

**DATE:** July 21, 2016

**TO:** WCA Governing Board

**FROM:** Debbie Enos, Deputy Executive Officer

**Through:** Mark Stanley, Executive Officer

**SUBJECT:** Item 11: Consideration of a resolution to: 1) accept Conservation Easements within the Puente Hills totaling 12 acres; and, 2) accept a monitoring fund endowment managed by The San Diego Foundation.

**RECOMMENDATION:** That the Watershed Conservation Authority (WCA): 1) accept conservation easements within the Puente Hills totaling 12 acres over portions of Assessor Identification Number 8137-021-911; and 2) accept a monitoring fund endowment managed by The San Diego Foundation.

**BACKGROUND:** Monterey Park Retail Partners (MPRP), has proposed a staged commercial retail development on a 62-acre site located in the City of Monterey Park at Paramount Boulevard/State Route 60 interchange. The project in a later stage will permanently remove 2.77 acres of marginal coastal sage scrub habitat that supports federally listed as threatened coastal California gnatcatcher and will permanently impact three nesting pairs that were identified by LSA Associates Inc. (LSA) in June 2015 as being present on the property during a present-absent survey. As a result of the findings, the Developer hired LSA to prepare a Low-Effect Habitat Conservation Plan (HCP) in support of its application to the United States Fish and Wildlife Service (USFWS) for an incidental take permit pursuant to Section 10(a)(1)(B) of the federal Endangered Species Act of 1973.

The United States Fish and Wildlife Service (USFWS), in review of the application and Habitat Conservation Plan issued an order requiring the developer to mitigate for impacts to coastal California gnatcatcher (*Polioptila californica californica*; CAGN) at a 4:1 mitigation ratio requiring 12 acres of coastal sage scrub (CSS) habitat restoration and long-term management.

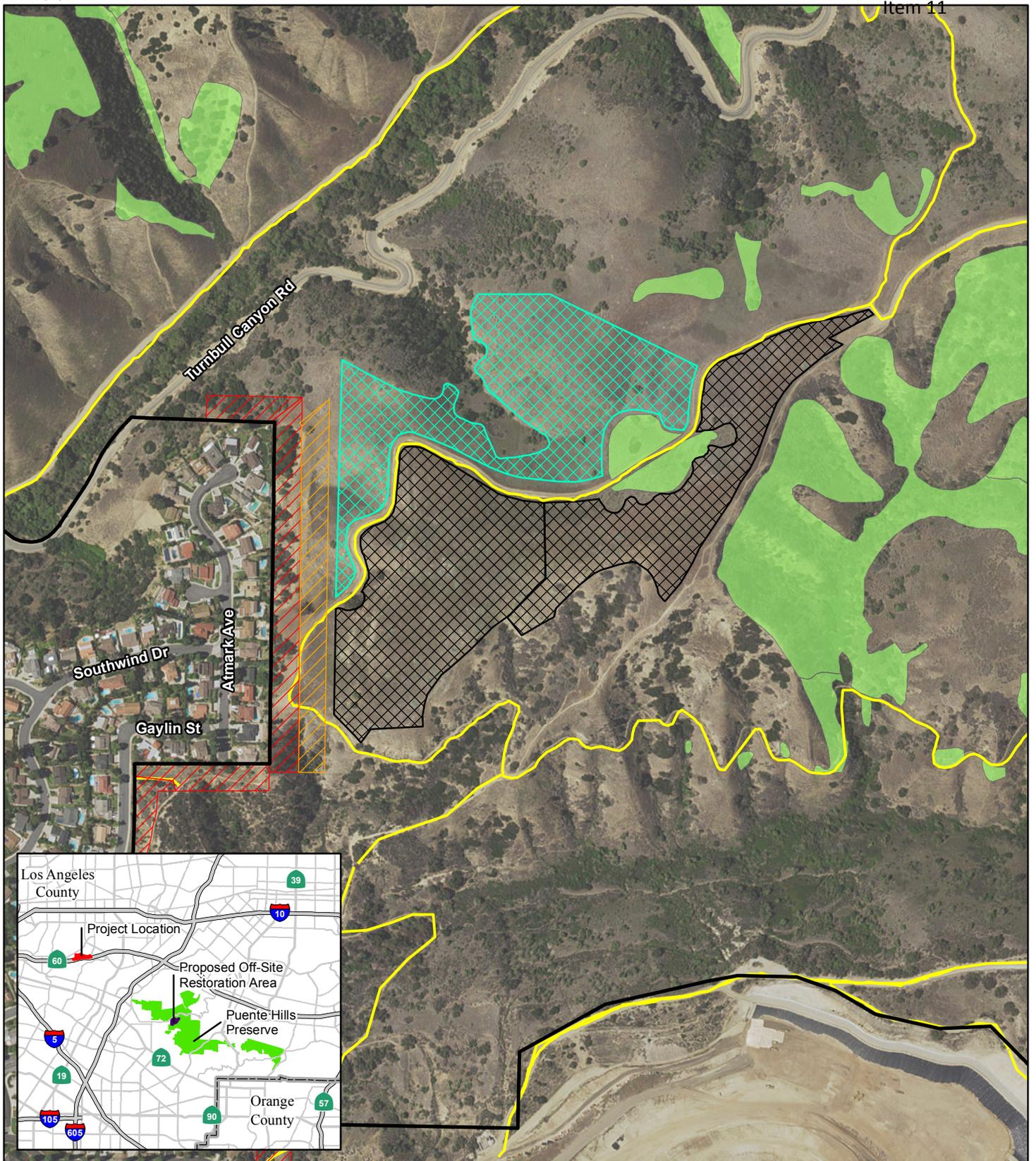
MPRP to satisfy its obligations will enter into an agreement with the Habitat Authority in August 2016 to restore habitat consistent with the gnatcatcher on portions of the Habitat Authority's property located in the Puente Hills and to permanently conserve the area via conservation easements over the restored sites (Exhibit A – CE Site Map). The Habitat Authority will provide both restoration work and will provided long-term monitoring and management based on an approved Habitat Management Plan currently being developed.

