RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF SAN CLEMENTE
100 Avenida Presidio
San Clemente, CA 92672
Attn: City Clerk

This Amended and Restated Development Agreement
for Talega Property is recorded at the request and for the
benefit of the City of San Clemente and the Talega Joint
Planning Authority and is exempt from the payment of a
recording fee pursuant to Government Code § 6103.

AMENDED AND RESTATED
DEVELOPMENT AGREEMENT FOR
TALEGA PROPERTY

by and among

CITY OF SAN CLEMENTE,

TALEGA JOINT PLANNING AUTHORITY,

and

TALEGA ASSOCIATES, LLC

Feb 17, 2002
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AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR TALEGA PROPERTY

This AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR TALEGA PROPERTY (the "Agreement") is entered into this 15th day of February, 2002, by and among the CITY OF SAN CLEMENTE, a municipal corporation of the State of California ("City"), the TALEGA JOINT PLANNING AUTHORITY, a joint powers authority organized under and existing pursuant to Section 6500 et seq. of the Government Code of the State of California ("TJPA"), and TALEGA ASSOCIATES, LLC, a Delaware limited liability company ("Developer"). City and TJPA are collectively referred to herein as the Public Agency Parties and individually as a Public Agency Party. City, TJPA, and Developer are collectively referred to herein as the "Parties" and individually as a "Party."

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the "Development Agreement Statute," Sections 65864, et seq., of the Government Code. The Development Agreement Statute authorizes City and TJPA to enter into an agreement with any person having a legal or equitable interest in real property and to provide for the development of such property and to establish certain development rights therein.

B. Developer is the owner in fee of that certain real property consisting of approximately nine hundred eighty-seven (987) acres of land area located in the City of San Clemente, County of Orange, State of California, more particularly described in the legal description attached hereto as Exhibit "A" and depicted on the Site Map attached hereto as Exhibit "C" (the "City Property"). Developer desires to develop the City Property with residential, commercial, and recreational uses (the "City Project").

C. Developer is the owner in fee of that certain real property consisting of approximately two hundred three (203) acres of land area located adjacent to the City Property in unincorporated territory of the County of Orange, State of California within the jurisdiction of the TJPA more particularly described in the legal description attached hereto as Exhibit "B" and depicted on the Site Map attached hereto as Exhibit "C" (the "TJPA Property"). Developer desires to develop the TJPA Property with residential, commercial, and recreational uses (the "TJPA Project"). Developer and City desire to annex the TJPA Property to the City.

D. On or about October 2, 1998, City and Developer entered into that certain Development Agreement for Talega Property recorded in the Official Records of Orange County, California on October 21, 1998, as Instrument No. 19980710014, relating to the development of certain property located within the City more particularly described therein as the "Property" (the "Original Development Agreement"). The Original Development Agreement also relates to the payment of fees for the development of, and the annexation of, certain other property located within the unincorporated territory of the County of Orange more particularly described in the Original Development Agreement as the "Sphere of Influence Property." The "Property" and the "Sphere of Influence Property" are collectively referred to in this Agreement.
as the "Master Talega Property." The City Property and the TJPA Property are included within the Master Talega Property.

E. The Parties desire to enter into this Agreement to supersede the Original Development Agreement with respect to the City Property and the TJPA Property. To the extent the Original Development Agreement applies to the portions of the Master Talega Property that do not constitute City Property and TJPA Property, including the portion of the Master Talega Property upon which the golf course is located, the Original Development Agreement shall remain in full force and effect and shall continue to apply thereto, except to the extent the Original Development Agreement has terminated as to portions of such property pursuant to Section 2.2 of the Original Development Agreement.

F. Prior to the Effective Date, City adopted the City of San Clemente General Plan and the Talega of San Clemente Specific Plan Amendment ("Specific Plan") for the City Property. City has determined that the City Project is consistent with the goals and policies of the General Plan and the Specific Plan and imposes appropriate standards and requirements with respect to the development of the City Property in order to maintain the overall quality of life and of the environment within the City. Prior to its approval of this Agreement, City considered the environmental impacts of the City Project and completed its environmental review of the City Project.

G. Prior to the Effective Date, TJPA adopted the City of San Clemente General Plan and the Specific Plan for the TJPA Property. TJPA has determined that the TJPA Project is consistent with the goals and policies of the General Plan and the Specific Plan and imposes appropriate standards and requirements with respect to the development of the TJPA Property in order to maintain the overall quality of life and of the environment within the geographic area that is under the jurisdiction of the TJPA. Prior to its approval of this Agreement, TJPA considered the environmental impacts of the TJPA Project and completed its environmental review of the TJPA Project.

H. This Agreement is intended to be, and shall be construed as, a development agreement within the meaning of the Development Agreement Statute. For the reasons recited herein, Developer and the Public Agency Parties have determined that the Talega Project is a development for which a development agreement is appropriate. This Agreement will eliminate uncertainty in planning for and secure the orderly development of the Talega Project, ensure a desirable and functional community environment, provide effective and efficient development of public facilities, infrastructure, and services appropriate for the development of the Talega Project, assure attainment of the maximum effective utilization of resources within the City and the geographic area that is under the jurisdiction of the TJPA, and provide other significant public benefits to City, TJPA, and their residents by otherwise achieving the goals and purposes of the Development Agreement Statute. In exchange for these benefits to City and TJPA, Developer desires to receive the assurance that it may proceed with the development of the Talega Project in accordance with the terms and conditions of this Agreement.

I. The Parties agree that this Agreement will promote and encourage the development of the Talega Property by providing Developer and future owners and lenders with a greater degree of certainty as to Developer's ability to expeditiously and economically
complete the Talega Project, and that the consideration to be received by the Public Agency Parties pursuant to this Agreement and the rights secured to Developer hereunder constitute sufficient consideration to support the covenants and agreements of the Public Agency Parties and Developer.

J. City acknowledges that the obligations of City set forth in this Agreement shall survive beyond the term or terms of the current members of the City Council and that this Agreement will serve to bind City and future City Councils. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by the City staff and the City Council and have been found to be fair, just, and reasonable, and City has concluded that the City Project will serve the best interests of its citizens and that the public health, safety, and welfare will be best served by entering into this Agreement.

K. TJPA acknowledges that the obligations of TJPA set forth in this Agreement shall survive beyond the term or terms of the current members of the TJPA Board of Directors and that this Agreement will serve to bind TJPA and future TJPA Board of Directors. By approving this Agreement, the TJPA Board of Directors has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by the TJPA staff and the TJPA Board of Directors and have been found to be fair, just, and reasonable, and TJPA has concluded that the TJPA Project will serve the best interests of its citizens and that the public health, safety, and welfare will be best served by entering into this Agreement.

**AGREEMENT**

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City, TJPA, and Developer hereby agree as follows:

1. **DEFINITIONS.**

   The following terms when used in this Agreement shall have the meanings set forth below:

   The term “ACOE” shall mean the United States of America, acting by and through the United States Army Corps of Engineers.

   The term "Additional La Pata Extension" shall mean the future extension of Avenida La Pata from the terminus of the future La Pata Extension (i.e., the proposed future intersection of Avenida La Pata and Avenida Vista Hermosa) to Calle Saluda.

   The term "Agreement" shall mean this Amended and Restated Development Agreement for Talega Property by and among City, TJPA, and Developer.
The term "Annual Review" shall have the meaning ascribed in Section 17 of this Agreement.

The term “Avenida Talega Bridge” shall mean the future bridge facility and approaches that will extend over Segunda Deshecha Canada south of the future intersection of Calle Saluda and Avenida Talega.

The term “Bridge Facilities” collectively refers to the Vista Hermosa Bridge, the Calle Saluda Bridge, and the Avenida Talega Bridge.

The term “Calle Saluda Bridge” shall mean the future bridge facility and approaches that will extend over Segunda Deshecha Canada northwest of the future intersection of Calle Saluda and Avenida Talega.

The term "CEQA" shall mean the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), as the same may be amended from time to time.

The term "CFD Proposed Infrastructure Improvements" collectively refers to the following: (i) the extension of Avenida Vista Hermosa from the westerly terminus of Camino Vera Cruz to its easterly terminus in the Master Talega Property; (ii) the extension of Avenida La Pata from its existing terminus north of Avenida Pico to Calle Saluda; (iii) Avenida Talega from the northeasterly corner of Tentative Tract No. 15765 to Calle Saluda; (iv) Calle Saluda from Avenida Talega east to the easterly corner of Tentative Tract No. 16216; and (v) the grading of the Offsite Pads.

The term "City" shall mean the City of San Clemente, a municipal corporation, organized and existing under the laws of the State of California.

The term "City Council" shall mean the governing body of City.

The term "City Engineer" shall mean the City Engineer of City or his or her authorized designee.

The term "City Project" shall mean the development of the City Property pursuant to this Agreement and the Specific Plan.

The term "City Property" shall mean that certain real property consisting of approximately nine hundred eighty-seven (987) acres of land area located within the incorporated limits of the City. The City Property is more particularly described in the legal description attached hereto as Exhibit "A" and is depicted on the Site Map attached hereto as Exhibit "C."

The term "Community Enhancement Fee" shall have the meaning ascribed in Section 4.1 of this Agreement.

The term “Consent Agreement” shall mean that certain Agreement Consenting to the Authority of the Talega Joint Planning Authority and Waiving Certain Rights and Benefits Under the County Development Agreement by and among City, TJPA, Developer, Lennar

The term "Conservation Easement" shall mean that certain Conservation Easement executed by Laing Forster Ranch LLC in favor of the United States of America, acting by and through the United States Army Corps of Engineers, recorded on June 29, 1999, in the Official Records of Orange County, California, as Instrument No. 19990483295.

The term "County" shall mean the County of Orange, a political subdivision of the State of California.

The term "County Development Agreement" shall mean that certain Development Agreement between the County and Developer recorded on October 5, 1999, in the Official Records of Orange County, California as Instrument No. 19990706758.

The term "Developer" shall mean Talega Associates, LLC, a Delaware limited liability company, and any permissible successor or assignee to the rights, powers, and responsibilities of Talega Associates, LLC hereunder, in accordance with Section 19 of this Agreement.

The term "Developer's Park Contractor" shall mean the qualified and licensed contractor retained by Developer to construct the Park Improvements on the Park Sites.

The term "Development Agreement Statute" shall refer to Sections 65864 through 65869.5 of the California Government Code, as the same may be amended from time to time.

The term "Development Allocations" shall have the meaning ascribed in Section 3.2.3 of this Agreement.

The term "Effective Date" shall mean the date that is thirty (30) days after the later of (i) the date the City Council adopts the ordinance approving this Agreement, or (ii) the date the TJPA Board of Directors adopts the ordinance approving this Agreement; provided, however, in no event shall the Effective Date be earlier than the date the Specific Plan Amendment and the General Plan Amendment necessary to implement the Specific Plan Amendment are adopted by both the City Council and the TJPA Board of Directors.

The term "Extension Slope Areas" shall have the meaning ascribed in Section 7.4 of this Agreement.

The term "Extensions" shall collectively refer to the Vista Hermosa Extension and the La Pata Extension, as described in Section 7.1.1 of this Agreement.

The term "Fire Station" shall mean the fire station to be constructed on the Fire Station Site.

The term "Fire Station Fee" shall have the meaning ascribed in Section 4.2 of this Agreement.
The term "Fire Station Site" shall refer to the portion of the Talega Property consisting of approximately 1.1 acres of land area located within Planning Area B-4, the precise location and boundaries of which is depicted in the Specific Plan.

The term "General Plan," as it applies to the City Property and the TJPA Property once the same is annexed into the City, shall mean the City of San Clemente General Plan, as said General Plan exists as of the Effective Date of this Agreement and as it may further be amended by City from time to time in accordance with this Agreement. As it applies to the TJPA Property, and until such time as the TJPA Property is annexed into the City, the term “General Plan” shall mean the City of San Clemente General Plan adopted by the TJPA, and as it may further be amended by TJPA from time to time in accordance with this Agreement.

The term "Habitat Mitigation Site" shall mean the approximately one hundred six (106) acre portion of that certain real property conveyed to City by Laing Forster Ranch LLC, a California limited liability company, pursuant to that certain Grant Deed recorded in the Official Records of Orange County on June 9, 2000, as Instrument No. 2000-0304372, that is depicted on Exhibit “L”.

The term “La Pata Domestic Water Line” shall mean the approximately 2,270 linear feet of 20-inch domestic water transmission line and the related valves and appurtenances required to make such transmission line operational that will be located within the La Pata Extension.

The term “La Pata Easement” shall mean the construction and permanent easements that must be acquired from the current owner(s) to accommodate the La Pata Extension.

The term "La Pata Extension" shall mean all the grading, drainage, erosion control, utility (including the La Pata Domestic Water Line and the La Pata Recycled Water Line), paving, landscaping, lighting, bike trail, and related improvements to be constructed and installed by Developer with respect to the extension of Avenida La Pata from its current terminus approximately 640 feet north of Avenida Pico to the proposed future intersection of Avenida La Pata and Avenida Vista Hermosa, with such extension to consist of six (6) graded traffic lanes and six (6) paved traffic lanes, in accordance with and subject to the terms and conditions set forth in Section 7.1 of this Agreement.

The term “La Pata Recycled Water Line” shall mean the approximately 2,340 linear feet of 8-inch recycled water transmission line and the related valves and appurtenances required to make such transmission line operational that will be located within the La Pata Extension.

The term “Large Offsite Pad” shall refer to that certain real property owned by City consisting of approximately forty-seven (47) acres of land area located at the southwest corner of the future intersection of Avenida Visa Hermosa and Avenida La Pata, as more fully described in the definition of “Offside Pads.”

The term "LOS Standards" shall mean the standards set forth in the existing General Plan and RCFPPP for defining the traffic service levels on roadways and at intersections (i.e., levels of service A-F and the characteristics of each level of service), the categories or list of roadways and intersections to which such standards currently apply, and the currently adopted minimum
standards for particular roadways and intersections (generally, LOS C for roadways, LOS D for intersections, and LOS E for the Pico/I-5 intersection).

The term "Master Plan Approval Date" shall mean, as to each Park Site, the date of the City Council's approval of the Approved Park Master Plan.

The term "Master Talega Project" shall mean the development of the Master Talega Property.

The term "Master Talega Property" shall collectively refer to that certain real property described in the Original Development Agreement as the "Property" and the "TJPA Property."

The term "Measure B" shall mean that certain growth control initiative adopted by the City's voters in 1986, and adopted by the City Council by its Ordinance No. 922 on March 4, 1986, and all amendments thereto, as the same may be further amended from time to time. Measure B is codified in the Municipal Code as Chapter 15.44.

The term "Mortgage" shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Talega Property, or a portion thereof or interest therein, is pledged as security, and contracted for in good faith and for fair value.

The term "Mortgagee" shall mean the holder of a beneficial interest under a Mortgage, or any successor or assignee of any such Mortgagee.

The term "Municipal Code" shall refer to the Code of the City of San Clemente, California, as the same now exists or may be further amended from time to time consistent with this Agreement.

The term "Oak Woodland Site" shall mean that portion of Planning Area G-6 consisting of approximately 5.5 acres of land area depicted on the Concept Park Master Plan for Park 3 attached to this Agreement as Exhibit "G."

The term "Offsite Pad Improvements" shall mean the improvements to be constructed and installed by Developer pursuant to Section 11 of this Agreement.

The term "Offsite Pads" shall refer to those portions of that certain real property offered for dedication by Laing Forster Ranch LLC, a California limited liability company, to City pursuant to that certain Irrevocable Offer of Dedication recorded in the Official Records of Orange County on May 11, 1998, as Instrument No. 1998-286799, that City believes can be graded into useable pads for future public uses. The Offsite Pads consist of the Small Offsite Pad and the Large Offsite Pad. The approximate location and configuration of the Offsite Pads are depicted in Exhibit "K" attached hereto.

The term “Original Development Agreement” shall mean that certain Development Agreement for Talega Property between City and Developer dated October 2, 1998, recorded in the Official Records of Orange County, California on October 21, 1998, as Instrument No. 19980710014.
The term "Park Fee" shall have the meaning ascribed in Section 4.3 of this Agreement.

The term "Park Director" shall mean City's Director of Beaches, Parks and Recreation or his or her authorized designee.

The term "Park Improvements" shall mean each of the improvements described in the approved plans and specifications to be installed by Developer on the Park Sites.

The term "Park Sites" collectively refers to the Park 2 Site and the Park 3 Site.

The term "Park 1 Agreement" shall mean that certain Agreement for Development and Conveyance of Park Site by and between City and Developer dated April 18, 2001, relating to the development of the approximately 5.5 acre park site on the Master Talega Property.

The term "Park 2 Site" shall mean that certain real property consisting of 9.5 acres of land area located within Planning Area C-2. In the event that the Park 2 Site is relocated to Village 4 pursuant to Section 5.4 of this Agreement, the term "Park 2 Site" shall be deemed to refer to the relocated Park 2 Site.

The term "Park 3 Site" shall mean that certain real property consisting of 7 acres of land area located within Planning Area E-5.

The term "Parties" shall collectively refer to City, TJPA, and Developer. The term "Party" shall individually refer to any of said parties.

The term "Phase" shall mean the phases of the residential development of the Talega Property, as more fully explained in Section 6.3 of this Agreement.

The term "Planning Area" shall refer to the planning areas within the Talega Property as depicted in the Specific Plan.

The term "Public Agency Parties" shall collectively refer to City and TJPA. The term "Public Agency Party" shall individually refer to City or TJPA.

The term "RCFPP" shall mean the City of San Clemente Regional Circulation, Financing and Phasing Program as adopted by Ordinance No. 998 of the City Council on April 5, 1989, as amended by Ordinance No. 1155 on July 19, 1995, and by Ordinance No. 1196 on December 17, 1997, as the same may be further amended from time to time by the City Council. The RCFPP establishes cost allocations and a funding mechanism for certain major road improvements within the City.

The term "SCE and SDG&E Easement Area" shall refer to the portion of the City Property located south of Avenida Pico upon which easements in favor of Southern California Edison Company and San Diego Gas & Electric Company are located.

The term "Small Offsite Pad" shall refer to that certain real property owned by City consisting of approximately nine (9) acres of land area located at the northwest corner of the
future intersection of Avenida Visa Hermosa and Avenida La Pata, as more fully described in the definition of the "Offside Pads."

The term "Specific Plan," as it applies to the City Property and the TJPA Property once the same is annexed into the City, shall mean the Talega of San Clemente Specific Plan Amendment for the Talega Property approved by the City Council on December 12, 2001, as the same may be further amended from time to time in accordance with this Agreement. As it applies to the TJPA Property, and until such time as the TJPA Property is annexed into the City, the term "Specific Plan" shall mean the Talega of San Clemente Specific Plan Amendment for the Talega Property approved by the TJPA Board of Directors on December 17, 2001, as the same may be further amended by TJPA from time to time in accordance with this Agreement.

The term "Talega Master Association" shall mean the Talega Maintenance Corporation, a California nonprofit corporation.

The term "Talega Project" shall collectively refer to the City Project and the TJPA Project.

The term "Talega Property" shall collectively refer to the City Property and the TJPA Property.

The term "Term" shall mean the period of time during which this Agreement shall be in effect and bind the Parties and their respective successors and assigns, as set forth in Section 2 of this Agreement.

The term "TJPA" shall mean the Talega Joint Planning Authority, a joint powers authority organized under and existing pursuant to Section 6500 et seq. of the California Government Code.

The term "TJPA Board of Directors" shall mean the governing body of the TJPA.

The term "TJPA Project" shall mean the development of the TJPA Property pursuant to this Agreement and the Specific Plan.

The term "TJPA Property" shall mean that certain real property consisting of approximately two hundred three (203) acres of land area located adjacent to the City Property and within the unincorporated area of the County. The TJPA Property consists of two non-contiguous land areas consisting of approximately one hundred eighty-one (181) acres and twenty-two (22) acres, respectively. The TJPA Property is more particularly described in the legal description attached hereto as Exhibit "B" and is depicted on the Site Map attached hereto as Exhibit "C."

The term "Village Center" shall mean that portion of the City Property located within Planning Areas H-1, H-2A, H-3, and H-4 described in the Specific Plan.

The term "Village 3" shall mean that portion of the City Property located within Planning Areas A-2, B-1A, B-1B, and C-2 described in the Specific Plan.
The term "Village 4" shall mean that portion of the City Property located within Planning Areas A-3, A-5, and C-3 described in the Specific Plan.

The term "Village 5" shall mean that portion of the City Property and the TJPA Property located within Planning Areas D-1, D-2, E-1, E-2, E-3, E-4, E-5, E-6, and E-7 described in the Specific Plan.

The term "Village 6" shall mean that portion of the City Property located within Planning Area G-9 described in the Specific Plan.

The term "Villages" collectively refers to the Village Center, Village 3, Village 4, Village 5, Village 6, and Planning Area G-2.

The term "Vista Hermosa Bridge" shall mean all of the grading, drainage, erosion control, utility, paving, landscaping, lighting, and related improvements associated with the construction and installation of the bridge facility and approaches over Segunda Deshecha Canada from the terminus of the future Vista Hermosa Extension at the westerly boundary of the Talega Property to the existing terminus of Avenida Vista Hermosa located on the Talega Property west of the intersection of Avenida Vista Hermosa and Avenida Talega, in accordance with the requirements of City, the California Department of Transportation, and all other governmental agencies with jurisdiction.

The term "Vista Hermosa Extension" shall mean all the grading, drainage, erosion control, utility (including the Vista Hermosa Domestic Water Line), paving, landscaping, lighting, bike trail, and related improvements to be constructed and installed by Developer with respect to the extension of Avenida Vista Hermosa from the intersection of Camino Vera Cruz to the boundary of the Talega Property.

The term "Vista Hermosa Interchange" shall mean the expansion of the existing bridge facility over Interstate 5 at Avenida Vista Hermosa, the construction of the Avenida Vista Hermosa interchange on- and off-ramps on both the coastal and inland sides of Interstate 5, and related signalization, roadway, drainage, utility, landscaping, and other related improvements as required to create a fully functional freeway interchange in accordance with the requirements of the California Department of Transportation and City.

The term "Vista Hermosa Domestic Water Line" shall mean the approximately 5,000 linear feet of 20-inch domestic water transmission line and the related valves and appurtenances required to make such transmission line operational that will be located within the Vista Hermosa Extension.

The term "Water Transmission Lines" shall collectively refer to the La Pata Domestic Water Line, the La Pata Recycled Water Line, and the Vista Hermosa Domestic Water Line.

2. **TERM.**

2.1 **Term.** The term of this Agreement (the "Term") shall commence on the Effective Date and, except as set forth in Sections 2.2 and 2.3, shall continue thereafter for a period of
twenty (20) years, unless this Agreement is terminated, modified, or extended by circumstances set forth in this Agreement or by mutual written consent of the Parties.

2.2 Termination Upon Sale of Individual Lots to Public and Completion of Construction. Notwithstanding Section 2.1, and except as set forth in Section 2.3, the provisions of this Agreement shall terminate with respect to any individual lot and such lot shall be released from and shall no longer be subject to this Agreement (without the execution or recordation of any further document or the taking of any further action) upon the satisfaction of all of the following conditions:

(a) the lot has been finally subdivided and sold or leased (for a period longer than one (1) year) to a member of the public or any other ultimate user; and

(b) a certificate of occupancy has been issued for the building or buildings on the lot or a final inspection of the building(s) has been approved by City or TJPA authorizing occupancy; and

(c) as to residential lots only, City has received payment of the Park Fee and the Community Enhancement Fee (if required pursuant to Section 4.1) pursuant to Sections 4.1 and 4.3 of this Agreement for the individual lot.

The Public Agency Parties shall cooperate with Developer, at no cost to the Public Agency Parties, in executing in recordable form any document that Developer (including any successor to the title of Developer in and to any of the aforesaid lots) may submit to confirm the termination of this Agreement as to any such lot.

2.3 Term of Miscellaneous Covenants. Notwithstanding Sections 2.1 and 2.2, Developer's obligation to maintain the Extension Slope Areas and the landscaping and erosion control on the Offsite Pad Improvements shall survive the termination of this Agreement as to other lots and shall remain in full force and effect for the periods set forth in Sections 7.4 and 11.5 of this Agreement.

3. DEVELOPMENT OF THE TALEGA PROPERTY.

3.1 General. Other than as expressly set forth in this Agreement, the terms and conditions of development applicable to the City Property and the TJPA Property, including but not limited to the permitted uses of the City Property and the TJPA Property, the density and intensity of use, maximum height and size of proposed buildings, provisions for the reservation and dedication of land for public purposes, and provisions for the construction and installation of public improvements shall be those set forth in the General Plan and Specific Plan and all other ordinances, laws, statutes, rules, regulations, and official policies governing development that may apply to the City Property or the TJPA Property from time to time. In the event of any conflict between the provisions of this Agreement, on the one hand, and the General Plan and Specific Plan in effect as of the Effective Date of this Agreement, the provisions of the General Plan and/or Specific Plan shall prevail. To the maximum extent permitted by law, however, in the event of any conflict between the express provisions of this Agreement, on the one hand, and either (i) any changes to the General Plan or Specific Plan adopted or approved after the Effective Date of this Agreement or (ii) any other ordinances, laws, statutes, rules, regulations, or
official policies governing development that may apply to the City Property or the TJPA Property from time to time, on the other hand, the provisions of this Agreement shall prevail.

3.2 Right to Develop. During the Term of this Agreement, Developer shall have the vested right to develop the Talega Property in accordance with the land use regulations and development standards set forth in this Section 3.2.

3.2.1 Specific Standards.

3.2.1.1 Residential Standards. Developer shall have the vested right to develop the portions of the Talega Property that are to be developed for residential uses in accordance with the residential land use standards set forth in Sections 502(A) (Purpose and Applicability), 502(B) (Principal Uses Permitted), 502(C) (Conditional Uses Permitted), 502(D) (Accessory Uses and Structures Permitted), 502(E) (Temporary Uses and Structures Permitted), and 502(F) (Development Standards for Conventional Subdivisions) of the Specific Plan as such standards exist as of the Effective Date.

3.2.1.2 Business Park Standards. Developer shall have the vested right to develop the portions of the Talega Property that are to be developed for business park uses in accordance with the business park land use standards set forth in Sections 503(A) (Purpose and Applicability), 503(B) (Principal Uses Permitted), 503(C) (Conditional Uses Permitted), 503(D) (Accessory Uses and Structures Permitted), 503(E) (Temporary Uses and Structures Permitted), and 503(F) (Development Standards) of the Specific Plan as such standards exist as of the Effective Date.

3.2.1.3 Commercial Standards. Developer shall have the vested right to develop the portions of the Talega Property that are to be developed for commercial uses in accordance with the commercial land use standards set forth in and Sections 504(A) (Purpose and Applicability), 504(B) (Principal Uses Permitted), 504(C) (Conditional Uses Permitted), 504(D) (Accessory Uses and Structures Permitted), 504(E) (Temporary Uses and Structures Permitted), and 504(F) (Development Standards) of the Specific Plan as such standards exist as of the Effective Date.

3.2.1.4 Public Facilities Standards. Developer shall have the vested right to develop the portions of the Talega Property that are to be developed with public facilities in accordance with the land use standards for public facilities set forth in Sections 505(A) (Purpose and Applicability), 505(B) (Principal Uses Permitted), 505(C) (Accessory Uses and Structures Permitted), 505(D) (Temporary Uses and Structures Permitted), and 505(E) (Development Standards) of the Specific Plan as such standards exist as of the Effective Date.

3.2.1.5 Institutional Standards. Developer shall have the vested right to develop the portions of the Talega Property that are to be developed for institutional uses in accordance with the land use standards for institutional uses set forth in Sections 506(A) (Purpose and Applicability), 506(B) (Principal Uses Permitted), 506(C) (Accessory Uses and Structures Permitted), 506(D) (Temporary Uses and Structures Permitted), and 506(E) (Development Standards) of the Specific Plan as such standards exist as of the Effective Date.
3.2.1.6 **Golf Course Standards.** Developer shall have the vested right to develop the portions of the Talega Property that are to be developed with a golf maintenance facility and driving range in accordance with the standards set forth in Sections 507(A) (Purpose and Applicability), 507(B) (Principal Uses Permitted), and 507(C) (Development Standards) of the Specific Plan as such standards exist as of the Effective Date.

3.2.1.7 **Open Space Standards.** Developer shall have the vested right to require that the open space standards set forth in Sections 508(A) (Purpose and Applicability), 508(B) (Principal Uses Permitted), 508(C) (Conditional Uses Permitted), and 508(D) (Accessory Uses and Structures) of the Specific Plan in effect as of the Effective Date apply to and govern the development of the Talega Property.

3.2.1.8 **Reserve Standards.** Developer shall have the vested right to require that the reserve land use standards set forth in Section 509 of the Specific Plan in effect as of the Effective Date apply to and govern the development of the Talega Property.

3.2.2 **Density or Intensity of Use.**

3.2.2.1 **Maximum Density.** The total number of market rate residential units to be constructed within the Talega Property shall be as set forth in the Specific Plan; provided, however, that all units, subdivisions, and site plans are subject to the normal public review process and are expected to meet the high quality standards of the Public Agency Parties and until detailed planning and engineering data is available and the public planning process is completed, it is not possible to determine if the maximum permitted density is achievable. Subject to reductions in density resulting from the normal site-specific site planning, engineering, and public review process, City shall not reduce the maximum permitted density of market rate residential units for the City Property and TJPA shall not reduce the maximum permitted density of market rate residential units for the TJPA Property without Developer’s prior written consent, which consent Developer may grant or withhold in its sole and absolute discretion.

3.2.2.2 **Density Transfers.** In Planning Areas which do not receive the full maximum allowable number of residential units through the public review process due to site planning considerations, the "lost units" (i.e., the difference between the maximum number of allowable residential units set forth in the Specific Plan and the number of units that is finally approved by City or TJPA) may be transferred to another Planning Area or areas as provided for in the Specific Plan, provided that (i) the transfer is consistent with Table 2-1 and Figure 2-1 of the existing Specific Plan, (ii) the maximum densities permitted in each residential category under the existing General Plan and the Specific Plan are not exceeded, (iii) the number of residential units within the Master Talega Property does not exceed 4,500, and (iv) the minimum number of open space acres required for the Master Talega Property is not reduced. Approval of all units in any Planning Area that receives additional units is subject to the public planning process and is not guaranteed, but may be allowed whenever the high quality standards of Developer and the Public Agency Parties are achieved.

3.2.3 **Development Allocations.** City acknowledges that prior to the Effective Date of this Agreement Developer acquired seventy-four (74) development allocations for
residential building permits for the City Property which have not been used ("Development Allocations"). City hereby agrees that the Development Allocations shall not be reallocated to another developer or otherwise revoked or withdrawn from Developer. Developer shall be entitled to use the Development Allocations for the City Project provided that if Developer hereafter changes any of the aspects of a development for which any of the Development Allocations previously were granted, the revised development must comply with the Measure B requirements for preservation or reallocation of development allocations in effect as of November 2, 1998. City further acknowledges and agrees that the Development Allocations are additive to those that may be applied for and granted in the current and subsequent years and shall in no way reduce City's annual development allocation of 500 residential dwelling units, as said number may be adjusted by the City Council in accordance with Section 15.44.040(B) of the Municipal Code.

City further acknowledges that prior to the Effective Date of this Agreement, Developer has notified City that Developer desires to transfer the Development Allocations from Tentative Tract Nos. 15763 and 15765 to Tentative Tract No. 13935 and Planning Area B-1B, as reflected on Exhibit "D" to this Agreement. If Developer applies for such a transfer of the Development Allocations, City covenants to consider such application in good faith in accordance with Measure B criteria and regulations and, upon Developer's request, to process said application concurrently with Developer's application for tentative tract map and site plan approval for the transferee site.

3.2.4 Certain Regulations to be Vested Through Approved Tentative Tract Maps. Developer shall have the vested right to require that the conditions set forth in any tentative tract map for the City Property approved by City prior to November 2, 1998, govern the development of the land area included within said tentative tract map during the period that such tentative tract map(s) and any final map or maps recorded pursuant thereto remain in effect.

3.3 Development of Commercial Uses. Developer shall develop commercial uses on a minimum of thirteen (13) net acres of the land area located within the Village Center at the locations shown on Developer's proposed Amended Tentative Tract Map 15763 prepared by RBF Consulting dated November 7, 2001. The general locations of the commercial use areas are depicted on Exhibit "E" attached to this Agreement. City's discretion in reviewing and processing Amended Tentative Tract Map 15763 shall be the same as with respect to any other tentative tract map application and shall not be limited by this Section 3.3.

3.4 SCE and SDG&E Easement Area. Developer shall exercise reasonable efforts to obtain from Southern California Edison and San Diego Gas & Electric Company the rights necessary to enable Developer to use the SCE and SDG&E Easement Area for parking or other development purposes.

3.5 Contour Grading. Developer acknowledges and agrees that contour grading shall be required on the Talega Property. The contour grading operations shall be performed by Developer in accordance with the requirements of Section 302 of the Specific Plan and all other applicable ordinances, laws, rules, and regulations, and in addition such grading shall be consistent with the features depicted on the Contour Grading Concept attached to this Agreement as Exhibit "F."
3.6 School Mitigation. Prior to the Effective Date, Developer, Capistrano Unified School District ("CUSD"), and Community Facilities District No. 90-2 of the Capistrano Unified School District ("CFD No. 90-2") entered into that certain Amendment No. 1 to Mitigation Agreement (the "School Mitigation Agreement"), which School Mitigation Agreement authorizes CFD No. 90-2 to levy taxes and issue bonds for the purpose of funding the acquisition and construction of certain school facilities for the mitigation and alleviation of impacts imposed on the K-12 public school system by the development of the Master Talega Property. With respect to expenditure of funds for grades 9-12 (i.e., high school) facilities, City and Developer shall cooperate and exercise their best efforts to persuade CUSD and CFD No. 90-2 to apply the maximum possible portion of funds generated by the School Mitigation Agreement to improvements and facilities at San Clemente High School. During the Term of this Agreement, City agrees that it will not require, impose, or request that Developer pay school fees, dedicate land to CUSD, construct or install improvements to any property of CUSD in connection with the development of the City Project, or otherwise assume any responsibility to mitigate the impacts of the City Project on the K-12 public school system beyond the mitigation provided for in said agreement. Developer acknowledges that this limitation on City’s police power authority does not apply to standard site planning or design review issues intended to minimize the impact between a school site and adjacent residential development.

