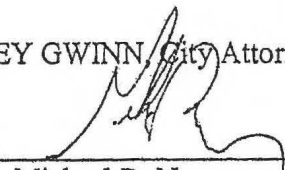
By signing this Stipulated Judgment, Defendants admit that they have personal knowledge  
of all the terms of this Stipulated Judgment as set forth herein. Service by mail shall constitute  
sufficient notice for all purposes.

IT IS SO STIPULATED.

Dated: 10/8, 2003

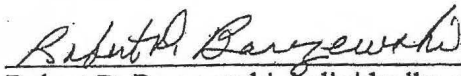
CASEY GWINN, City Attorney

By

  
Michael D. Neumeyer  
Deputy City Attorney

Attorneys for Plaintiffs

Dated: 10/2, 2003

  
Robert D. Barczewski, individually, as Trustee  
Under Declaration of Trust Dated August 10,  
1977, as President of Rancho Del Sol Nurseries,  
Inc., and as President of Zero Energy Systems,  
Inc.  
Defendant

1 Dated: 10/7, 2003

Approved as to Form and Content

2  
3 John W. Millar, Esq.  
Attorney for Defendants

4  
5  
6 Upon the stipulation of the Parties hereto, and upon their agreement to the entry of  
7 Judgment without trial or adjudication of any issue of fact or law herein, and good cause  
8 appearing therefore, IT IS SO ORDERED, ADJUDGED, AND DECREED.

9 Dated: 10/8/03

JUDGE OF THE SUPERIOR COURT

E. MAC AMOS, JR.

10  
11  
12  
13 DATE: NOV 08 2003

Attest: A true copy,  
Clerk of the Superior Court

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28 Deputy / F. P. GEE

A. ANZALONE