U.S. Department of Fish and Wildlife (USFWS) has directed that a suitable third-party accept the conservation easements, with WCA having been identified as acceptable Conservation Easement (CE) Holder. The CE holder's responsibilities begin at the time the Conservation Easements are duly recorded. The CE's long term monitoring and annual reporting requirements commence following the successful completion of the habitat restoration work to be conducted by the Habitat Authority and is accepted by USFWS. It is anticipated that the monitoring and reporting requirement of the CE will commence approximately five years from the start of restoration work to be completed by the Habitat Authority which is scheduled to begin sometime with the next 12 months. (Exhibit B – Sample Checklist).

Additionally, MPRP is required to establish a monitoring endowment fund for the CE holder. MPRP will satisfy this requirement by depositing a corpus amount with the San Diego Foundation held for the benefit of the CE holder. WCA has requested the corpus amount of \$41,500 (Exhibit C – Endowment Calculation). The San Diego Foundation will manage the fund, issue earning reports and will make future annual distributions to the CE holder of record to fund the monitoring and reporting requirement associated with acceptance of the Conservation Easements. (Exhibit D – DRAFT Endowment Agreement).

In consultation with legal counsel and the Habitat Authority, has determined the CE holder's responsibilities and requirements will be of a similar nature to those attached to the Conservation Easements accepted by WCA authorized by resolution 2016-13 on the January 21, 2016 Board Meeting. Staff recommends acceptance of the conservation easements and endowment for monitoring funds as a suitable third-party Conservation Easement Holder. The WCA will accept the conservation easements upon receipt of perfect recordable legal descriptions and executed Fund Agreement.

**FISCAL INFORMATION:** Anticipated annual expense for monitoring and reporting is estimated in current dollars to be \$1,000 annually, this value will be adjusted for inflation. An Endowment will be funded by MPRP and held and managed by the San Diego Foundation for the benefit of the Easement Holder of record. The fund will make distributions from the Conservation Easement Fund to the Easement Holder, in order to offset the costs/expenses incurred by the Easement Holder in performing its monitoring and inspection obligations under each Conservation Easement.

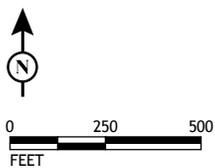


Item 11

LSA

LEGEND

- Monterey Park HCP (12.00 acre)
- Potential Restoration Areas
- Puente Hills Preserve
- Trails
- Preserve Fuel Modification Zones
- Potential Fuel Modification
- Conservation Easements



SOURCE: ESRI (2014); OCWR (2016)  
 F:\MRP1501\GIS\HRP\_OffsiteMitigation.mxd (7/18/2016)

FIGURE 2

**DRAFT**

*Monterey Park Market Place  
 Off-Site CSS Restoration  
 Project Detail*

Annual Review of the Conservation Easement Areas on Puente Hills Habitat Preservation Authority land in Turnbull Canyon, Whittier, CA (Monterey Park Retail Partners Mitigation)

Watershed Conservation Authority

PROHIBITED ACTIVITIES

			(Circle One)	
		NOT		
1.	Unseasonal Watering	OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

		NOT		
2.	Use of herbicides, pesticides, biocides, fertilizers, or other agricultural chemicals, except to control non-native and invasive plant species.	OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

		NOT		
3.	Off-Road Vehicle use or use of motorized vehicles off existing roadways.	OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

5.	Livestock grazing or agriculture.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

6.	Horseback riding, bicycling, hunting or fishing or other recreational activities.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

7.	Commercial or industrial uses.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

8.	Any physical evidence of legal or de facto division, subdivision or partitioning of the property	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

9.	Construction or placement of any building, billboard, or any other structure or improvement of any kind.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

10.	Dumping or accumulation of trash, soil, ashes, refuse, waste, bio-solids	NOT OBSERVED	OBSERVED	N/A
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or any other materials.