3.7 Police Power. In all respects not provided for in this Agreement, each of the Public Agency Parties shall retain full rights to exercise its police power to regulate the development of the Talega Property. Any uses or developments requiring an area plan, site plan, tentative tract map, conditional use permit, variance, or other discretionary permit or approval in accordance with the Specific Plan or the Public Agency Party’s zoning or other land use regulations shall require a permit or approval pursuant to this Agreement, and, notwithstanding any other provision set forth herein, this Agreement is not intended to vest Developer’s right to the issuance of such permit or approval nor to restrict City’s or TJPA’s exercise of discretion with respect thereto. Not by way of limitation of the foregoing, it is specifically understood that each Public Agency reserves the right after the Effective Date to amend, pursuant to procedures provided by law and this Agreement, the portions of the Specific Plan not specifically listed in Section 3.2.1 as being vested and other City and TJPA laws, rules, regulations, and policies applicable to the Talega Property as to which Developer’s rights are not expressly vested and such amendment or amendments shall be binding on the Talega Property except to the extent that the same conflict with the express provisions of this Agreement. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement shall be construed as a limitation upon a Public Agency Party’s police power authority to provide for the public health, safety, and welfare, and nothing herein shall preclude a Public Agency Party from applying to the Master Talega Property any ordinance, resolution, regulation, or official policy or other similar limitation if the Public Agency Party determines that the failure to do so would place the residents of the Master Talega Property or the City, or both, in a condition perilous to their health or safety, or both, notwithstanding that the application of such ordinance, resolution, regulation, or official policy or other similar limitation would result in the impairment of Developer’s vested rights under this Agreement, including without limitation those set forth in Sections 3.2 and 3.10.

3.8 State and Federal Laws. By entering into this Agreement, Developer does not waive the benefit or protection of any rights it may have under applicable state or federal laws or
regulations that may apply to the development of the Talega Property from time to time, including without limitation any laws applying the laws in effect at a given time in processing land use applications such as Government Code Sections 65961, 66474.2, and 66498.1 through 66498.9, except to the extent that applying such laws and regulations to the Talega Property would be inconsistent with any of the express provisions of this Agreement. In the event that state or federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, the Parties agree to consider in good faith amending or suspending such provisions of this Agreement as may be necessary to comply with such state or federal laws, provided that no Party shall be bound to approve any amendment to this Agreement unless this Agreement is amended in accordance with the procedures applicable to the adoption of development agreements as set forth in the Development Agreement Statute and each Party retains full discretion with respect thereto.

3.9 **Measure B.**

3.9.1 **Participation in Litigation.** Developer agrees that from and after the Effective Date, it will not participate in, finance, or otherwise promote any litigation which seeks a judicial determination that Measure B is invalid, either on its face or as applied to all or any portion of the City Property or the TJPA Property once the same is annexed to the City, or which seeks to enjoin the enforcement of Measure B.

3.9.2 **Amendments to Measure B.** During the Term of this Agreement, City agrees that no amendment to Measure B and no new City ordinance, resolution, rule, regulation, or official policy shall apply to the City Property if and to the extent that the same either (i) reduces the number of residential building allocations that City can approve or issue in any year below the number of allocations now authorized by Measure B (i.e. 500, as said number may be adjusted in accordance with Section 15.44.040(B) of the Municipal Code (Section 4 of Measure B)), or (ii) further reduces or restricts the exemptions set forth in Section 15.44.020 of the Municipal Code (Section 2 of Measure B).

3.10 **Assurances to Developer Parties.** The Parties acknowledge that the public benefits to be provided by Developer to the Public Agency Parties pursuant to this Agreement, including without limitation the participation by Developer in the financing, construction, dedication, and/or maintenance of certain public improvements and facilities, are in consideration for and reliance upon assurances that the Talega Property can be developed in accordance with the terms of this Agreement. Accordingly, City agrees that it will not attempt to restrict or limit the development of the City Property in conflict with the provisions of this Agreement and TJPA agrees that it will not attempt to restrict or limit the development of the TJPA Property in conflict with the provisions of this Agreement. The Public Agency Parties acknowledge that Developer cannot at this time predict the timing or rate at which the Talega Property will be developed. The timing and rate of development depend on numerous factors such as market demand, interest rates, absorption, completion schedules, and other factors which are not within the control of Developer. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city’s growth control ordinance notwithstanding that the construction company and the city had entered into a consent judgment (tantamount to a contract under California law) establishing the company’s vested rights to develop its property in accordance with the zoning
ordinance in effect at the commencement of development. The California Supreme Court reached this result on the basis that the consent judgment failed to address the timing of development. It is the intent of the Parties to avoid the result of the *Parduee* case by acknowledging and providing in this Agreement that Developer shall have the vested right to develop the Talega Property in such order and at such rate and at such time as Developer deems appropriate within the exercise of Developer's sole subjective business judgment, notwithstanding the adoption of an initiative after the Effective Date by a Public Agency's electorate to the contrary. In addition to and not in limitation of the foregoing, but except as set forth in the following sentence, it is the intent of the Parties that no Public Agency Party moratorium or other similar limitation relating to the rate, timing, or sequencing of the development of the Talega Project or any portion thereof, whether adopted by initiative or otherwise, shall apply to the Talega Property to the extent such moratorium or other similar limitation is in conflict with the express provisions of this Agreement. Notwithstanding the foregoing, Developer acknowledges and agrees that nothing herein is intended or shall be construed as (i) overriding any provision set forth in this Agreement relating to the rate, timing, or sequencing of development of the Talega Project, including without limitation Section 6.3.1, (ii) overriding any existing City or TJPA ordinances, resolutions, regulations, or official policies relating to the rate, timing, or sequencing of development of the Talega Project, (iii) restricting City or TJPA from exercising the powers described in Section 3.7 of this Agreement to regulate development of the Master Talega Property, or (iv) preventing the Public Agency Parties from applying to the Talega Project any state and federal laws and regulations relating to the rate, timing, or sequencing of the development of the Talega Project, together with any City or TJPA ordinances, resolutions, regulations, and official policies which are necessary to enable City or TJPA to comply with such state and federal laws and regulations.

3.11 Consent Agreement. Subject to the following sentence, each of the Public Agency Parties acknowledges that the limitations on its powers to govern the development of the TJPA Property and the portion of the City Property that was annexed into the City after the Consent Agreement was entered into (collectively, the "Consent Agreement Property") that are set forth in the Consent Agreement shall continue to apply as set forth in the Consent Agreement. The Parties acknowledge that the application of certain provisions of this Agreement to the Consent Agreement Property, and the Public Agency Parties' performance under this Agreement, could be construed to be in conflict with the Consent Agreement. To the extent that any provision of this Agreement is incompatible or in conflict with the Consent Agreement, Developer hereby agrees that the application of, and the performance by a Public Agency Party pursuant to, such provision of this Agreement shall not constitute a default under the Consent Agreement, and Developer will not declare a Public Agency Party to be in default or participate in or promote any litigation which seeks a judicial determination that such a default exists. In addition, to the extent that any provision of this Agreement is construed as a regulation or policy constituting a "Withdrawal Condition" pursuant to clauses (ii) or (iii) of Section 4 of the Consent Agreement, Developer hereby waives any right it otherwise would have to withdraw from the Consent Agreement for the occurrence of such Withdrawal Condition.

4. FEES.

4.1 Community Enhancement Fee. Developer shall pay or cause to be paid to City the sum of Eight Million Dollars ($8,000,000) (the "Community Enhancement Fee") in the
manner set forth in this Section 4.1. From the Effective Date and continuing through the date that any portion of the Community Enhancement Fee remains outstanding, Developer shall, prior to and as a condition to the issuance of each building permit for residential development in the Villages, pay to City a portion of the Community Enhancement Fee equal to Four Thousand Dollars ($4,000). If City determines in its reasonable discretion that the maximum number of residential units currently permitted in the Villages will not be developed, City shall have the right from time to time during the Term of the Agreement, upon written notice to Developer, to increase the amount of the Community Enhancement Fee due to City upon issuance of each building permit as may be necessary to provide City with reasonable assurances that the full amount of the Community Enhancement Fee will be paid. It is understood that the Community Enhancement Fee shall apply to the portion of the Villages located within the TJPA Property even if said portion is not annexed into the City. City shall be authorized to use the first One Million Dollars ($1,000,000) of the Community Enhancement Fee paid to City for uses associated with the Casa Romantica cultural site. City shall be authorized to use the next One Million Five Hundred Thousand Dollars ($1,500,000) of the Community Enhancement Fee paid to City for the revitalization of that certain real property depicted in Figure 17.64.125 of the Municipal Code entitled "Downtown Parking Study Area." City shall be authorized to use the next One Million Dollars ($1,000,000) of the Community Enhancement Fee paid to City for the revitalization of the North Beach area. City shall be authorized to use the balance of the Community Enhancement Fee paid to City in the amount of Four Million Five Hundred Thousand Dollars ($4,500,000) for any public purpose.

4.2 Fire Station Fee. Developer shall pay or cause to be paid to City a fee (herein, the "Fire Station Fee") in the sum of One Million Six Hundred Forty-Five Thousand Five Hundred Dollars ($1,645,500), plus the "Fire Station Fee CPI Adjustment." As used herein, the term "Fire Station Fee CPI Adjustment" shall mean the product derived by multiplying the sum of $1,645,500 by a fraction in which the numerator equals the CPI on the date that is four (4) months prior to the date on which the Fire Station Fee is due and in which the denominator equals the CPI on the date that is four (4) months prior to the Effective Date of this Agreement. As used herein, the term "CPI" shall mean the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for the Los Angeles/Anaheim/Riverside area (All Items) or, if such index is not published or available at the time the Fire Station Fee CPI Adjustment is required to be calculated hereunder, such other inflationary index that the City Engineer of City shall reasonably determine to be an appropriate substitute therefor. Payment of the Fire Station Fee shall be due by Developer to City within thirty (30) days after Developer's receipt of written demand, provided that payment shall not be due prior to the date that is eighteen (18) months prior to the date City estimates in its reasonable discretion that the Fire Station will be completed. City shall apply the Fire Station Fee toward the cost of planning, designing, and constructing a Fire Station on the Fire Station Site to be dedicated to City pursuant to Section 9 of this Agreement. In the event that the costs incurred by City for planning, designing, and constructing the Fire Station on the Fire Station Site are less than the amount of the Fire Station Fee, City shall be authorized to use the remaining balance of the Fire Station Fee for City public safety capital expenditures. The Public Agency Parties agree that during the Term of this Agreement, except as provided in Section 9.7, Developer shall have no further obligations to City or TJPA with respect to the construction and/or financing of fire stations or equipment for fire stations on the Talega Property.
4.3 Park Fee.

4.3.1 Payment of Park Fee. Developer shall pay or cause to be paid to City the sum of Nine Million Three Hundred Sixty-Three Thousand Five Hundred Thirty-One Dollars and Fifty Cents ($7,363,513.50) (the "Park Fee") in the manner set forth in this Section 4.3. From the Effective Date through the date that any portion of the Park Fee remains outstanding, Developer shall, prior to and as a condition to the recording of each final tract map for residential development in the Talega Property, pay to City an amount equal to the product derived by multiplying the sum of Four Thousand Five Hundred Seventy-Two Dollars ($4,572) (the Park Fee divided by 2,048) by the maximum number of residential units permitted to be constructed within the land area included within the geographic area included within said final tract map (the "Per-Map Park Fee"). If City determines in its reasonable discretion that 2,048 residential units will not be developed in the Talega Property, City shall have the right from time to time during the Term of this Agreement, upon written notice to Developer, to increase the Per-Map Park Fee as may be necessary to provide City with reasonable assurances that the full amount of the Park Fee will be paid. It is understood that the Per-Map Park Fee shall apply to the TJPA Property even if said portion of the Talega Property is not annexed into the City.

Notwithstanding the foregoing, Developer shall receive a credit against its Park Fee obligation hereunder and shall not be required to pay the Per-Map Park Fee to City with respect to the TJPA Property if and to the extent that the County requires Developer to pay a separate park fee to the County.

City covenants that the Park Fee will be used only for the planning, design, engineering, construction, installation, supervision, and inspection of community and special use parks within the City.

Developer’s payment of the Park Fee shall constitute complete satisfaction of Developer’ obligation to pay any fee or tax for park and open space purposes which otherwise might be imposed by the Public Agency Parties on Developer’s right to develop the Talega Property, including without limitation any fee or tax which otherwise might be imposed pursuant to Chapter 3.12 or Section 16.36.070 of the Municipal Code, and Developer’s payments to City pursuant to this Section 4.3.1 shall be credited in full against any other such fee or tax.

City agrees to act in good faith to develop an implementation plan for use of the Park Fee received from Developer pursuant to this Agreement; provided, however, that in no event shall City’s delay in processing or approval of said implementation plan or Developer’s disagreement with the plan itself excuse Developer’s obligation to pay the Park Fee as provided herein.

City acknowledges that prior to the Effective Date, Developer paid to City the sum of Six Million One Hundred Thirty-Six Thousand Four Hundred Sixty-Nine Dollars and Fifty Cents ($6,136,469.50) for park fees due to City under the Original Development Agreement through the Effective Date.

4.3.2 Reimbursement of Park Fees. No later than the issuance of the 2500th building permit for a residential unit in the Master Talega Property or Developer’s completion of
the Park Improvements on the Park 2 Site as evidenced by City’s issuance of the notice of completion, whichever occurs last, City shall reimburse Developer for a portion of the Park Fees previously paid to City in an amount equal to One Million Two Hundred Thousand Dollars ($1,200,000). No later than the issuance of the 3200th building permit for a residential unit in the Master Talega Property or Developer’s completion of the Park Improvements on the Park 3 Site, whichever occurs last, City shall reimburse Developer for a portion of the Park Fees previously paid to City in an amount equal to One Million Dollars ($1,000,000). City’s obligation to reimburse Developer such amounts shall be a special and not a general obligation of City, payable from the sole source of City’s Parks Acquisition and Development Fund. City shall not be required by this Agreement to repay any developer or owner of the Master Talega Property other than Talega Associates, LLC, such amounts whether or not the Park Fees are paid by Talega Associates, LLC, or some other party. Developer shall be responsible for advising all of the current and future owners of any portion of the Master Talega Property regarding this provision, and Developer shall indemnify, defend, and hold harmless City and TJPA from and against any and all claims, liabilities, and losses arising out of City’s and/or TJPA’s failure or refusal to repay the Park Fees or other Parks Acquisition and Development Fund monies to such third party or parties. City acknowledges that pursuant to the Park 1 Agreement City is obligated to reimburse Developer for the park fees paid to City by Developer pursuant to the Original Development Agreement in an amount equal to Developer’s reimbursable costs to construct the 5.5 acre park site on the Master Talega Property, all on the terms and conditions set forth in the Park 1 Agreement.

4.4 “85-01” Sewer Bond Assessment Fee; Wastewater Capacity. Pursuant to Section 4.5 of the Original Development Agreement, Developer paid to City the sum of One Million Six Hundred Eighteen Thousand Two Hundred Eighteen Dollars and Ninety Cents ($1,618,218.90) (the "Wastewater Capacity Fee"). City acknowledges that pursuant to the Original Development Agreement, Developer is entitled to 196,120.27 gallons per day of wastewater treatment capacity from City’s wastewater treatment plant ("Wastewater Treatment Capacity"). The right to the Wastewater Treatment Capacity is personal to Talega Associates, LLC, and does not run with the land and does not automatically pass to Developer’s successors-in-interest to the Talega Property. Notwithstanding the foregoing, Developer shall have the right to assign to third parties the Wastewater Treatment Capacity, provided Developer does so expressly pursuant to a written agreement. Developer shall notify City in writing of any assignments of the Wastewater Treatment Capacity made by Developer and shall provide City a copy of the assignment agreement. Developer represents and warrants to City that as of the Effective Date of this Agreement Developer has not assigned to any party the right to any portion of the Wastewater Treatment Capacity. Developer shall indemnify, defend, and hold harmless City and City’s agents, officers, and employees from and against any losses, liability, damages, claims, suits and actions brought by any person or entity as a result of City’s allocation and provision of the Wastewater Treatment Capacity. Developer acknowledges that City’s provision of the Wastewater Treatment Capacity to Developer may be subject to the approval of the Santa Margarita Water District and other third parties and that City does not represent or warrant to Developer that such approvals will be obtained. Developer agrees that if such approvals are not obtained Developer shall have no right to a refund of any portion of the Wastewater Capacity Fee.
4.5 **Drainage Facilities Fee.** Within ninety (90) days after the Effective Date of this Agreement, Developer shall pay to City the sum of Two Hundred Fourteen Thousand One Hundred Twenty-Seven Dollars ($214,127). No later than November 1, 2002, Developer shall pay to City the additional sum of Two Hundred Fifty Thousand Dollars ($250,000). Subject to the following sentence, the Public Agency Parties agree that Developer’s payment of said amounts, shall satisfy Developer’s obligation to pay the drainage facilities fee for the "Segunda Deshecha Canada, including Tributary to San Mateo Creek" charged by City pursuant to Section 15.56.010.B of the Municipal Code and by TJPA pursuant to the corresponding TJPA ordinances and regulations or to otherwise construct or contribute to the cost of constructing off-site drainage improvements in connection with development of the Talega Property. Notwithstanding the foregoing, Developer acknowledges that as a direct result of the development of the Talega Master Property there may be some mitigation required for the natural channel located downstream of Rancho San Clemente which Developer may be required to perform. Moreover, Developer acknowledges that the provisions hereof are not intended to and shall not be interpreted or construed to release Developer from the obligation to pay to the Public Agency Parties the stormwater drainage fee which may be charged by a Public Agency Party pursuant to Chapter 13.32 of the Municipal Code and the corresponding TJPA ordinances and regulations or to construct or contribute to the cost of constructing on-site drainage facilities. As used herein, the term “on-site” means any location within the boundaries of the Master Talega Property, and “off-site” means any location not within the boundaries of the Master Talega Property.

4.6 **Affordable Housing Fees and Obligations.** City acknowledges that pursuant to Section 10.11 of the Amended and Restated Option Agreement (Phase 2) between City and Developer dated as of June 7, 2000 (the “Affordable Housing Option Agreement”), the execution and delivery of said Affordable Housing Option Agreement constitutes full satisfaction of any obligation of Developer to City to construct any affordable housing or pay any in-lieu fees for the development of the Talega Project, provided that none of the events described in clauses (i)-(v) of the second sentence of Section 10.11 of the Affordable Housing Option Agreement occur.

4.7 **Other Fees and Charges.** Except as specifically set forth in Sections 4.1 through 4.6, nothing set forth in this Agreement is intended or shall be construed to limit or restrict City's or TJPA's authority to impose new fees, charges, assessments, or taxes for the development of the Talega Property or to increase any existing fees, charges, assessments, or taxes, and nothing set forth herein is intended or shall be construed to limit or restrict whatever right Developer might otherwise have to challenge any fee, charge, assessment, or tax not in effect as of November 2, 1998. In connection therewith, Developer shall timely pay all applicable fees, charges, assessments, and special and general taxes validly imposed in accordance with the Constitution and laws of the State of California.

5. **DEVELOPMENT AND CONVEYANCE OF PARKS.**

5.1 **Development and Conveyance of Park 2 Site and Park 3 Site.**

5.1.1 **Master Plans.** Developer City shall be responsible for processing a Master Plan for the development of each of the Park Sites. The Master Plan for each of the Park Sites that is ultimately approved by the City Council and City's Beaches, Parks and Recreation
Department are referred to herein as the “Approved Park Master Plans.” The approval of the Master Plans is subject to the public review process and, accordingly, the amenities and facilities approved for development on the Park Sites pursuant to the Approved Park Master Plans may be different from those in the Concept Park Master Plans attached hereto as Exhibit “G.” Notwithstanding the foregoing, City agrees that its ability to modify the Concept Park Master Plans shall be subject to the following limitations: (i) as to each Park Site, from and after the date that is thirty (30) days after the date City receives the Park Grading Plan Notice pursuant to Section 5.1.4, City shall not be permitted to modify the amenities and facilities in the Concept Park Master Plan in such a way that the Park Site, as rough graded in accordance with the Concept Park Master Plan, would not be able to accommodate the modified amenities and facilities; and (ii) as to each Park Site, from and after the date that is one hundred eighty (180) days after the date City receives the Park Improvement Plan Notice pursuant to Section 5.1.5, City shall not be permitted to modify the amenities and facilities in the Concept Park Master Plan.

5.1.2 Size of Park Sites. The cumulative size of the Park Sites shall be a minimum of 16.5 acres of land area, with the Park 2 Site consisting of 9.5 acres and the Park 3 Site consisting of 7 acres. City agrees Developer shall be permitted to reduce the acreage of one of the Park Sites as a result of geotechnological or other unforeseen circumstances provided the reduction is not more than 10% of the anticipated Park Site size (8.55 acres for the Park 2 Site and 6.3 acres for the Park 3 Site) and, further provided that the size of the Park Site that is not being reduced is increased by an amount equal to the size of the reduction of the first Park Site. For example, if the size of the Park 2 Site is decreased by one (1) acre, the size of the Park 3 Site must be increased by one (1) acre.

5.1.3 Funding. Subject to the following sentence, Developer shall have the sole obligation to fund the planning, design, engineering, construction, supervision, inspection, and all other costs associated with the design and construction of the Park Improvements on the Park Site. If Developer is required to develop the Park Site in accordance with the Approved Park Master Plan pursuant to Section 5.1.5 of this Agreement and the amenities and facilities in the Approved Park Master Plan are different from those shown in the Concept Park Master Plan for the applicable Park Site, City shall have the obligation to pay the costs or reimburse Developer the costs associated with the design and construction of the Park Improvements on the Park Site (excluding the Overhead Charge as defined below) that exceed the Concept Park Cost for the Park Site. As to each Park Site, the term “Concept Park Cost” shall mean the planning, design, engineering, construction, supervision, inspection, and all other costs associated with the design and construction of the park amenities and facilities that are shown in the Concept Park Master Plan for that Park Site (excluding the Overhead Charge), estimated as of the date City approves the plans and specifications for the Park Improvements on the Park Site. The estimated cost for the design and construction of the park amenities and facilities shown on each Concept Park Master Plan as of the Effective Date is set forth in Exhibit “F” attached to this Agreement (“Park Budgets”). City and Developer acknowledge that the amounts set forth in the Park Budgets are estimates of the Concept Park Cost as of the Effective Date of this Agreement and that the amounts of the actual Concept Park Cost (which amounts are determined as of the date the plans and specifications for the Park Improvements on the Park Site are approved by City) may be more or less than the amounts reflected in the Park Budgets. As used in this Section 5.1.3, the term “Overhead Charge” means any costs, fees, charges or profit allocated to Developer’s own
internal administrative payroll or overhead expenses or to any person or entity affiliated with Developer.

Nothing in this Section 5.1.3 shall not be construed to limit City’s obligation to reimburse Developer a portion of the Park Fees paid by Developer to City in accordance with Section 4.3.2 of this Agreement.

5.1.4 Grading Plans and Site Preparation. No earlier than the date that is thirty (30) days prior to the date Developer intends to commence preparing the grading plans for each of the Park Sites, Developer shall notify the Park Director in writing of its intent to commence preparing said plans (“Park Grading Plan Notice”). If, on the date that is thirty (30) days after the date City receives the Park Grading Plan Notice, City has not approved the Approved Park Master Plan for the Park Site, Developer shall prepare the grading plans in accordance with the Concept Park Master Plan for the Park Site. If, on the date that is thirty (30) days after the date City receives the Park Grading Plan Notice, City has approved the Approved Park Master Plan for the Park Site, Developer shall prepare the grading plans in accordance with the Approved Park Master Plan for the Park Site.

Prior to and as a condition to the recordation of the first final tract map for any property located within Village 4, Developer shall complete the rough grading on the Park 2 Site. If, after Developer completes the rough grading on the Park 2 Site, City determines that the size of the Park 2 Site is less than that required pursuant to Section 5.1.2 of this Agreement or the grading of the Park 2 Site is not in accordance with the grading plan approved by City, Developer shall relocate the Park 2 Site to Village 4 at a location reasonably determined by City and Developer. The establishment of the location and boundaries of the relocated Park 2 Site by City and Developer shall be a condition to the recordation of the first final tract map for Village 4.

If, after Developer completes the rough grading on the Park 3 Site, City determines that the size of the Park 3 Site is less than that required pursuant to Section 5.1.2 of this Agreement or the grading of the Park 3 Site is not in accordance with the grading plan approved by City, Developer shall take whatever action necessary (including the relocation of roads and property boundaries), at whatever cost, to cause the Park 3 Site to be comprised of the requisite number of acres and to conform to the approved grading plans.

5.1.5 Park Improvement Plans. No later than the date that is one hundred eighty (180) days prior to the date Developer intends to commence preparing the plans for the Park Improvements on each of the Park Sites, Developer shall notify the Park Director in writing of its intent to commence preparing said plans (“Park Improvement Plan Notice”). If on the date that is one hundred eighty (180) days after the date City receives the Park Improvement Plan Notice, City has not approved the Approved Park Master Plan for the applicable Park Site, Developer shall prepare the plans for the Park Improvements in accordance with the Concept Park Master Plan for said Park Site. If on the date that is one hundred eighty (180) days after the date City receives the Park Improvement Plan Notice City has approved the Approved Park Master Plan for the applicable Park Site, Developer shall prepare the plans for the Park Improvements in accordance with the Approved Park Master Plan for said Park Site.
5.1.6 *Construction and Completion of Park Improvements.* Developer, at its sole cost and expense, shall construct and install or cause to be constructed and installed the Park Improvements in strict accordance with the plans and specifications approved by City. In addition, Developer shall construct and install or cause to be constructed and installed the Park Improvements in compliance with all applicable laws, regulations, and rules of all governmental agencies having jurisdiction, including without limitation the payment of “prevailing wages,” as that term is defined in California Labor Code Section 1720 et seq.

The provisions of this paragraph shall apply only in the event City is required to fund a portion of the cost to develop the Park Improvements on the Park Site(s) pursuant to Section 5.1.3 of this Agreement; the provisions of this paragraph shall have no application otherwise. As to each such Park Site, Developer shall submit to the Park Director a minimum of three bone fide written construction contract bids for the Park Improvements on the Park Site no less than thirty (30) days prior to the date that Developer estimates it will be entering into the construction contract for the performance of the works of improvement. Said submittal shall include detailed backup information as needed to enable the Park Director to evaluate the reasonableness of the bids. Within thirty (30) days after receipt of Developer’s submittal, the Park Director shall approve (or disapprove) the lowest responsible and responsive bid, as determined by the Park Director in his or her reasonable discretion. It is expressly understood that Developer may enter into a contract with a contractor other than the contractor submitting the lowest responsible bid (so long as the contractor selected is otherwise responsible and reasonably acceptable to the Park Director), provided that the amount for which City will be required to fund or reimburse Developer for the work included in the main construction bid shall be calculated on the basis of the lowest responsible bid, subject to additional costs incurred for change orders during construction which are also subject to the reasonable approval of the Park Director. City acknowledges that the main construction bid may not include all of the work associated with the design and construction of the Park Improvements (i.e., design and engineering) and nothing herein is intended to imply that such work is not also subject to reimbursement or payment by City pursuant to Section 5.1.3.

Developer shall substantially complete or cause to be substantially completed construction of the Park Improvements on the Park 2 Site no later than the issuance of the 2500th building permit for a residential unit in the Master Talega Property. Developer shall substantially complete or cause to be substantially completed construction of the Park Improvements on the Park 3 Site no later than the issuance of the 3200th building permit for a residential unit in the Master Talega Property. If Developer fails to substantially complete the Park Improvements on the Park Sites within the times set forth in this Section 5.1.6, the Public Agency Parties shall be entitled to not issue any additional building permits for development within the Talega Property and Developer shall not obtain any building permits from the County until such time as the Park Improvements are completed. As used in this Section 5.1.6, the term “substantially complete” shall mean that the Park Site is in a condition that the Park Director has reasonably determined is sufficient for the Park Site to be opened for use to the public. Developer shall cause the Park Improvements on the Park 2 Site to be fully completed no later than the date that is one hundred eighty (180) days after the issuance of the 2500th building permit for a residential unit in the Master Talega Property, so that the improvements can be accepted by City. Developer shall cause the Park Improvements on the Park 3 Site to be fully completed no later than the date that is one hundred eighty (180) days after the issuance of the
3200th building permit for a residential unit in the Master Talega Property, so that the improvements can be accepted by City.

5.1.7 Authority of the Park Director. The Park Director shall have the authority to decide all questions which may arise as to the quality and acceptability of materials furnished and work performed, and all questions as to the satisfactory and acceptable fulfillment of the construction of the Park Improvements on the Park Sites by Developer and Developer’s Park Contractor.

5.1.8 Rights of Access. For the purpose of assuring compliance with the provisions of this Agreement, representatives of City shall have the reasonable right of access to the Park Sites at normal construction hours. City’s representatives shall comply with all generally applicable work place safety rules imposed by Developer’s Park Contractor.

5.1.9 Supervision. Developer or Developer’s Park Contractor shall have an authorized representative on the job site at all times during which work is being done who has full authority to act for Developer, its design engineer, and Developer’s Park Contractor regarding the Park Improvements. Developer shall cause Developer’s Park Contractor to furnish to City every reasonable mechanism for ascertaining whether or not the Park Improvements as constructed and installed are in accordance with the requirements and intent of this Agreement, including the plans and specifications and related documents. At the request of City, Developer’s Park Contractor, at any time before City issues the notice of completion for the Park Improvements, shall remove or uncover any uninspected portions of the finished work. After examination, Developer shall cause Developer’s Park Contractor to restore the work to the standards required hereunder. Inspection or supervision by City shall not be considered as direct control of the individual workmen on the job site. City shall have the authority to stop any and all work not in accordance with the requirements contained or referenced in this Agreement, including, but not limited to, the approved plans and specifications and the requirements and standards of City and TJPA and any other governmental agency with jurisdiction. The inspection of the work by City shall not relieve Developer of any obligations to fulfill this Agreement as herein provided, and unsuitable materials or work may be rejected, notwithstanding that such materials or work may have been previously overlooked or accepted.

5.1.10 Defective Work. Developer shall cause Developer’s Park Contractor to repair, reconstruct, replace, or otherwise make acceptable any work reasonably found by the Park Director to be defective. Final acceptance of any of the Park Improvements shall not constitute a waiver by City of defective work subsequently discovered.

5.1.11 Warranty of Work.

5.1.11.1 Warranty Period. Developer warrants that the Park Improvements shall be free from all defects in materials and workmanship for a period of one (1) year after the date City accepts the Park Improvements for maintenance. If City reasonably determines within said warranty period that any of the work done by Developer fails to fulfill any of the requirements of this Agreement or the plans and specifications approved by City, or contains any defects in materials or workmanship, Developer, within fifteen (15) days after written notice of such defects, or within such shorter time as may reasonably be determined by
City in the event of an emergency shall, and without cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Park Improvements. Should Developer fail to act promptly or in accordance with this Agreement, or if the exigencies of the case require repairs or replacement to be made before Developer can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work and Developer shall pay to City, on demand, the actual cost of such repairs plus fifteen percent (15%) to cover administrative and other expenses. The warranty period provided herein shall not be in lieu of, but shall be in addition to, any warranties or other obligations otherwise imposed by law.

5.1.11.2 Security Instrument for Warranty Period. Prior to City’s acceptance of the Park Improvements and recordation of the notice of completion, Developer shall deliver to City a security instrument or instruments warranting the Park Improvements for a period of one (1) year following the date City accepts the Park Improvements for maintenance, with the amount of such security instrument to be equal to twenty-five percent (25%) of the estimated construction cost or a suitable amount determined by the Park Director. City shall release the warranty security instrument(s) upon Developer’s written request upon the expiration of the warranty period, provided no claims are outstanding at that time regarding defective work.

5.1.12 City Approval of Work. Prior to City’s acceptance of the Park Improvements, City shall notify Developer whether the Park Improvements have been completed in accordance with the approved plans and specifications. If City determines that the Park Improvements have not been completed in accordance with the approved plans and specifications, City shall inform Developer in writing of all incomplete and/or unacceptable work. Upon receipt of such writing, Developer shall promptly perform all necessary remedial measures to correct any inadequacies. Developer shall notify City in writing upon completion of such remedial measures. The parties shall follow the above steps until such time as City determines that the Park Improvements have been completed in strict accordance with the approved plans and specifications. Upon such determination, City shall issue the requisite notice of completion.

5.1.13 Conveyance of Park Sites.

5.1.13.1 Grant Deed. Developer shall convey fee simple title to each of the Park Sites to City by grant deed.

5.1.13.2 Conveyance Period. City shall deliver written notice to Developer of its intent to take fee title to each of the Park Sites, which notice shall be delivered at any time during the Term of this Agreement, as determined by City in its sole and absolute discretion; provided, however, (i) in no event shall City accept conveyance of the Park Site 2 Site later than the date Developer completes the Park Improvements on the Park 2 Site as evidenced by City’s issuance of the notice of completion or the issuance of the 2500th building permit for a residential unit within the Master Talega Property, whichever occurs last, and (ii) in no event shall City accept conveyance of the Park Site 3 Site later than the date Developer completes the Park Improvements on the Park 3 Site as evidenced by City’s issuance of the notice of completion or the issuance of the 3200th building permit for a residential unit within the Master Talega Property, whichever occurs last.
5.1.13.3 **Condition of Title.** Developer shall convey and City shall accept fee simple title to each of the Park Sites free and clear of all recorded and unrecorded monetary liens. Developer further agrees to convey each of the Park Sites free and clear of all recorded and unrecorded non-monetary liens, encumbrances, easements, leases, covenants, conditions, restrictions, and other exceptions to or defects in title, excepting only the following: (i) non-delinquent property taxes and assessments (to be paid by Developer prior to the closing, subject to Developer’s right to apply for a refund for any portion of said taxes or assessments allocable to the period after the closing date); (ii) the lien of this Agreement; (iii) the standard printed title exceptions in the form of CLTA title policy (or ALTA policy with Western Regional Exceptions) commonly used by the Title Company identified in Section 5.1.13.4 herein; and (iv) those additional title exceptions as may be approved in writing by City in its sole and absolute discretion.

5.1.13.4 **Title Insurance and Conveyance Costs.** Developer shall pay any Park Site taxes and assessments and all costs required to place title in the condition described in Section 5.1.13.3 and all costs for the conveyance of the Park Site to City. Concurrently with the conveyance of the Park Site to City, and as a condition to City's acceptance of said conveyance, Developer shall cause First American Title Insurance Company, or such other title company as may be selected by Developer and subject to City's reasonable approval (the "Title Company"), to deliver to City an ALTA standard or, at City's election, an extended coverage owner's policy of title insurance showing title vested in City in the condition described in Section 5.1.13.3 with insurance coverage in the amount of the fair market value of the Park Site (the "Title Policy"). Developer shall pay the premium for the Title Policy. City shall pay the premium for any additional coverage or endorsements to the Title Policy.

5.1.14 **Maintenance of Park Sites.** Developer shall maintain the Park Sites in accordance with the standards and specifications established by City from time to time and in compliance with all applicable laws, statutes, rules, and regulations until the date that fee title to each Park Site is conveyed to City pursuant to Section 5.1.13.2 of this Agreement.

