

COOPERATIVE AGREEMENT AMONG THE
STATE OF CALIFORNIA, THE COUNTY OF
SAN DIEGO AND THE SAN ELIJO LAGOON
CONSERVANCY FOR THE OPERATION AND
MAINTENANCE OF THE SAN ELIJO LAGOON
ECOLOGICAL RESERVE

This Agreement is made and entered into this 30 day of January 2007, by the State of California (State), acting by and through the Department of Fish and Game, the County of San Diego, a political subdivision of the State of California (County), and the San Elijo Lagoon Conservancy, a California non-profit corporation (Conservancy).

RECITALS

WHEREAS, the San Elijo Lagoon (Lagoon) is a wetland/estuary located on both sides of Interstate 5 in the cities of Encinitas and Solana Beach; and

WHEREAS, State owns approximately 348 acres of real property in and around the Lagoon; and

WHEREAS, by Lease No. PRC 6913 effective December 1, 1985, State leased an unspecified amount of its land to County for 49 years for the operation and maintenance of San Elijo Nature Center;

WHEREAS, County owns approximately 567.09 acres of real property in and around the Lagoon and has leased such lands to the State (Department of Fish and Game) pursuant to a lease dated May 12, 1981 that expires on June 30, 2006; and

WHEREAS, Conservancy owns 62.03 acres of real property in and around the Lagoon; and

WHEREAS, the real property owned by each party in and around the Lagoon abuts or is contiguous to the real property owned by one or both of the other parties;

WHEREAS, pursuant to California Code of Regulations, title 14, section 630(b)(103), the State Fish and Game Commission declared the property owned by the County and the State to be the San Elijo Lagoon Ecological Reserve (Reserve); and

WHEREAS, on May 12, 1981 State and County entered into the Cooperative Agreement Between the State of California, Department of Fish and Game and the County

of San Diego for the Operation and Maintenance of San Elijo Lagoon Regional Park and Ecological Reserve, and this agreement expires on June 30, 2006; and

WHEREAS, State, County and the Conservancy desire to cooperate in the rehabilitation, development, operation and maintenance of the property owned by all three entities to protect and enhance the Lagoon's natural resources and to provide for appropriate recreational uses related thereto.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The real property that is the subject of this Agreement is the real property that is separately owned by each of the three parties at the Reserve. Exhibit A, attached hereto and incorporated herein, is a list of all of the parcels owned by all three parties. Exhibit B, attached hereto and incorporated herein, is a map showing each of the parcels in the Reserve and the acreage for each parcel.

2. Each party may acquire additional real property at or around the Reserve in the future. Accordingly, this Agreement applies to the real property currently owned by each party at and around the Reserve as listed on Exhibit A and also applies to any real property acquired by any of the parties in the future if (i) the real property abuts property owned by any of the three parties to this Agreement at the Reserve; and (ii) the party that acquires the additional real property sends written notice to both other parties describing the location and size of the property and stating that the property is part of the Reserve.

3. The purpose of the Reserve is to protect and enhance fish and wildlife habitat and other environmental resources in the Reserve and to provide for public use and enjoyment of the Reserve to the extent consistent with this purpose.

4. Subject to the availability of funding as determined by the County, the County has the following obligations at the Reserve:

a. Operate and maintain the Visitor Center or Nature Center located at 2710 Manchester Avenue in Encinitas.

b. Maintain the facilities (other than the Visitor Center/Nature Center) at the Reserve by servicing and stocking the restrooms, putting plastic trash bags in the trash cans, emptying the trash cans, providing for refuse disposal service, maintaining signs and kiosks, posting public notices and warnings, and other necessary maintenance.

c. Staff the office at 2710 Manchester Avenue with at least one employee from the Department of Parks and Recreation.

d. Periodically patrol the Reserve and, where necessary, seek the public's compliance with the Reserve's rules and regulations.

e. Maintain the trails and trail heads by providing erosion control, trimming plants away from the trails, and other necessary maintenance, and eliminate non-designated trails that threaten habitat preservation.