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(If observed, describe corrective action or response taken)

11.	Planting, introduction or dispersal of non-native or exotic plant or animal species.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

12.	Excavation or extraction of minerals/soil.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

13.	Recent alterations of topography/grading, including building of roads.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

14.	Recently removed, cut, or destroyed trees, shrubs, or other vegetation, not including invasive and non-native species.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

15.	Manipulating, impounding, or altering of any water, body of water, or water course or any other activities detrimental to water quality.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

Additional

Notes: \_\_\_\_\_

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**Monterey Park Marketplace  
Conservation Easement Endowment Forecast**

Actual Returns 2002-2014

Reinvestment into Principal

Spending Policy Rate:	5.00%
Interest & Dividends Rate of Return:	2.2816% <i>If PRIN drops below HVG only Interest &amp; Dividends can only be distributed</i>
Admin Fee:	0.75% <i>(min. \$250)</i>

Historical Gift Value (HGV):	\$41,500.00	\$41,500.00	\$41,500.00	\$41,500.00	\$41,500.00	\$41,500.00	\$41,500.00	\$41,500.00	\$41,500.00	\$41,500.00	\$41,500.00	\$41,500.00	\$41,500.00
Actual Annual Return:	-10.0%	23.2%	11.9%	8.1%	12.8%	7.7%	-30.0%	26.3%	14.8%	-3.2%	14.3%	13.7%	3.6%

Year Ending:	12/31/2002	12/31/2003	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008	12/31/2009	12/31/2010	12/31/2011	12/31/2012	12/31/2013	12/31/2014
<b>Principal (permanent)</b>													
Beginning Principal Balance	41,500	37,076	45,353	50,388	54,081	60,569	61,971	41,211	49,447	53,927	49,591	53,848	58,164
Contributions	-	-	-	-	-	-	-	-	-	-	-	-	-
Earnings	(4,150)	8,602	5,397	4,081	6,922	4,664	(18,591)	10,838	7,318	(1,726)	7,092	7,377	2,094
Spending Policy (5% current policy)	(852)	(2,284)	(2,537)	(2,723)	(3,050)	(3,262)	(2,169)	(2,602)	(2,838)	(2,610)	(2,834)	(3,061)	(3,013)
Spending Policy % Check:	2.28%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
<b>Ending PRIN Balance:</b>	<b>36,498</b>	<b>43,394</b>	<b>48,212</b>	<b>51,746</b>	<b>57,953</b>	<b>61,971</b>	<b>41,211</b>	<b>49,447</b>	<b>53,927</b>	<b>49,591</b>	<b>53,848</b>	<b>58,164</b>	<b>57,245</b>
	Below HGV						Below HGV						
<b>Distributable (5% current policy)</b>													
Beginning Distributable Balance	-	-	-	-	-	-	-	-	-	-	-	-	-
Contributions	-	-	-	-	-	-	-	-	-	-	-	-	-
Spending Policy (5% current policy)	852	2,284	2,537	2,723	3,050	3,262	2,169	2,602	2,838	2,610	2,834	3,061	3,013
Admin Fee	(274)	(325)	(362)	(388)	(435)	(465)	(309)	(371)	(404)	(372)	(404)	(436)	(429)
Distribution to Easement Holder*	-	-	-	-	-	(2,797)	(1,860)	(2,232)	(2,434)	(2,238)	(2,430)	(2,625)	(2,584)
Reinvest in Principal:	578	1,958	2,176	2,335	2,616	-	-	-	-	-	-	-	-
<b>Total Fund Balance:</b>	<b>37,076</b>	<b>45,353</b>	<b>50,388</b>	<b>54,081</b>	<b>60,569</b>	<b>61,971</b>	<b>41,211</b>	<b>49,447</b>	<b>53,927</b>	<b>49,591</b>	<b>53,848</b>	<b>58,164</b>	<b>57,245</b>

\* Inflation calculated using actual historic values  
The information presented is intended only for possible forecast purposes. The San Diego Foundation is unable to make any guarantees on financial returns.



## FUND AGREEMENT for the

Southern California Edison - TRTP CAGN  
Conservation Easement Monitoring Fund  
(a *Designated Mitigation Endowment Fund*)

THIS AGREEMENT is made and entered into on December 11, 2015, by and between THE SAN DIEGO FOUNDATION, a California nonprofit public benefit corporation described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("TSDF"), and SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation ("SCE", "Founder" or "Project Proponent").

### RECITALS

A. On December 17, 2009, the California Public Utilities Commission ("CPUC") issued Decision 90-12-44 granting to SCE a Certificate of Public Convenience and Necessity relative to the construction of the Tehachapi Renewable Transmission Project ("TRTP").

B. In connection with the environmental review and approval processes for the TRTP, the U.S. Fish and Wildlife Service ("USFWS" or "Agency") issued a biological opinion on July 31, 2010 ("B.O.") that, in relevant part, obligated SCE to perform certain mitigation activities to offset TRTP-related impacts to occupied and designated critical habitat for the coastal California gnatcatcher.

C. In partial satisfaction of SCE's mitigation obligations under the B.O., SCE entered into a Mitigation Agreement with the Puente Hills Habitat Preservation Authority ("PHHPA") dated December 10, 2015 (the "Mitigation Agreement").

D. Pursuant to the Mitigation Agreement, SCE retained PHHPA to restore 53 acres of open space lands owned by PHHPA and located within the Puente Hills region of Los Angeles County (collectively, the "Mitigation Sites").

E. In addition to the above-referenced restoration activities, the Mitigation Agreement obligates PHHPA to (i) permanently conserve, manage and monitor the restored Mitigation Sites and (ii) grant to the Watershed Conservation Authority ("WCA") a conservation easement over the Mitigation Sites (the "Conservation Easement").