5.2 **Dedication of Additional Land for Park Purposes.** Developer may desire to convey to City, in addition to the Park Sites, approximately 2.3 acres of land area for park purposes ("Additional Parkland"), a portion of which Additional Parkland is located adjacent to the Park 2 Site and a portion of which is located adjacent to the Oak Woodland Site. The offer of such Additional Parkland by Developer, and the acceptance of such Additional Parkland by City in the event the Parkland is offered by Developer, shall be in the sole and absolute discretion of each of them. The Additional Parkland shall not count towards the minimum 16.5 acres Developer is required to provide for the Park 2 Site and the Park 3 Site pursuant to Section 5.1.2. For example, if the size of the Park 2 Site is reduced by one (1) acre pursuant to Section 5.1.2, and Developer conveys to City the Additional Parkland, Developer shall still be required to increase the size of the Park 3 Site by one (1) acre.

5.3 **Park 1 Agreement.** This Agreement does not in any way modify, amend, or supersede, or otherwise affect the rights and obligations of City or Developer under the Park 1 Agreement.
5.4 Option to Acquire Oak Woodland Site.

5.4.1 Option. Subject to the terms and conditions of this Section 5.4, Developer hereby grants to City and City hereby accepts from Developer an option to acquire the Oak Woodland Site.

5.4.2 Option Fee and Purchase Price. Developer’s granting of the option referred to in this Section 5.4 shall be in consideration of City’s performance of its obligations set forth in this Agreement. City shall not be required to pay any option fee or consideration or purchase price for the Oak Woodland Site.

5.4.3 Option Period. City shall have the right to exercise its option to acquire the Oak Woodland Site commencing on the Effective Date of this Agreement and terminating on the date that any final tract map that includes the Oak Woodland Site is recorded. Developer shall notify the Park Director in writing of the anticipated recording of said final tract map ninety (90) days prior to the anticipated recording date.

5.4.4 Manner of Exercise of Option. City shall exercise its option to acquire the Oak Woodland Site by delivering written notice to Developer of City’s intention to do so. Within ten (10) days after City delivers such notice to Developer, City and Developer shall open an escrow for the conveyance with First American Title Insurance Company, or such other escrow company as may be selected by Developer and subject to City’s reasonable approval (the “Escrow Agent”). The escrow instructions for the conveyance shall be consistent with this Section 5.4. City and Developer agree to execute such additional instructions as may be reasonably required by the Escrow Agent in order to accomplish the purposes of this Section 5.4 and close the escrow within sixty (60) days after the date the escrow is opened; provided, however, that in the event of any conflicts between the standard printed form escrow instructions of the Escrow Agent and the provision of this Section 5.4, the provisions of this Section 5.4 shall prevail.

5.4.5 Condition of Title. Developer shall convey fee simple title to the Oak Woodland Site by grant deed. Developer shall convey and City shall accept fee simple title to the Oak Woodland Site free and clear of all recorded and unrecorded monetary liens. Developer further agrees to convey the Oak Woodland Site free and clear of all recorded and unrecorded non-monetary liens, encumbrances, easements, leases, covenants, conditions, restrictions, and other exceptions to or defects in title, excepting only the following: (i) non-delinquent property taxes and assessments (to be paid by Developer prior to the closing, subject to Developer’s right to apply for a refund for any portion of said taxes or assessments allocable to the period after the closing date); (ii) the lien of this Agreement; (iii) the standard printed title exceptions in the form of CLTA title policy (or ALTA policy with Western Regional Exceptions) commonly used by the Title Company identified in Section 5.4.6 herein; and (iv) those additional title exceptions as may be approved in writing by City in its sole and absolute discretion.

5.4.6 Escrow Fees, Title Charges, and Closing Costs. City and Developer each shall pay one-half (½) of the escrow fees and closing costs incurred for the conveyance of the Oak Woodland Site, except that Developer shall pay any non-delinquent property taxes and assessments and all costs required to place title in the condition described in Section 5.4.5.
Developer shall cause First American Title Insurance Company, or such other title company as may be selected by Developer and subject to City's reasonable approval (the "Title Company"), to deliver to City at the close of escrow a standard form CLTA owner's policy of title insurance (or ALTA policy with Western Regional Exceptions) showing title vested in City in the condition described in Section 5.4.5, with title insurance coverage in the amount of the fair market value of the Oak Woodland Site. Developer shall pay the premium for said policy. Developer and City hereby warrant and represent to one another that neither party will engage the services of a broker or finder in this transaction, and each agrees to indemnify, defend, and hold the other harmless from and against any claims, liabilities, or losses arising out of a breach of such warranty and representation.

6. **RCFPP; TRAFFIC ISSUES.**

6.1 **RCFPP Compliance.** Developer shall dedicate land, construct improvements, and pay fees as required to comply with the General Plan and the RCFPP, and shall otherwise be bound by the same, as more particularly set forth herein. City acknowledges that prior to the Effective Date of this Agreement Developer paid to City all RCFPP fees attributable to development of the Master Talega Project.

6.2 **Dedication of Rights-of-Way; Construction Easements.**

6.2.1 **Dedication of Rights-of-Way.** Within thirty (30) days after written request by City, Developer shall execute in recordable form and deliver to City an irrevocable offer to dedicate to City all of the rights-of-way to be located on the Talega Property needed to accommodate the road improvements which are identified in the RCFPP and the General Plan, including without limitation the proposed extensions of Avenida Vista Hermosa and Avenida La Pata, with the rights-of-way to be in the locations generally depicted in Exhibit "I" attached hereto and incorporated herein by this reference and of a width, size, and precise alignment reasonably acceptable to the City Engineer.

City shall have the right to accept the offers of dedication at the time City reasonably determines that the rights-of-way are needed to accommodate the road improvements. In connection therewith, City shall have the right to accept any portion of the land offered for dedication hereunder separately from any other portion and its acceptance of one portion shall not be deemed to constitute a rejection of any other portion. Developer hereby grants to City and its contractors, subcontractors, and other designees a non-exclusive license to enter onto portions of the Talega Property adjacent to the rights-of-way for the purpose of conducting soils tests and engineering and boundary surveys and other similar tests and investigations, provided that (i) City shall notify Developer in writing a minimum of seventy-two (72) hours prior to any such entry, (ii) City shall indemnify, defend, and hold harmless Developer with respect thereto, and (iii) City shall not unreasonably interfere with any of Developer's ongoing business activities or operations on the Talega Property in exercising its rights hereunder. City shall not be required to pay any compensation or fee for the rights-of-way and the non-exclusive license described in this Section 6.2.1.

6.2.2 **Construction Easements.** Developer hereby grants to City a non-exclusive easement in, on, over, and across the Talega Property as reasonably necessary for the purpose of
performing construction work associated with the construction of roads within the rights-of-way to be dedicated by Developer pursuant to Section 6.2.1, which construction work includes but is not limited to drainage improvements, slope stabilization, and construction of curbs, gutters, medians, sidewalks, and street lighting, signalization, and signage, provided that: (i) City shall notify Developer in writing a minimum of seventy-two (72) hours prior to exercising its right of entry pursuant to this Section 6.2.2, (ii) City shall indemnify, defend, and hold harmless Developer with respect thereto, and (iii) City shall not unreasonably interfere with any of Developer’s ongoing business activities or operations on the Talega Property in exercising its rights hereunder. City shall not be required to pay any compensation or fee for the non-exclusive easements described herein.

6.3 Traffic Capacity.

6.3.1 Development Rights. The Public Agency Parties have evaluated the traffic impacts associated with development of the Master Talega Project upon the Public Agency Parties’ traffic circulation system and have determined that so long as certain conditions referred to hereinbelow are satisfied, the development of 3,400 residential units in the Master Talega Property can be accommodated in six (6) Phases as described below without violating the LOS Standards. Accordingly, if Developer timely performs its obligations set forth in this Agreement and the conditions described below for the particular Phase ("Conditions") have been satisfied, the Public Agency Parties shall not withhold residential building permits or take any other action to prevent or delay Developer from constructing on the Talega Property the maximum number of residential units permitted for that Phase on the basis of the Talega Project’s impact on a Public Agency Party’s traffic circulation system or any alleged violation of the LOS Standards. Nothing contained herein is intended as a representation or warranty by the Public Agency Parties with respect to Developer’s satisfaction of federal, state, or local laws, rules, or regulations governing development or building approvals other than as expressly set forth in the preceding sentence and nothing contained herein is intended to release Developer from its obligations to obtain other required development and building approvals, including without limitation any required development allocations under Measure B. Developer agrees that a Public Agency Party’s issuance of building permits for residential units in each Phase is contingent and conditional upon the satisfaction of all of the Conditions for the Phase. Developer further agrees that, as to each Phase, until all of the Conditions for the Phase have been satisfied, the Public Agency Parties shall not be required to issue any additional residential building permits and Developer shall not be entitled to obtain any additional residential building permits (including building permits from the County) and shall not develop any residential units on any portion of the Talega Property unless the LOS Standards are satisfied. As of the Effective Date, the Phase 1, 2, and 3 Conditions have been satisfied.
<table>
<thead>
<tr>
<th>Phase</th>
<th>Residential Units</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1 - 800</td>
<td>This Agreement and the Original Development Agreement remains in full force and effect.</td>
</tr>
<tr>
<td>2</td>
<td>801 - 1,200</td>
<td>Developer provides to City Developer’s share of the funding for the Vista Hermosa Interchange and Developer advances the share of the funding for the Vista Hermosa Interchange that the RCFPP allocates to the developer of the Marblehead Coastal Property (with such funding to be in the form of cash and/or letter(s) of credit). The Phase 1 Condition has been satisfied.</td>
</tr>
<tr>
<td>3</td>
<td>1,201 - 2,200</td>
<td>Either (i) the construction contract for the Vista Hermosa Interchange has been awarded or (ii) Developer’ proposed development satisfies the LOS Standards. The Phase 1 and 2 Conditions have been satisfied.</td>
</tr>
<tr>
<td>4</td>
<td>2,201 - 2,400</td>
<td>Developer has furnished to City the security instruments for the Vista Hermosa Extension and the La Pata Extension. The Phase 1, 2, and 3 Conditions have been satisfied.</td>
</tr>
<tr>
<td>5</td>
<td>2,401 - 2,600</td>
<td>The construction of the Vista Hermosa Extension and the La Pata Extension has commenced. The Phase 1, 2, 3, and 4 Conditions have been satisfied.</td>
</tr>
<tr>
<td>6</td>
<td>2,601 - 3,400</td>
<td>The construction of the Vista Hermosa Extension and the La Pata Extension has been completed. The Phase 1, 2, 3, 4, and 5 Conditions have been satisfied.</td>
</tr>
</tbody>
</table>

6.3.2 Arbitration. In addition to the provisions of Sections 6.3.1 and 6.3.3 of this Agreement, the Parties acknowledge that the issuance of the building permit for the 3,401st residential unit and all additional residential units in the Master Talega Property will depend on the proposed development's compliance with the LOS Standards. If at any time after the issuance of the building permit for the 3400th residential unit in the Master Talega Property, a Public Agency Party determines that the proposed development would violate the LOS Standards,
Standards, the Public Agency Party will be entitled to not issue any additional residential building permits and Developer shall not obtain any additional residential building permits from the County until such time as the traffic condition is alleviated and the violation of the LOS Standards ceases to exist. Any disagreement between a Public Agency Party and Developer regarding a determination of a violation of the LOS Standards that cannot be resolved by the Parties after (but not before) the issuance of the 3,400th residential building permit for the Master Talega Property shall be submitted to arbitration upon the written request of either Party involved in the dispute. Each Party shall, within thirty (30) days notice from the other Party, appoint an arbitrator. The arbitrators shall hold a hearing in the County of Orange, State of California, within thirty (30) days after the date of their appointment. At the hearing, the Parties may present any relevant evidence and the formal rules of evidence applicable to judicial proceedings shall not govern. The arbitrators shall notify the Parties in writing of their determination within twenty (20) days of the hearing. In the event the arbitrators are unable to reach agreement, the arbitrators shall appoint a neutral third arbitrator. The third arbitrator shall hear and determine the controversy within thirty (30) days after being appointed, and shall notify the Parties in writing of his or her determination, which determination shall be final, conclusive, and binding. In the event that either Party fails to timely appoint its arbitrator, or the two arbitrators fail to timely appoint the third arbitrator, or the third arbitrator fails to timely proceed with the hearing and determination of the cause, either Party not in default may apply directly to the Orange County Superior Court to hear the matter consistent with this Agreement. In all respects not inconsistent with the express provisions of this Agreement, any arbitration shall be conducted pursuant to the provisions set forth in the California Code of Civil Procedure, as such provisions exist at the time of arbitration.

Each Party shall bear the costs of its own arbitrator (with the understanding that a Public Agency Party's costs shall be an eligible charge against its RCFPP fee account) and the cost for the third arbitrator shall be shared equally by Developer and the Public Agency Party(ies) involved in the dispute (again, with a Public Agency Party's costs being an eligible charge against its RCFPP fee account). The arbitrators shall be registered traffic engineers with at least five (5) years experience in matters similar in nature to the dispute. In addition, the arbitrators shall have no prior business or employment relationship with any Party.

6.3.3 LOS Standards. For the purpose of determining whether or not building permits can be issued, Developer shall have the vested right to require that the LOS Standards shall be applied to the Talega Project. In the event that a Public Agency Party hereafter amends the LOS Standards in a manner that adversely impacts Developer's ability to develop the Talega Project in accordance with Section 6.3.1, such amendment shall not be applicable to the Talega Property without the written consent of Developer, which consent Developer may withhold in its sole and absolute discretion. In addition, in determining whether proposed development on the Talega Property satisfies the LOS Standards, neither Public Agency party shall reserve traffic capacity for future development and shall consider only traffic generated by development existing at the time building permits are requested for the proposed development on the Talega Property plus traffic which is anticipated to be generated by other developments for which building permits have been issued by County (for any portion of the Master Talega Property), City, or TJPA prior to said date and the traffic which is anticipated to be generated by the proposed development on the Talega Property. For purposes of determining whether or not building permits can be issued, Developer shall have the vested right to require that the Public
Agency Parties determine compliance with the LOS Standards in accordance with the standards set forth in the preceding sentence and the Public Agency Party’s Traffic Model in use at the time compliance with the LOS Standards is determined, with the understanding that the Public Agency Party shall, for the Term of this Agreement, use the traffic trip generation rates set forth on Exhibit “I” in determining compliance with LOS Standards. In addition, in determining whether a proposed development on the Talega Property satisfies the LOS Standards, the Public Agency Parties shall not consider the traffic levels on roadways and intersections that are not within the Study Area depicted on Exhibit “M” attached to this Agreement.

6.3.4 Developer’s Advance of Funds for RCFPP Road Improvements.

6.3.4.1 RCFPP Road Improvements: Developer’s Advance. If at any time after the issuance of the building permit for the 3,400th residential unit in the Master Talega Property, a Public Agency Party determines that the proposed development would violate the LOS Standards, and City determines that the construction of certain road improvements identified in the RCFPP would alleviate the traffic impacts and cause the violation of the LOS Standards to cease to exist (the “RCFPP Road Improvement”), Developer shall have the right to advance to City the funds for the construction of the RCFPP Road Improvement. City shall notify Developer of the number of additional residential units that can be accommodated by the construction of the RCFPP Road Improvement without violating the LOS Standards (the “Additional Units”). Upon City’s award of the contract for the RCFPP Road Improvement, the Public Agency Parties shall not withhold residential building permits or take any other action to prevent or delay Developer from constructing on the Talega Property the Additional Units on the basis of the impact of the Additional Units on a Public Agency Party’s traffic circulation system or any alleged violation of the LOS Standards. Nothing contained herein is intended as a representation or warranty by the Public Agency Parties with respect to Developer’s satisfaction of federal, state, or local laws, rules, or regulations governing development or building approvals other than as expressly set forth in the preceding sentence and nothing contained herein is intended to release Developer from its obligations to obtain other required development and building approvals, including without limitation any required development allocations under Measure B.

6.3.4.2 Reimbursement. The RCFPP Road Improvements may provide benefit to property owners other than Developer (the "Benefited Landowner(s)"). In the event City identifies RCFPP Road Improvements and Developer advances funds for the construction of the RCFPP Road Improvements pursuant to Section 6.3.4.1, City agrees to exercise reasonable diligence in an effort to obtain reimbursement from the Benefited Landowner(s) for its or their fair share of Developer’s Reimbursable Expenses. As used herein, the term "Reimbursable Expenses" shall mean the amount advanced by Developer for the construction of the RCFPP Road Improvements pursuant to Section 6.3.4.1 of this Agreement exceeding Developer’s fair share of the cost as determined by City in accordance with the RCFPP. City makes no warranty or representation to Developer with regard to City's entitlement or ability to obtain any payments for any portion of the RCFPP Road Improvements to the extent the cost for such improvements are advanced by Developer, but City agrees to exercise reasonable diligence in an effort to cause the Benefited Landowner(s) to pay its or their fair share portion(s) of the expense prior to issuance of the first building permit for its or their development(s) and, to the extent that City does obtain such payments, it will apply the same to
reimburse Developer for the Reimbursable Expenses (without interest). City's obligation to reimburse Developer shall be a special and not a general obligation of City, payable from the sole source of fees collected from the Benefited Landowner(s) which are allocable to the Reimbursable Expenses. Reimbursement payments shall be made within a reasonable time after City receipt of the fees from the Benefited Landowner(s), and said payments shall continue to be made until the earlier of: (i) the date that Developer has been fully paid the amount of Reimbursable Expenses hereunder (excluding the amount determined by the City Engineer to be Developer's fair share of the cost in accordance with the RCFPP), or (ii) expiration of the Term of this Agreement. Any amount unpaid, if any, as of the expiration of the Term of this Agreement automatically shall be deemed discharged and forgiven. Payments shall be made to Developer at the address specified in Section 21.16 herein or at such other address as may be provided in writing by Developer in accordance therewith.

6.3.5 Developer's Advance of Funds for Non-RCFPP Road Improvements. If at any time after the issuance of the building permit for the 3,400th residential unit in the Master Talega Property, a Public Agency Party determines that the proposed development would violate the LOS Standards, City shall consider in good faith whether there are any road improvements that are not identified in the RCFPP, the construction of which are in the public interest (as determined by the City Council in its reasonable discretion) and which would alleviate the traffic impacts and cause the violation of the LOS Standards to cease to exist (the "Non-RCFPP Road Improvements"). In the event City identifies such Non-RCFPP Road Improvements, Developer shall have the right to advance to City the funds for the construction of the Non-RCFPP Road Improvement. City shall notify Developer of the number of Additional Units that can be accommodated by the construction of the Non-RCFPP Road Improvement without violating the LOS Standards. Upon City’s award of the contract for the construction of the Non-RCFPP Road Improvement, the Public Agency Parties shall not withhold residential building permits or take any other action to prevent or delay Developer from constructing on the Talega Property the Additional Units on the basis of the impact of the Additional Units on a Public Agency Party’s traffic circulation system or any alleged violation of the LOS Standards. Nothing contained herein is intended as a representation or warranty by the Public Agency Parties with respect to Developer’s satisfaction of federal, state, or local laws, rules, or regulations governing development or building approvals other than as expressly set forth in the preceding sentence and nothing contained herein is intended to release Developer from its obligations to obtain other required development and building approvals, including without limitation any required development allocations under Measure B. Developer acknowledges that it will not be entitled to any reimbursement from City or TJPA for the cost of constructing any Non-RCFPP Road Improvements.

6.4 Foothill/Eastern Transportation Corridor Agency Alignments. The Public Agency Parties and Developer shall oppose construction of any roadway alignments adopted or proposed by the Foothill/Eastern Transportation Corridor Agency that traverse through the City or any property within the jurisdiction of the TJPA.
7. **FUNDING, CONSTRUCTION, AND MAINTENANCE OF CERTAIN ROAD IMPROVEMENTS.**

7.1 **Extension of Avenida Vista Hermosa and Avenida La Pata.**

7.1.1 **General.** Developer’s construction of the Vista Hermosa Extension and the La Pata Extension (collectively, the "Extensions") shall be performed as set forth in the Specific Plan and this Agreement and, to the extent not inconsistent with the express provisions of this Agreement, in accordance with the provisions of City’s standard form Subdivision Improvement Agreement in use on the Effective Date. Subject to Sections 7.1.6 and 7.1.7 of this Agreement, Developer shall have the sole obligation to fund the planning, design, engineering, construction, supervision, inspection, and all other costs associated with the design and construction of the Extensions.

7.1.2 **Submittal and Review of Plans.** Prior to the Effective Date, Developer prepared and submitted to the City Engineer for review and approval the final plans and specifications for the grading, drainage, erosion control, paving, lighting, and bike trail to be constructed and installed by Developer in connection with the Extensions. Developer and City shall cooperate and exercise reasonable diligence to cause said submittal to be processed and any required changes and corrections to the plans and specifications to be made on a schedule that will enable the City Engineer to approve the final plans and specifications by March 1, 2002. No later than March 1, 2002, Developer shall submit to the City Engineer for review and approval the final plans and specifications for the utilities, landscaping, and related improvements to be constructed and installed by Developer in connection with the Extensions. Developer and City shall cooperate and exercise reasonable diligence to cause said submittal to be processed and any required changes and corrections to the plans and specifications to be made on a schedule that will enable the City Engineer to approve the final plans and specifications by June 1, 2002.

7.1.3 **Commencement and Completion of Construction.** No later than June 1, 2002, Developer shall commence construction of the Extensions. Subject to Section 16.3 of this Agreement, Developer shall substantially complete construction of the Extensions no later than March 15, 2003. As used herein, the term "substantially complete" shall mean that the Extensions are in a condition that the City Engineer has determined is sufficient for the roadways to be opened for traffic to the public. Developer shall exercise reasonable diligence to cause the Extensions to be fully completed as soon as possible after they are substantially complete, so that the improvements in question can be accepted by City. Nothing in this Section 7.1.3 shall be deemed to require City to accept the Extensions or record a notice of completion prior to the date all improvements are fully completed in accordance with City's normal standards applicable to public works projects.

7.1.4 **City's Acquisition of the La Pata Easement.** City shall exercise reasonable diligence in an effort to acquire the La Pata Easement on a schedule that will not prevent or delay Developer’s completion of the La Pata Extension within the time set forth in Section 7.1.3 of this Agreement; provided, however, nothing herein shall be deemed a warranty or representation by City that the acquisition definitely will occur or occur by a specific date or as a precommitment or prejudgment by City as to any of the findings and determinations the City Council would be required to make as a condition to its right to exercise its power of eminent domain. In the event
City exercises its power of eminent domain to acquire the La Pata Easement, City shall, subject to delays outside City’s control, exercise reasonable diligence to obtain the right to immediate possession of the La Pata Easement and to complete the acquisition of the La Pata Easement as soon as practicable after commencement of eminent domain proceedings.

7.1.5 Security.

7.1.5.1 Developer’s Obligation to Provide Security to City. No later than the earlier of (i) March 1, 2002, or (ii) City’s issuance of the grading permit for the Extensions, Developer shall furnish to City faithful performance security and payment security in the form of bonds (collectively, the “Extension Security Instruments”) in an amount not less than one hundred percent (100%) of the City Engineer’s approved estimated cost of the Extensions and the payment security in an amount not less than one hundred percent (100%) of such estimated cost, in favor of City securing Developer’s obligation to construct the Extensions. The Extension Security Instruments shall be in a form acceptable to the City Attorney, and issued by a financial institution acceptable to City.

7.1.5.2 Increases in Security. In the event the City Engineer reasonably determines that the estimated cost of constructing the Extensions has increased above the amounts of the Extension Security Instruments, City shall have the right, but not the obligation, to so notify Developer in writing. Within fifteen (15) days of receipt of such written notice, Developer shall provide additional faithful performance security to City in an amount equal to one hundred percent (100%) of the estimated increased cost and additional payment security in an amount equal to one hundred percent (100%) of the estimated increased cost, both in a form acceptable to the City Attorney and issued by a financial institution acceptable to City.

7.1.5.3 Release of Security. City shall release the Extension Security Instruments upon the last to occur of the following: (i) City's acceptance of the work performed in connection with the Extensions; (ii) expiration of the time within which stop notice or lien claims are required to be made pursuant to applicable provisions of the California Civil Code; or (iii) if stop notice or lien claims have been timely filed, after all such claims have been resolved or Developer has provided a statutory lien release bond.

7.1.6 Reimbursement for La Pata Extension. In 1998 City submitted to the Orange County Transportation Authority (“OCTA”) an application for a Measure M Grant for Master Plan of Arterial Highways for certain La Pata Extension improvements (“La Pata Improvements”). The application submitted to OCTA by City estimated the cost of the La Pata Improvements to be approximately Four Million Dollars ($4,000,000) and OCTA approved a grant of funds in the amount of One Million Dollars ($1,000,000). Developer acknowledges that in the event the cost of the La Pata Improvements that are eligible for reimbursement pursuant to OCTA’s guidelines and regulations (“Eligible La Pata Improvements”) is less than Four Million Dollars ($4,000,000), the grant of Measure M funds for the Eligible La Pata Improvements will be proportionately reduced by OCTA. The grant of Measure M funds for the Eligible La Pata Improvements will not be proportionately increased by OCTA in the event the cost of the Eligible La Pata Improvements is more than Four Million Dollars ($4,000,000). The grant of Measure M funds actually received by City for the Eligible La Pata Improvements shall be referred to herein as the “La Pata Measure M Grant.”
City shall reimburse Developer for the Reimbursable La Pata Expenses in an amount equal to the La Pata Measure M Grant. As used herein, the term “Reimbursable La Pata Expenses” shall mean the costs incurred by Developer with respect to the Eligible La Pata Improvements that are eligible for reimbursement under OCTA guidelines and regulations.

Prior to the tenth (10th) day of each month following the month in which City receives ninety percent (90%) of the La Pata Measure M Grant, Developer shall submit to the City Engineer a request for payment of the Reimbursable La Pata Expenses incurred by Developer for the previous month. The payment request shall include itemized statements, with such supporting information as City and/or OCTA may reasonably require, documenting all of Developer’s costs incurred during the previous month eligible to be considered in calculating the amount to be reimbursed to Developer pursuant to this Section 7.1.6. Developer’s submittal of such information to City each month is a condition to Developer’s right to receive monthly payments of Reimbursable La Pata Expenses. The City Engineer shall have the authority on behalf of City to calculate and approve the amount of Developer’s Reimbursable La Pata Expenses. No later than thirty (30) calendar days after Developer’s submission of the payment request and supporting information to City, City shall approve (or disapprove) the payment request. Any disapproval of a payment request shall state in writing the reasons for disapproval and shall be provided to Developer within thirty (30) calendar days after City has received the payment request. Within fifteen (15) working days after the date City approves a payment request, City shall pay to Developer ninety percent (90%) of the Reimbursable La Pata Expenses incurred for the month for which a payment request has been made. City shall pay to Developer the amounts withheld from each payment upon the last to occur of the following: (i) City’s acceptance of the work performed in connection with the construction and installation of the La Pata Extension; (ii) the expiration of the time within which lien claims are required to be made; (iii) if lien claims have been timely filed, after all such claims have been resolved or Developer has provided a statutory release bond; or (iv) the date City receives from OCTA the final ten percent (10%) of the La Pata Measure M Grant. Notwithstanding the foregoing, Developer acknowledges that City’s payments to Developer of the Reimbursable La Pata Expenses will not commence until the date City receives ninety percent (90%) of the La Pata Measure M Grant from OCTA. Developer acknowledges that it is possible that OCTA may not provide the La Pata Measure M Grant to City until 2003, in which case City will not make the monthly payments to Developer described in this paragraph.

7.1.7 Reimbursement for Water Transmission Lines. City shall reimburse Developer for the Reimbursable Water Line Expenses that exceed the sum of Five Hundred Thousand Dollars ($500,000). As used herein, the term “Reimbursable Water Line Expenses” shall mean the sum of the following costs incurred by Developer with respect to the Water Transmission Lines: (i) the amount paid by Developer to the contractor or contractors performing the works of improvement; (ii) the amount of fees paid by Developer to City or other governmental agencies with jurisdiction over said works of improvement for processing and approving the plans for said works of improvement and inspecting the work; and (iii) costs and fees paid by Developer to independent third-party engineers or consultants with respect to the planning, design and engineering of the works of improvement (but not including costs, fees, charges or profit allocated to Developer’s own internal administrative payroll or overhead expenses or to any person or entity affiliated with Developer and in no event to exceed eight percent (8%) of the “hard costs” of construction).
The amounts to be used in calculating the Reimbursable Water Line Expenses for the La Pata Domestic Water Line shall be Developer's marginal cost for oversizing the water line from ten (10) inches to twenty (20) inches (i.e., the marginal additional cost that Developer incurs for the items set forth in clauses (i)-(iii) of the preceding paragraph) in constructing and installing a twenty (20) inch water line that it would not have incurred if it constructed and installed a ten (10) inch water line. The amounts to be used in calculating the Reimbursable Water Line Expenses for the Vista Hermosa Domestic Water Line shall be Developer's marginal cost for oversizing the water line from eight (8) inches to twenty (20) inches (i.e., the marginal additional cost that Developer incurs for the items set forth in clauses (i)-(iii) of the preceding paragraph) in constructing and installing a twenty (20) inch water line that it would not have incurred if it constructed and installed an eight (8) inch water line.

Periodically, not less frequently than monthly, Developer shall submit to City itemized statements, with such supporting information as City may reasonably require, documenting all of Developer's costs eligible to be considered in calculating the amount to be reimbursed to Developer pursuant to this Section 7.1.7. The City Engineer shall have the authority on behalf of City to calculate and approve the amount of Developer’s Reimbursable Water Line Expenses.

Payment from City to Developer of the Reimbursable Water Line Expenses shall be made as set forth in this paragraph. Within thirty (30) days after Developer completes the installation of the Water Transmission Lines to the satisfaction of the City Engineer, City shall pay to Developer an amount equal to ninety percent (90%) of the amount City determines is due to Developer for the Reimbursable Water Line Expenses. City shall pay to Developer the balance of the Reimbursable Water Line Expenses due to Developer hereunder upon the last to occur of the following: (i) City's acceptance of the work performed in connection with the construction and installation of the Water Transmission Lines; (ii) the expiration of the time within which lien claims are required to be made; or (iii) if lien claims have been timely filed, after all such claims have been resolved or Developer has provided a statutory release bond.

Prior to entering into any contract for work for which Developer intends to seek reimbursement as part of the Water Transmission Lines and any change order to any such contract that increases the cost of the reimbursable work on a cumulative basis in excess of $10,000, Developer shall submit such contract (or change order) to the City Engineer for review and approval with respect to (i) the identity of the contracting party or parties, (ii) the scope of work and/or plans, (iii) the payment amounts, rates, and charges, and (iv) if the contract (or change order) includes some work that is payable or reimbursable as part of the Water Transmission Line and other work that is not so payable or reimbursable, the allocation of costs between the two categories of work. Developer shall cooperate with City to provide such information as may be required by the City Engineer to review such contract(s) or change order(s). Any contract or change order including both reimbursable and non-reimbursable work shall contain separate bid items for each. The City Engineer shall act reasonably in reviewing all such submittals by Developer.

Developer shall submit construction contract bids for the Water Transmission Lines to the City Engineer no less than forty-five (45) days prior to the date that Developer estimates it will be entering into any construction contract for the performance of any of said
works of improvement. Within thirty (30) days after receipt of Developer's submittal, the City Engineer shall approve (or disapprove) the lowest responsible and responsive bid. Assuming that a bid is approved, that bid shall be utilized for purposes of calculating Developer's Reimbursable Water Line Expenses subject to additional costs incurred for change orders during the course of construction (which are also subject to reasonable approval of the City Engineer).

7.2 Vista Hermosa Bridge.

7.2.1 General. Developer's construction of the Vista Hermosa Bridge shall be performed as set forth in this Agreement and, to the extent not inconsistent with the express provisions of this Agreement, in accordance with the provisions of City's standard form Subdivision Improvement Agreement in use on the Effective Date. Developer shall have the sole obligation to fund the planning, design, engineering, construction, supervision, inspection, and all other costs associated with the design and construction of the Vista Hermosa Bridge.

7.2.2 Submittal of Plans. No later than the earlier of (i) June 30, 2002, or the (ii) the date the first final tract map for any property included within Village 3 is recorded, Developer shall prepare and submit to the City Engineer for review and approval the plans and specifications for the Vista Hermosa Bridge (the "Vista Hermosa Bridge Plans"). City shall exercise reasonable diligence in reviewing and approving the Vista Hermosa Bridge Plans. Any disapproval of the Vista Hermosa Bridge Plans shall be in writing and shall state the reasons therefor. Upon receipt of a disapproval, Developer shall act promptly to revise or correct the Vista Hermosa Bridge Plans as necessary to conform to City requirements. The same procedures and requirements shall apply to subsequent submittals and reviews until the Vista Hermosa Bridge Plans are finally approved by City. Once approved, no changes to the Vista Hermosa Bridge Plans shall be permitted without prior written City approval.

7.2.3 Commencement and Completion of Construction. No later than July 1, 2003, Developer shall commence construction of the Vista Hermosa Bridge. Once commenced, construction shall be diligently pursued to completion and shall be completed no later than July 1, 2004.

7.2.4 Security.

7.2.4.1 Developer’s Obligations to Provide Security to City. Prior to and as a condition to the recordation of the first final tract map for any property located within Village 3, Developer shall furnish to City security instruments in favor of City securing Developer’s obligation to construct the Vista Hermosa Bridge as follows: (i) an irrevocable letter of credit in the amount of thirty-three percent (33%) of the estimated cost of the Vista Hermosa Bridge as reasonably determined by the City Engineer (the “Bridge Letter of Credit”); and (ii) faithful performance and payment security in the form of bonds in the amount of sixty-seven percent (67%) of the estimated cost of the Vista Hermosa Bridge as reasonably determined by the City Engineer. The Bridge Letter of Credit and the bonds shall be in a form acceptable to the City Attorney and shall be issued by a financial institution(s) acceptable to City. City shall release the Bridge Letter of Credit upon Developer’s timely commencement of construction of the Vista Hermosa Bridge, provided Developer provides to City substitute security in the form of
bonds acceptable to the City Attorney issued by a financial institution(s) acceptable to City, in
the amount of the Bridge Letter of Credit.

7.2.4.2 Increases in Security. In the event the City Engineer reasonably determines that the estimated costs of constructing the Vista Hermosa Bridge have increased above the amounts of the security instruments provided by Developer pursuant to Section 7.2.4.1, City shall have the right, but not the obligation, to so notify Developer, in writing. Within fifteen (15) days of receipt of such written notice, Developer shall provide to City additional faithful performance security in an amount equal to one hundred percent (100%) of the estimated increased cost and additional payment security in an amount equal to one hundred percent (100%) of the estimated increased cost.