f. Provide interpretative information to the public, such as answering questions about plants, animals, history and current affairs related to the Reserve.

g. Prepare and, as necessary, amend a Facility Pollution Prevention Plan for the Reserve Visitor Center area.

h. Remove non-native, exotic plants by hand, mechanically and/or by application of herbicides.

i. Remove or trim vegetation from County-owned property as reasonably required by the local fire agencies (City of Solana Beach, City of Encinitas, and Rancho Santa Fe Fire Protection District).

j. Protect cultural resources through good land stewardship practices and by protecting known archeological sites at the Lagoon.

k. Coordinate with the Department of Environmental Health (DEH) regarding action DEH determines is appropriate to protect against the establishment or spread of West Nile Virus or other public health hazards.

l. Monitor biological resources pursuant to the North County Multiple Species Conservation Plan, once this plan has been adopted.

m. Maintain the flood dike east of I-5, and operate the water control valves with the goal of maintaining optimal wetland conditions in the Lagoon.

n. By January 31 each year, submit to the State and Conservancy two dates and locations for regular Reserve oversight meetings for that year to discuss issues regarding the Lagoon that may arise that year.

o. Attend the regular Reserve oversight meetings.

5. Subject to the availability of funding as determined by the Conservancy, the Conservancy has the following obligations at the Reserve:

a. Monitor the environmental conditions that show whether there is effective tidal flushing in the Lagoon inlet, such as amount of sedimentation in the Lagoon, the water level in the Lagoon, the amount of algae in the Lagoon, etc.

b. In accordance with the results of the monitoring program, remove the accumulation of sediment from the Lagoon inlet and channel to maintain effective tidal flushing in the Lagoon. Obtain all necessary permits and approvals for sediment removal.

c. Maintain and monitor stream flow gauges and provide the data from these gauges to County.

d. As funding permits, remove non-native, exotic plants by hand, mechanical means, and/or by application of herbicides. Plants that have been removed by hand, mechanical means, or sprayed with herbicides could cause a fire hazard. To prevent a fire hazard, plants that have been removed by hand, or mechanical means shall be collected and hauled from the Lagoon for disposal. Plants that have been sprayed with an herbicide shall be removed by hand promptly after the plants die and shall be collected and hauled from the Lagoon for disposal. As an alternative to hauling the plants from the Lagoon, the plants may be mulched and distributed at the Lagoon, but only to a maximum depth of one foot.

e. Monitor biological resources by:

(1) Watching for sources of water pollution that enters the Lagoon and collecting data on water pollution;

(2) Maintaining and monitoring water quality meters;

(3) Monitoring birds including preparing monthly bird counts and observing birds during nesting season to determine how well the habitat is sustaining the bird population; and

(4) Monitoring threatened and endangered species under the state and federal permit guidelines.

f. Provide educational programs at the Nature Center and educational hikes for school children and the general public.

g. Provide and manage volunteer docents.

h. Plan and supervise volunteer Lagoon platoon maintenance projects, such as maintaining trails, removing exotic plants and picking up trash. However,

Conservancy must obtain the prior approval of County for each Lagoon platoon maintenance project.

i. Plan and manage special events, such as Lagoon Days, Coastal Cleanup Day and I Love a Clean San Diego.

j. Attend the regular Reserve oversight meetings.

6. Subject to the availability of funding as determined by State, the Department of Fish and Game has the following obligations in the Reserve:

a. Provide support for biological monitoring.

b. Train County staff and Conservancy's docents in the proper application of herbicides for removal of non-native, exotic plants and coordinate with County staff and the docents in the removal of non-native, exotic plants.

c. Assist with enforcement/violation issues as requested.

d. Assist with the management of predators, such as cowbirds, crows and ravens.

e. Attend the regular Reserve oversight meetings.

7. State, County and Conservancy shall jointly develop rules and regulations for public use of the Reserve that protect the environmental resources in the Reserve.