F. In accordance with the express terms of the Mitigation Agreement, SCE is obligated to create an endowment fund in the amount of Forty-One Thousand Five Hundred and No/100 Dollars (\$41,500.00) (the "Conservation Easement Endowment Amount"), representing a principal amount that, when managed and invested, is reasonably anticipated to cover the funding needs for WCA's perpetual performance of monitoring and inspection of the Mitigation Sites pursuant to the requirements of the Conservation Easement (the "Conservation Easement Monitoring Requirements").

G. TSDf is a California nonprofit public benefit corporation that, in relevant part, accepts, invests, manages and disburses funds for a variety of community purposes - including the management and preservation of open space lands.

H. Subject to the terms and conditions set forth in this Agreement:

- SCE is desirous of tendering to TSDf an amount equal to the Conservation Easement Endowment Amount, which amount shall be held, managed, invested and disbursed by TSDf solely for, and permanently restricted to, the performance and satisfaction of the Conservation Easement Monitoring Requirements upon the Mitigation Sites; and
- TSDf is willing to accept, manage, invest and disburse the Conservation Easement Endowment Amount for the benefit of the Mitigation Sites vis-à-vis the performance and satisfaction of the Conservation Easement Monitoring Requirements thereon.

I. Consistent with the provisions of the Mitigation Agreement, WCA's performance of the Conservation Easement Monitoring Requirements shall not commence until such time as the Conservation Easement has been duly recorded. As such, WCA may not access or otherwise utilize the proceeds generated by the Conservation Easement Endowment Amount until such time as the Conservation Easement has been recorded. And, until such time as the Conservation Easement has recorded, the earnings generated by the Conservation Easement Endowment Amount shall be retained and reinvested as part of the corpus of the Conservation Easement Endowment Amount.

## DEFINITIONS

The following terms, as used in this Agreement, shall be defined as follows:

(1) Agency: The United States Fish and Wildlife Service (*i.e.*, the lead governmental entity issuing the B.O. in relation to the TRTP and requiring the establishment of the conservation easement endowment).

(2) Project Proponent: Southern California Edison Company (*i.e.*, the entity proposing the TRTP and obligated to mitigate the impacts thereof in accordance with the B.O.). In this Agreement, the Project Proponent is also known as the "Founder," and such terms may be used interchangeably.

(3) Easement Holder: The Watershed Conservation Authority, a local public entity of the State of California exercising joint powers of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (RMC) and the Los Angeles County Flood Control District (*i.e.*, the entity selected by SCE and PHHPA to hold the Conservation Easement and to perform regular inspection and monitoring tasks upon the Mitigation Sites in accordance with the terms of the Conservation Easement).

(4) Conservation Easement: That instrument executed and recorded by PHHPA that (i) identifies WCA as the Easement Holder, (ii) recognizes Agency as a third-party beneficiary, (iii) establishes the boundaries of the Mitigation Sites and (iv) provides for the permanent protection of the resource values located on the Mitigation Sites through the prohibition and prevention of any use or activity on the Mitigation Sites that could impair or interfere with the identified resource values.

(5) Conservation Easement Monitoring Requirements: The inspection and monitoring activities more particularly described in the Conservation Easement, which activities are to be accomplished on a regular basis by the Easement Holder.

(6) Property: The portions of real property to be conserved and managed by PHHPA pursuant to the Mitigation Agreement and the Conservation Easement (*i.e.*, the Mitigation Sites).

(7) Mitigation Agreement: The agreement between Project Proponent and PHHPA dated December 10, 2015 concerning PHHPA's restoration, conservation and long-term management and monitoring of the Mitigation Sites.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. NAME OF FUND

Concurrent with its execution and delivery of this Agreement, Project Proponent irrevocably transfers the Conservation Easement Endowment Amount to TSDF to establish in TSDF the Southern California Edison - TRTP CAGN Conservation Easement Monitoring Fund (the "Fund") as an endowment for the purpose described in Section 2 below. An endowment is a permanent fund. Endowment funds are pooled for maximum benefit and invested to achieve long-term capital growth. Contributions are irrevocable and become assets of The San Diego Foundation. As an endowment fund for the purpose described in Section 2 below, the Fund shall be operated and administered in accordance with (i) Sections 65965, 65966, 65967 and 65968 of the California Government Code and (ii) the Uniform Prudent Management of Institutional Funds Act, California Probate Code Section 18501 et seq. ("UPMIFA"), except to the extent TSDF may adhere, from time to time, to more rigorous standards or requirements than those proscribed by UPMIFA. Expenditures from the Fund shall be made in the manner described for endowment funds under UPMIFA Section 18504. TSDF may receive additional irrevocable gifts of property acceptable to TSDF from time to time from Project Proponent and from any other source to be added to the Fund, all subject to the provisions hereof.