7.2.4.3 Release of Security. City shall release the bonds securing Developer’s obligation to construct the Vista Hermosa Bridge upon the last to occur of the following: (i) City's acceptance of the work performed in connection with the Vista Hermosa Bridge; (ii) expiration of the time within which lien claims are required to be made pursuant to Article 3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part IV of Division 3 of the California Civil Code; or (iii) if lien claims have been timely filed, after all such claims have been resolved or Developer has provided a statutory lien release bond.

7.3 Ownership and Maintenance of Bridge Facilities. Upon Developer’s completion of each Bridge Facility (Vista Hermosa Bridge, Calle Saluda Bridge, and Avenida Talega Bridge) to the satisfaction of the City Engineer, Developer shall offer to dedicate the Bridge Facility to City for City’s ownership and maintenance. Developer, at its sole expense, shall maintain each of the Bridge Facilities in good operating condition and repair and in accordance with standards imposed by the City Engineer until such time as City accepts the offer of dedication. Subject to Developer having caused the Talega Master Association to take whatever action as may be required to enable the Talega Master Association to provide to City the Bridge Maintenance Funds described in this Section 7.3, City shall accept Developer’s offer of dedication for each Bridge Facility within ninety (90) days following the satisfactory completion of construction of the Bridge Facility. No later than the earlier of the date that is one hundred eighty (180) days after the Effective Date of this Agreement, or the date the first final tract map for any property within Village 3 is recorded (and as a condition to the recordation of such final map), Developer shall cause the Talega Master Association to (i) enter into an agreement with City, in a form approved by the City Attorney, requiring the Talega Master Association to provide to City the Bridge Maintenance Funds for City’s maintenance of the Bridge Facilities commencing on January 1, 2005, and continuing until January 1, 2033, as more fully described below, (ii) provide to City satisfactory evidence that the Talega Master Association has properly budgeted for such expense, and (iii) amend the Master Declaration of Covenants, Conditions, Restrictions and Reservations for Talega if such an amendment is necessary to enable the Talega Master Association to provide such funds to City. As used herein, the amount of the Bridge Maintenance Funds that shall be paid to City on January 1 of each year (each, a “Payment Date”), commencing on January 1, 2005, and continuing until January 1, 2033, shall be calculated by multiplying the sum of Twenty-Five Dollars ($25.00) by the number of residential units (houses, condominiums, townhouses, apartments, and other residential dwelling units) within the Master Talega Property that have been developed and sold or leased to a member of the public or any other ultimate user as of the Payment Date.
7.4 Maintenance of Extension Slope Areas. Developer shall maintain the slope areas located off of the Master Talega Property that are adjacent to the Vista Hermosa Extension, the La Pata Extension, and the Additional La Pata Extension (collectively, the “Extension Slope Areas”) in accordance with City standards until the earlier of (i) three (3) years following the date that the City Engineer verifies that Developer has satisfactorily completed the grading of the Extension Slope Areas and construction and installation of all drainage, erosion control, irrigation, landscaping, and related improvements thereon or (ii) the date that the City Engineer verifies that Developer has satisfactorily completed said work and that the landscaping has achieved a minimum of eighty percent (80%) coverage of the landscaped areas (with the understanding that groundcovers of limited life span shall not be considered in the determination of the 80% coverage requirement). After said date, City shall accept the Extension Slope Areas for maintenance purposes.

Nothing in this Agreement shall restrict City's authority to require that the Extension Slope Areas be maintained in perpetuity by the homeowners' association and/or business park association in the area affected.

7.5 Maintenance of Detention Basin by Association. No later than the recordation of the first final tract map for any property within Village 3 (and as a condition to the recordation of such final map), Developer shall cause the Talega Master Association to (i) enter into an agreement with City, in a form approved by the City Attorney, obligating the Talega Master Association to maintain the future detention and water quality basin to be located off the Talega Property on the easterly side of the Additional La Pata Extension (the “Detention Basin”), (ii) provide to City satisfactory evidence that the Talega Master Association has properly budgeted for the expenses for such maintenance, and (iii) amend the Master Declaration of Covenants, Conditions, Restrictions and Reservations for Talega if such an amendment is necessary to enable the Talega Master Association to maintain the Detention Basin.

8. CRISTIANITOS ROMP.

No later than June 1, 2002, Developer shall commence construction of all of the improvements described in the Cristianitos Runoff Management Plan approved by City (“ROMP Improvements”). Developer shall complete construction of the ROMP Improvements to the satisfaction of the City Engineer no later than October 15, 2002. Developer shall exercise diligent efforts to obtain from the Santa Margarita Water District prior to June 1, 2002, the approvals which may be required for the construction of the low flow diversion device included within the ROMP Improvements. No later than February 1, 2002, Developer shall submit to TJPA an application for a conditional use permit to enable Developer to perform the grading work that is a part of the ROMP Improvements. Prior to commencing construction, Developer shall furnish to City faithful performance security and payment security in the form of bonds in an amount not less than one hundred percent (100%) of the City Engineer’s approved estimated cost of the ROMP Improvements and the payment security in an amount not less than one hundred percent (100%) of such estimated cost, in favor of City securing Developer’s obligation to construct the ROMP Improvements. The security instruments shall be in a form acceptable to the City Attorney, and issued by a financial institution acceptable to City. In the event the City Engineer reasonably determines that the estimated cost of constructing the ROMP Improvements has increased above the amounts of the security instruments, City shall have the right, but not the
obligation, to so notify Developer in writing. Within fifteen (15) days of receipt of such written notice, Developer shall provide additional faithful performance security to City in an amount equal to one hundred percent (100%) of the estimated increased cost and additional payment security in an amount equal to one hundred percent (100%) of the estimated increased cost, both in a form acceptable to the City Attorney and issued by a financial institution acceptable to City.

9. CONVEYANCE OF FIRE STATION SITE.

9.1 Option. Subject to the terms and conditions of this Section 9, Developer hereby grants to City and City hereby accepts from Developer an option to acquire the Fire Station Site.

9.2 Option Fee and Purchase Price. Developer's granting of the option referred to in this Section 9 shall be in consideration of City's performance of its obligations set forth in this Agreement. City shall not be required to pay any option fee or consideration or purchase price for the Fire Station Site.

9.3 Option Period. City shall have the right to exercise its option to acquire the Fire Station Site at any time during the Term of this Agreement commencing on the date that is eighteen (18) months prior to the date the Orange County Fire Authority and/or City determines that the operation of a fire station on the Fire Station Site is necessary.

9.4 Manner of Exercise of Option. City shall exercise its option to acquire the Fire Station Site by delivering written notice to Developer of City's intention to do so. Within ten (10) days after City delivers such notice to Developer, City and Developer shall open an escrow for the conveyance with First American Title Insurance Company, or such other escrow company as may be selected by Developer and subject to City's reasonable approval (the "Escrow Agent"). The escrow instructions for the conveyance shall be consistent with this Section 9. City and Developer agree to execute such additional instructions as may be reasonably required by the Escrow Agent in order to accomplish the purposes of this Section 9 and close the escrow within sixty (60) days after the date the escrow is opened; provided, however, that in the event of any conflicts between the standard printed form escrow instructions of the Escrow Agent and the provision of this Section 9, the provisions of this Section 9 shall prevail.

9.5 Condition of Title. Developer shall convey fee simple title to the Fire Station Site by grant deed. Developer shall convey and City shall accept fee simple title to the Fire Station Site free and clear of all recorded and unrecorded monetary liens. Developer further agrees to convey the Fire Station Site free and clear of all recorded and unrecorded non-monetary liens, encumbrances, easements, leases, covenants, conditions, restrictions, and other exceptions to or defects in title, excepting only the following: (i) non-delinquent property taxes and assessments (to be paid by Developer prior to the closing, subject to Developer's right to apply for a refund for any portion of said taxes or assessments allocable to the period after the closing date); (ii) the lien of this Agreement; (iii) the standard printed title exceptions in the form of CLTA title policy (or ALTA policy with Western Regional Exceptions) commonly used by the Title Company identified in Section 9.6 herein; and (iv) those additional title exceptions as may be approved in writing by City in its sole and absolute discretion.
9.6 Escrow Fees, Title Charges, and Closing Costs. City and Developer each shall pay one-half (½) of the escrow fees and closing costs incurred for the conveyance of the Fire Station Site, except that Developer shall pay any non-delinquent property taxes and assessments and all costs required to place title in the condition described in Section 9.5. Developer shall cause First American Title Insurance Company, or such other title company as may be selected by Developer and subject to City's reasonable approval (the "Title Company"), to deliver to City at the close of escrow a standard form CLTA owner's policy of title insurance (or ALTA policy with Western Regional Exceptions) showing title vested in City in the condition described in Section 9.5, with title insurance coverage in the amount of the fair market value of the Fire Station Site. Developer shall pay the premium for said policy. Developer and City hereby warrant and represent to one another that neither party will engage the services of a broker or finder in this transaction, and each agrees to indemnify, defend, and hold the other harmless from and against any claims, liabilities, or losses arising out of a breach of such warranty and representation.

9.7 Physical Condition of the Fire Station Site. Developer shall deliver the Fire Station Site to City in a level, rough graded condition and in compliance with all statutes, laws, ordinances, rules, regulations, and official policies of federal, state, and local agencies with jurisdiction with regard to grading, soils conditions and compaction, environmental conditions and hazardous materials, and other matters that would affect the ability of the Orange County Fire Authority and/or City to feasibly operate a fire station on the property. In addition, Developer shall be responsible for constructing and installing all public improvements around the perimeter of the Fire Station Site prior to the close of escrow, including without limitation streets, curbs, gutters, sidewalks, storm drains, and utilities (stubbed to the property line in a location or locations reasonably acceptable to the City Engineer).

10. ANNEXATION OF THE TJPA PROPERTY.

10.1 Cooperation of City and TJPA Developer Parties. Pursuant to the Cortese/Knox Local Government Reorganization Act of 1985, Government Code Sections 56000, et seq. ("Cortese/Knox Act"), prior to the issuance of any building permit for any lot within a tract within the TJPA Property, Developer shall file with the Orange County Local Agency Formation Commission ("LAFCO") a petition for the annexation of the tract and LAFCO shall have certified that the petition is complete for the purpose of processing the annexation. City shall cooperate with and reasonably assist Developer with the processing and approval of the annexation petitions. Developer shall request LAFCO to impose on the annexation approvals for residential and commercial lots a condition that the annexation shall occur after the date a building permit for a residential or commercial unit on the lot has been issued and before the date a certificate of occupancy has been issued for a building on the lot or final inspection of the building has been approved by TJPA authorizing occupancy. City, as the "conducting authority" under the Cortese/Knox Act, shall not approve and order the annexation of any residential lot unless such a condition on annexation of the residential lot meeting the approval of Developer is adopted by LAFCO. The timing for the annexation of the lettered lots within the TJPA Property into the City shall be as determined by City and LAFCO.

10.2 Annexation Fee. In consideration of Developer’s performance of its obligations set forth in this Agreement, City agrees it shall not require Developer to pay, in connection with
the annexation of the TJPA Property to the City, the annexation fee charged by City pursuant to Section 3.28.030 of the Municipal Code or any other annexation fee or tax that may be charged by City from time to time.

10.3 City Development Agreement for TJPA Property. Pursuant to Government Code Section 65865(b), this Agreement constitutes a development agreement of City with respect to the TJPA Property. As to portions of the TJPA Property that are annexed into the City within ten (10) years after the Effective Date, as and when the annexation of such portions of the TJPA Property into the City becomes effective, the provisions of this Agreement that apply to the City Property shall also apply to such portions of the TJPA Property.

11. OFFSITE PAD IMPROVEMENTS.

11.1 Size of Offsite Pads. City acknowledges that the actual size of the Offsite Pads will depend on the amount of fill available for export from the Village Center. City agrees there shall be no limitation on the maximum size of the Offsite Pads, so long as the ACOE has authorized the placement of fill, and has agreed to terminate the Conservation Easement, on the land area included within the Offsite Pads. Provided Developer complies with the terms and conditions of the grading permit(s) issued by City for the Offsite Pads and the Village Center, City agrees that the size of the Large Offsite Pad may be less than forty-seven (47) acres; provided, however, in no event shall the Large Offsite Pad be less than forty-four (44) acres and in no event shall the Small Offsite Pad be less than nine (9) acres, notwithstanding that the amount of fill available for export from the Export Site may be insufficient to create pads of this size and that Developer would be required to export fill from another location.

11.2 Preparation of Plans and Specifications. Prior to the Effective Date, Developer prepared and submitted to the City Engineer for review and approval the plans and specifications for the Offsite Pad Improvements (the "Offsite Pad Plans and Specifications"). As used herein, the term "Offsite Pad Improvements" shall mean the grading, erosion control, and hydro-seeding of the Offsite Pads and the stubbing in of utilities to the boundaries of the Offsite Pads at locations to be mutually agreed to by City and Developer. City shall exercise reasonable diligence in reviewing and approving the Offsite Pad Plans and Specifications. Any disapproval of the Offsite Pad Plans and Specifications shall be in writing and shall state the reasons therefor. Upon receipt of a disapproval, Developer shall act promptly to revise or correct the Offsite Pad Plans and Specifications as necessary to conform to City requirements. The same procedures and requirements shall apply to subsequent submittals and reviews until the Offsite Pad Plans and Specifications are finally approved by City. Once approved, no changes to the Offsite Pad Plans and Specifications shall be permitted without prior written City approval.

11.3 Construction. No later than June 1, 2002, Developer shall commence construction of the Offsite Pad Improvements. Once construction is commenced, it shall be diligently pursued to completion and will be completed no later than March 15, 2003. The construction of the Offsite Pad Improvements shall be in strict accordance with the Offsite Pad Plans and Specifications approved by City. Developer shall perform or cause to be performed the construction of the Offsite Pad Improvements in a manner acceptable to the City Engineer and in full compliance with all federal, state, and local regulations and requirements, as well as the terms of this Agreement and, to the extent not inconsistent with the express provisions of this
Agreement, in accordance with the provisions of City's standard form Subdivision Improvement Agreement in use on the Effective Date.

11.4 **Termination of Conservation Easement.** From and after the Effective Date of this Agreement and prior to Developer's commencement of construction of the Offsite Pad Improvements, Developer shall exercise diligent efforts to cause the ACOE to provide to City an agreement or letter or such other evidence as City may reasonably require giving City the assurance that Developer's construction of the Offsite Pad Improvements will not constitute a default under the Conservation Easement and that the Conservation Easement will be removed as an encumbrance to title to the Offsite Pads. If the ACOE's removal of the Conservation Easement as an encumbrance to title the Offsite Pads is subject to Developer's compliance with any term, condition or obligation imposed by ACOE, Developer shall comply with such term, condition and obligation.

11.5 **Maintenance.** As to each Offsite Pad, Developer shall maintain the landscaping and erosion control on the Offsite Pad for a period of one (1) year after the date the City Engineer verifies that Developer has satisfactorily completed the Offsite Pad Improvements on that Offsite Pad.

12. **FINANCING OF CFD PROPOSED INFRASTRUCTURE IMPROVEMENTS.**

Developer desires that the financing for the construction of the CFD Proposed Infrastructure Improvements be provided for by the issuance of bonds by Community Facilities District No. 90-2 of the Capistrano Unified School District ("CFD 90-2"). CFD 90-2 is a community facilities district established prior to the Effective Date of this Agreement pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 et seq.). City agrees it shall not oppose the issuance and sale of bonds by the CFD 90-2 for the purpose of funding the design, planning, installation, and construction of the CFD Proposed Infrastructure Improvements and shall cooperate in good faith to consider the approval of the formation of the CFD 90-2, to the extent required, and to enter into such agreements with CFD 90-2 as reasonably may be required to reflect the City's approval of the issuance and sale of bonds by the CFD 90-2 for such purpose; provided, however, that nothing herein shall be construed as a commitment by City to take such actions or as a limitation on City's legislative discretion with respect thereto. In the event the costs of constructing the CFD Proposed Infrastructure Improvement are not included in the CFD 90-2 or the amount of the bonds sold is not sufficient to pay for the costs of said improvements, Developer shall nevertheless be responsible for installing at its own cost the CFD Proposed Infrastructure Improvements as may be required for the development of the Master Talega Property.

13. **HABITAT MITIGATION.**

City agrees that during the Term of this Agreement, Developer shall have the right to conduct habitat preservation, replacement, enhancement, creation, and maintenance on the Habitat Mitigation Site as may be required by any federal, state, or local governmental agency in connection with the development of the Talega Project ("Habitat Mitigation"), subject to the following: (i) Developer shall coordinate with City prior to conducting the Habitat Mitigation and shall enter into a Right of Entry Agreement with City prior to entering the Habitat Mitigation
Site; (ii) Developer's performance of the Habitat Mitigation shall not interfere with City's ability to develop roadways or perform any other obligations or duties of City as City deems appropriate; (iii) the Habitat Mitigation shall not interfere with any rights any third parties may have in and to the Habitat Mitigation Site as of the Effective Date of this Agreement, including the right of Laing Forster Ranch, LLC to use the Habitat Mitigation Site for habitat mitigation and other environmental purposes; (iv) the Habitat Mitigation shall not cause the City to incur any cost or expense and shall not impose, or result in the imposition of, any burdens on City for maintenance or otherwise; (v) the Habitat Mitigation shall not violate the Conservation Easement or any other agreement or permit applicable to the Habitat Mitigation Site; (vi) the Habitat Mitigation shall be consistent with any use restrictions and covenants applicable to the Property; and (vii) Developer shall be responsible for obtaining at its sole cost and expense any and all permits and approvals from third parties necessary to perform the Habitat Mitigation on the Habitat Mitigation Site. The Community Development Director or his or her designee shall have the authority to approve and enter into, on behalf of City, the Right of Entry Agreement(s) referred to in clause (i) of the preceding sentence.

14. ORIGINAL DEVELOPMENT AGREEMENT.

This Agreement shall supersede the Original Development Agreement as to the City Property and the TJPA Property. To the extent the Original Development Agreement applies to the portions of the Master Talega Property that do not constitute City Property and TJPA Property, including the portion of the Master Talega Property upon which the golf course is located, the Original Development Agreement shall remain in full force and effect and shall continue to apply thereto, except to the extent the Original Development Agreement has terminated as to portions of such property pursuant to Section 2.2 of the Original Development Agreement. City and Developer wish to clarify that the entire Master Talega Property shall continue to be utilized in the calculations to be made in determining whether the Fiscal Mitigation Conditions set forth in Section 8 of the Original Development Agreement are satisfied.

15. IMPLEMENTATION.

15.1 Processing of Applications and Permits. Upon satisfactory completion by Developer of all required preliminary actions and payment of appropriate processing fees, if any, the applicable Public Agency Party shall proceed to process and check all applications for Talega Project development and building approvals within the times set forth in the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the California Government Code), the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the California Government Code), and other applicable provisions of law, as the same may be amended from time to time.

In no event shall a Public Agency Party disapprove, condition, or delay the processing of any application for Talega Project development or building approvals for reasons inconsistent with the express provisions of this Agreement. If a Public Agency Party is unable to timely process any of Developer's applications for Talega Project development or building approvals, upon request by Developer, the Public Agency Party shall consider engaging outside consultants to aid in such processing, provided that Developer shall be required to advance all charges to be
incurred by the Public Agency Party for such outside consultants. In this regard, Developer, in a timely manner, will provide the Public Agency Parties with all documents, applications, plans, and other information necessary for the Public Agency Party to carry out its obligations hereunder and will cause Developer's planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefor.

15.2 Tentative Subdivision Maps. With respect to applications by Developer for tentative subdivision maps for portions of the City Property, City agrees that Developer may file and process vesting tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of City's subdivision ordinance, as the same may be amended from time to time. If final maps are not recorded for the entire City Property before such tentative map(s) would otherwise expire, the term of such tentative map(s) automatically shall be extended for the Term of this Agreement. With respect to applications by Developer for tentative subdivision maps for portions of the TIPA Property, TIPA agrees that Developer may file and process vesting tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of TIPA's subdivision ordinance, as the same may be amended from time to time. If final maps are not recorded for the entire TIPA Property before such tentative map(s) would otherwise expire, the term of such tentative map(s) automatically shall be extended for the Term of this Agreement. Pursuant to Section 65867.5(b) of the Government Code, any tentative map prepared for the Talega Property shall comply with the provisions of Section 66473.7 of the Government Code relating to the availability of sufficient water supply.

15.3 Permit Review. Each of the Public Agency Parties shall have the authority to review applications for building permits as required by law and to conduct its development review of any specific improvements proposed for the Talega Project pursuant to the applicable provisions of the Public Agency Party's ordinances, rules, and regulations, provided, however, no such review shall authorize or permit the Public Agency Party to impose any condition and/or withhold approval of any proposed building the result of which would be inconsistent with any term or provision of this Agreement.

15.4 Environmental Review. With respect to meeting any requirements of CEQA, Developer shall provide all information required of it and shall pay for any necessary studies and reports, and the Public Agency Parties each shall process such matters in accordance with this Section 15.4 and, to the extent permitted by CEQA, shall use and adopt existing environmental reports and studies without requiring new or supplemental environmental documentation.

15.5 Other Governmental Permits. Provided that Developer will pay the reasonable cost of such cooperation, after a Public Agency Party has approved the development of any portion of the Talega Property, the Public Agency Party shall cooperate with Developer in its efforts to obtain such additional permits and approvals as may be required by any other governmental or quasi-governmental agencies having jurisdiction over such portion of the Talega Property, which permits and approvals are consistent with the Public Agency Party's approval and which are consistent with applicable regulatory requirements. The Public Agency Parties do not warrant or represent that any other governmental or quasi-governmental permits or approvals will be granted.
16. DEFAULT, REMEDIES, AND TERMINATION.

16.1 Notice and Opportunity to Cure. Before this Agreement may be terminated or action may be taken to obtain judicial relief, the Party seeking relief ("Nondefaulting Party") shall comply with the notice and cure provisions of this Section 16.1. A Nondefaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("Defaulting Party") to perform any material duty or obligation of said Defaulting Party in accordance with the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Nondefaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "default" of its obligations set forth in this Agreement if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within ten (10) days after the date of such notice (for monetary defaults), within thirty (30) days after the date of such notice (for non-monetary defaults), or within such lesser time as may be specifically provided in this Agreement. If, however, a non-monetary default cannot be cured within such thirty (30) day period, as long as the Defaulting Party does each of the following:

(a) notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

(b) notifies the Non-Defaulting Party of the Defaulting Party's proposed course of action to cure the default;

(c) promptly commences to cure the default within the thirty (30) day period;

(d) makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and

(e) diligently prosecutes such cure to completion,

then the Defaulting Party shall not be deemed in breach of this Agreement. Notwithstanding the foregoing, the Defaulting Party shall be deemed in default of its obligations set forth in this Agreement if said breach or failure involves the payment of money but the Defaulting Party has failed to completely cure said monetary default within ten (10) days (or such lesser time as may be specifically provided in this Agreement) after the date of such notice.

16.2 Default Remedies. Subject to the foregoing, in the event of a default, the Non-Defaulting Party, at its option, may institute legal action to cure, correct, or remedy such default, enjoin any threatened or attempted violation, or enforce the terms of this Agreement by specific performance. Furthermore, either Public Agency Party, in addition to or as an alternative to exercising the remedies set forth in this Section 16.2, in the event of a material default by Developer, may give notice of its intent to terminate or modify this Agreement pursuant to the Development Agreement Statute, in which event the matter shall be scheduled for consideration and review by the City Council and TJPA Board of Directors within thirty (30) calendar days after the issuance of such notice to terminate, in the manner set forth in Government Code
Sections 65865, 65867, and 65868, as the same may be amended from time to time. In no event shall Developer have the right to sue either Public Agency Party for damages or monetary relief arising out of a Public Agency Party’s default of its obligations set forth in this Agreement, the Parties agreeing that declaratory and injunctive relief, mandate, and specific performance shall be Developer’s sole and exclusive judicial remedies.

16.3 Force Majeure. The obligations by any Party hereunder shall not be deemed to be in default where delays or failures to perform are due to any cause without the fault and beyond the reasonable control of such Party, including to the extent applicable, the following: war; insurrection; strikes; walk-outs; the unavailability or shortage of labor, material, or equipment; riots; floods; earthquakes; the discovery and resolution of hazardous waste or significant geologic, hydrologic, archaeologic, paleontologic, or endangered species problems on the Property; fires; casualties; acts of God; governmental restrictions imposed or mandated by other governmental entities; with regard to delays of Developer’s performance, delays caused by a Public Agency Party’s failure to act or timely perform its obligations set forth herein; with regard to delays of a Public Agency Party’s performance, delays caused by Developer’s failure to act or timely perform its obligations set forth herein; inability to obtain necessary permits or approvals from other governmental entities; enactment of conflicting state or federal statutes or regulations; judicial decisions; or litigation not commenced by such Party. Notwithstanding the foregoing, any delay caused by the failure of a Public Agency party or any agency, division, or office of a Public Agency Party to timely issue a license, permit, or approval required pursuant to this Agreement shall not constitute an event of force majeure extending the time for that Public Agency’s performance hereunder. If written notice of such delay or impossibility of performance is provided to the other Parties within a reasonable time after the commencement of such delay or condition of impossibility, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon by the Parties in writing, or the performance rendered impossible may be excused in writing by the Party so notified. In no event shall adverse market or financial conditions constitute an event of force majeure extending the time for such Party’s performance hereunder. In addition, in no event shall the Term of this Agreement be extended by an event of force majeure.

16.4 No Obligation to Develop. It is understood that Developer’s development of the Talega Property depends upon a number of factors including, but not necessarily limited to, the housing market, the availability of financing, and general economic conditions. Nothing in this Agreement shall be construed as requiring Developer to develop the Talega Property, and any failure to develop the Talega Property shall not be deemed a default by Developer of its obligations set forth in this Agreement. In the event Developer fails to develop all or a portion of the Talega Property, Developer shall not be responsible for payment of any fees required to be paid by Developer as provided in this Agreement or City’s or TJPA’s ordinances, regulations, rules, and official policies that apply only to such portion of the Talega Property that is not so developed.

17. ANNUAL REVIEW.

17.1 Timing and Scope of Annual Review. At least once every twelve (12) month period from the Effective Date, City shall review the good faith compliance of Developer with the terms of this Agreement (the "Annual Review"). The Annual Review shall be conducted by
the City Council or its designee in accordance with Article 6 of City's regulations for consideration of development agreements, approved by Resolution No. 46-81 on June 17, 1981, as the same may be amended from time to time. The Annual Review shall be limited in scope to the determination of Developer's compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1; provided, however, that if the City Council imposes a mitigation monitoring or reporting program pursuant to CEQA which is to be completed simultaneously with the Annual Review of this Agreement, then the scope of the Annual Review may include implementation of mitigation measures pursuant to CEQA, except that compliance with mitigation measures shall not be deemed to be an obligation of any Party pursuant to this Agreement solely or partly because mitigation monitoring is conducted simultaneously with review of this Agreement.

At least once every twelve (12) month period from the Effective Date, TJPA shall review the good faith compliance of Developer with the terms of this Agreement. The Annual Review shall be conducted by the TJPA Board of Directors or its designee in accordance with the same standards utilized by City pursuant to the preceding paragraph. The Annual Review shall be limited in scope to the determination of Developer's compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1; provided, however, that if the TJPA Board of Directors imposes a mitigation monitoring or reporting program pursuant to CEQA which is to be completed simultaneously with the Annual Review of this Agreement, then the scope of the Annual Review may include implementation of mitigation measures pursuant to CEQA, except that compliance with mitigation measures shall not be deemed to be an obligation of any Party pursuant to this Agreement solely or partly because mitigation monitoring is conducted simultaneously with review of this Agreement.

17.2 Standards for Annual Review. During the Annual Review, Developer shall be required to demonstrate good faith compliance with the terms of this Agreement. At the conclusion of the Annual Review, (i) the City Council or its designee shall make a written determination, on the basis of substantial evidence, whether or not Developer has complied in good faith with the terms and conditions of this Agreement and (ii) the TJPA Board of Directors or its designee shall make a written determination, on the basis of substantial evidence, whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of any designee of the City Council shall be appealable to the City Council and the decision of any designee of the TJPA Board of Directors shall be appealable to the TJPA Board of Directors. If a Public Agency Party or its designee finds and determines that Developer has not complied with the terms and conditions of this Agreement, then the Public Agency Party may declare a default by Developer in accordance with Section 16 herein. A Public Agency Party may exercise its rights and remedies relating to any such event of default only after the period for curing a default as set forth in Section 16 has expired without cure of the default. The costs incurred by the Public Agency Parties in connection with the Annual Review process shall be paid by Developer.

17.3 Evidence for Annual Review. A Public Agency Party, upon request by Developer, shall provide Developer a copy of any final public staff reports and documents to be used or relied upon in conducting the Annual Review and, to the extent practical, related exhibits concerning Developer's performance hereunder, prior to any such review. Developer shall be
permitted an opportunity to respond to a Public Agency Party's evaluation of its performance, either orally at a public hearing or in a written statement, at Developer's election.

17.4 Certificate of Compliance. With respect to each year in which a Public Agency Party approves Developer's compliance with this Agreement, the Public Agency Party shall, upon written request by Developer, provide Developer with a written certificate of good faith compliance within thirty (30) days of the Public Agency Party's receipt of Developer's request for same.

18. MORTGAGEE RIGHTS.

18.1 Encumbrances on the Property. The Parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Talega Property or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use, or operation of the Talega Project.

18.2 Mortgagee Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Talega Property or any portion thereof by a Mortgagee (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement and any such Mortgagee who takes title to the Talega Property or any portion thereof shall be entitled to the benefits arising under this Agreement.

18.3 Mortgagee Not Obligated. Notwithstanding the provisions of this Section 18, a Mortgagee will not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of Developer or other affirmative covenants of Developer hereunder, or to guarantee such performance, except that (i) the Mortgagee shall have no right to develop the Talega Project without fully complying with the terms of this Agreement and (ii) to the extent that any covenant to be performed by Developer is a condition to the performance of a covenant by a Public Agency Party, the performance thereof shall continue to be a condition precedent to the Public Agency Party's performance hereunder.

18.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure. Each Mortgagee shall, upon written request to a Public Agency Party, be entitled to receive written notice from the Public Agency Party of the results of the Annual Review and of any default by Developer of its obligations set forth in this Agreement. Each Mortgagee shall have a further right, but not an obligation, to cure such default within sixty (60) days after receipt of such notice or, if such default can only be remedied or cured by such Mortgagee upon obtaining possession of the Property, such Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure such default within sixty (60) days after obtaining possession, and, except in case of emergency or to protect the public health or safety, the Public Agency Parties may not exercise any of their judicial remedies set forth in this Agreement until expiration of such sixty (60) day period; provided, however, that in the case of a default which cannot with diligence be remedied or cured or the remedy or cure of which
cannot be commenced within such sixty (60) day period, the Mortgagee shall have such additional time as is reasonably necessary to remedy or cure such default.

18.5 Bankruptcy. Notwithstanding the foregoing provisions of this Section 18, if any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Developer, the times specified in Section 18.4 for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition. In addition, if this Agreement is rejected by Developer or otherwise terminated in connection with any such proceeding, then upon the request of any Mortgagee, a new development agreement upon the same terms and conditions set forth in this Agreement shall be entered into between such Mortgagee and the Public Agency Parties.

19. ASSIGNMENT.

19.1 Assignee Subject to Terms of Agreement. Following an assignment or transfer of any of the rights and interests of Developer set forth in this Agreement, the assignee's exercise, use, and enjoyment of the Talega Property shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Developer.

19.2 Release of Developer. Upon the written consent of the Public Agency Parties to the partial or complete assignment of this Agreement (which consent shall not be unreasonably withheld) and the express written assumption of such assigned obligations of Developer under this Agreement by the assignee, Developer shall be relieved of its legal duty to perform the assigned obligations set forth in this Agreement, except to the extent Developer is in default hereunder prior to said transfer.

19.3 Sale to Builders. Nothing herein shall prevent Developer from selling or transferring a portion of the Talega Property for development subject to any approved parcel map or final subdivision map to a builder for development in accordance with the terms of this Agreement, provided that the transferee enters into an appropriate agreement with the appropriate Public Agency Parties to assure that all development obligations and restrictions hereunder related to such portion of the Talega Property will be met.

20. INSURANCE AND INDEMNITY.

20.1 Insurance. Developer shall procure and maintain, at all times during the Term when actual work on the Talega Property is being performed, or any of the improvements described in this Agreement are being constructed, by Developer or its contractors or subcontractors, in a form and content satisfactory to the Public Agency Parties, the following policies of insurance:

(a) Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than Five Million Dollars ($5,000,000.00) combined single limits.
(b) **Automobile Insurance.** A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (A) bodily insurance liability limits of Two Million Dollars ($2,000,000.00) per person and Two Million Dollars ($2,000,000.00) per occurrence and property damage liability limits of Five Hundred Thousand Dollars ($500,000.00) per occurrence and Five Hundred Thousand Dollars ($500,000.00) in the aggregate or (B) combined single limit liability of Two Million Dollars ($2,000,000.00). Said policy shall include coverage for owned, non-owned, leased, and hired cars.

(c) **Workers’ Compensation Insurance.** A policy of workers’ compensation insurance in such amount as will fully comply with the laws of the State of California.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California and rated "A:VII" or better in the most recent edition of Best's Insurance Guide. All of the aforesaid policies of insurance shall be primary insurance and shall name the Public Agency Parties, and their respective officials and employees as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against the Public Agency Parties and their insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days prior written notice to the Public Agency Parties. In the event any of said policies of insurance are cancelled, Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 20.1. No work to be performed by Developer pursuant to this Agreement shall commence until Developer has provided the Public Agency Parties with certificates of insurance or appropriate insurance binders evidencing the above insurance coverage and said certificates or binders are approved by the Public Agency Parties.

20.2 **Indemnity.**

20.2.1 **Participation in Litigation; Indemnity.** Developer agrees to indemnify, defend, and hold harmless the Public Agency Parties and their respective elected and appointed boards, commissions, officers, agents, and employees from and against any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) which may arise, directly or indirectly, from the acts, omissions, or operations of Developer or Developer's agents, contractors, subcontractors, agents, or employees pursuant to this Agreement. A Public Agency Party shall provide Developer with notice of the pendency of any such action and request that Developer defend such action. If Developer fails to do so, a Public Agency Party may defend the action and Developer shall pay the cost thereof.

20.2.2 **Survival of Indemnity Obligations.** The indemnity provisions set forth in this Agreement shall survive termination of this Agreement.
21. MISCELLANEOUS.

21.1 Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Talega Property for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto.