8. Subject to Reserve rules and regulations, the public shall have conditional ingress and egress to the Reserve except as provided herein and except when County, after consultation with State and Conservancy, determines that the public should be excluded from an area for health and/or safety reasons, to allow County, State or Conservancy to properly perform its obligations under this Agreement, or to protect the flora and/or fauna.

9. This Agreement shall be for the term commencing on the date listed above and ending on June 30, 2030.

10. Any party may terminate this Agreement at any time if either of the other parties breaches a material provision of this Agreement, provided that the party seeking termination gives written notice to the other two parties describing the nature of the breach and stating that the party that breached the Agreement has 30 days to correct the breach. If after 30 days the breach has not been corrected, the party seeking to terminate the Agreement may do so immediately upon written notice to the other parties.

11. Any party may terminate this Agreement for convenience by giving the other parties 180 days' prior written notice.

12. All notices which shall or may be given by any party to the others may be given by personally serving the other parties or may be given by United States mail, postage prepaid, and addressed to the other parties as follows:

State:

Regional Manager-South Coast Regional
Department of Fish and Game
4949 Ridgeview Avenue
San Diego, CA 92123

County:

Director, Department of Parks and Recreation
9150 Chesapeake Drive, Suite 200
San Diego, CA 92123

Conservancy:

Executive Director
San Elijo Lagoon Conservancy
P. O. Box 230634
Encinitas, California 92023

A notice mailed as specified above shall be deemed received three business days after having been mailed. The addresses listed above to which the notices shall or may be mailed may be changed by written notice to each of the other parties.

13. This Agreement shall not be assigned, in whole or in part, by any party without the prior written consent of the other parties. Any such assignment without the prior written consent of both other parties shall be null and void.

14. As between the County and the State, the following defense and indemnity provision shall apply:

a. Claims Arising From Sole Acts or Omissions of County

The County agrees to defend and indemnify the State, its agents, officers and employees (collectively referred to in this subparagraph as State), from any

claim, action or proceeding against State, arising solely out of the acts or omissions of County in the performance of this Agreement. At its sole discretion, the State may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve County of any obligation imposed by this Agreement. The State shall notify County promptly of any claim, action or proceeding and cooperate fully in the defense.

b. Claims Arising From Sole Acts or Omissions of State

The State agrees to defend and indemnify the County, its agents, officers and employees (collectively referred to in this subparagraph as County) from any claim, action or proceeding against County, arising solely out of the acts or omissions of the State in the performance of this Agreement. At its sole discretion, County may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve the State of any obligation imposed by this Agreement. County shall notify the State promptly of any claim, action or proceeding and cooperate fully in the defense.

c. Claims Arising From Concurrent Acts or Omissions

The County agrees to defend itself, and the State agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of the County and the State. In such cases, County and State agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in subparagraph e below.

d. Joint Defense

Notwithstanding subparagraph c above, in cases where County and State agree in writing to a joint defense, County and State may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of State and County. Joint defense counsel shall be selected by mutual agreement of County and State. County and State agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in subparagraph e below. County and State further agree that neither party may bind the other to a settlement agreement without the written consent of both County and State.

e. Reimbursement and/or Reallocation

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, County and State may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

15. To the fullest extent permitted by law, neither County nor State shall be liable for, and Conservancy shall defend and indemnify County and State and their respective officers, agents, employees and volunteers (collectively, County/State Parties), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (collectively, Claims), which arise out of or are in any way connected to the obligations in this Agreement arising either directly or indirectly from any act, error, omission or negligence of Conservancy or its officers, employees, agents, contractors, licensees, servants, members or volunteers. Conservancy shall have no obligation, however, to defend or indemnify County/State Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole active negligent act or willful misconduct of County/State Parties.

16. This Agreement shall be administered on behalf of County by the Director of Parks and Recreation or her designee, on behalf of State by the Director of the Department of Fish and Game or his/her designee, and on behalf of Conservancy by Conservancy's Executive Director.

17. This Agreement shall in every respect be binding upon the parties hereto and their respective successors and assigns. This Agreement shall be governed by the laws of the State of California.

18. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein. If for any reason any such provision is not inserted, or is not correctly stated, then upon application of any party, the Agreement shall forthwith be physically amended to make such insertion or correction.

19. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

20. This Agreement and any notice of additional real property provided pursuant to paragraph 1 above contains all representations and the entire understanding of the parties with respect to the subject matter in this Agreement. Any prior correspondence, memoranda, representations or agreements, whether or not consistent with this Agreement, oral or written, are superseded by this Agreement. Except for any notice of additional real property provided pursuant to paragraph 1 above, this Agreement may be changed only by written amendment signed by all parties.

21. The failure of any party to enforce any term, covenant or condition of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce this or any other term, covenant or condition of this Agreement. No waiver shall be effective unless the waiver is expressly stated in writing and is signed by the party waiving the right or benefit.

22. The provisions of this Agreement shall be liberally construed to effectuate its purpose. The language of all parts of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against any party.

23. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. Separate counterparts of the Agreement may be separately executed by the parties all with the same full force and effect as though the same counterpart had been executed simultaneously by each party.

24. State warrants that the Department of Fish and Game is fully authorized to execute and perform this Agreement on behalf of State without needing to obtain any further approval or authorization from any State official or officials.

25. Within 10 working days of the inception of this Agreement, Conservancy shall submit to County certificates of insurance and appropriate separate endorsements to the actual insurance policy, evidencing that Conservancy, at its sole expense, has obtained insurance in the following forms of coverage and minimum amounts from insurance carriers with a Best's Rating of not less than A-VII:

a. An occurrence policy of Commercial General Liability insurance insuring Conservancy against liability for bodily injury, personal injury or property damage arising out of or in connection with the Conservancy's performance of work or service under this Agreement of not less than \$1,000,000 per occurrence and \$1,000,000 general aggregate. The County of San Diego, its officers, agents, employees, and volunteers shall be added as Additional Insured by separate endorsement to the policy.

b. Statutory Workers' Compensation, as required by State of California, and Employer's Liability at \$1,000,000 each accident for bodily injury or disease.

c. Certificates of insurance provided by Conservancy must evidence that the insurer providing the policy will give County 30 days' written notice, at the address shown in the section of the Contract entitled "Notices," in advance of any cancellation, lapse, Reduction or other adverse change respecting such insurance.

d. The County of San Diego shall retain the right to review the coverage, form and amount of insurance required herein and may require Conservancy to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate

protection against the kind and extent of risk which exists at the time a change in insurance is required. County requirements shall be reasonable. County retains the right to demand a certified copy of any insurance policy required herein after 15 days notice.

26. For each party to fulfill its obligations under this Agreement, each party has the right to enter and go on to the real property owned by each of the other parties at the lagoon.

27. Pursuant to Lease No. PRC 6913 (W 23531), Section 4, General Provisions, paragraph 4(c), State authorizes County to demolish the existing Visitor Center and to construct a new Nature Center in generally the same location.

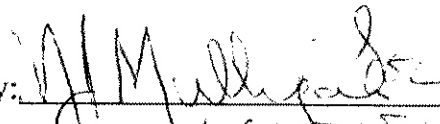
28. County and State hereby rescind the Cooperative Agreement Between the State of California, Department of Fish and Game and the County of San Diego for the Operation and Maintenance of San Elijo Lagoon Regional Park and Ecological Reserve dated May 21, 1981.

WHEREFORE, the parties execute this Agreement on the date first written above.

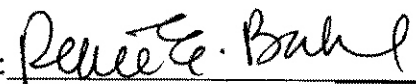
STATE OF CALIFORNIA,
Department of Fish and Game

COUNTY OF SAN DIEGO

By:


Regional Park Manager
Print Title

By:

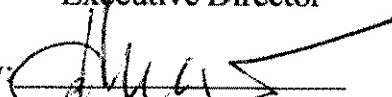

Director of Parks and Recreation

SAN ELIJO LAGOON CONSERVANCY,
a California nonprofit corporation

By:


Executive Director

By:


President