2. PURPOSE

Subject to the limitations of Section 4 below, the primary purpose of the Fund ("Purpose") shall be to support the Easement Holder in furtherance of the inspection and monitoring of the Property in accordance with the Conservation Easement. In the event that in the future the Easement Holder (i) no longer constitutes an organization described in Section 170(c)(1) of the Internal Revenue Code, (ii) becomes subject to bankruptcy proceedings under state or federal law, (iii) liquidates and dissolves or otherwise ceases to exist, (iv) fails to submit to Agency and TSDF in a timely manner (or within such reasonable period as determined by Agency and TSDF) the annual income and expense report (the "Expense Report") along with reimbursement to the Fund of any unused funds from any previous distribution(s) and an annual certification, signed by the President or Chief Financial Officer of the Easement Holder, certifying as to the accuracy and completeness, in all material respects, of the Expense Report and the Easement Holder's compliance with the requirements imposed upon it under the Conservation Easement (the "Certification"), or (v) proves unable to fulfill substantially all of the duties described in the Conservation Easement as determined by either the Agency or a court of law, then the assets of the Fund shall be applied as described in Section 5 below.

### 3. INVESTMENT OF FUNDS

TSDF shall have all powers necessary or desirable to carry out the Purpose of the Fund, including, but not limited to, the power to retain, invest and reinvest the Fund in any manner within the “prudent person” standard and the power to commingle the assets of the Fund with those of other funds for investment purposes, subject however, to the requirements of Sections 5231 and 5240 of the California Corporations Code.

### 4. DISTRIBUTEES

Subject to Section 5 below, earnings allocated by TSDF to the Fund shall be distributed exclusively for charitable, scientific, literary or educational purposes or to organizations of the type to which an individual taxpayer may make deductible charitable contributions, gifts, and bequests under the income, gift and estate tax provisions of the Internal Revenue Code of 1986, as amended, and of the Revenue and Taxation Code of California. It is intended by the foregoing that at the time a distribution is made from the Fund, the distribution must be made for a charitable, scientific, literary or educational purpose as described in, or to an organization which is described in, Sections 170(c)(1) or (2), of the Internal Revenue Code of 1986, as amended, and Section 17201 of the Revenue and Taxation Code of California, or to a government entity acceptable to Agency. Distributions from the Fund shall be within the purposes and procedures of TSDF as contained in its Articles of Incorporation and its Bylaws.

### 5. DISTRIBUTION

Distributions from the Fund may be made from earnings and so much of the net gains (realized and unrealized) in the fair value of the assets of the Fund as is prudent under the standard established by Section 18504 of UPMIFA. Distributions shall be made to the Easement Holder (or such other permissible distributees) and at such times and in such amounts as may be requested by Easement Holder (or other permissible distributee), subject to the approval of the TSDF Board of Governors. Subject to the limitations of Section 18504 of UPMIFA, distributions shall be made each year to the extent needed to cover the Easement Holder’s expenses incurred for such year in satisfying the Conservation Easement Monitoring Requirements, provided, however, TSDF is not, and shall not in the future under any circumstances be deemed to be, a party to the Mitigation Agreement or the Conservation Easement. Moreover, TSDF shall have no liability or responsibility whatsoever for the funding needed to cover such expenses to the extent such funding need is greater than the distributable amount of the Fund. There shall be no requirement that all earnings and net gains be distributed each year; earnings and net gains may be

accumulated and added to principal, and shall not later be available for distribution.

Distributions shall be made to such distributees of the type described in Section 4 above as may be designated by the Board of Governors of TSDF except as modified in accordance with Section 6 below.

In the event that Agency or Project Proponent notify TSDF in writing that Easement Holder has misused or diverted any monies from the inspection and monitoring purposes required by the Conservation Easement or any of the events listed in Section 2 above have occurred, TSDF shall (i) within fourteen (14) days cease making any further distributions from the Fund to the Easement Holder, (ii) provide the Easement Holder with written notice of such cessation of further distributions, and (iii) if Agency elects to undertake the Easement Holder's inspection and monitoring responsibilities over the Property, make distributions from the Fund to Agency or make distributions from the Fund to a distributee designated by Agency and approved the TSDF Board of Governors as described in Section 6 below.

Without limiting the foregoing, all parties hereto acknowledge and agree that distributions from the Fund are to be made only for the Purpose described in Section 2 above, and that the Fund is not intended to provide distributions to address the effects of emergencies or natural disasters.

Unless the Conservation Easement provides that another person or entity shall prepare an annual fiscal report that complies with the requirements set forth in Section 65966(e) of the California Government Code, TSDF shall prepare such an annual fiscal report. Such reports are available via TSDF's website, [www.sdfoundation.org](http://www.sdfoundation.org).

## 6. CONTINUITY OF THE FUND

If any of the events referred to in Section 2(i), (ii), (iii), (iv), (v) or Section 5 (iii) above occur, TSDF and Agency shall elect a new nonprofit habitat management organization approved by Agency and the TSDF Board of Governors.

The Fund shall continue so long as assets are available in the Fund and the purposes in the Fund can be served by its continuation. If the Fund is terminated for any of the above reasons, TSDF shall grant all remaining funds to Agency for use in accomplishing the Purpose or, in the event the Agency no longer exists or the Purpose is no longer necessary, devote any remaining assets in the Fund exclusively for charitable purposes that:

- a. are within the scope of the charitable purposes of TSDF's Articles of Incorporation; and,
- b. most nearly approximate, in the good faith opinion of the Board of Governors, of the original purpose of the Fund.