21.2 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties and, subject to Section 14, supersedes all previous negotiations, discussions, and agreements among the Parties with respect to all or part of the subject matter hereof. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

21.3 Legal Expenses. In any judicial proceeding, arbitration, or mediation (collectively, "Action") between any Public Agency Party and Developer seeking enforcement of any of the terms and provisions of this Agreement, the prevailing Party in such Action shall be awarded all of its actual and reasonable costs and expenses (whether or not the same would be recoverable pursuant to Code of Civil Procedure Section 1033.5 or 1717 in the absence of this Agreement), including expert witness fees, attorney's fees, and costs of investigation and preparation prior to the commencement of the Action. The right to recover such costs and expenses shall accrue upon commencement of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

21.4 Amendment. Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall have any force or effect unless it is set forth in writing, signed by duly authorized representatives of each of the Parties hereto, and recorded in the Official Records of Orange County.

21.5 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Talega Project or the Talega Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Talega Project or the Talega Property.

21.6 Cooperation in the Event of Legal Challenge; Limitations. In the event of any legal action instituted by any third party challenging the validity or enforceability of any provision of this Agreement, the Parties hereby agree to cooperate in defending said action as set forth in this Section 21.6. Each of the Public Agency Parties shall have the right to defend such action. The Public Agency Parties shall have no obligation to defend any such action, except that if Developer timely provides a Public Agency Party with written notice that Developer has elected to defend the action, the Public Agency Party shall not allow any default or judgment to be taken against it and shall not enter into any settlement or compromise of any claim which has the effect, directly or indirectly, of prohibiting, preventing, delaying, or further conditioning or impairing Developer's rights hereunder. In addition, if Developer elects to defend the action, the Public Agency Parties shall provide reasonable assistance to Developer, such assistance to include (i) making available upon reasonable notice, and at no cost to Developer, the City and TJPA officials and employees who are or may be witnesses in such action, and (ii) provision of
other non-privileged information within the custody or control of the Public Agency Parties that is relevant to the subject matter of the action.

Developer shall have the right, but not the obligation, to defend any such action. If Developer defends any such action, it shall indemnify, defend, and hold harmless the Public Agency Parties and their respective officials and employees from and against any claims, losses, or liabilities assessed or awarded against the Public Agency Party by way of judgment, settlement, or stipulation. In such event, Developer shall further have the right to settle such action, provided that nothing herein shall authorize Developer to settle such action on terms that would constitute an amendment or modification of this Agreement unless such amendment or modification is approved by the Public Agency Parties in accordance with applicable legal requirements, and the Public Agency Parties reserve their full legislative discretion with respect thereto. If Developer does not defend any such action, Developer shall have no responsibility for the payment or defense of any claims, losses, or liabilities incurred by or filed against the Public Agency Parties.

21.7 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by any other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

21.8 Parties in Interest. This Agreement and all of its terms, conditions, and provisions are entered into only for the benefit of the Parties executing this Agreement (and any successors in interest), and not for the benefit of any other individual or entity.

21.9 No Joint Venture or Partnership. The Public Agency Parties and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the Public Agency Parties and Developer joint venturers or partners.

21.10 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless and to the extent the rights and obligations of any Party has been materially altered or abridged by such holding.

21.11 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other Parties to the extent necessary to implement this Agreement. Upon the request of a Party at any time, the other Parties shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

21.12 Recordation. No later than ten (10) days after the Effective Date of this Agreement, the City Clerk shall record a copy of this Agreement against the Talega Property in the Official Records of the Recorder's Office of Orange County. Developer shall be responsible for all recordation fees, if any.
21.13 **Estoppel Certificate.** Any Party hereunder may, at any time, deliver written notice to any other Party requesting such Party to certify in writing that, to the best knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations set forth in this Agreement or, if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within sixty (60) days following the receipt thereof. Any third party including a Mortgagee shall be entitled to rely on the Certificate.

21.14 **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

21.15 **Construction.** As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

21.16 **Notices.** Any notice or communication required hereunder between a Public Agency Party and Developer must be in writing and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated hereinafter as the Party to whom the notice is sent. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. A Party hereto may at any time, by giving ten (10) days' written notice to the other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

**If to City:**

City of San Clemente  
City Hall  
100 Avenida Presidio  
San Clemente, California 92672  
Attn: City Manager  
Telephone: (949) 361-8322  
Telecopy: (949) 361-8316

**With a copy to:**

Rutan & Tucker, LLP  
611 Anton Blvd., Suite 1400  
Costa Mesa, California 92626  
Attn: Jeffrey M. Oderman, Esq.  
Telephone: (714) 641-5100  
Telecopy: (714) 546-9035
21.17 Compliance with Laws. Developer shall construct and install or cause to be constructed and installed the improvements described in this Agreement in compliance with all laws, regulations, and rules of all governmental agencies having jurisdiction, including without limitation the payment of “prevailing wages,” as that term is defined in California Labor Code Section 1720 et seq., if applicable.

21.18 Authority to Execute. Developer warrants and represents that (i) Developer is duly organized and existing, (ii) it is duly authorized to execute and deliver this Agreement, (iii) by so executing this Agreement, Developer is formally bound to the provisions of this Agreement, (iv) Developer’s entering into and performance of its obligations set forth in this Agreement does not violate any provision of any other Agreement to which Developer is bound, and (v) there is no existing or threatened litigation or legal proceeding of which Developer is aware which could prevent Developer from entering into or performing its obligations set forth in this Agreement.

21.19 Failure of TJPA to Approve Agreement. In the event this Agreement is not approved by the Board of Directors of the TJPA within sixty (60) days after the date this Agreement is approved by the City Council, the City Manager and City Attorney shall have the authority on behalf of City to make such modifications to this Agreement as necessary to remove
the provisions herein for which City would not have the authority to enter into a development agreement (i.e., provisions that impose obligations on the TJPA, vest the TJPA Property with development rights, etc.) Developer hereby agrees in advance to such modifications.

21.20 Counterparts and Exhibits. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument. This Agreement contains thirteen (13) exhibits, attached hereto and made a part hereof by this reference. Said exhibits are identified as follows:

A Legal Description of City Property
B Legal Description of TJPA Property
C Site Map
D Developer’s Proposal for Transfer of Development Allocations
E Depiction of Commercial Use Areas
F Contour Grading Concept
G Concept Park Master Plans
H Park Budgets
I General Locations of Rights-of-Way Required For Roadways Identified In City's General Plan and RCFPP
J Traffic Trip Generation Rates
K Depiction of Offsite Pads
L Depiction of Habitat Mitigation Site
M Traffic Study Area

[Signatures on next page]
IN WITNESS WHEREOF, City, TJPA, and Developer have executed this Agreement as of the date first written above.

"CITY"

CITY OF SAN CLEMENTE,
a municipal corporation

By:
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Jeffrey M. Oderman
City Attorney

"TJPA"

TALEGA JOINT PLANNING AUTHORITY,
a joint powers authority existing under Section 6500, et seq., of the Government Code

By: Chairman of the Board

ATTEST:

Secretary

APPROVED AS TO FORM:

Authority Counsel
"TALEGA"

TALEGA ASSOCIATES, LLC,
a Delaware limited liability company

By: Patrick Hayes

Its: General Manager
On February 27, 2002, before me, Myrna Erway, personally appeared Scott Diehl, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature  
Myrna Erway, City Clerk
City of San Clemente, California
STATE OF CALIFORNIA
COUNTY OF ORANGE SS.
CITY OF SAN CLEMENTE

On February 27, 2002, before me, Myrna Erway, personally appeared Jim Dahl, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature ____________________
Myrna Erway, City Clerk
City of San Clemente, California
STATE OF CALIFORNIA  )
COUNTY OF _____________ ) ss

On _________________, before me, ________________________, personally
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

______________________________
Notary Public

[SEAL]

STATE OF CALIFORNIA  )
COUNTY OF _____________ ) ss

On _________________, before me, ________________________, personally
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

______________________________
Notary Public

[SEAL]
STATE OF CALIFORNIA

COUNTY OF Orange

On Dec 12, 2001, before me, Bonnie Campbell, personally appeared
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

BONNIE CAMPBELL
Commission # 1177507
Notary Public - California
Orange County
My Comm. Expires Mar 27, 2002

Notary Public
EXHIBIT "A"

LEGAL DESCRIPTION OF CITY PROPERTY

[attached]
EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Those certain parcels of land situated in the City of San Clemente, County of Orange, State of California, being Parcels 1 and 4 of Lot Line Adjustment No. LL 98-98 recorded December 14, 1998 as Instrument No. 19980862026 of Official Records in the Office of the County Recorder of said Orange County.

EXCEPTING THEREFROM Tract No. 15756 filed in Book 782, Pages 14 through 18 of Miscellaneous Maps in said Office of the Orange County Recorder.

EXCEPTING THEREFROM Tract No. 13686 filed in Book 782, Pages 8 through 13 of Miscellaneous Maps in said Office of the Orange County Recorder.

EXCEPTING THEREFROM Tract No. 13685 filed in Book 781, Pages 47 through 50 of Miscellaneous Maps in said Office of the Orange County Recorder.

EXCEPTING THEREFROM Tract No. 13684 filed in Book 782, Pages 1 through 7 of Miscellaneous Maps in said Office of the Orange County Recorder.

EXCEPTING THEREFROM Tract No. 13683 filed in Book 781, Pages 39 through 46 of Miscellaneous Maps in said Office of the Orange County Recorder.

EXCEPTING THEREFROM Tract No. 15947 filed in Book 804, Pages 34 through 36 of Miscellaneous Maps in said Office of the Orange County Recorder.

EXCEPTING THEREFROM Lots 1 and 2 of Tract No. 15948 filed in Book 804, Pages 37 through 40 of Miscellaneous Maps in said Office of the Orange County Recorder.

EXCEPTING THEREFROM Lot 2 of Tract No. 14228 filed in Book 804, Pages 14 through 17 of Miscellaneous Maps in said Office of the Orange County Recorder.


EXCEPTING THEREFROM Tract No. 14224 filed in Book 810, Pages 1 through 8 of Miscellaneous Maps in said Office of the Orange County Recorder.

EXCEPTING THEREFROM Tract No. 14226 filed in Book 810, Pages 9 through 13 of Miscellaneous Maps and as Amended and filed in Book 819, Pages 44 through 48 of Miscellaneous Maps, all in said Office of the Orange County Recorder.

EXCEPTING THEREFROM that certain parcel of land described in a Grant Deed to Santa Margarita Water District, recorded November 30, 2000 as Instrument No. 20000651017 of Official Records in said Office of the Orange County Recorder.
EXHIBIT "B"

LEGAL DESCRIPTION OF TJPA PROPERTY

[attached]
EXHIBIT "B"

LEGAL DESCRIPTION

PARCEL 1
CERTIFICATE OF COMPLIANCE CC 87-06
(TALEGA)

That certain parcels of land situated in the unincorporated territory of the County of Orange, State of California, being Parcel 1 of Certificate of Compliance CC 87-06 recorded August 7, 1987 as Instrument No. 87-449971 of Official Records in the Office of the County Recorder of said Orange County.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Records.

EXHIBIT "B" attached and by this reference made a part hereof.

Gregory A. Helmer, L.S. 5134
LEGAL DESCRIPTION

PARCEL 1
CERTIFICATE OF COMPLIANCE CC 96-003
(TALEGA)

That certain parcels of land situated in the unincorporated territory of the County of Orange, State of California, being Parcel 1 of Certificate of Compliance CC 96-003 recorded February 7, 1997 as Instrument No. 19970060841 of Official Records in the Office of the County Recorder of said Orange County.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Records.

EXHIBIT "B" attached and by this reference made a part hereof.
EXHIBIT "B"
SKETCH TO ACCOMPANY A
LEGAL DESCRIPTION FOR

PARCEL 1
CERTIFICATE OF COMPLIANCE
CC 96-003
CONTAINING: 22.385 ACRES
EXHIBIT "C"

SITE MAP

[attached]
EXHIBIT "D"

DEVELOPER'S PROPOSAL FOR TRANSFER
OF DEVELOPMENT ALLOCATIONS

[attached]
LEGEND

PROPOSED LOCATION OF ELEMENTARY SCHOOL.

APPROXIMATELY 74 EXISTING RDEB ALLOCATIONS AWARDED TO TRACTS 15763 AND 15765 TO BE TRANSFERRED TO PLANNING AREAS INCLUDING BUT NOT LIMITED TO B-1B
Note: Acreages and configuration of land uses are approximate and are subject to modification during the tentative tract mapping stage of project design.
EXHIBIT "F"

CONTOUR GRADING CONCEPT

[attached]
EXHIBIT "G"

CONCEPT PARK MASTER PLANS

[attached]
EXHIBIT "H"

PARK BUDGETS

[attached]
## EXHIBIT "H"

### Park 2 - Talega Village 3
### Park Concept Budget
### November 21, 2001

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Sub Total: $1,825,634

10% Contingency: 10% LS $1,825,634 $182,563

**Total Construction** $2,008,197

### Indirect Costs

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Subtotal Indirects: $525,000

**Total Park Cost** $2,533,197
EXHIBIT "H"

Park 3 - Talega Village 5
Park Concept Budget
November 21, 2001

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**Indirect Costs**

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EXHIBIT "I"

GENERAL LOCATIONS OF RIGHTS-OF-WAY REQUIRED
FOR ROADWAYS IDENTIFIED IN CITY'S GENERAL PLAN AND RCFPP

[attached]
GENERAL LOCATIONS OF RIGHTS-OF-WAY REQUIRED FOR ROADWAYS IDENTIFIED IN THE CITY'S GENERAL PLAN AND RCFPP
EXHIBIT "J"

TRAFFIC TRIP GENERATION RATES

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EXHIBIT "K"

DEPICTION OF OFFSITE PADS

[attached]
EXHIBIT "L"

DEPICTION OF HABITAT MITIGATION SITE

[attached]
EXHIBIT "M"

TRAFFIC STUDY AREA

[attached]
IMPLEMENTATION AGREEMENT FOR AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR TALEGA PROPERTY

This IMPLEMENTATION AGREEMENT FOR AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR TALEGA PROPERTY ("Agreement") is entered into this 16th day of SEPTEMBER, 2003, by and among the CITY OF SAN CLEMENTE, a California municipal corporation ("City"), the TALEGA JOINT PLANNING AUTHORITY, a joint powers authority organized under and existing pursuant to Section 6500, et seq. of the Government Code of the State of California ("TJPA"), and TALEGA ASSOCIATES, LLC, a Delaware limited liability company ("Developer"). City and TJPA are collectively referred to herein as the "Public Agency Parties" and individually as a "Public Agency Party."

RECITALS

A. On February 27, 2002, City, TJPA and Developer entered into that certain Amended and Restated Development Agreement for Talega Property recorded in the Official Records of Orange County, California on March 21, 2002 as Instrument No. 20020231933 ("Development Agreement"), relating to the development of that certain real property located within the City and unincorporated territory of the County of Orange, more particularly described therein as the "Talega Property."

B. In order to fully effectuate and implement the Development Agreement and facilitate full performance of the obligations of City, TJPA and Developer thereunder, the parties desire to enter into this Agreement to, among other things, account for (a) changed conditions resulting from imposition of regulations by various governmental entities that affect the Talega Property; (b) updated information regarding traffic circulation within and around the Talega Property; (c) updated cost estimates for certain drainage improvements made necessary by development of the Talega Property; and (d) the rights, duties and obligations of City, TJPA and Developer with respect to such matters, all as more particularly set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, TJPA and Developer hereby agree as follows:

1. Defined Terms. Any capitalized terms contained in this Agreement which are not defined herein shall have the meaning given in the Development Agreement, unless expressly provided to the contrary.

2. Covenant Not to Sue Regarding Building Permit Fees and Business License Tax.

2.1 Covenant Not to Sue. Developer, and each and every individual, partnership, corporation, and entity of Developer, on behalf of itself and themselves and their respective partners and principals and its and their agents, employees, attorneys, other representatives, heirs, successors and assigns hereby consents to and waives and right of protest with regard to, and covenants not to file, initiate, maintain, or prosecute, or voluntarily support,
participate in, or encourage any third party in the filing, initiation, maintenance, or prosecution, of any administrative proceeding or judicial action against the Public Agency Parties or their respective officers, officials, employees, agents or representatives based upon or relating to, any of the following ("Covered Claims") in connection with the ongoing, planned, or future development of any portion of the Talega Property located within the boundaries of Villages 4, 5 and 6, with the exception of the area encompassed by Vesting Tentative Tract Map No. 16370 ("Covered Property"), which Covered Property is more particularly described in the legal description attached hereto as Exhibit "1": (a) the establishment, imposition, and enforcement of each Public Agency Party’s business license tax in effect as of the date of this Agreement and the extent and manner in which each Public Agency Party applies and interprets its business license tax as of the date of this Agreement, including the classification of persons engaged in the development of real property (e.g., developers and builders) as a “profession and occupation” subject to the business license tax levied under subsection (B) of Section 5.08.030 of the Municipal Code; (b) the establishment, imposition, and enforcement of each Public Agency Party’s building permit fees as such fees exist and are assessed by each Public Agency Party as of the date of this Agreement, including the manner in which such fees were adopted by a Public Agency Party, the amount of such fees charged by a Public Agency Party as of the date of this Agreement, and any future increases in the amount of such fees provided the increases do not exceed increases in the fee schedules set forth in the version of the Uniform Building Code adopted by the Public Agency Parties, as those schedules may be increased from time to time; and (c) any acts or matters related to the foregoing (a) or (b).

In the event the amount of the business license tax charged by a Public Agency Party is increased after the date of this Agreement, or the amount of any building permit fee charged by a Public Agency Party is increased after the date of this Agreement and the increase exceeds the increase in the fee schedule in the Uniform Building Code as further explained in clause (b) of the last sentence of the preceding paragraph, the establishment, imposition, and enforcement of such increased portion of the business license tax and/or building permit fee shall not be a Covered Claim and, accordingly, the foregoing covenant shall not be applicable as to the amount of the increase. Notwithstanding the foregoing, Developer understands and acknowledges that even in the event of such an increase, the underlying business license tax and building permit fee as well as the amount of the tax and fee charged as of the date of this Agreement shall continue to constitute Covered Claims and shall be subject to the covenants set forth in the first paragraph of this Section 2.1.

2.2 Covenant to Run With the Land. All of the Covered Property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied and improved subject to the covenants, conditions, and restrictions set forth herein. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth in Section 2.1 shall run with the Covered Property and shall be binding upon all persons having any right, title or interest in the Covered Property, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of each of the Public Agency Parties and their successors and assigns, including but not limited to their successors in interest with fee or easement interests in the Public Agency Property (as defined below); and may be enforced by the Public Agency Parties and their successors and assigns. The covenants established in Section 2.1 of this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of each of the Public Agency Parties and their successors and assigns, and the parties hereto
expressly agree that this Agreement and the covenants herein shall run in favor of each of the Public Agency Parties, without regard to whether the Public Agency Party is an owner of the Public Agency Property or any portion thereof. This Agreement is further designed to create equitable servitudes and covenants appurtenant to all real property owned by each of the Public Agency Parties including without limitation the property described in the legal description attached hereto as Exhibit “2” (“Public Agency Property") and running with the Covered Property in accordance with the provisions of Civil Code Section 1468. The Public Agency Parties are deemed the beneficiaries of the terms and provisions of this Agreement and of the covenants running with the land, for and in their own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. Developer hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land. Developer hereby further declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Public Agency Property by the citizens of the Public Agency Parties and by furthering the health, safety, and welfare of the residents of the Public Agency Parties. The Public Agency Parties shall have the right to designate other or additional real property as benefited by the covenants contained herein. Developer agrees to cooperate in executing any document necessary to designate such other real property as the benefited property. Developer further agrees that in the event a Public Agency Party no longer owns or has easement rights in all or any part of the Public Agency Property, (a) the covenants, conditions, restrictions, equitable servitudes, liens and charges set forth in this Agreement will continue to be binding upon all persons having any right, title, or interest in the Covered Property, or any part thereof, their heirs, successive owners, and assigns, and (b) Developer and Developer’s heirs, successive owners, and assigns shall be estopped from arguing that the covenants, conditions, restrictions, equitable servitudes, liens and charges set forth herein are unenforceable. The covenants contained in this Agreement shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title.

2.3 Memorandum of Agreement Concurrently with the execution of this Agreement, City and Developer shall execute the Memorandum of Development Agreement Implementation Agreement (“Memorandum”) in the form attached hereto as Exhibit “3” to provide notice to subsequent purchasers of the Covered Property of the covenants set forth in Section 2.1. Within (10) days after the date of this Agreement, the parties shall cause the Memorandum to be recorded in the Official Records of Orange County, California. Developer represents that it is the fee owner of all of the Covered Property and Developer shall not sell or convey any of the Covered Property until the Memorandum has been recorded. The covenant not to sue in Section 2.1 of this Agreement shall terminate automatically as to any individual parcel within the Covered Property, effective the “Home Purchase Date” (as defined below), as to Covered Claims applicable to the parcel accruing on and after the Home Purchase Date. Upon each such termination, the Memorandum shall automatically be removed of record as to such parcel of the Covered Property without the need to record any instrument confirming the same. Nevertheless, the Public Agency Parties shall cooperate with Developer or its successor owners of any portion of the Covered Property, at no cost to the Public Agency Parties, to execute in recordable form and to record any instrument reasonably necessary to confirm of record any such removal of the Memorandum. The “Home Purchase Date” shall mean, with respect to a given parcel of the Covered Property, the date of purchase of that parcel by a member of the
homebuying public (and not by a builder or developer) as evidenced by the recordation of a quitclaim deed or grant deed conveying fee title to the parcel to the homebuyer. It is understood and agreed that notwithstanding the removal of the Memorandum as an encumbrance to title to a parcel, the covenants set forth in Section 2.1 of this Agreement shall not terminate and shall continue to be binding as to Covered Claims applicable to the parcel accruing prior to the Home Purchase Date (i.e., any building permit fees and business license tax that were paid or were payable prior to the Home Purchase Date for the parcel).

3. Traffic Capacity: Development Rights. Section 6.3.1 of the Development Agreement provides that so long as certain Conditions are satisfied, the development of 3,400 residential units in the Master Talega Property can be accommodated in six (6) Phases without violating the LOS Standards. In accordance with Section 6.3.3 of the Development Agreement, City and TJPA have completed an analysis of traffic circulation within the Study Area depicted on Exhibit “M” to the Development Agreement and have determined that the development of an additional 600 residential units in the Master Talega Property can be accommodated in the 6th Phase of development without violating the LOS Standards so long as the Conditions for the 6th Phase are satisfied. Accordingly, the maximum number of residential units permitted in the Master Talega Property is hereby increased from 3,400 to 4,000, with the additional 600 residential units permitted in the 6th Phase of development. All of the provisions set forth in the Development Agreement shall apply to and govern the issuance of the building permits for the additional 600 residential units permitted in the 6th Phase of development. In connection therewith, City and TJPA each hereby acknowledge that in accordance with the Development Agreement, if Developer timely performs its obligations set forth in the Development Agreement and the Conditions described in the Development Agreement for each Phase have been satisfied, City and TJPA will not withhold residential building permits or take any other action to prevent or delay Developer from constructing on the Talega Property the additional 600 residential units permitted in the 6th Phase on the basis of the Talega Project's impact on City's or TJPA's traffic circulation system or any alleged violation of the LOS Standards.

4. Avenida La Pata Widening.

4.1 La Pata Widening Improvements. In addition to Developer’s obligation under Section 7 of the Development Agreement to construct the La Pata Extension and its obligation under certain conditions of approval applicable to the Talega Property to construct two (2) traffic lanes and related improvements to extend Avenida La Pata from the terminus of the La Pata Extension to the future intersection of Avenida La Pata and Calle Saluda (“Additional La Pata Extension”), Developer shall widen the Additional La Pata Extension from two (2) traffic lanes to four (4) traffic lanes and construct a landscaped median within the Additional La Pata Extension. The grading, drainage, erosion control, paving, and related improvements to be constructed and installed by Developer with respect to the widening of the Additional La Pata Extension and the installation of the landscaped median is referred to herein as the "La Pata Widening." The La Pata Widening improvements are generally depicted on the site map attached to this Agreement as Exhibit “4.” Developer’s construction of the La Pata Widening shall be performed as set forth in this Agreement and, to the extent not inconsistent with the express provisions of this Agreement, in accordance with the provisions of City's standard form Subdivision Improvement Agreement in use on the date of this Agreement, which agreement is incorporated herein by reference as if set forth in full. Developer shall have the
sole obligation to fund the planning, design, engineering, construction, supervision, inspection, and all other costs associated with the design and construction of the La Pata Widening.

4.2 Approval of Plans. Prior to the date of this Agreement, City reviewed and approved the plans and specifications submitted by Developer for the La Pata Widening.

4.3 Commencement and Completion of Construction. Developer shall commence construction of the La Pata Widening within thirty (30) days after the date of this Agreement. Subject to Section 11.1 of this Agreement, Developer shall substantially complete construction of the La Pata Widening no later than one hundred eighty (180) days following commencement of construction. As used herein, the term "substantially complete" shall mean that the La Pata Widening is in a condition that the City Engineer has determined is sufficient for the roadway improvements to be opened for traffic to the public. Developer shall exercise reasonable diligence to cause the La Pata Widening to be fully completed as soon as possible after it is substantially complete, so that the improvements in question can be accepted by City. Nothing in this Section 4.3 shall be deemed to require City to accept the La Pata Widening or record a notice of completion prior to the date all improvements required by the plans and specifications are fully complete in accordance with City’s normal standards applicable to public works projects.

4.4 Security.

4.4.1 Developer’s Provision of Security to City. Prior to the date of this Agreement, Developer furnished to City, and City approved, Developer’s faithful performance security and payment security in the form of bonds (collectively, “La Pata Widening Security Instruments”), each in an amount not less than one hundred percent (100%) of the City Engineer’s approved estimated cost of the La Pata Widening, in favor of City securing Developer’s obligation to construct the La Pata Widening.

4.4.2 Release of Security. City shall release the La Pata Widening Security Instruments upon the last to occur of the following: (a) City’s acceptance of the work performed in connection with the La Pata Widening; (b) expiration of the time within which stop notice or lien claims are required to be made pursuant to applicable provisions of the California Civil Code; or (c) if stop notice or lien claims have been timely filed, after all such claims have been resolved or Developer has provided a statutory lien release bond.

5. City’s Reimbursement to Developer for La Pata Extension. Section 7.1.6 of the Development Agreement requires City to reimburse Developer for certain costs incurred by Developer with respect to the construction of the La Pata Extension, which costs are referred to in the Development Agreement as the “Reimbursable La Pata Expenses.” The third paragraph of Section 7.1.6 sets forth a process for Developer to submit invoices to City each month as Reimbursable La Pata Expenses are incurred and for City to make monthly payments to Developer from the La Pata Measure M Grant received by City. As of the date of this Agreement, City has not received the La Pata Measure M Grant and has not made any payments to Developer. City and Developer have agreed to modify the timing and process for City’s payments to Developer for the Reimbursable La Pata Expenses. Accordingly, the timing and process for City’s reimbursement payments to Developer shall be as set forth in this Section 5
and the provisions of this Section 5 shall supersede the provisions on reimbursement set forth in Section 7.1.6 of the Development Agreement.

The procedures for OCTA's disbursement of Measure M grants are set forth in Chapter 13 of OCTA's Combined Transportation Funding Programs manual ("OCTA Manual"). The OCTA Manual generally provides for Measure M grants to be disbursed in two installments. For information purposes, pages 1-5 of the OCTA Manual are attached to this Agreement as Exhibit "5." Within sixty (60) days after the date of this Agreement, Developer shall submit to City copies of the construction contracts for the Eligible La Pata Improvements and all other documents and information required to be submitted by Developer in order to enable City to submit to OCTA a request for the first payment of the La Pata Measure M Grant. Upon City's receipt of said documents and information from Developer, City shall submit to OCTA a request for the first payment of the La Pata Measure M Grant in the maximum amount permitted under the OCTA guidelines, together with the documents required to be submitted by City to OCTA under the OCTA Manual. The amount of the first payment of the La Pata Measure M Grant disbursed to City by OCTA is referred to herein as the "First La Pata Measure M Grant Payment." Upon City's issuance of the last notice of completion for the Eligible La Pata Improvements, but in no event earlier than City's receipt of the First La Pata Measure M Grant Payment from OCTA, City shall pay to Developer (a) an amount equal to the First La Pata Measure M Grant Payment received from OCTA or (b) the sum of Six Hundred Thousand Dollars ($600,000), whichever is less.

Within thirty (30) days after City's issuance of the last notice of completion for the Eligible La Pata Improvements, Developer shall submit to City all documents and information required to be submitted by Developer in order to enable City to submit to OCTA a request for the final payment of the La Pata Measure M Grant. Upon City's receipt of said documents and information from Developer, City shall submit to OCTA a request for the final payment of the La Pata Measure M Grant, together with the Final Report described in the OCTA Manual. Upon receipt of the final payment of the La Pata Measure M Grant from OCTA ("Final La Pata Measure M Grant Payment"), City shall pay to Developer an amount equal to the Final La Pata Measure M Grant Payment received from OCTA and any portion of the First La Pata Measure M Grant Payment received from OCTA that was not disbursed to Developer pursuant to the preceding paragraph, not to exceed the sum of One Million Dollars ($1,000,000). As further explained in Section 7.1.6 of the Development Agreement, provided the cost of the Eligible La Pata Improvements is at least Four Million Dollars ($4,000,000), City expects that the La Pata Measure M Grant will be approximately One Million Dollars ($1,000,000). Any La Pata Measure M Grant proceeds in excess of One Million Dollars ($1,000,000) will be retained by City.

For a period of five (5) years following completion of the La Pata Extension, Developer shall retain true and correct records of the costs incurred by Developer for the Eligible La Pata Improvements. Developer acknowledges and agrees that the records shall be subject to inspection and audit by OCTA and City.
6. Deposit and Stockpiling of Excess Dirt and Extension of Avenida La Pata Roadbed; Maintenance.

6.1 Stockpiling Excess Dirt. In order to reduce the truck traffic on City’s streets that would result from the removal and transportation of excess dirt generated from Developer’s grading of Villages 4, 5 and 6 and other areas of the Talega Property (“Excess Dirt”) to a location offsite from the Talega Property, and to achieve rough grading of a further extension of Avenida La Pata from the terminus of the future Additional La Pata Extension (the future intersection of Avenida La Pata and Calle Saluda), City hereby agrees that Developer may deposit and stockpile the Excess Dirt at the location designated on Exhibit “6” (“Stockpile Area”) hereto, subject to the following: (a) the City Engineer’s approval of a grading plan for the deposit and stockpiling of the Excess Dirt, which plan shall include grading and compaction of a roadbed for the future extension of Avenida La Pata; and (b) hydroseeding and erosion control measures for all slopes and stockpile areas created by such stockpiling and grading. Developer shall submit for City’s review and approval an application for a conditional use permit for deposit and stockpiling of all such Excess Dirt and grading if required by City’s Municipal Code.

6.2 Maintenance. Developer shall maintain the landscaping and erosion control measures on the Stockpile Area (“Stockpile Area Improvements”) for a period of one (1) year after the last to occur of the following: (a) the date the City Engineer verifies that Developer has satisfactorily completed the Stockpile Area Improvements; and (b) the date that eighty percent (80%) of the Stockpile Area is covered with landscaping. The Stockpile Area Improvements shall be maintained by Developer in an attractive condition and in good order, quality, condition, and repair and in accordance with all applicable laws, statutes, rules, and regulations. Prior to stockpiling the Excess Dirt on the Stockpile Area or performing any other work on the Stockpile Area, Developer shall furnish to City a maintenance bond in the amount of the estimated annual cost of the maintenance of the Stockpile Area Improvements as reasonably determined by the City Engineer, in favor of City securing Developer’s obligation to maintain the Stockpile Area Improvements (“Maintenance Bond”). The Maintenance Bond shall be in a form acceptable to the City Attorney and issued by a financial institution acceptable to City. City shall release the Maintenance Bond upon the last to occur of the following: (a) the date that is one (1) year after the date the City Engineer verifies that Developer has satisfactorily completed the Stockpile Area Improvements; (b) expiration of the time within which stop notice or lien claims are required to be made pursuant to applicable provisions of the California Civil Code; or (c) if stop notice or lien claims have been timely filed, after all such claims have been resolved or Developer has provided a statutory lien release bond.

7. Offsite Pad Improvements.

7.1 Stockpiling Excess Dirt on Portions of Offsite Pads. In order to avoid the truck traffic on City’s streets that would result from the removal and transportation of excess dirt from the property located within Villages 4, 5 and 6 during grading operations (“Excess Village Dirt”), City shall permit Developer to stockpile the Excess Village Dirt on the Small Offsite Pad and the lower portion of the Large Offsite Pad depicted on Exhibit “7” attached hereto. Since the stockpiling of the Excess Village Dirt will require Developer to regrade the Small Offsite Pad and the lower portion of the Large Offsite Pad, the time period under the Development Agreement for Developer to complete the Offsite Pad Improvements to those areas shall be
extended as set forth herein. Notwithstanding any other provision in this Agreement to the contrary, Developer's right to stockpile the Excess Village Dirt on the Small Offsite Pad and the lower portion of the Large Offsite Pad shall be subject to Developer obtaining from City an amendment to the grading permit issued by City prior to the date of this Agreement for the Offsite Pad Improvements. Developer acknowledges it will be required to pay to City grading and inspection fees for the work contemplated hereunder.

7.2 Lower Portion of Large Offsite Pad. Developer shall be permitted to stockpile the Excess Village Dirt on the lower portion of the Large Offsite Pad until the date that is thirty (30) days after the date City provides written notice to Developer that City intends to commence detailed engineering and site plan drawings for a specific use for the Large Offsite Pad. City shall not provide such notice to Developer earlier than the date that is ninety (90) days prior to the date City reasonably determines that City will commence the engineering and site plan drawings. Notwithstanding the time period for Developer's completion of the Offsite Pad Improvements set forth in Section 11.3 of the Development Agreement, Developer shall complete construction of the Offsite Pad Improvements to the lower portion of the Large Offsite Pad no later than the date City commences detailed engineering and site plan drawings for the Large Offsite Pad. Following completion of construction of the Offsite Pad Improvements to the lower portion of the Large Offsite Pad, Developer shall provide to City a topographical, as-built grading plan of the Large Offsite Pad.

7.3 Small Offsite Pad. Developer shall be permitted to stockpile the Excess Village Dirt on the Small Offsite Pad until such time as Developer is required to complete the Offsite Pad Improvements to the Small Offsite Pad as set forth in the following sentence. Notwithstanding the time period for completion of construction of the Offsite Pad Improvements set forth in Section 11.3 of the Development Agreement, in order to permit the stockpiling of the Excess Village Dirt on the Small Offsite Pad for the purpose of reducing truck traffic on City streets, the time period for Developer to complete construction of the Offsite Pad Improvements to the Small Offsite Pad shall be extended to the earlier of (a) six (6) months following the date City gives written notice to Developer that the Small Offsite Pad is required for a specific use; or (b) December 31, 2006.

8. Processing of Welcome Center Site Entitlements. City acknowledges that Developer desires to develop that certain real property consisting of approximately 2.8 acres of land area located at the southeast corner of the intersection of Avenida Vista Hermosa and Camino La Pedriza and currently used by Developer for its "Welcome Center" with residential uses. Upon satisfactory completion by Developer of all required preliminary actions and payment of fees, City shall concurrently process Developer's application for tentative tract map and site plan approval for the development of residential uses at the Welcome Center site. Developer understands that the approval of the tentative tract map and site plan is subject to City's normal public review process and that nothing herein is intended to restrict City's exercise of discretion with respect thereto and that City does not warrant or represent to Developer that the tentative tract map and site plan will be approved or approved with or without any particular term or condition. City understands that nothing herein is intended to modify the vested rights of Developer under the Development Agreement relating to the development of the Welcome Center site.
9. **Offsite Drainage Mitigation Fee.** Developer shall pay or cause to be paid to City the sum of Seven Hundred Thousand Dollars ($700,000) ("Drainage Mitigation Fee") upon the earlier of the following: (a) the issuance of a building permit for the 3,500th residential unit within the Master Talega Property; (b) December 31, 2006; or (c) sixty (60) days after the date City notifies Developer that City intends to conduct studies or construct mitigation improvements to the Segunda Deshecha (M02) Channel downstream of Camino Vera Cruz. No later than sixty (60) days following the date of this Agreement, Developer shall furnish to City a surety bond in the amount of the Drainage Mitigation Fee securing Developer’s obligation to pay to City the Drainage Mitigation Fee, which bond shall be in a form acceptable to the City Attorney and issued by a financial institution acceptable to City. City shall release the bond upon Developer’s payment of the Drainage Mitigation Fee. City agrees that Developer’s performance of the obligations set forth in this Section 9 shall be deemed to satisfy Developer’s contingent obligation to provide bonds to City under Condition of Approval No. 21 of City Council Resolution 03-07 approving Vesting Tentative Tract Map No. 16334. In addition, City agrees that Developer shall have no further obligation to construct or contribute to the cost of constructing any improvements to the portion of the Segunda Deshecha (M02) Channel located outside of the Master Talega Property.

10. **Water Quality Improvements.**

10.1 **Construction Schedule for ROMP Improvements.** Pursuant to Section 8 of the Development Agreement, Developer is required to construct the improvements described in the Cristianitos Runoff Management Plan and referred to in the Development Agreement as the “ROMP Improvements.” Developer has completed construction of some of the ROMP Improvements, including the installation of “DrainPac” catch basin filters in the catch basins that collect runoff destined to the Cristianitos Basin, preventing contaminants and debris from entering the storm drain system, and “Continuous Deflection Systems” that further filter runoff. Despite Developer’s exercise of diligent efforts, however, Developer has not been able to obtain all of the governmental approvals required for the construction of some of the ROMP Improvements ("Required Approvals") and, as a result, has not constructed all of the ROMP Improvements as required by the Development Agreement. The ROMP Improvements that Developer has not constructed are referred to herein as the “Remainder ROMP Improvements.” Developer shall continue to exercise diligent efforts to obtain the Required Approvals for the Remainder ROMP Improvements. Notwithstanding the construction schedule set forth in the Development Agreement, Developer shall commence construction of the Remainder ROMP Improvements no later than the date that is thirty (30) days after the date Developer obtains all of the Required Approvals ("Approval Date") and shall complete construction to the satisfaction of the City Engineer no later than the date that is one hundred fifty (150) days after the Approval Date.

10.2 **Alternative ROMP Improvements.** If, after and despite its exercise of diligent efforts to obtain the Required Approvals, Developer has not obtained all of the Required Approvals by July 1, 2004, City shall have the election to require Developer to process an amendment to the Cristianitos Runoff Management Plan to identify alternative water quality improvements to be constructed by Developer ("Cristianitos Runoff Management Plan Amendment"). If City elects to require Developer to process the Cristianitos Runoff Management Plan Amendment, City shall notify Developer in writing of its election ("Election
and the following provisions of this Section 10.2 shall be applicable. Developer and City shall cooperate in identifying the alternative water quality improvements to be included in the Cristianitos Runoff Management Plan Amendment ("Alternative ROMP Improvements") and shall exercise reasonable diligence to complete the amendment review process and cause the City Council to take action on the Cristianitos Runoff Management Plan Amendment no later than the date that is ninety (90) days after Developer’s receipt of City’s Election Notice. Upon City’s approval of the Cristianitos Runoff Management Plan Amendment, Developer shall be released from its obligation to construct the Remainder ROMP Improvements and shall be required to construct the Alternative ROMP Improvements. The term "ROMP Improvements" in the Development Agreement shall then be deemed to refer to the Alternative ROMP Improvements and, with the exception of the provisions on the timing of construction, all of the provisions in the Development Agreement relating to the ROMP Improvements, including without limitation Developer’s obligation to furnish to City faithful performance security and payment security, shall be applicable to the Alternative ROMP Improvements. Developer shall complete construction of the Alternative ROMP Improvements no later than one hundred twenty (120) days after City’s approval of the Cristianitos Runoff Management Plan Amendment.

11. Miscellaneous.

11.1 Force Majeure. The obligations by any party hereunder shall not be deemed to be in default where delays or failures to perform are due to any cause without the fault and beyond the reasonable control of such party, including to the extent applicable, the following: war; insurrection; strikes; walk-outs; the unavailability or shortage of labor, material, or equipment; riots; floods; earthquakes; the discovery and resolution of hazardous waste or significant geologic, hydrologic, archaeological, paleontologic, or endangered species problems on the Property; fires; casualties; acts of God; governmental restrictions imposed or mandated by other governmental entities; with regard to delays of Developer’s performance, delays caused by failure of City or TJPA to act or timely perform its obligations set forth herein; with regard to delays of performance by City or TJPA, delays caused by Developer’s failure to act or timely perform its obligations set forth herein; inability to obtain necessary permits or approvals from other governmental entities; enactment of conflicting state or federal statutes or regulations; judicial decisions; or litigation not commenced by such party. Notwithstanding the foregoing, any delay caused by the failure of City, TJPA or any agency, division, or office of City or TJPA to timely issue a license, permit, or approval required pursuant to this Agreement shall not constitute an event of force majeure extending the time for performance by City or TJPA hereunder. If written notice of such delay or impossibility of performance is provided to the other parties within a reasonable time after the commencement of such delay or condition of impossibility, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon by the parties in writing, or the performance rendered impossible may be excused in writing by the party so notified. In no event shall adverse market or financial conditions constitute an event of force majeure extending the time for such party’s performance hereunder.

11.2 Cross-Default. If an event (i.e., failure to perform an obligation) occurs that is determined to constitute a default by Developer under this Agreement, the default shall, at the election of the City Manager, constitute a default of the Development Agreement and, in
addition to whatever other remedy City may have in the event of such a default, City shall have the right to exercise the remedies set forth in Section 16.2 of the Development Agreement.

11.3 **Waivers and Amendments.** All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged. A waiver of the breach of the covenants, conditions or obligations under this Agreement by any party shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or obligations of this Agreement. Any amendment or modification to this Agreement must be in writing and executed by the appropriate authorities of City, TJPA and Developer.

11.4 **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of the Agreement shall continue in full force and effect, unless and to the extent the rights and obligations of one or more parties has been materially altered or abridged by such holding.

11.5 **Notices.** Any notice or communication required hereunder between or among City, TJPA and Developer must be in writing and may be given either personally or by registered or certified mail, return receipt requested, or by telecopier or facsimile transmission provided the original of the notice is concurrently delivered by regular mail. If given by registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated hereinbelow as the party to whom the notice is sent. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If delivered by facsimile transmission, a notice shall deemed to have been given and received on the date of receipt. A party hereto may at any time, by giving ten (10) days’ written notice to the other parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

**If to City:**

City of San Clemente  
City Hall  
100 Avenida Presidio  
San Clemente, California 92672  
Attn: City Manager  
Telephone: (949) 361-8322  
Telecopy: (949) 361-8316

**With a copy to:**

Rutan & Tucker, LLP  
611 Anton Blvd., Suite 1400  
Costa Mesa, California 92626  
Attn: Jeffrey M. Oderman, Esq.  
Telephone: (714) 641-5100  
Telecopy: (714) 546-9035
11.6 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

11.7 Litigation Expenses. If either party to this Agreement commences an action against another party to this Agreement arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys’ fees, expert witness fees, costs of investigation, and costs of suit from the losing party.

11.8 Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement, the parties hereto are formally bound to the provisions of this Agreement.

[signatures on next page]
IN WITNESS WHEREOF, City, TJPA, and Developer have executed this Agreement as of the date first written above.

“CITY”

CITY OF SAN CLEMENTE,
a municipal corporation

By: [Signature]
Mayor

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM:

[Signature]
Jeff Goldfarb for Jeff Oderman

Jeffrey M. Oderman
City Attorney

“TJPA”

TALEGA JOINT PLANNING AUTHORITY,
a joint powers authority existing under Section 6500, et seq., of the Government Code

By: [Signature]
Chapman of the Board

ATTEST:

[Signature]
Secretary

APPROVED AS TO FORM:

[Signature]
Jeff Goldfarb for Jeff Oderman

Authority Counsel
“TALEGA”

TALEGA ASSOCIATES, LLC,
a Delaware limited liability company

By: [Signature]

Its: [Signature]
EXHIBIT 1 TO AGREEMENT

LEGAL DESCRIPTION OF COVERED PROPERTY

That certain real property located in the County of Orange, State of California more particularly described as follows:

[see attached]
PARCEL 1


EXCEPTING THEREFROM Tract No. 13685 filed in Book 781, Pages 47 through 50 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 13684 filed in Book 782, Pages 1 through 7 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 13683 filed in Book 781, Pages 39 through 46 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 14228 filed in Book 804, Pages 14 through 17 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 15947 filed in Book 804, Pages 34 through 36 of Miscellaneous Maps in said Office of the County Recorder.


ALSO EXCEPTING THEREFROM Amended Tract No. 14224 filed in Book 834, Pages 33 through 41 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Amended Tract No. 14226 filed in Book 819, Pages 44 through 46 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM all those certain parcels of land described in a Grant Deed to Santa Margarita Water District, recorded November 30, 2000 as Instrument No. 20000651017 of Official Records in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Avenida Pico as described in that certain Irrevocable Offer of Dedication of Easement recorded April 16, 1999 as Instrument No. 19990276757 of Official Records in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 15756 filed in Book 782, Pages 14 through 18 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 13686 filed in Book 782, Pages 8 through 13 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 13935 filed in Book 825, Pages 1 through 5 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 16337 filed in Book 837, Pages 12 through 21 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM all those certain parcels of land described in a Grant Deed to Capistrano Unified School District recorded December 21, 2001 as Instrument No. 20010935145 of Official Records in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM that certain parcel of land described as follows:
BEGINNING at the southwesterly terminus of that certain course shown as
"North 60°54'19" East 545.33 feet" in the southeasterly boundary of said Tract No. 15947;
thench along said southeasterly boundary North 60°54'19" East 545.33 feet; thench
South 66°24'28" East 39.78 feet; thench South 24°00'00" East 33.00 feet; thench
South 38°30'00" East 81.00 feet; thench South 14°58'00" East 57.00 feet; thench
South 04°16'00" West 27.00 feet; thench South 81°20'00" East 54.00 feet; thench
South 18°17'00" East 49.90 feet; thench South 07°16'00" East 63.00 feet; thench
South 22°37'00" West 31.50 feet; thench South 49°12'00" West 63.50 feet; thench
South 63°29'00" West 30.00 feet; thench South 84°12'00" West 56.50 feet; thench
South 79°22'00" West 22.00 feet; thench North 67°27'00" West 80.00 feet; thench
North 74°22'00" West 127.00 feet; thench North 05°50'17" West 85.00 feet to the easterly
prolongation of the southerly line of Lot "BB" of said Amended Tract No. 14224; thench
along said easterly prolongation South 83°09'43" West 267.38 feet to the general
northerly boundary line of said Amended Tract No. 14224; thench along said general
northerly boundary line North 52°30'50" West 39.64 feet to the POINT OF BEGINNING.

CONTAINING: 528.730 Acres, More or less.

ALSO EXCEPTING THEREFROM that certain parcel of land depicted on the attached map as Planning Area
G-2.
EXHIBIT 2 TO AGREEMENT

LEGAL DESCRIPTION OF PUBLIC AGENCY PROPERTY

That certain real property located in the County of Orange, State of California more particularly described as follows:

[Attached]
LEGAL DESCRIPTION

STREET RIGHT-OF-WAY DEDICATION
OF AVENIDA VISTA HERMOSA,
AVENIDA LA PATA AND CALLE SALUDA

Those certain parcels of land situated in the City of San Clemente, County of Orange, State of California, being those portions of Parcel 1 as described in Lot Line Adjustment No. 98-83 recorded November 2, 1998 as Instrument No. 19980743412 of Official Records in the Office of the County Recorder of said Orange County described as follows:

Parcel 1 (Avenida La Pata)

COMMENCING at the northwesterly terminus of that certain course on the centerline of Avenida La Pata shown as "North 26°19'08" West 455.79 feet" on the map of Tract No. 15264 filed in Book 744, Pages 5 through 8 of Miscellaneous Maps, in Office of the County Recorder; thence along the prolongation of said course, hereinafter referred to as Course "A", North 26°19'08" West 29.68 feet to the beginning of a tangent curve concave easterly and having a radius of 2350.00 feet, said curve is hereinafter referred to as Curve "Z"; thence along said curve northerly 702.08 feet through a central angle of 17°07'03"; thence tangent from said curve along a course hereinafter referred to as Course "B" North 09°12'05" West 287.98 feet to the beginning of a tangent curve concave westerly and having a radius of 2350.00 feet, said curve is hereinafter referred to as Curve "Y"; thence along said curve northerly and northwesterly 910.80 feet through a central angle of 22°12'23"; thence tangent from said curve along a course hereinafter referred to as Course "C" North 31°24'28" West 2111.18 feet to the beginning of a tangent curve concave northeasterly and having a radius of 2650.00 feet, said curve is hereinafter referred to as Curve "X"; thence along said curve northwesterly 299.90 feet through a central angle of 06°29'03" to the TRUE POINT OF BEGINNING; thence radially from said curve North 65°04'35" East 57.00 feet; thence South 62°16'13" East 33.95 feet; thence South 26°11'35" East 30.00 feet to a point hereinafter referred to as Point "A"; thence continuing South 26°11'35" East 30.00 feet; thence South 09°53'02" West 33.95 feet to a point on a non-tangent curve concave northeasterly and having a radius of 2593.00
feet concentric with and 57.00 feet northeasterly of said Curve "X", a radial line of said concentric curve from said point bears North 62°32'15" East; thence along said curve southeasterly 178.55 feet through a central angle of 03°56'43" to the tangent intersection with a line parallel with and 57.00 feet northeasterly of said Course "C"; thence along said parallel line South 31°24'28" East 621.94 feet; thence South 32°26'58" East 880.15 feet to a line parallel with and 73.00 feet northeasterly of said Course "C"; thence along said parallel line South 31°24'28" East 235.34 feet to a point hereinafter referred to as Point "B"; thence South 30°41'19" East 159.30 feet to a point on a line parallel with and 71.00 feet northeasterly of said Course "C", said point is hereinafter referred to as Point "C"; thence along said parallel line South 31°24'28" East 214.62 feet to the beginning of a tangent curve concave southwesterly and having a radius of 2421.00 feet concentric with and 71.00 feet easterly of said Curve "Y"; thence along said concentric curve southeasterly 335.25 feet through a central angle of 07°56'03" to a point of compound curvature with a curve concave westerly and having a radius of 2259.00 feet, a radial line of said curves from said point bears South 66°31'35" West; thence along said curve southerly 562.71 feet through a central angle of 14°16'20" to the tangent intersection with a line parallel with and 66.00 feet easterly of said Course "B"; thence along said parallel line South 09°12'05" East 327.92 feet to the beginning of a tangent curve concave easterly and having a radius of 2284.00 feet concentric with and 66.00 feet easterly of said Curve "Z"; thence along said concentric curve southerly 682.36 feet through a central angle of 17°07'03" to the tangent intersection with a line parallel with and 66.00 feet northeasterly of said Course "A"; thence along said parallel line South 26°19'08" East 63.18 feet to the southerly line of said Parcel 1 of Lot Line Adjustment LL 98-83; thence along said southerly line North 89°24'37" West 142.42 feet to a point on a non-tangent curve concave northeasterly and having a radius of 2411.00 feet concentric with and 61.00 feet westerly of said Curve "Z", a radial line of said concentric curve from said point bears North 63°42'41" East; thence along said curve northerly 239.80 feet through a central angle of 05°41'55"; thence radially from said curve South 69°24'36" West 27.00 feet to a non-tangent curve having a radius of 2438.00 feet concentric with last said curve; thence along said concentric curve northerly 285.29 feet through a central angle of 06°42'17"; thence radially from said curve North 76°06'53" East 27.00 feet to a non-tangent curve having a radius of 2411.00 feet concentric with last said curve; thence along said concentric curve northerly 102.60 feet through a central angle of 02°26'18"; thence radially from said curve South 78°33'11" West 16.00 feet to a point on a non-tangent curve having a radius of 2427.00 feet concentric with and 77.00 feet westerly of said Curve "Z", a radial line of said concentric curve from said point bears North 78°33'11" East; thence along said curve
northerly 95.12 feet through a central angle of 02°14'44" to the tangent intersection with a line parallel with and 77.00 feet westerly of said Course "B"; thence along said parallel line North 09°12'05" West 281.74 feet; thence North 80°47'55" East 16.00 feet to a line parallel with and 61.00 feet westerly of said Course "B"; thence along said parallel line North 09°12'05" West 6.24 feet to the beginning of a tangent curve concave westerly and having a radius of 2289.00 feet concentric with and 61.00 feet westerly of said Curve "Y"; thence along said concentric curve northerly and northwesterly 495.84 feet through a central angle of 12°24'41" to a point of compound curvature with a curve concave southwesterly and having a radius of 1946.00 feet, a radial line of said curves from said point bears South 68°23'14" West; thence along said curve northwesterly 332.68 feet through a central angle of 09°47'42" to the tangent intersection with a line parallel with and 66.00 feet southwesterly of said Course "C"; thence along said parallel line North 31°24'28" West 124.04 feet; thence South 58°35'32" West 3.00 feet to a line parallel with and 69.00 feet southwesterly of said Course "C"; thence along said parallel line North 31°24'28" West 144.06 feet to a point hereinafter referred to as Point "D"; thence North 32°51'43" West 157.64 feet to a point on a line parallel with and 73.00 feet southwesterly of said Course "C", said point is hereinafter referred to as Point "E"; thence along said parallel line North 31°24'28" West 192.98 feet to the beginning of a tangent curve concave northeasterly and having a radius of 380.56 feet; thence along said curve northwesterly 49.20 feet through a central angle of 07°24'24"; thence tangent from said curve North 24°00'04" West 47.36 feet to the beginning of a tangent curve concave southwesterly and having a radius of 445.71 feet; thence along said curve northwesterly 57.62 feet through a central angle of 07°24'24" to the tangent intersection with a line parallel with and 60.00 feet southwesterly of said Course "C"; thence along said parallel line tangent from said curve North 31°24'28" West 45.40 feet; thence North 30°22'07" West 275.65 feet to a line parallel with and 55.00 feet southwesterly of said Course "C"; thence along said parallel line North 31°24'28" West 1076.37 feet to the beginning of a tangent curve concave northeasterly and having a radius of 2705.00 feet concentric with and 55.00 feet southwesterly of said Curve "X"; thence along said concentric curve northwesterly 306.13 feet through a central angle of 06°29'03"; thence radially from said curve North 65°04'35" East 55.00 feet to the TRUE POINT OF BEGINNING.

CONTAINING: 12.921 Acres, more or less.

Parcel 2 (Calle Saluda)

A strip of land 60.00 feet wide, the centerline of which is described as follows:
BEGINNING at the intersection of the westerly terminus of the centerline of Calle Saluda with the westerly boundary line of Tract No. 16337, both as shown on a map thereof filed in Book 837, Pages 12 through 21 of Miscellaneous Maps in said Office of the County Recorder, said terminus being on a curve concave southerly and having a radius of 1400.00 feet, a radial line of said curve from said terminus bears South 15°06'41" East; thence along the continuation of said curve westerly 270.78 feet through a central angle of 11°04'54" to the tangent intersection with a line which bears South 63°48'25" West and passes through Point "A" described hereinbefore in Parcel 1; thence along said line South 63°48'25" West 269.02 feet to said Point "A".

Said strip of land shall be lengthened or shortened easterly so as to terminate in said westerly boundary line of Tract No. 16337.

CONTAINING: 0.744 Acres, more or less.

Parcel 3 (Avenida Vista Hermosa)

COMMENCING at the intersection of the westerly terminus of the centerline of Avenida Vista Hermosa with the westerly boundary line of Tract No. 16337, both as shown on a map thereof filed in Book 837, Pages 12 through 21 of Miscellaneous Maps in said Office of the County Recorder, said terminus being on a curve concave southeasterly and having a radius of 2150.00 feet, a radial line of said curve from said terminus bears South 26°11'32" East; thence along the continuation of said curve southwesterly 123.74 feet through a central angle of 03°17'51" to a point on the northeasterly line of hereinbefore described Parcel 1, said point is hereinafter referred to as Point "F" and is also the TRUE POINT OF BEGINNING; thence along said northeasterly line North 30°41'19" West 82.27 feet to Point "B" described hereinbefore in said Parcel 1; thence South 71°03'15" East 29.84 feet to a point on a non-tangent curve concave southeasterly and having a radius of 2210.00 feet concentric with and 60.00 feet northwesterly of the curve described hereinbefore as having a radius of 2150.00 feet, a radial line of said concentric curve from said point bears South 29°01'15" East; thence along said curve northeasterly 116.36 feet through a central angle of 03°01'00" to a non-tangent intersection with said westerly boundary line of Tract No. 16337; thence along said westerly boundary line and the westerly boundary line of Tract No. 16253 as shown on a map thereof filed in Book 830, Pages 13 through 22 of Miscellaneous Maps, in said Office of the County Recorder, South 19°17'34" East 109.79 feet to a point on a non-tangent curve
concave southeasterly and having a radius of 2101.00 feet concentric with and
49.00 feet southeasterly of said curve described hereinbefore as having a radius
of 2150.00 feet, a radial line of said concentric curve from said point bears
South 26°21'14" East; thence along said curve southwesterly 88.05 feet through
a central angle of 02°24'04"; thence non-tangent from said curve
South 12°48'56" West 37.64 feet to Point "C" described hereinbefore in said
Parcel 1; thence along said northeasterly line of Parcel 1 North 30°41'19" West
77.03 feet to the TRUE POINT OF BEGINNING.

CONTAINING: 0.326 Acres, more or less.

Parcel 4 (Avenida Vista Hermosa)

COMMENCING at Point "F" described hereinbefore in Parcel 3, said point being on
a curve concave southeasterly and having a radius of 2150.00 feet, said curve is
hereinafter referred to as Curve "W", a radial line of said curve from said point
bears South 29°29'23" East; thence along said curve southwesterly 427.78 feet
through a central angle of 11°24'00"; thence tangent from said curve along a
course hereinafter referred to as Course "D" South 49°06'37" West 400.00 feet to
the beginning of a tangent curve concave northwesterly and having a radius of
1800.00 feet, said curve is hereinafter referred to as Curve "V"; thence along
said curve southwesterly 455.53 feet through a central angle of 14°30'00" to a
point hereinafter referred to as Point "G" and also the TRUE POINT OF BEGINNING;
thence radially from said curve North 26°23'23" West 54.00 feet to a non-tangent
curve concave northwesterly and having a radius of 1746.00 feet concentric with
and 54.00 feet northwesterly of said Curve "V"; thence along said concentric
curve northeasterly 234.87 feet through a central angle of 07°42'27"; thence
radially from said curve North 34°05'50" West 3.00 feet to a non-tangent curve
having a radius of 1743.00 feet concentric with last said curve; thence along
said concentric curve northeasterly 86.50 feet through a central angle
of 02°50'36"; thence radially from said curve South 36°56'26" East 3.00 feet to
a point on a non-tangent curve concave northwesterly and having a radius of
1746.00 feet concentric with and 54.00 feet northwesterly of said Curve "V", a
radial line of said concentric curve from said point bears North 36°56'26" West;
thence along said curve northeasterly 120.34 feet through a central angle
of 03°50'57" to the tangent intersection with a line parallel with and 54.00 feet
northwesterly of said Course "D"; thence along said parallel line
North 49°06'37" East 199.76 feet to the beginning of a tangent curve concave
northwesterly and having a radius of 1803.00 feet; thence along said curve
northeasterly 90.02 feet through a central angle of 02°51'38" to a point of
reverse curvature with a curve concave southeasterly and having a radius of 2209.00 feet concentric with and 59.00 feet northwesterly of said Curve "W", a radial line of said reverse curve from said point bears South 43°45'01" East; thence along said curve northeasterly 87.75 feet through a central angle of 02°16'34"; thence radially from said curve North 41°28'27" West 3.00 feet to a non-tangent curve having a radius of 2112.00 feet concentric with last said curve; thence along said concentric curve northeasterly 191.34 feet through a central angle of 04°57'22"; thence radially from said curve South 36°31'05" East 3.00 feet to a point on a non-tangent curve concave southeasterly and having a radius of 2209.00 feet, concentric with and 59.00 feet northwesterly of said Curve "W", a radial line of said concentric curve from said point bears South 36°31'05" East; thence along said curve northeasterly 102.84 feet through a central angle of 02°40'03"; thence non-tangent from said curve North 18°59'05" East 27.45 feet to Point "E" described hereinbefore in Parcel 1; thence along the southwesterly line of said Parcel 1 South 32°51'43" East 157.64 feet to Point "D" described hereinbefore in said Parcel 1; thence North 77°43'14" West 31.95 feet to a point on a non-tangent curve concave southeasterly and having a radius of 2091.00 feet concentric with and 59.00 feet southeasterly of said Curve "W", a radial line of said concentric curve from said point bears South 33°55'57" East; thence along said curve southwesterly 253.90 feet through a central angle of 06°57'26" to a point of reverse curvature with a curve concave northwesterly and having a radius of 524.80 feet, a radial line of said curve from said point bears North 40°53'23" West; thence along said curve southwesterly 53.18 feet through a central angle of 05°48'20" to a point of reverse curvature with a curve concave southeasterly and having a radius of 457.21 feet, a radial line of said curve from said point bears South 35°05'03" East; thence along said curve southwesterly 39.21 feet through a central angle of 04°54'47"; thence tangent from said curve South 50°00'10" West 336.63 feet to the beginning of a tangent curve concave northwesterly and having a radius of 1849.00 feet concentric with and 49.00 feet southeasterly of said Curve "V"; thence along said concentric curve southwesterly 439.13 feet through a central angle of 13°36'27" to a radial line which bears South 26°23'23" East from said Point "G"; thence along said radial line North 26°23'23" West 49.00 feet to the TRUE POINT OF BEGINNING

CONTAINING: 2.869 Acres, more or less.

Parcel 5 (Avenida Vista Hermosa)

A variable width strip of land, the reference line of which is described as
BEGINNING at Point "G" described hereinbefore in Parcel 4, said point being the southwesterly terminus of a curve concave northwesterly and having a radius of 1800.00 feet, a radial line of said curve from said terminus bears North 26°23'23" West; thence tangent from said curve South 63°36'37" West 233.12 feet to a point hereinafter referred to as Point "H"; thence continuing South 63°36'37" West 511.32 feet to the beginning of a tangent curve concave southeasterly and having a radius of 1800.00 feet; thence along said curve southwesterly 412.92 feet through a central angle of 13°08'37" to a point hereinafter referred to as Point "I"; thence continuing along said curve southwesterly 110.54 feet through a central angle of 03°31'07" to a point hereinafter referred to as Point "J"; thence continuing along said curve southwesterly 78.29 feet through a central angle of 02°29'31" to a point hereinafter referred to as Point "K"; thence continuing along said curve southwesterly 241.38 feet through a central angle of 07°41'00" to a point hereinafter referred to as Point "L"; thence continuing along said curve southwesterly 164.02 feet through a central angle of 05°13'15" to the tangent intersection with a line, the southwesterly terminus of which is tangent to the northeasterly continuation of that certain curve shown as being concave northwesterly and having a radius of 1450.00 feet along the centerline of Avenida Vista Hermosa on the map of Tract No. 16212 filed in Book 828, Pages 1 through 10 of Miscellaneous Maps, in said Office of the County Recorder; thence along said line South 31°33'07" West 10.98 feet to a point hereinafter referred to as Point "M"; thence continuing South 31°33'07" West 45.84 feet to a point hereinafter referred to as Point "N"; thence continuing South 31°33'07" West 81.62 feet to a point hereinafter referred to as Point "O"; thence continuing South 31°33'07" West 22.53 feet to a point hereinafter referred to as Point "P"; thence continuing South 31°33'07" West 211.32 feet to said tangent intersection with the curve having a radius of 1450.00 feet; thence along said curve southwesterly 563.83 feet through a central angle of 22°16'46" to the northeasterly line of said Tract No. 16212 and a point hereinafter referred to as Point "Q".

Said strip of land shall be 103.00 feet wide lying 54.00 feet northwesterly and 49.00 feet southeasterly of said reference line between Points "G" and "H", between Points "I" and "J", between Points "K" and "L", between Points "M" and "N" and between Points "O" and "P".

Said strip of land shall be 120.00 feet wide lying 71.00 feet northwesterly and
49.00 feet southeasterly of said reference line between Points "H" and "I".

Said strip of land shall be 106.00 feet wide lying 57.00 feet northwesterly and
49.00 feet southeasterly of said reference line between Points "J" and "K" and
between Points "N" and "O".

Said strip of land shall be 114.00 feet wide lying 54.00 feet northwesterly and
60.00 feet southeasterly of said reference line between Points "L" and "M".

Said strip of land shall be 127.00 feet wide lying 54.00 feet northwesterly and
73.00 feet southeasterly of said reference line between Points "P" and "Q".

EXCEPTING THEREFROM that portion lying southwesterly of the southerly line of
said Parcel 1 of Lot Line Adjustment LL 98-83.

CONTAINING:  5.546 Acres, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

______________________________
Gregory A. Helmer, P.L.S. 5134
EXHIBIT 3 TO AGREEMENT

MEMORANDUM

[Attached]
MEMORANDUM OF DEVELOPMENT AGREEMENT IMPLEMENTATION AGREEMENT

This MEMORANDUM OF DEVELOPMENT AGREEMENT IMPLEMENTATION AGREEMENT ("Memorandum") is entered into on this 5th day of August, 2003 ("Memorandum"), by the CITY OF SAN CLEMENTE, a California municipal corporation ("City"), the TALEGA JOINT PLANNING AUTHORITY, a joint powers authority organized under and existing pursuant to Section 6500, et seq. of the Government Code of the State of California ("TJPA"), and TALEGA ASSOCIATES, LLC, a Delaware limited liability company ("Developer"). City and TJPA are collectively referred to herein as the "Public Agency Parties" and individually as a "Public Agency Party."

This Memorandum is made with reference to the following:

1. Developer is the owner of that certain real property located in the County of Orange, State of California, more particularly described on the legal description attached hereto as Exhibit "1" ("Covered Property").

2. The Public Agency Parties each own a portion of that certain real property located in the County of Orange, State of California, more particularly described on the legal description attached hereto as Exhibit "2" ("Public Agency Property").

3. On or about the date of this Memorandum, City, TJPA and Developer entered into that certain Implementation Agreement for Amended and Restated Development Agreement for Talega Property ("Implementation Agreement"). The Implementation Agreement is available for inspection at City Hall located at 100 Avenida Presidio, San Clemente, CA 92672. The definitions of all terms contained in the Implementation Agreement shall apply to this Memorandum.

4. The parties wish to memorialize that Sections 2.1 and 2.2 of the Development Agreement provide as follows:

   2.1 Covenant Not to Sue. Developer, and each and every individual, partnership, corporation, and entity of Developer, on behalf of itself and themselves and their respective partners and principals and its and their agents,
employees, attorneys, other representatives, heirs, successors and assigns hereby consents to and waives and right of protest with regard to, and covenants not to file, initiate, maintain, or prosecute, or voluntarily support, participate in, or encourage any third party in the filing, initiation, maintenance, or prosecution, of any administrative proceeding or judicial action against the Public Agency Parties or their respective officers, officials, employees, agents or representatives based upon or relating to, any of the following ("Covered Claims") in connection with the ongoing, planned, or future development of any portion of the Talega Property located within the boundaries of Villages 4, 5 and 6, with the exception of the area encompassed by Vesting Tentative Tract Map No. 16370 ("Covered Property"), which Covered Property is more particularly described in the legal description attached hereto as Exhibit "I": (a) the establishment, imposition, and enforcement of each Public Agency Party’s business license tax in effect as of the date of this Agreement and the extent and manner in which each Public Agency Party applies and interprets its business license tax as of the date of this Agreement, including the classification of persons engaged in the development of real property (e.g., developers and builders) as a "profession and occupation" subject to the business license tax levied under subsection (B) of Section 5.08.030 of the Municipal Code; (b) the establishment, imposition, and enforcement of each Public Agency Party’s building permit fees as such fees exist and are assessed by each Public Agency Party as of the date of this Agreement, including the manner in which such fees were adopted by a Public Agency Party, the amount of such fees charged by a Public Agency Party as of the date of this Agreement, and any future increases in the amount of such fees provided the increases do not exceed increases in the fee schedules set forth in the version of the Uniform Building Code adopted by the Public Agency Parties, as those schedules may be increased from time to time; and (c) any acts or matters related to the foregoing (a) or (b).

In the event the amount of the business license tax charged by a Public Agency Party is increased after the date of this Agreement, or the amount of any building permit fee charged by a Public Agency Party is increased after the date of this Agreement and the increase exceeds the increase in the fee schedule in the Uniform Building Code as further explained in clause (b) of the last sentence of the preceding paragraph, the establishment, imposition, and enforcement of such increased portion of the business license tax and/or building permit fee shall not be a Covered Claim and, accordingly, the foregoing covenant shall not be applicable as to the amount of the increase. Notwithstanding the foregoing, Developer understands and acknowledges that even in the event of such an increase, the underlying business license tax and building permit fee as well as the amount of the tax and fee charged as of the date of this Agreement shall continue to constitute Covered Claims and shall be subject the covenants set forth in the first paragraph of this Section 2.1.