7. NOT A SEPARATE TRUST

The Fund shall be subject to the Articles of Incorporation and Bylaws of TSDF. All money and property in the Fund shall be assets of TSDF, and not a separate trust, and shall be subject only to the control of TSDF. Pursuant to Treasury Regulations, the Board of Governors of TSDF has the power "to modify any restriction or condition on the distribution of funds for any specified charitable purpose or to any specified organization if, in the sole discretion of the Board of Governors, such restriction or condition becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served." Treas. Reg. §1.170A-9(e)(11)(v)(B) and (E). Notwithstanding the foregoing, TSDF acknowledges and agrees that the assets of the Fund shall be used and distributed solely and exclusively for the Purpose.

8. COSTS OF THE FUND

Founder understands and agrees that the Fund shall share a fair portion of the total administrative costs of TSDF. The administrative cost annually charged against the Fund shall be determined in accordance with the then current Fee Policy identified by TSDF as the fee structure applicable to Funds of this type. Any costs to TSDF in accepting, transferring or managing property donated to TSDF for the Fund shall also be paid from the Fund.

9. ACCOUNTING

This Fund shall be accounted for separately and apart from other gifts to TSDF.

10. CHARITABLE DEDUCTIONS

TSDF has provided no advice or assurance to Founder as to the tax treatment of the amounts deposited in the Fund. Founder has been advised and given the opportunity to seek independent advice as to such tax treatment.

11. DISCLAIMERS

TSDF shall have no duty of any kind whatsoever to monitor or determine the Easement Holder's compliance with the Conservation Easement other than to accept receipt, annually, of the Expense Report and the Certifications. TSDF shall have no liability whatsoever with respect to the performance of any of the obligations of the Easement Holder under the Conservation Easement. The responsibility for inspecting and monitoring the Property is limited solely to the Easement Holder. TSDF shall have no obligation whatsoever to enforce the terms and provisions of the Conservation Easement.

12. ATTACHMENTS

If checked below, the attachment(s) so designated shall be incorporated by reference herein and hereby made a part of this Agreement as if fully set forth in this Agreement (provided that the applicable attachments are executed by Founder).

- Addendum To Fund Agreement for Southern California Edison - TRTP CAGN Conservation Easement Monitoring Fund
- Endowment Distribution Election for Southern California Edison - TRTP CAGN Conservation Easement Monitoring Fund

13. CERTIFICATION

Pursuant to California Government Code Section 65968(e), TSDF certifies that it meets all of the following requirements:

- a. TSDF has the capacity to effectively manage the Fund;
- b. TSDF has the capacity to achieve reasonable rates of return on the investment of the Fund similar to those of other prudent investors for endowment funds and shall manage and invest the Fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, consistent with UPMIFA;
- c. TSDF uses generally accepted accounting practices (GAAP) as promulgated by the Financial Accounting Standards Board or any successor entity;
- d. TSDF will be able to ensure that the Fund is accounted for, and tied to, the Property; and
- e. TSDF has an investment policy that is consistent with UPMIFA.

**[THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]**

DRAFT

IN WITNESS WHEREOF, Founder hereby executes this agreement as of the Effective Date.

Southern California Edison Company

Signature: \_\_\_\_\_ 

Printed Name: \_\_\_\_\_ BAUDER

Title: \_\_\_\_\_ VP - OPERATIONAL SERVICES

Approved by the President & CEO of The San Diego Foundation on 12/17/15

By: \_\_\_\_\_ 

B. Kathlyn Mead  
President & CEO

Enc.: Program Guidelines



**ADDENDUM TO FUND AGREEMENT**  
for

Southern California Edison - TRTP CAGN  
Conservation Easement Monitoring Fund

THIS ADDENDUM TO FUND AGREEMENT is dated as of the same date as the Fund Agreement by and between THE SAN DIEGO FOUNDATION (“TSDF”) and Southern California Edison (“Founder” or “Project Proponent”) and amends and supplements the Fund Agreement as follows:

14. DISPUTE RESOLUTION

A. Mediation. Founder and TSDF agree to mediate any dispute or claims arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorneys fees, even if they are otherwise available to that party in any such action. Exclusions from this mediation agreement are specified in Section 14.C below.

B. Arbitration of Disputes. Founder and TSDF agree that any dispute or claim in law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be submitted for neutral, non-binding arbitration before an arbitrator who is mutually acceptable to the parties. The arbitrator shall be a retired judge or justice, or an attorney with at least 20 years of experience, unless the parties mutually agree upon different qualifications. The parties shall have the right to discovery in accordance with the Code of Civil Procedure Section 1283.85. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Exclusions from this arbitration provision are specified in Section 14.C below.

C. Exclusions. Any matter that is within the jurisdiction of any bankruptcy court shall be excluded from mediation and arbitration.

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DRAFT

IN WITNESS WHEREOF, Founder hereby executes this Addendum as of the Effective Date.

Southern California Edison Company

Signature: \_\_\_\_\_



Printed Name: \_\_\_\_\_

BAUDER

Title: \_\_\_\_\_

VP - OPERATIONAL SERVICES

Approved by the President & CEO of The San Diego Foundation on 12/17/15.