2.2 Covenant to Run With the Land. All of the Covered Property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied and improved subject to the covenants, conditions, and restrictions set forth herein. The
covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth in Section 2.1 shall run with the Covered Property and shall be binding upon all persons having any right, title or interest in the Covered Property, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of each of the Public Agency Parties and their successors and assigns, including but not limited to their successors in interest with fee or easement interests in the Public Agency Property (as defined below); and may be enforced by the Public Agency Parties and their successors and assigns. The covenants established in Section 2.1 of this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of each of the Public Agency Parties and their successors and assigns, and the parties hereto expressly agree that this Agreement and the covenants herein shall run in favor of each of the Public Agency Parties, without regard to whether the Public Agency Party is an owner of the Public Agency Property or any portion thereof. This Agreement is further designed to create equitable servitudes and covenants appurtenant to all real property owned by each of the Public Agency Parties including without limitation the property described in the legal description attached hereto as Exhibit “2” ("Public Agency Property") and running with the Covered Property in accordance with the provisions of Civil Code Section 1468. The Public Agency Parties are deemed the beneficiaries of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. Developer hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land. Developer hereby further declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Public Agency Property by the citizens of the Public Agency Parties and by furthering the health, safety, and welfare of the residents of the Public Agency Parties. The Public Agency Parties shall have the right to designate other or additional real property as benefited by the covenants contained herein. Developer agrees to cooperate in executing any document necessary to designate such other real property as the benefited property. Developer further agrees that in the event a Public Agency Party no longer owns or has easement rights in all or any part of the Public Agency Property, (a) the covenants, conditions, restrictions, equitable servitudes, liens and charges set forth in this Agreement will continue to be binding upon all persons having any right, title, or interest in the Covered Property, or any part thereof, their heirs, successive owners, and assigns, and (b) Developer and Developer’s heirs, successive owners, and assigns shall be estopped from arguing that the covenants, conditions, restrictions, equitable servitudes, liens and charges set forth herein are unenforceable. The covenants contained in this Agreement shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title.
5. This Memorandum may be signed in any number of counterparts, each of which shall be an original and all of which shall constitute the same instrument.

6. This Memorandum is for purposes of giving record notice only and is not intended to modify the terms and provisions of the Implementation Agreement in any respect.

[signatures on next page]
IN WITNESS WHEREOF, this Memorandum of Agreement was executed as of the date and year first above written.

"CITY"

CITY OF SAN CLEMENTE,
a municipal corporation

By: ________________________________
   Mayor

ATTEST:

_____________________
City Clerk

APPROVED AS TO FORM:

_____________________
Jeffrey M. Odeman
City Attorney

"TJPA"

TALEGA JOINT PLANNING AUTHORITY,
a joint powers authority existing under Section 6500, et seq., of the Government Code

By: ________________________________
   Chairman of the Board

ATTEST:

_____________________
Secretary

APPROVED AS TO FORM:

_____________________
Authority Counsel
"TALEGA"

TALEGA ASSOCIATES, LLC,
a Delaware limited liability company

By: [Signature]

Its: [Signature]
STATE OF CALIFORNIA  )
COUNTY OF ORANGE    ) ss.

On __________________, before me, ____________________, personally
appeared ________________________________________________________

personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

____________________________________
Notary Public

[SEAL]

STATE OF CALIFORNIA  )
COUNTY OF ORANGE    ) ss.

On __________________, before me, ____________________, personally
appeared ________________________________________________________

personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

____________________________________
Notary Public

[SEAL]
STATE OF CALIFORNIA

COUNTY OF ORANGE

On April 1, 2003, before me, Holly A. Foster, Notary Public, personally appeared Patrick Hayes personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Holly A. Foster
Notary Public

[SEAL]

HOLLY A. FOSTER
Commission # 1343927
Notary Public - California
Orange County
My Comm. Expires Feb 18, 2009
EXHIBIT "1" TO MEMORANDUM

LEGAL DESCRIPTION OF COVERED PROPERTY

That certain real property located in the County of Orange, State of California, described as follows:

[see attached]
PARCEL 1


EXCEPTING THEREFROM Tract No. 13685 filed in Book 781, Pages 47 through 50 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 13684 filed in Book 782, Pages 1 through 7 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 13683 filed in Book 781, Pages 39 through 46 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 14228 filed in Book 804, Pages 14 through 17 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 15947 filed in Book 804, Pages 34 through 36 of Miscellaneous Maps in said Office of the County Recorder.


ALSO EXCEPTING THEREFROM Amended Tract No. 14224 filed in Book 834, Pages 33 through 41 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Amended Tract No. 14226 filed in Book 819, Pages 44 through 48 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM all those certain parcels of land described in a Grant Deed to Santa Margarita Water District, recorded November 30, 2000 as Instrument No. 20000651017 of Official Records in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Avenida Pico as described in that certain Irrevocable Offer of Dedication of Easement recorded April 16, 1999 as Instrument No. 19990276757 of Official Records in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 15756 filed in Book 782, Pages 14 through 18 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 13686 filed in Book 782, Pages 8 through 13 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 13935 filed in Book 825, Pages 1 through 5 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 16337 filed in Book 837, Pages 12 through 21 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM all those certain parcels of land described in a Grant Deed to Capistrano Unified School District recorded December 21, 2001 as Instrument No. 20010933145 of Official Records in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM that certain parcel of land described as follows:
BEGINNING at the southwesterly terminus of that certain course shown as "North 60°54'19" East 545.33 feet" in the southeasterly boundary of said Tract No. 15947; thence along said southeasterly boundary North 60°54'19" East 545.33 feet; thence
South 66°24'28" East 39.78 feet; thence South 24°00'00" East 33.00 feet; thence
South 38°30'00" East 81.00 feet; thence South 14°58'00" East 57.00 feet; thence
South 04°16'00" West 27.00 feet; thence South 81°20'00" East 54.00 feet; thence
South 18°17'00" East 49.50 feet; thence South 07°16'00" East 63.00 feet; thence
South 22°37'00" West 31.50 feet; thence South 49°12'00" West 63.50 feet; thence
South 63°29'00" West 30.00 feet; thence South 84°12'00" West 56.50 feet; thence
South 70°22'00" West 22.00 feet; thence North 67°27'00" West 80.00 feet; thence
North 74°22'00" West 127.00 feet; thence North 06°50'17" West 85.00 feet to the easterly prolongation of the southerly line of Lot "BB" of said Amended Tract No. 14224; thence along said easterly prolongation South 83°09'43" West 267.38 feet to the general northerly boundary line of said Amended Tract No. 14224; thence along said general northerly-boundary line North 52°30'58" West 38.64 feet to the POINT OF BEGINNING.

CONTAINING: 528.730 Acres, More or less.

ALSO EXCEPTING THEREFROM that certain parcel of land depicted on the attached map as Planning Area G-2.
EXHIBIT “2” TO MEMORANDUM

LEGAL DESCRIPTION OF PUBLIC AGENCY PROPERTY

That certain real property located in the County of Orange, State of California, described as follows:

[Attached]
Those certain parcels of land situated in the City of San Clemente, County of Orange, State of California, being those portions of Parcel 1 as described in Lot Line Adjustment No. 98-83 recorded November 2, 1998 as Instrument No. 19980743412 of Official Records in the Office of the County Recorder of said Orange County described as follows:

Parcel 1 (Avenida La Pata)

COMMENCING at the northwesterly terminus of that certain course on the centerline of Avenida La Pata shown as "North 26°19'08" West 455.79 feet" on the map of Tract No. 15264 filed in Book 744, Pages 5 through 8 of Miscellaneous Maps, in Office of the County Recorder; thence along the prolongation of said course, hereinafter referred to as Course "A", North 26°19'08" West 29.68 feet to the beginning of a tangent curve concave easterly and having a radius of 2350.00 feet, said curve is hereinafter referred to as Curve "Z"; thence along said curve northerly 702.08 feet through a central angle of 17°07'03"; thence tangent from said curve along a course hereinafter referred to as Course "B" North 09°12'05" West 287.98 feet to the beginning of a tangent curve concave westerly and having a radius of 2350.00 feet, said curve is hereinafter referred to as Curve "Y"; thence along said curve northerly and northwesterly 910.80 feet through a central angle of 22°12'23"; thence tangent from said curve along a course hereinafter referred to as Course "C" North 31°24'28" West 2111.18 feet to the beginning of a tangent curve concave northeasterly and having a radius of 2650.00 feet, said curve is hereinafter referred to as Curve "X"; thence along said curve northwesterly 299.90 feet through a central angle of 06°29'03" to the TRUE POINT OF BEGINNING; thence radially from said curve North 65°04'35" East 57.00 feet; thence South 62°16'13" East 33.95 feet; thence South 26°11'35" East 30.00 feet to a point hereinafter referred to as Point "A"; thence continuing South 26°11'35" East 30.00 feet; thence South 09°53'02" West 33.95 feet to a point on a non-tangent curve concave northeasterly and having a radius of 2593.00
feet concentric with and 57.00 feet northeasterly of said Curve "X", a radial line of said concentric curve from said point bears North 62°32'15" East; thence along said curve southeasterly 178.55 feet through a central angle of 03°56'43" to the tangent intersection with a line parallel with and 57.00 feet northeasterly of said Course "C"; thence along said parallel line South 31°24'28" East 621.94 feet; thence South 32°26'58" East 880.15 feet to a line parallel with and 73.00 feet northeasterly of said Course "C"; thence along said parallel line South 31°24'28" East 235.34 feet to a point hereinafter referred to as Point "B"; thence South 30°41'19" East 159.30 feet to a point on a line parallel with and 71.00 feet northeasterly of said Course "C", said point is hereinafter referred to as Point "C"; thence along said parallel line South 31°24'28" East 214.62 feet to the beginning of a tangent curve concave southwesterly and having a radius of 2421.00 feet concentric with and 71.00 feet easterly of said Curve "Y"; thence along said concentric curve southeasterly 335.25 feet through a central angle of 07°56'03" to a point of compound curvature with a curve concave westerly and having a radius of 2259.00 feet, a radial line of said curves from said point bears South 66°31'35" West; thence along said curve southerly 562.71 feet through a central angle of 14°16'20" to the tangent intersection with a line parallel with and 66.00 feet easterly of said Course "B"; thence along said parallel line South 09°12'05" East 327.92 feet to the beginning of a tangent curve concave easterly and having a radius of 2284.00 feet concentric with and 66.00 feet easterly of said Curve "Z"; thence along said concentric curve southerly 682.36 feet through a central angle of 17°07'03" to the tangent intersection with a line parallel with and 66.00 feet northeasterly of said Course "A"; thence along said parallel line South 26°19'08" East 63.18 feet to the southerly line of said Parcel 1 of Lot Line Adjustment LL 98-83; thence along said southerly line North 89°24'37" West 142.42 feet to a point on a non-tangent curve concave northeasterly and having a radius of 2411.00 feet concentric with and 61.00 feet westerly of said Curve "Z", a radial line of said concentric curve from said point bears North 63°42'41" East; thence along said curve northerly 239.80 feet through a central angle of 05°41'55"; thence radially from said curve South 69°24'36" West 27.00 feet to a non-tangent curve having a radius of 2438.00 feet concentric with last said curve; thence along said concentric curve northerly 285.29 feet through a central angle of 06°42'17"; thence radially from said curve North 76°06'53" East 27.00 feet to a non-tangent curve having a radius of 2411.00 feet concentric with last said curve; thence along said concentric curve northerly 102.60 feet through a central angle of 02°26'18"; thence radially from said curve South 78°33'11" West 16.00 feet to a point on a non-tangent curve having a radius of 2427.00 feet concentric with and 77.00 feet westerly of said Curve "Z", a radial line of said concentric curve from said point bears North 78°33'11" East; thence along said curve
northerly 95.12 feet through a central angle of 02°14'44" to the tangent intersection with a line parallel with and 77.00 feet westerly of said Course "B"; thence along said parallel line North 09°12'05" West 281.74 feet; thence North 80°47'55" East 16.00 feet to a line parallel with and 61.00 feet westerly of said Course "B"; thence along said parallel line North 09°12'05" West 6.24 feet to the beginning of a tangent curve concave westerly and having a radius of 2289.00 feet concentric with and 61.00 feet westerly of said Curve "Y"; thence along said concentric curve northerly and northwesterly 495.84 feet through a central angle of 12°24'41" to a point of compound curvature with a curve concave southwesterly and having a radius of 1946.00 feet, a radial line of said curves from said point bears South 68°23'14" West; thence along said curve northwesterly 332.68 feet through a central angle of 09°47'42" to the tangent intersection with a line parallel with and 66.00 feet southwesterly of said Course "C"; thence along said parallel line North 31°24'28" West 124.04 feet; thence South 58°35'32" West 3.00 feet to a line parallel with and 69.00 feet southwesterly of said Course "C"; thence along said parallel line North 31°24'28" West 144.06 feet to a point hereinafter referred to as Point "D"; thence North 32°51'43" West 157.64 feet to a point on a line parallel with and 73.00 feet southwesterly of said Course "C", said point is hereinafter referred to as Point "E"; thence along said parallel line North 31°24'28" West 192.98 feet to the beginning of a tangent curve concave northeasterly and having a radius of 380.56 feet; thence along said curve northwesterly 49.20 feet through a central angle of 07°24'24"; thence tangent from said curve North 24°00'04" West 47.36 feet to the beginning of a tangent curve concave southwesterly and having a radius of 445.71 feet; thence along said curve northwesterly 57.62 feet through a central angle of 07°24'24" to the tangent intersection with a line parallel with and 60.00 feet southwesterly of said Course "C"; thence along said parallel line tangent from said curve North 31°24'28" West 45.40 feet; thence North 30°22'07" West 275.65 feet to a line parallel with and 55.00 feet southwesterly of said Course "C"; thence along said parallel line North 31°24'28" West 1076.37 feet to the beginning of a tangent curve concave northeasterly and having a radius of 2705.00 feet concentric with and 55.00 feet southwesterly of said Curve "X"; thence along said concentric curve northwesterly 306.13 feet through a central angle of 06°29'03"; thence radially from said curve North 65°04'35" East 55.00 feet to the TRUE POINT OF BEGINNING.

CONTAINING: 12.921 Acres, more or less.

Parcel 2 (Calle Saluda)

A strip of land 60.00 feet wide, the centerline of which is described as follows:
BEGINNING at the intersection of the westerly terminus of the centerline of Calle Saluda with the westerly boundary line of Tract No. 16337, both as shown on a map thereof filed in Book 837, Pages 12 through 21 of Miscellaneous Maps in said Office of the County Recorder, said terminus being on a curve concave southerly and having a radius of 1400.00 feet, a radial line of said curve from said terminus bears South 15°06'41" East; thence along the continuation of said curve westerly 270.78 feet through a central angle of 11°04'54" to the tangent intersection with a line which bears South 63°48'25" West and passes through Point "A" described hereinbefore in Parcel 1; thence along said line South 63°48'25" West 269.02 feet to said Point "A".

Said strip of land shall be lengthened or shortened easterly so as to terminate in said westerly boundary line of Tract No. 16337.

CONTAINING: 0.744 Acres, more or less.

Parcel 3 (Avenida Vista Hermosa)

COMMENCING at the intersection of the westerly terminus of the centerline of Avenida Vista Hermosa with the westerly boundary line of Tract No. 16337, both as shown on a map thereof filed in Book 837, Pages 12 through 21 of Miscellaneous Maps in said Office of the County Recorder, said terminus being on a curve concave southeasterly and having a radius of 2150.00 feet, a radial line of said curve from said terminus bears South 26°11'32" East; thence along the continuation of said curve southwesterly 123.74 feet through a central angle of 03°17'51" to a point on the northeasterly line of hereinbefore described Parcel 1, said point is hereinafter referred to as Point "F" and is also the TRUE POINT OF BEGINNING; thence along said northeasterly line North 30°41'19" West 82.27 feet to Point "B" described hereinbefore in said Parcel 1; thence South 71°03'15" East 29.84 feet to a point on a non-tangent curve concave southeasterly and having a radius of 2210.00 feet concentric with and 60.00 feet northwesterly of the curve described hereinbefore as having a radius of 2150.00 feet, a radial line of said concentric curve from said point bears South 29°01'15" East; thence along said curve northeasterly 116.36 feet through a central angle of 03°01'00" to a non-tangent intersection with said westerly boundary line of Tract No. 16337; thence along said westerly boundary line and the westerly boundary line of Tract No. 16253 as shown on a map thereof filed in Book 830, Pages 13 through 22 of Miscellaneous Maps, in said Office of the County Recorder, South 19°17'34" East 109.79 feet to a point on a non-tangent curve.
concave southeasterly and having a radius of 2101.00 feet concentric with and 49.00 feet southeasterly of said curve described hereinbefore as having a radius of 2150.00 feet, a radial line of said concentric curve from said point bears South 26°21'14" East; thence along said curve southwesterly 88.05 feet through a central angle of 02°24'04"; thence non-tangent from said curve South 12°48'56" West 37.64 feet to Point "C" described hereinbefore in said Parcel 1; thence along said northeasterly line of Parcel 1 North 30°41'19" West 77.03 feet to the TRUE POINT OF BEGINNING.

CONTAINING: 0.326 Acres, more or less.

Parcel 4 (Avenida Vista Hermosa)

COMMENCING at Point "F" described hereinbefore in Parcel 3, said point being on a curve concave southeasterly and having a radius of 2150.00 feet, said curve is hereinafter referred to as Curve "W", a radial line of said curve from said point bears South 29°29'23" East; thence along said curve southwesterly 427.78 feet through a central angle of 11°24'00"; thence tangent from said curve along a course hereinafter referred to as Course "D" South 49°06'37" West 400.00 feet to the beginning of a tangent curve concave northwesterly and having a radius of 1800.00 feet, said curve is hereinafter referred to as Curve "Y"; thence along said curve southwesterly 455.53 feet through a central angle of 14°30'00" to a point hereinafter referred to as Point "G" and also the TRUE POINT OF BEGINNING; thence radially from said curve North 26°23'23" West 54.00 feet to a non-tangent curve concave northwesterly and having a radius of 1746.00 feet concentric with and 54.00 feet northwesterly of said Curve "V"; thence along said concentric curve northeasterly 234.87 feet through a central angle of 07°42'27"; thence radially from said curve North 34°05'50" West 3.00 feet to a non-tangent curve having a radius of 1743.00 feet concentric with last said curve; thence along said concentric curve northeasterly 86.50 feet through a central angle of 02°50'36"; thence radially from said curve South 36°56'26" East 3.00 feet to a point on a non-tangent curve concave northwesterly and having a radius of 1746.00 feet concentric with and 54.00 feet northwesterly of said Curve "V", a radial line of said concentric curve from said point bears North 36°56'26" West; thence along said curve northeasterly 120.34 feet through a central angle of 03°56'57" to the tangent intersection with a line parallel with and 54.00 feet northwesterly of said Course "D"; thence along said parallel line North 49°06'37" East 199.76 feet to the beginning of a tangent curve concave northwesterly and having a radius of 1803.00 feet; thence along said curve northeasterly 90.02 feet through a central angle of 02°51'38" to a point of
revert curvature with a curve concave southeasterly and having a radius of 2209.00 feet concentric with and 59.00 feet northwesterly of said Curve "W", a radial line of said reverse curve from said point bears South 43°45'01" East; thence along said curve northeasterly 87.75 feet through a central angle of 02°16'34"; thence radially from said curve North 41°28'27" West 3.00 feet to a non-tangent curve having a radius of 2112.00 feet concentric with last said curve; thence along said concentric curve northeasterly 191.34 feet through a central angle of 04°57'22"; thence radially from said curve South 36°31'05" East 3.00 feet to a point on a non-tangent curve concave southeasterly and having a radius of 2209.00 feet, concentric with and 59.00 feet northwesterly of said Curve "W", a radial line of said concentric curve from said point bears South 36°31'05" East; thence along said curve northeasterly 102.84 feet through a central angle of 02°40'03"; thence non-tangent from said curve North 18°59'05" East 27.45 feet to Point "E" described hereinbefore in Parcel 1; thence along the southwesterly line of said Parcel 1 South 32°51'43" East 157.64 feet to Point "D" described hereinbefore in said Parcel 1; thence North 77°43'14" West 31.95 feet to a point on a non-tangent curve concave southeasterly and having a radius of 2091.00 feet concentric with and 59.00 feet southeasterly of said Curve "W", a radial line of said concentric curve from said point bears South 33°55'57" East; thence along said curve southwesterly 253.90 feet through a central angle of 06°57'26" to a point of reverse curvature with a curve concave northwesterly and having a radius of 524.80 feet, a radial line of said curve from said point bears North 40°53'23" West; thence along said curve southwesterly 53.18 feet through a central angle of 05°48'20" to a point of reverse curvature with a curve concave southeasterly and having a radius of 457.21 feet, a radial line of said curve from said point bears South 35°05'03" East; thence along said curve southwesterly 39.21 feet through a central angle of 04°54'47"; thence tangent from said curve South 50°00'10" West 336.63 feet to the beginning of a tangent curve concave northwesterly and having a radius of 1849.00 feet concentric with and 49.00 feet southeasterly of said Curve "W"; thence along said concentric curve southwesterly 439.13 feet through a central angle of 13°36'27" to a radial line which bears South 26°23'23" East from said Point "G"; thence along said radial line North 26°23'23" West 49.00 feet to the TRUE POINT OF BEGINNING

CONTAINING: 2.869 Acres, more or less.

Parcel 5 (Avenida Vista Hermosa)

A variable width strip of land, the reference line of which is described as
BEGINNING at Point "G" described hereinbefore in Parcel 4, said point being the southwesterly terminus of a curve concave northwesterly and having a radius of 1800.00 feet, a radial line of said curve from said terminus bears North 26°23'23" West; thence tangent from said curve South 63°36'37" West 233.12 feet to a point hereinafter referred to as Point "H"; thence continuing South 63°36'37" West 511.32 feet to the beginning of a tangent curve concave southeasterly and having a radius of 1800.00 feet; thence along said curve southwesterly 412.92 feet through a central angle of 13°08'37" to a point hereinafter referred to as Point "I"; thence continuing along said curve southwesterly 110.54 feet through a central angle of 03°31'07" to a point hereinafter referred to as Point "J"; thence continuing along said curve southwesterly 78.29 feet through a central angle of 02°29'31" to a point hereinafter referred to as Point "K"; thence continuing along said curve southwesterly 241.38 feet through a central angle of 07°41'00" to a point hereinafter referred to as Point "L"; thence continuing along said curve southwesterly 164.02 feet through a central angle of 05°13'15" to the tangent intersection with a line, the southwesterly terminus of which is tangent to the northeasterly continuation of that certain curve shown as being concave northwesterly and having a radius of 1450.00 feet along the centerline of Avenida Vista Hermosa on the map of Tract No. 16212 filed in Book 828, Pages 1 through 10 of Miscellaneous Maps, in said Office of the County Recorder; thence along said line South 31°33'07" West 10.98 feet to a point hereinafter referred to as Point "M"; thence continuing South 31°33'07" West 45.84 feet to a point hereinafter referred to as Point "N"; thence continuing South 31°33'07" West 81.62 feet to a point hereinafter referred to as Point "O"; thence continuing South 31°33'07" West 22.53 feet to a point hereinafter referred to as Point "P"; thence continuing South 31°33'07" West 211.32 feet to said tangent intersection with the curve having a radius of 1450.00 feet; thence along said curve southwesterly 563.83 feet through a central angle of 22°16'46" to the northeasterly line of said Tract No. 16212 and a point hereinafter referred to as Point "Q".

Said strip of land shall be 103.00 feet wide lying 54.00 feet northwesterly and 49.00 feet southeasterly of said reference line between Points "G" and "H", between Points "I" and "J", between Points "K" and "L", between Points "M" and "N" and between Points "O" and "P".

Said strip of land shall be 120.00 feet wide lying 71.00 feet northwesterly and
49.00 feet southeasterly of said reference line between Points "H" and "I".

Said strip of land shall be 106.00 feet wide lying 57.00 feet northwesterly and 49.00 feet southeasterly of said reference line between Points "J" and "K" and between Points "N" and "O".

Said strip of land shall be 114.00 feet wide lying 54.00 feet northwesterly and 60.00 feet southeasterly of said reference line between Points "L" and "M".

Said strip of land shall be 127.00 feet wide lying 54.00 feet northwesterly and 73.00 feet southeasterly of said reference line between Points "P" and "Q".

EXCEPTING THEREFROM that portion lying southwesterly of the southerly line of said Parcel 1 of Lot Line Adjustment LL 98-83.

CONTAINING: 5.546 Acres, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.
EXHIBIT “4” TO AGREEMENT

LA PATA WIDENING IMPROVEMENTS

[Attached]
EXHIBIT “5” TO AGREEMENT

OCTA MANUAL

[Attached]
Procedures For Receiving Funds

The consultant contract, right-of-way acquisition process, or construction contract for approved projects under Tier 1 must be awarded within the fiscal year funds are programmed. Once work is initiated, the local agency can undertake the process for receiving payment of CTFP funds.¹⁰

Funds will be released through two payments. The initial payment will constitute 90 percent of the contract award or programmed amount, whichever is less. The final payment will be disbursed after approval of the final report.

90 Percent Payment

Once the contract has been awarded, the Agency shall submit the following documents to the Project Administrator:

A. Your request for Transportation Program funds must include a Certification from the Public Works Director stating the following:

1. The project is designed to city/county and other participating jurisdiction’s (e.g., Caltrans) standards (if applicable)
2. The project contract has been awarded
3. The total cost of the contract based on the award
4. The city/county has committed matching funds to the project (if required)
5. Right-of-way was acquired in conformance with city/county procedures (if applicable)
6. All required environmental documentation is complete and certified (if applicable)

A Minute Order, Agency Resolution, or other Council/Board Action showing award of the contract and the contract amount must be submitted with your funding request. Exhibit 13-1 is a sample resolution. No Combined Transportation Funding Program funds will be disbursed until these items are received.

¹⁰ RSTP and LSTP funds will undertake a separate process. Local agencies must contact Caltrans Local Streets and Roads for reimbursement.
B. (If Applicable) Certification of PS&E (Exhibit 13-2) signed by the Agency Engineer. This will certify that the local agency has properly prepared and approved plans and specifications in accordance with authorized procedures and adopted standards, followed approved scope of work and incorporated materials report.

C. A Revised Cost Estimate in the form provided with the application package.

D. An invoice for the lesser amount of either 90% of the program project allocation or the contract amount.

E. For Right-of-way, also submit:
   1. Copy of appraiser's bill for completion of work.
   2. Copy of written offer(s).
   3. Council/Board action to start project (i.e. minute order, resolution, budget action).
   4. Order of immediate possession (if applicable).
   5. Excess right-of-way disposal plan (if applicable)

Availability of Funds

The funds allocated by OCTA for each project will be available on July 1 of the Fiscal Year for which the project was programmed. After bids are opened and a contractor selected, the final allocation will be the lesser amount of the original allocation or the revised project cost estimate.

Once the construction/consultant contract is awarded, or the right-of-way process is underway, your agency may request 90 percent of the Measure M allocation. Examples of calculating the initial funding request are described below.

Example A - contract is awarded for less than the estimated construction cost.

Given:

\[
\begin{align*}
$200,000 & = \text{Total Combined Transportation Funds programmed for Project X} \\
$200,000 & = \text{Estimated construction cost} \\
$160,000 & = \text{Construction contract award}
\end{align*}
\]
Chapter 13

Approved Projects

Calculations:

90 percent of contract amount = $160,000 x 0.9 = $144,000.

Example B - Contract is awarded for more than the estimated construction cost.

Given:

$200,000 = Total Combined Transportation Funds programmed for Project Y
$200,000 = Estimated construction cost
$280,000 = Construction contract award

Calculations:

Construction costs = $280,000
Since this amount exceeds $200,000 programmed, need to adjust down to $200,000.
90 percent of contract amount = $200,000 x 0.9 = $180,000.

Cancellation of Project

If a local agency, for whatever reason, decides to cancel a project, the agency shall notify OCTA as soon as possible thereafter. Funds for the canceled project will revert to a program-specific unallocated fund.

Notice of Completion

After the project has been completed, a Notice of Completion shall be submitted to OCTA.
Final Report

The Final Report must be submitted to the Orange County Transportation Authority within 120 days after acceptance of the improvements, study, or project (i.e., Notice of Completion) by the city council/County Board. If for some reason this 120-day limit cannot be met (such as contractual arrangements with Caltrans), please notify OCTA so that a final report can be submitted at a later date. The Authority will review these reports to determine the items eligible for reimbursement. After review and approval of the final report, the local agency will be requested to submit the final project billing.

Form of Report:

The local agency should prepare a Final Report for the project in the form of Exhibit 13-3 for construction projects, Exhibit 13-4 for right-of-way projects, and Exhibit 13-5 for all other types of projects.

General lump sum pay items, appraisal cost, design and construction engineering should be distributed in the same ratio as the total right-of-way acquisition or construction costs.

Delinquent Final Report:

Final reports shall be considered delinquent if not submitted prior to 120 days after the project Notice of Completion. If no final report is submitted by an agency within these 120 days, it may be found ineligible for program participation.

Final Payment

The remaining balance, approximately 10 percent in Combined Transportation Program funds, will be released when the project is completed and a Final Report on the project is accepted by OCTA. The balance is determined based on final costs for Combined Transportation Funding Programs eligible expenditures as stated in the program from where funds were programmed. Prior to submitting the report, review the section in this manual discussing the final report process.
Chapter 13

Approved Projects

Project Cost Changes

If the contract price is lower than the amount programmed and additional items and/or change orders were needed during construction/study, additional funding, up to the allocation programmed, may be approved when the final report for the project is filed. OCTA and the auditor will review these reports to determine: 1) the reason for the change order(s), 2) the items eligible for reimbursement, and 3) the original scope of the project. You should provide information supporting the need for the change orders in the final report. Changes in project limits for construction projects are not eligible for reimbursement.

Audit

Once the final report is submitted to OCTA, an audit will be conducted on the project. OCTA will hire an auditing firm to complete the reviews. The cost estimate forms submitted with the project applications (revised where appropriate), your project accounting records and the final report will be the primary items used for the audit. Separate records must be maintained for your projects (i.e., expenditures, interest) to ensure compliance. Only Combined Transportation Funding Programs' eligible items listed on your cost estimate form will be reimbursed.

Project Advancement

An agency may begin work for an approved CTFP project prior to the fiscal year it is programmed. One of the two processes, described below, must be followed to advance a project.

Local Agency Project Advancement

A local agency has two options available to them for the advancement of an approved project. The first option is called Local Agency Project Advancement (LAPA). With this option, the local agency may begin work on any approved CTFP project prior to the fiscal year funds are programmed. The eligible expenses will then be reimbursed to the local agency at the beginning of the fiscal year that the project's funds were programmed (up to the programmed amount or contract value, whichever is less). In order to be eligible for consideration under LAPA the OCTA must be notified that the local agency intends to proceed with the project prior to the project's start-up.
EXHIBIT “6” TO AGREEMENT

LOCATION OF DIRT DEPOSIT AND STOCKPILE AREA

[Attached]
EXHIBIT "7" TO AGREEMENT

DEPICTION OF LOWER PORTION OF LARGE OFFSITE PAD

[Attached]
TEMPORARY AREA OF GRADING IMPACT
AMENDED AND RESTATED IMPLEMENTATION AGREEMENT FOR AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR TALEGA PROPERTY

This AMENDED AND RESTATED IMPLEMENTATION AGREEMENT FOR AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR TALEGA PROPERTY ("Agreement") is entered into this ___ day of ____, 2006, by and among the CITY OF SAN CLEMENTE, a California municipal corporation ("City"), the TALEGA JOINT PLANNING AUTHORITY, a joint powers authority organized under and existing pursuant to Section 6500, et seq. of the Government Code of the State of California ("TJPA"), and TALEGA ASSOCIATES, LLC, a Delaware limited liability company ("Developer"). City and TJPA are collectively referred to herein as the "Public Agency Parties" and individually as a "Public Agency Party."

RECITALS

A. On February 27, 2002, City, TJPA and Developer entered into that certain Amended and Restated Development Agreement for Talega Property recorded in the Official Records of Orange County, California on March 21, 2002 as Instrument No. 20020231933 ("Development Agreement"), relating to the development of that certain real property located within the City and unincorporated territory of the County of Orange, more particularly described therein as the "Talega Property."

B. On August 5, 2003, City, TJPA and Developer entered into an Implementation Agreement for Amended and Restated Development Agreement for Talega Property ("Original Agreement") to effectuate and implement the Development Agreement based on information and conditions present at that time.

C. In order to fully effectuate and implement the Development Agreement and facilitate full performance of the obligations of City, TJPA and Developer thereunder, the parties desire to enter into this Agreement to, among other things, account for (a) changed conditions resulting from imposition of regulations by various governmental entities that affect the Talega Property; (b) updated information regarding traffic circulation within and around the Talega Property; (c) updated cost estimates for certain drainage improvements made necessary by development of the Talega Property; (d) the updated stockpile and grade requirements as agreed to by City and Developer in that certain Stockpile Agreement entered July 20, 2005; and (e) the rights, duties and obligations of City, TJPA and Developer with respect to such matters, all as more particularly set forth herein.

D. Developer has fully performed certain obligations under the Original Agreement as memorialized in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, TJPA and Developer hereby agree as follows:
1. Defined Terms. Any capitalized terms contained in this Agreement which are not defined herein shall have the meaning given in the Development Agreement, unless expressly provided to the contrary.

2. Covenant Not to Sue Regarding Building Permit Fees and Business License Tax.

2.1 Covenant Not to Sue. Developer, and each and every individual, partnership, corporation, and entity of Developer, on behalf of itself and themselves and their respective partners and principals and its and their agents, employees, attorneys, other representatives, heirs, successors and assigns hereby consents to and waives any right of protest with regard to, and covenants not to file, initiate, maintain, or prosecute, or voluntarily support, participate in, or encourage any third party in the filing, initiation, maintenance, or prosecution, of any administrative proceeding or judicial action against the Public Agency Parties or their respective officers, officials, employees, agents or representatives based upon or relating to, any of the following ("Covered Claims") in connection with the ongoing, planned, or future development of any portion of the Talega Property located within the boundaries of Villages 4, 5 and 6, with the exception of the area encompassed by Vesting Tentative Tract Map No. 16370 ("Covered Property"), which Covered Property is more particularly described in the legal description attached hereto as Exhibit "A": (a) the establishment, imposition, and enforcement of each Public Agency Party's business license tax in effect as of the date of this Agreement and the extent and manner in which each Public Agency Party applies and interprets its business license tax as of the date of this Agreement, including the classification of persons engaged in the development of real property (e.g., developers and builders) as a "profession and occupation" subject to the business license tax levied under subsection (B) of Section 5.08.030 of the Municipal Code; (b) the establishment, imposition, and enforcement of each Public Agency Party's building permit fees as such fees exist and are assessed by each Public Agency Party as of the date of this Agreement, including the manner in which such fees were adopted by a Public Agency Party, the amount of such fees charged by a Public Agency Party as of the date of this Agreement, and any future increases in the amount of such fees provided the increases do not exceed increases in the fee schedules set forth in the version of the Uniform Building Code adopted by the Public Agency Parties, as those schedules may be increased from time to time; and (c) any acts or matters related to the foregoing (a) or (b).