By: \_\_\_\_\_



B. Kathlyn Mead  
President & CEO



The San Diego Foundation  
Growing a Vibrant Region

**ENDOWMENT DISTRIBUTION ELECTION**  
**for**  
Southern California Edison - TRTP CAGN  
Conservation Easement Monitoring Fund

Allocation of earnings are made semi-annually to each Fund in March and September. Earnings are available for distribution semi-annually, annually, or on request after an allocation period. Distributable earnings will remain distributable unless it is requested that the earnings be reinvested. Earnings reinvested become a part of principal and cannot be accessed in the future for distribution.

It is the Easement Holder's responsibility to request that TSDF end reinvestment in the fund with adequate advance notice. For annual distributions, TSDF must be notified 15 months in advance of requested distribution date. For semi-annual distributions, TSDF must be notified 9 months in advance of requested distribution date.

Please check one of the following: (If no selection is made earnings will be held until distribution is requested by founder(s) or advisor(s))

- Please distribute the earnings semi-annually. (March and September)
- Please distribute the earnings annually.  
**Circle one:** March or September
- Please hold the earnings until distribution is requested.  
**Please note distributable balance earnings are not credited to the fund.**
- Please reinvest the earnings

(This selection can be changed at any time, but becomes effective on July 1 and January 1.)

Southern California Edison Company

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

BAUER

Title: \_\_\_\_\_

VP - OPERATIONAL SERVICES



### PROGRAM GUIDELINES

The San Diego Foundation. The San Diego Foundation (“TSDF”) is a California nonprofit public benefit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“IRC”). TSDF is recognized as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi) and operates as a “community trust” under U.S. Treasury Regulations Section 1.170A-9T(f)(11). All contributions to and assets of TSDF are subject to its Articles of Incorporation, Bylaws and Program Policies. TSDF reserves the right to modify the terms and conditions of its Articles of Incorporation, Bylaws and Program Policies at any time.

Donor Advised Funds. As a community foundation, TSDF may establish for its donors a “donor advised fund,” which is separately identified by reference to the donor or donors. The fund is owned and controlled by TSDF and the donor or persons appointed by the donor have the privilege of providing advice with respect to the fund’s investments or distributions. TSDF has final authority over the distribution of all grants from its donor advised funds, and reserves the right to decline or modify a grant recommendation that is not consistent with these policies or TSDF’s charitable purposes. Gifts to a donor advised fund are irrevocable.

Other Funds. In addition to donor advised funds, TSDF also establishes scholarship funds (discussed below), agency funds (for the benefit of a specified charity), field of interest funds (for a specified charitable purpose) and habitat funds (to administer funds set aside to maintain ecological preserves). Gifts to these funds are irrevocable.

Fund Minimums. Generally, a minimum of \$50,000 is required to establish an agency fund and \$25,000 for all other funds.

Providing Grant Advice to Donor Advised Funds. Once a donor advised fund has been established and funded, the advisor(s) named in the agreement may recommend distributions to qualified charitable organizations. (TSDF staff will perform due diligence to verify that the organization is a current, qualified charity.) The following rules govern grant recommendations:

Minimums. Each recommended grant should be for at least \$250.00.

Procedure. Unless otherwise restricted as an endowment, grants may be recommended out of the original principal, as well as accumulated investment earnings, if any. Grant recommendations can be made at any time during the year, except for designated endowment funds, which make distributions in March and/or September. A maximum of four (4) grants may be made per year from Agency non-endowment funds. Recommendations can be submitted by mail, facsimile or electronic mail. Forms and instructions for making grant recommendations will be provided upon creation of a fund, as part of an advisor orientation process.

Grant Restrictions. The following restrictions apply to grants:

- i. No Indirect Benefit. Grants from donor advised funds may not be used to secure any benefit from the grantee for the donor, the advisor or any persons related to them.
- ii. Enforceable Pledges. Grants from donor advised funds may not be used to discharge or satisfy a charitable pledge or obligation that is legally enforceable against the donor or any other person.
- iii. Event Tickets. Grants from donor advised funds may not be used to pay for goods or services of value received by the donor, advisor or their family members. For example, grants may not be used to support any charitable event, including fundraising dinners, concerts, auctions, or other benefit functions when the donor would receive a return benefit, such as the benefit of being able to attend a fundraising dinner or event. Further, no grants may be used to pay for any portion of a split or bifurcated disbursement to a charity. A split or bifurcated payment refers to the splitting of a payment to a charity, such as for tickets to an event, into two parts: the deductible portion and the non-deductible portion.
- iv. Giving to Individuals. Donors may not choose a specific individual to receive a benefit from a grant from a donor advised fund.

v. Prohibited Loans & Compensation. Donors, advisors or any related parties may not receive grants, loans, compensation or similar payments (including expense reimbursements) from donor advised funds.

Restricted Organizations and Purposes. TSDF will not approve grant recommendations that are for non-functionally integrated Type III supporting organizations; supporting organizations that provide support to organizations controlled by the donor, advisor or related persons; supporting organizations that are controlled by the donor, advisor, or related persons; private non-operating foundations; lobbying, political campaigns or other political activities; or any purpose that is not entirely charitable.

Remedial Action. TSDF will take remedial action if it discovers that grants have been made for improper purposes. Remedial actions may include, but are not limited to, a requirement that the recipient charity return the grant and/or termination of the donor's advisory privileges.

Anti-Terrorism Provisions. As part of the grant review process, TSDF checks all recommended grant recipients against the Treasury Department's List of Specially-Designated Nationals, other U.S. and foreign government watch lists, and the IRS list of organizations whose tax exemption has been suspended under IRC Section 501(p). TSDF will not approve grant recommendations to organizations that appear on such lists.

Scholarship Funds. Scholarship funds may have a scholarship advisory committee. All scholarship advisory committee members must be approved by the TSDF's Board of Governors prior to making the first scholarship awards and thereafter annually. The founder may participate on the scholarship advisory committee, provided that neither the founder nor the founder's designees (related parties) may chair the scholarship advisory committee or in any way control the selection process or constitute a majority of the scholarship advisory committee members. In the event the scholarship advisory committee shall cease to be in existence, the Board of Governors of TSDF shall serve as the advisor of the scholarship fund. All scholarships shall be awarded on an objective and nondiscriminatory basis using procedures that have been approved in advance by the Board of Governors of TSDF and that have been designed to ensure that all such grants meet the requirements of paragraphs (1), (2), or (3) of Section 4945(g) of the Internal Revenue Code of 1986.

Income and Estate Tax Deductions. TSDF does not provide any advice or assurance to its donors as to the income tax treatment of amounts deposited in a fund. Donors are advised to seek independent advice as to such income tax treatment.

Investments. The fund advisors for endowment funds will have the assets invested in TSDF's Endowment pool. The fund advisors for non-endowment funds with assets in excess of \$25,000 may recommend that the assets of the fund be invested in one of three investment pools (subject to liquidity requirements); information regarding the composition of each investment pool will be provided to the donor at the time the fund is established. Such recommendations are advisory, and TSDF has final authority over the investment of assets in its funds.

Fees and Costs. Each fund established at TSDF shall share a fair portion of the total administrative costs of TSDF. The administrative cost annually charged against each fund shall be determined in accordance with the then current fee policy of TSDF as the fee structure applicable to funds of its type. Administrative fees for charitable expenses will be negotiated and incurred based upon the complexity of the transaction. Charitable expenses apply exclusively to Field of Interest or Special Project Funds. In addition, upon receipt of assets upon the death of a donor, a onetime estate fee will be assessed in accordance with the then current fee policy of TSDF. Any costs to TSDF in accepting, transferring or managing property donated to TSDF for a fund shall also be paid from such fund.

Provision for Governing Law. These Program Policies, all fund agreements, and any program-related agreement executed by a Donor shall be governed by California law. All gift agreements are deemed to be entered into in the State of California, and all contributions to the TSDF are intended to be administered and managed in the State of California.

Confidentiality. All information concerning donors' or prospective donors' gifts, including names of beneficiaries, gift amounts, and other personal information shall be kept confidential unless permission is obtained from the donor to release such information.

July 21, 2016 – Item 11

**RESOLUTION 2016-33**

**RESOLUTION OF THE WATERSHED CONSERVATION AUTHORITY TO: 1) ACCEPT CONSERVATION EASEMENTS WITHIN THE PUENTE HILLS TOTALING 12 ACRES OVER PORTIONS OF ASSESSOR IDENTIFICATION NUMBER 8137-021-911; AND, 2) ACCEPT A MONITORING FUND ENDOWMENT MANAGED BY THE SAN DIEGO FOUNDATION.**

**WHEREAS**, the Watershed Conservation Authority (WCA) has been established to facilitate joint projects between the Rivers and Mountains Conservancy and Los Angeles County Flood Control District; and

**WHEREAS**, The Watershed Conservation Authority has been established to focus on projects which will provide open space, habitat restoration, and watershed improvement projects in both the San Gabriel and Lower Los Angeles Rivers watershed; and

**WHEREAS**, this action accepts conservation easements within the Puente Hills totaling 12 acres over portions of Assessor Identification Number 8137-021-911; and

**WHEREAS**, this action accepts a monitoring fund endowment managed by The San Diego Foundation; and

**WHEREAS**, this action is exempt from the environmental impact report requirements of the California Environmental Quality Act (CEQA).

*Therefore be it resolved* that the WCA hereby:

1. **FINDS** that this action is consistent with the purposes and objectives of the WCA.
2. **FINDS** that the actions contemplated by this resolution are exempt from the environmental impact report requirements of the California Environmental Quality Act.
3. **ADOPTS** the staff report dated July 21, 2016.
4. **ACCEPTS** conservation easements within the Puente Hills totaling 12 acres over portions of Assessor Identification Number 8137-021-911.
5. **ACCEPTS** a monitoring fund endowment managed by The San Diego Foundation.

*~ End of Resolution ~*

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Resolution 2016-33

Motion: \_\_\_\_\_ Second: \_\_\_\_\_

Ayes: \_\_\_\_\_ Nays: \_\_\_\_\_ Abstentions: \_\_\_\_\_

Passed and Adopted by the Board of the  
**WATERSHED CONSERVATION AUTHORITY**  
On July 21, 2016

\_\_\_\_\_  
Brian Mejia, Governing Board Chair

ATTEST: \_\_\_\_\_

Terry Fujimoto  
Deputy Attorney General