In the event the amount of the business license tax charged by a Public Agency Party is increased after the date of this Agreement, or the amount of any building permit fee charged by a Public Agency Party is increased after the date of this Agreement and the increase exceeds the increase in the fee schedule in the Uniform Building Code as further explained in clause (b) of the last sentence of the preceding paragraph, the establishment, imposition, and enforcement of such increased portion of the business license tax and/or building permit fee shall not be a Covered Claim and, accordingly, the foregoing covenant shall not be applicable as to the amount of the increase. Notwithstanding the foregoing, Developer understands and acknowledges that even in the event of such an increase, the underlying business license tax and building permit fee as well as the amount of the tax and fee charged as of the date of this Agreement shall continue to constitute Covered Claims and shall be subject to the covenants set forth in the first paragraph of this Section 2.1.

2.2 Covenant to Run With the Land. All of the Covered Property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied and improved subject to the
covenants, conditions, and restrictions set forth herein. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth in Section 2.1 shall run with the Covered Property and shall be binding upon all persons having any right, title or interest in the Covered Property, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of each of the Public Agency Parties and their successors and assigns, including but not limited to their successors in interest with fee or easement interests in the Public Agency Property (as defined below); and may be enforced by the Public Agency Parties and their successors and assigns. The covenants established in Section 2.1 of this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of each of the Public Agency Parties and their successors and assigns, and the parties hereto expressly agree that this Agreement and the covenants herein shall run in favor of each of the Public Agency Parties, without regard to whether the Public Agency Party is an owner of the Public Agency Property or any portion thereof. This Agreement is further designed to create equitable servitudes and covenants appurtenant to all real property owned by each of the Public Agency Parties including without limitation the property described in the legal description attached hereto as Exhibit "2" ("Public Agency Property") and running with the Covered Property in accordance with the provisions of Civil Code Section 1468. The Public Agency Parties are deemed the beneficiaries of the terms and provisions of this Agreement and the covenants running with the land, for and in their own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. Developer hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land. Developer hereby further declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Public Agency Property by the citizens of the Public Agency Parties and by furthering the health, safety, and welfare of the residents of the Public Agency Parties. The Public Agency Parties shall have the right to designate other or additional real property as benefited by the covenants contained herein. Developer agrees to cooperate in executing any document necessary to designate such other real property as the benefited property. Developer further agrees that in the event a Public Agency Party no longer owns or has easement rights in all or any part of the Public Agency Property, (a) the covenants, conditions, restrictions, equitable servitudes, liens and charges set forth in this Agreement will continue to be binding upon all persons having any right, title, or interest in the Covered Property, or any part thereof, their heirs, successive owners, and assigns, and (b) Developer and Developer's heirs, successive owners, and assigns shall be estopped from arguing that the covenants, conditions, restrictions, equitable servitudes, liens and charges set forth herein are unenforceable. The covenants contained in this Agreement shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title.

2.3 Memorandum of Agreement. Concurrently with the execution of this Agreement, City and Developer shall execute the Memorandum of Amended and Restated Implementation Agreement for Amended and Restated Development Agreement for Talega Property ("Memorandum") in the form attached hereto as Exhibit "3" to provide notice to subsequent purchasers of the Covered Property of the covenants set forth in Section 2.1. Within (10) days after the date of this Agreement, the parties shall cause the Memorandum to be recorded in the Official Records of Orange County, California. Developer represents that it is the fee owner of all of the Covered Property and Developer shall not sell or convey any of the
Covered Property until the Memorandum has been recorded. The covenant not to sue in Section 2.1 of this Agreement shall terminate automatically as to any individual parcel within the Covered Property, effective the “Home Purchase Date” (as defined below), as to Covered Claims applicable to the parcel accruing on and after the Home Purchase Date. Upon each such termination, the Memorandum shall automatically be removed of record as to such parcel of the Covered Property without the need to record any instrument confirming the same. Nevertheless, the Public Agency Parties shall cooperate with Developer or its successor owners of any portion of the Covered Property, at no cost to the Public Agency Parties, to execute in recordable form and to record any instrument reasonably necessary to confirm of record any such removal of the Memorandum. The “Home Purchase Date” shall mean, with respect to a given parcel of the Covered Property, the date of purchase of that parcel by a member of the homebuying public (and not by a builder or developer) as evidenced by the recordation of a quitclaim deed or grant deed conveying fee title to the parcel to the homebuyer. It is understood and agreed that notwithstanding the removal of the Memorandum as an encumbrance to title to a parcel, the covenants set forth in Section 2.1 of this Agreement shall not terminate and shall continue to be binding as to Covered Claims applicable to the parcel accruing prior to the Home Purchase Date (i.e., any building permit fees and business license tax that were paid or were payable prior to the Home Purchase Date for the parcel).

3. Traffic Capacity; Development Rights. Section 6.3.1 of the Development Agreement provides that so long as certain Conditions are satisfied, the development of 3,400 residential units in the Master Talega Property can be accommodated in six (6) Phases without violating the LOS Standards. In accordance with Section 6.3.3 of the Development Agreement, City and TJPA have completed an analysis of traffic circulation within the Study Area depicted on Exhibit “M” to the Development Agreement and have determined that the development of an additional 600 residential units in the Master Talega Property can be accommodated in the 6th Phase of development without violating the LOS Standards so long as the Conditions for the 6th Phase are satisfied. Accordingly, the maximum number of residential units permitted in the Master Talega Property is hereby increased from 3,400 to 4,000, with the additional 600 residential units permitted in the 6th Phase of development. All of the provisions set forth in the Development Agreement shall apply to and govern the issuance of the building permits for the additional 600 residential units permitted in the 6th Phase of development. In connection therewith, City and TJPA each hereby acknowledge that in accordance with the Development Agreement, if Developer timely performs its obligations set forth in the Development Agreement and the Conditions described in the Development Agreement for each Phase have been satisfied, City and TJPA will not withhold residential building permits or take any other action to prevent or delay Developer from constructing on the Talega Property the additional 600 residential units permitted in the 6th Phase on the basis of the Talega Project's impact on City’s or TJPA’s traffic circulation system or any alleged violation of the LOS Standards.

4. Avenida La Pata Widening.

4.1 La Pata Widening Improvements. In addition to Developer’s obligation under Section 7 of the Development Agreement to construct the La Pata Extension and its obligation under certain conditions of approval applicable to the Talega Property to construct two (2) traffic lanes and related improvements to extend Avenida La Pata from the terminus of the La Pata Extension to the future intersection of Avenida La Pata and Calle Saluda
(“Additional La Pata Extension”), Developer shall widen the Additional La Pata Extension from two (2) traffic lanes to four (4) traffic lanes and construct a landscaped median within the Additional La Pata Extension. The grading, drainage, erosion control, paving, and related improvements to be constructed and installed by Developer with respect to the widening of the Additional La Pata Extension and the installation of the landscaped median is referred to herein as the “La Pata Widening.” The La Pata Widening improvements are generally depicted on the site map attached to this Agreement as Exhibit “4.” Developer’s construction of the La Pata Widening shall be performed as set forth in this Agreement and, to the extent not inconsistent with the express provisions of this Agreement, in accordance with the provisions of City’s standard form Subdivision Improvement Agreement in use on the date of this Agreement, which agreement is incorporated herein by reference as if set forth in full. Developer shall have the sole obligation to fund the planning, design, engineering, construction, supervision, inspection, and all other costs associated with the design and construction of the La Pata Widening.

4.2 Approval of Plans. Prior to the date of this Agreement, City reviewed and approved the plans and specifications submitted by Developer for the La Pata Widening.

4.3 Commencement and Completion of Construction. Developer shall commence construction of the La Pata Widening within thirty (30) days after the date of this Agreement. Subject to Section 12.1 of this Agreement, Developer shall substantially complete construction of the La Pata Widening no later than one hundred eighty (180) days following commencement of construction. As used herein, the term “substantially complete” shall mean that the La Pata Widening is in a condition that the City Engineer has determined is sufficient for the roadway improvements to be opened for traffic to the public. Developer shall exercise reasonable diligence to cause the La Pata Widening to be fully completed as soon as possible after it is substantially complete, so that the improvements in question can be accepted by City. Nothing in this Section 4.3 shall be deemed to require City to accept the La Pata Widening or record a notice of completion prior to the date all improvements required by the plans and specifications are fully complete in accordance with City’s normal standards applicable to public works projects.

4.4 Security.

4.4.1 Developer’s Provision of Security to City. Prior to the date of this Agreement, Developer furnished to City, and City approved, Developer’s faithful performance security and payment security in the form of bonds (collectively, “La Pata Widening Security Instruments”), each in an amount not less than one hundred percent (100%) of the City Engineer’s approved estimated cost of the La Pata Widening, in favor of City securing Developer’s obligation to construct the La Pata Widening.

4.4.2 Release of Security. City shall release the La Pata Widening Security Instruments upon the last to occur of the following: (a) City’s acceptance of the work performed in connection with the La Pata Widening; (b) expiration of the time within which stop notice or lien claims are required to be made pursuant to applicable provisions of the California Civil Code; or (c) if stop notice or lien claims have been timely filed, after all such claims have been resolved or Developer has provided a statutory lien release bond.
5. **City’s Reimbursement to Developer for La Pata Extension.** Section 7.1.6 of the Development Agreement requires City to reimburse Developer for certain costs incurred by Developer with respect to the construction of the La Pata Extension, which costs are referred to in the Development Agreement as the “Reimbursable La Pata Expenses.” The third paragraph of Section 7.1.6 sets forth a process for Developer to submit invoices to City each month as Reimbursable La Pata Expenses are incurred and for City to make monthly payments to Developer from the La Pata Measure M Grant received by City. As of the date of this Agreement, City has not received the La Pata Measure M Grant and has not made any payments to Developer. City and Developer have agreed to modify the timing and process for City’s payments to Developer for the Reimbursable La Pata Expenses. Accordingly, the timing and process for City’s reimbursement payments to Developer shall be as set forth in this Section 5 and the provisions of this Section 5 shall supersede the provisions on reimbursement set forth in Section 7.1.6 of the Development Agreement.

The procedures for OCTA’s disbursement of Measure M grants are set forth in Chapter 13 of OCTA’s Combined Transportation Funding Programs manual (“OCTA Manual”). The OCTA Manual generally provides for Measure M grants to be disbursed in two installments. For information purposes, pages 1-5 of the OCTA Manual are attached to this Agreement as Exhibit “S.” Within sixty (60) days after the date of this Agreement, Developer shall submit to City copies of the construction contracts for the Eligible La Pata Improvements and all other documents and information required to be submitted by Developer in order to enable City to submit to OCTA a request for the first payment of the La Pata Measure M Grant. Upon City’s receipt of said documents and information from Developer, City shall submit to OCTA a request for the first payment of the La Pata Measure M Grant in the maximum amount permitted under the OCTA guidelines, together with the documents required to be submitted by City to OCTA under the OCTA Manual. The amount of the first payment of the La Pata Measure M Grant disbursed to City by OCTA is referred to herein as the “First La Pata Measure M Grant Payment.” Upon City’s issuance of the last notice of completion for the Eligible La Pata Improvements, but in no event earlier than City’s receipt of the First La Pata Measure M Grant Payment from OCTA, City shall pay to Developer (a) an amount equal to the First La Pata Measure M Grant Payment received from OCTA or (b) the sum of Six Hundred Thousand Dollars ($600,000), whichever is less.

Within thirty (30) days after City’s issuance of the last notice of completion for the Eligible La Pata Improvements, Developer shall submit to City all documents and information required to be submitted by Developer in order to enable City to submit to OCTA a request for the final payment of the La Pata Measure M Grant. Upon City’s receipt of said documents and information from Developer, City shall submit to OCTA a request for the final payment of the La Pata Measure M Grant, together with the Final Report described in the OCTA Manual. Upon receipt of the final payment of the La Pata Measure M Grant from OCTA (“Final La Pata Measure M Grant Payment”), City shall pay to Developer an amount equal to the Final La Pata Measure M Grant Payment received from OCTA and any portion of the First La Pata Measure M Grant Payment received from OCTA that was not disbursed to Developer pursuant to the preceding paragraph, not to exceed the sum of One Million Dollars ($1,000,000). As further explained in Section 7.1.6 of the Development Agreement, provided the cost of the Eligible La Pata Improvements is at least Four Million Dollars ($4,000,000), City expects that the La Pata Measure M Grant will be approximately One Million Dollars ($1,000,000). Any La Pata
Measure M Grant proceeds in excess of One Million Dollars ($1,000,000) will be retained by City.

For a period of five (5) years following completion of the La Pata Extension, Developer shall retain true and correct records of the costs incurred by Developer for the Eligible La Pata Improvements. Developer acknowledges and agrees that the records shall be subject to inspection and audit by OCTA and City.

6. Deposit and Stockpiling of Excess Dirt and Extension of Avenida La Pata Roadbed; Maintenance.

6.1 Stockpiling Excess Dirt. In order to reduce the truck traffic on City's streets that would result from the removal and transportation of excess dirt generated from Developer's grading of Villages 4, 5 and 6 and other areas of the Talega Property ("Excess Dirt") to a location offsite from the Talega Property, and to achieve rough grading of a further extension of Avenida La Pata from the terminus of the future Additional La Pata Extension (the future intersection of Avenida La Pata and Calle Saluda), City hereby agrees that Developer may deposit and stockpile the Excess Dirt at the location designated on Exhibit "6" ("Stockpile Area") hereto, subject to the following: (a) the City Engineer's approval of a grading plan for the deposit and stockpiling of the Excess Dirt, which plan shall include grading and compaction of a roadbed for the future extension of Avenida La Pata; and (b) hydroseeding and erosion control measures for all slopes and stockpile areas created by such stockpiling and grading. Developer shall submit for City's review and approval an application for a conditional use permit for deposit and stockpiling of all such Excess Dirt and grading if required by City's Municipal Code.

6.2 Maintenance. In the event Developer deposits and stockpiles the Excess Dirt at the Stockpile Area, Developer shall maintain the landscaping and erosion control measures on the Stockpile Area ("Stockpile Area Improvements") for a period of one (1) year after the last to occur of the following: (a) the date the City Engineer verifies that Developer has satisfactorily completed the Stockpile Area Improvements; and (b) the date that eighty percent (80%) of the Stockpile Area is covered with landscaping. The Stockpile Area Improvements shall be maintained by Developer in an attractive condition and in good order, quality, condition, and repair and in accordance with all applicable laws, statutes, rules, and regulations. Prior to stockpiling the Excess Dirt on the Stockpile Area or performing any other work on the Stockpile Area, Developer shall furnish to City a maintenance bond in the amount of the estimated annual cost of the maintenance of the Stockpile Area Improvements as reasonably determined by the City Engineer, in favor of City securing Developer's obligation to maintain the Stockpile Area Improvements ("Maintenance Bond"). The Maintenance Bond shall be in a form acceptable to the City Attorney and issued by a financial institution acceptable to City. City shall release the Maintenance Bond upon the last to occur of the following: (a) the date that is one (1) year after the date the City Engineer verifies that Developer has satisfactorily completed the Stockpile Area Improvements; (b) expiration of the time within which stop notice or lien claims are required to be made pursuant to applicable provisions of the California Civil Code; or (c) if stop notice or lien claims have been timely filed, after all such claims have been resolved or Developer has provided a statutory lien release bond.

7. Offsite Pad Improvements.
7.1 **Stockpiling Excess Dirt on Portions of Offsite Pads.** In order to avoid the truck traffic on City's streets that would result from the removal and transportation of excess dirt from the property located within Villages 4, 5 and 6 during grading operations ("Excess Village Dirt"), City hereby agrees that Developer may stockpile the Excess Village Dirt on the Small Offsite Pad and the lower portion of the Large Offsite Pad depicted on Exhibit "Z" attached hereto. Since the stockpiling of the Excess Village Dirt will require Developer to regrade the Small Offsite Pad and the lower portion of the Large Offsite Pad, the time period under the Development Agreement for Developer to complete the Offsite Pad Improvements to those areas shall be extended as set forth herein. Notwithstanding any other provision in this Agreement to the contrary, Developer's right to stockpile the Excess Village Dirt on the Small Offsite Pad and the lower portion of the Large Offsite Pad shall be subject to Developer obtaining from City an amendment to the grading permit issued by City prior to the date of this Agreement for the Offsite Pad Improvements. Developer acknowledges it will be required to pay to City grading and inspection fees for the work contemplated hereunder.

7.2 **Lower Portion of Large Offsite Pad.** Developer shall be permitted to stockpile the Excess Village Dirt on the lower portion of the Large Offsite Pad until the date that is thirty (30) days after the date City provides written notice to Developer that City intends to commence detailed engineering and site plan drawings for a specific use for the Large Offsite Pad. City shall not provide such notice to Developer earlier than the date that is ninety (90) days prior to the date City reasonably determines that City will commence the engineering and site plan drawings. Notwithstanding the time period for Developer's completion of the Offsite Pad Improvements set forth in Section 11.3 of the Development Agreement, Developer shall complete construction of the Offsite Pad Improvements to the lower portion of the Large Offsite Pad no later than the date City commences detailed engineering and site plan drawings for the Large Offsite Pad. Following completion of construction of the Offsite Pad Improvements to the lower portion of the Large Offsite Pad, Developer shall provide to City a topographical, as-built grading plan of the Large Offsite Pad.

7.3 **Small Offsite Pad.** Developer shall be permitted to stockpile the Excess Village Dirt on the Small Offsite Pad until such time as Developer is required to complete the Offsite Pad Improvements to the Small Offsite Pad as set forth in the following sentence. Notwithstanding the time period for completion of construction of the Offsite Pad Improvements set forth in Section 11.3 of the Development Agreement, in order to permit the stockpiling of the Excess Village Dirt on the Small Offsite Pad for the purpose of reducing truck traffic on City streets, the time period for Developer to complete construction of the Offsite Pad Improvements to the Small Offsite Pad shall be extended to the earlier of (a) six (6) months following the date City gives written notice to Developer that the Small Offsite Pad is required for a specific use; or (b) December 31, 2006.

7.4 **Satisfaction of Developer Obligations.** City hereby acknowledges that Developer has satisfied all obligations imposed on Developer by Section 7.3.

8. **Stockpile and Grading Improvements for the Community Park Site.**

8.1 **Stockpiling Earthen Material on Community Park Site.** In order to facilitate the placement of earthen material collected and exported from the Talega Property ("Earthen Material"), and to implement the terms and conditions of the Stockpile Agreement
entered July 20, 2005, City hereby agrees that Developer may stockpile and grade a total of approximately three hundred and five thousand (305,000) cubic yards of Earthen Material onto the Community Park Site, which is entirely within the Large Offsite Pad (more specifically described in Section 7 herein) and located southwest of the intersection of Avenida Vista Hermosa and Avenida La Pata (the "Community Park Site"), and more particularly depicted in Exhibit "8", attached hereto and incorporated herein by this reference; provided, however, that Developer may stockpile and grade the Earthen Material according to this Section 8 only if the City Council approves the modified Community Park Rough Grading Plan ("Community Park Rough Grading Plan"), attached hereto as Exhibit "9" and incorporated herein by reference or a plan that substantially conforms to the Community Park Rough Grading Plan. Earthen Material may include the Excess Dirt and Excess Village Dirt as defined in Section 6 and Section 7 herein, but may not include any material, soil or otherwise, that is not authorized to be collected and exported from the Talega Property pursuant to this Agreement, the Development Agreement, or any other agreement concerning the Talega Project. It is expressly understood that the approximately three hundred and five thousand (305,000) cubic yards of Earthen Material allowable pursuant to this Section 8 shall include the one hundred and seventy thousand (170,000) cubic yards of Earthen Material referenced in the July 20, 2005 Stockpile Agreement.

8.2 Rough Grading Requirements. In the event Developer stockpiles and grades Earthen Material pursuant to Section 8 of this Agreement, Developer shall perform any and all grading work according to the following terms and conditions:

8.2.1 Rough Grading Plan. Developer shall grade the Community Park Site according to the Community Park Rough Grading Plan.

8.2.2 Areas of Rough Grading. Developer shall complete in phases the rough grading of the areas of the Community Park Site according to the Community Park Phasing Plan ("Phasing Plan"), attached hereto as Exhibit "10" and incorporated herein by reference. As more particularly depicted in the Phasing Plan, the area in Phase A shall be the southern portion of the Community Park Site; the area in Phase B shall be the eastern portion of the Community Park Site; the area in Phases C and D shall be the western portion of the Community Park Site, where Phase D is that area currently scheduled to be improved by the City for a commercial site.

8.2.3 Completion and Certification of Rough Grading in Phases. Developer shall complete rough grading, and shall provide at its own cost and expense a final survey that both (a) is satisfactory to the City Engineer and (b) certifies the rough grading for the applicable phase has been completed in substantial conformance with the Community Park Rough Grading Plan, according to the following schedule:

- Phase A: No later than January 31, 2006;
- Phase B: No later than April 30, 2006; and
- Phases C and D: No later than July 31, 2006.
Notwithstanding anything in the Community Park Rough Grading Plan to the contrary, grades shall substantially conform to the field measurements set forth in the Grading Tolerances, attached hereto as Exhibit "11" and incorporated herein by reference.

8.2.4 Alternative Sources for Importation of Earthen Material. If either City or Developer determines there is not an adequate quantity of Earthen Material to achieve the ultimate grades established in the Community Park Rough Grading Plan or Grading Tolerances, Developer shall be required to import Earthen Material from other acceptable locations in the Talega Project, which may include but is not limited to the existing stockpile at the terminus of Avenida La Pata.

8.2.5 City's Right to Complete Rough Grading. On and after August 1, 2006, City shall have the sole and exclusive right to demand that Developer stop work and vacate the Community Park Site, even if for whatever reason Developer has not satisfactorily completed any portion of the rough grading. Upon said demand, Developer and any contractor(s) and agent(s) of Developer shall immediately: (a) cease any and all work, including any and all rough grading and surveying activities; (b) remove or cause to be removed without delay any and all of Developer's machinery and equipment; (c) vacate the Community Park Site and cause any and all of Developer's employees, agents, contractors, subcontractors, consultants, and any other person acting on Developer's behalf to do the same; provided, however, Developer may remain on the Community Park Site only as long as necessary to satisfy its obligation pursuant to Section 8.2.6 of this Agreement to provide City with a final survey certifying the status of the work completed by Developer as of the date Developer ceases work; and (d) take any other actions necessary, as determined by City in its sole and absolute discretion, to allow City to assume any of Developer's remaining obligations as set forth in Section 8.2 of this Agreement. It is expressly understood and agreed between City and Developer that Developer shall use its best efforts to complete all of its obligations set forth in Section 8 of this Agreement by the time and date specified in this Section 8.2.5, and that City may, but is not obligated to, authorize Developer to remain for a limited period on the Community Park Site after July 31, 2006, in the event that Developer has only minor work to complete in order to perform all of its obligations set forth in Section 8 of this Agreement.

8.2.6 Mandatory Certification. In the event City demands Developer to stop work and vacate the Community Park Site pursuant to Section 8.2.5 of this Agreement, Developer shall provide a final survey certifying the work completed by Developer upon City's demand to stop work and vacate.

8.3 Importation of Earthen Material. Any Earthen Material collected for stockpiling and grading on the Community Park Site shall conform to the Soil Suitability Specifications, attached hereto as Exhibit "12" and incorporated herein by reference. Earthen Material shall be subject to review and testing prior to importation. City, at its sole discretion, shall select a Geotechnical Engineer with knowledge and expertise in soil analysis, and Developer shall reimburse City for any and all costs and expenses arising from the soil review and analysis. Developer agrees and acknowledges that all Earthen Material and any component or components of said Earthen Material, including but not limited to different soil types, shall be reasonably acceptable to the City prior to importation onto the Community Park Site; City may, in the exercise of reasonable discretion, refuse the importation of any soil type or other component in the Earthen Material.
8.4 **No Extension by Reason of Force Majeure.** Notwithstanding Section 12 of this Agreement or any other similar provision regarding Force Majeure in the Development Agreement or other agreement concerning the Talega Project, Developer agrees and acknowledges that time is of the essence of Developer's performance of its obligations set forth in this Section 8, that Developer's time for performance and completion of its obligations set forth in this Section 8 shall not be extended for events of Force Majeure, and that City is under no obligation to provide an extension of time to complete rough grading work or any other obligation set forth in this Section 8 for any reason, including but not limited to adverse weather, inability to obtain materials, or disputes or disruptions with its laborers.

8.5 **Remedies.** In addition to any other rights or remedies in law or equity available to City arising from this Agreement or any other agreement concerning the Talega Project, if Developer fails to timely perform any of its obligations set forth in this Section 8, City shall have the right to, and Developer shall be liable for, any and all monetary damages, costs, and expenses, including attorney's fees, incurred by City to complete any of Developer's such obligations under Section 8 of this Agreement. Monetary damages, costs, and expenses shall include, but are not limited to, any and all costs and expenses associated with or arising out of any change order that City may be required to approve with its contractor for the Community Park Site to complete rough grading, or any and all rough grading and surveying performed by City, or caused to be performed by City, that results from Developer's failure to substantially conform with the terms and conditions of the Community Park Rough Grading Plan or Grading Tolerances.

8.6 **Construction With Terms of Agreements.** Nothing in this Section 8 shall be deemed to limit, or be construed as limiting, any obligation Developer has or may have in this Agreement, the Development Agreement, or any other agreement concerning the Talega Project, that is not specifically limited or altered by the terms of this Section 8. By means of example and not limitation, nothing in this Section 8 limits Developer's obligations under Section 5.1.11 of the Development Agreement (concerning a warranty of work by Developer for Park Improvements) or Section 5.1.13 of the Development Agreement (concerning Conveyance of Park Sites).

9. **Processing of Welcome Center Site Entitlements.** City acknowledges that Developer desires to develop that certain real property consisting of approximately 2.8 acres of land area located at the southeast corner of the intersection of Avenida Vista Hermosa and Camino La Pedrizo and currently used by Developer for its "Welcome Center" with residential uses. Upon satisfactory completion by Developer of all required preliminary actions and payment of fees, City shall concurrently process Developer's application for tentative tract map and site plan approval for the development of residential uses at the Welcome Center site. Developer understands that the approval of the tentative tract map and site plan is subject to City's normal public review process and that nothing herein is intended to restrict City's exercise of discretion with respect thereto and that City does not warrant or represent to Developer that the tentative tract map and site plan will be approved or approved with or without any particular term or condition. City understands that nothing herein is intended to modify the vested rights of Developer under the Development Agreement relating to the development of the Welcome Center site.
10. **Offsite Drainage Mitigation Fee.** Developer shall pay or cause to be paid to City the sum of Seven Hundred Thousand Dollars ($700,000) ("Drainage Mitigation Fee") upon the earlier of the following: (a) the issuance of a building permit for the 3,500th residential unit within the Master Talega Property; (b) December 31, 2006; or (c) sixty (60) days after the date City notifies Developer that City intends to conduct studies or construct mitigation improvements to the Segunda Deshecha (M02) Channel downstream of Camino Vera Cruz. No later than sixty (60) days following the date of this Agreement, Developer shall furnish to City a surety bond in the amount of the Drainage Mitigation Fee securing Developer's obligation to pay to City the Drainage Mitigation Fee, which bond shall be in a form acceptable to the City Attorney and issued by a financial institution acceptable to City. City shall release the bond upon Developer's payment of the Drainage Mitigation Fee. City agrees that Developer's performance of the obligations set forth in this Section 10 shall be deemed to satisfy Developer's contingent obligation to provide bonds to City under Condition of Approval No. 21 of City Council Resolution 03-07 approving Vesting Tentative Tract Map No. 16334. In addition, City agrees that Developer shall have no further obligation to construct or contribute to the cost of constructing any improvements to the portion of the Segunda Deshecha (M02) Channel located outside of the Master Talega Property.

11. **Water Quality Improvements.**

11.1 **Construction Schedule for ROMP Improvements.** Pursuant to Section 8 of the Development Agreement, Developer is required to construct the improvements described in the Cristianitos Runoff Management Plan and referred to in the Development Agreement as the “ROMP Improvements.” Developer has completed construction of some of the ROMP Improvements, including the installation of “DrainPac” catch basin filters in the catch basins that collect runoff destined to the Cristianitos Basin, preventing contaminants and debris from entering the storm drain system, and “Continuous Deflection Systems” that further filter runoff. Despite Developer’s exercise of diligent efforts, however, Developer has not been able to obtain all of the governmental approvals required for the construction of some of the ROMP Improvements (“Required Approvals”) and, as a result, has not constructed all of the ROMP Improvements as required by the Development Agreement. The ROMP Improvements that Developer has not constructed are referred to herein as the “Remainder ROMP Improvements.” Developer shall continue to exercise diligent efforts to obtain the Required Approvals for the Remainder ROMP Improvements. Notwithstanding the construction schedule set forth in the Development Agreement, Developer shall commence construction of the Remainder ROMP Improvements no later than the date that is thirty (30) days after the date Developer obtains all of the Required Approvals (“Approval Date”) and shall complete construction to the satisfaction of the City Engineer no later than the date that is one hundred fifty (150) days after the Approval Date.

11.2 **Alternative ROMP Improvements.** If, after and despite its exercise of diligent efforts to obtain the Required Approvals, Developer has not obtained all of the Required Approvals by July 1, 2004, City shall have the election to require Developer to process an amendment to the Cristianitos Runoff Management Plan to identify alternative water quality improvements to be constructed by Developer (“Cristianitos Runoff Management Plan Amendment”). If City elects to require Developer to process the Cristianitos Runoff Management Plan Amendment, City shall notify Developer in writing of its election (“Election
Notice”) and the following provisions of this Section 11.2 shall be applicable. Developer and City shall cooperate in identifying the alternative water quality improvements to be included in the Cristianitos Runoff Management Plan Amendment (“Alternative ROMP Improvements”) and shall exercise reasonable diligence to complete the amendment review process and cause the City Council to take action on the Cristianitos Runoff Management Plan Amendment no later than the date that is ninety (90) days after Developer’s receipt of City’s Election Notice. Upon City’s approval of the Cristianitos Runoff Management Plan Amendment, Developer shall be released from its obligation to construct the Remainder ROMP Improvements and shall be required to construct the Alternative ROMP Improvements. The term “ROMP Improvements” in the Development Agreement shall then be deemed to refer to the Alternative ROMP Improvements and, with the exception of the provisions on the timing of construction, all of the provisions in the Development Agreement relating to the ROMP Improvements, including without limitation Developer’s obligation to furnish to City faithful performance security and payment security, shall be applicable to the Alternative ROMP Improvements. Developer shall complete construction of the Alternative ROMP Improvements no later than one hundred twenty (120) days after City’s approval of the Cristianitos Runoff Management Plan Amendment.

12. Miscellaneous.

12.1 Force Majeure. The obligations by any party hereunder shall not be deemed to be in default where delays or failures to perform are due to any cause without the fault and beyond the reasonable control of such party, including to the extent applicable, the following: war; insurrection; strikes; walk-outs; the unavailability or shortage of labor, material, or equipment; riots; floods; earthquakes; the discovery and resolution of hazardous waste or significant geologic, hydrologic, archaeologic, paleontologic, or endangered species problems on the Property; fires; casualties; acts of God; governmental restrictions imposed or mandated by other governmental entities; with regard to delays of Developer’s performance, delays caused by failure of City or TJPA to act or timely perform its obligations set forth herein; with regard to delays of performance by City or TJPA, delays caused by Developer’s failure to act or timely perform its obligations set forth herein; inability to obtain necessary permits or approvals from other governmental entities; enactment of conflicting state or federal statutes or regulations; judicial decisions; or litigation not commenced by such party. Notwithstanding the foregoing, any delay caused by the failure of City, TJPA or any agency, division, or office of City or TJPA to timely issue a license, permit, or approval required pursuant to this Agreement shall not constitute an event of force majeure extending the time for performance by City or TJPA hereunder. If written notice of such delay or impossibility of performance is provided to the other parties within a reasonable time after the commencement of such delay or condition of impossibility, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon by the parties in writing, or the performance rendered impossible may be excused in writing by the party so notified. In no event shall adverse market or financial conditions constitute an event of force majeure extending the time for such party’s performance hereunder.

12.2 Cross-Default. If an event (i.e., failure to perform an obligation) occurs that is determined to constitute a default by Developer under this Agreement, the default shall, at the election of the City Manager, constitute a default of the Development Agreement and, in
addition to whatever other remedy City may have in the event of such a default, City shall have the right to exercise the remedies set forth in Section 16.2 of the Development Agreement.

12.3 Waivers and Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged. A waiver of the breach of the covenants, conditions or obligations under this Agreement by any party shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or obligations of this Agreement. Any amendment or modification to this Agreement must be in writing and executed by the appropriate authorities of City, TJPA and Developer.

12.4 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of the Agreement shall continue in full force and effect, unless and to the extent the rights and obligations of one or more parties has been materially altered or abridged by such holding.

12.5 Notices. Any notice or communication required hereunder between or among City, TJPA and Developer must be in writing and may be given either personally or by registered or certified mail, return receipt requested, or by telecopier or facsimile transmission provided the original of the notice is concurrently delivered by regular mail. If given by registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated hereinbelow as the party to whom the notice is sent. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If delivered by facsimile transmission, a notice shall deemed to have been given and received on the date of receipt. A party hereto may at any time, by giving ten (10) days’ written notice to the other parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City:

City of San Clemente
City Hall
100 Avenida Presidio
San Clemente, California 92672
Attn: City Manager
Telephone: (949) 361-8322
Telecopy: (949) 361-8316

With a copy to:

Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, California 92626
Attn: Jeffrey M. Oderman, Esq.
Telephone: (714) 641-5100
Telecopy: (714) 546-9035
If to TJPA:
Talega Joint Planning Authority
100 Avenida Presidio
San Clemente, California 92672
Attn: Community Development Director
Telephone: (949) 361-6106
Telexcopy: (949) 361-8281

With a copy to:
Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, California 92626
Attn: Jeffrey M. Oderman, Esq.
Telephone: (714) 641-5100
Telexcopy: (714) 546-9035

If to Developer:
Talega Associates, LLC
951 Calle Negocio, Suite D
San Clemente, California 92673
Attn: Patrick Hayes
Telephone: (949) 498-1366
Telexcopy: (949) 498-0612

With a copy to:
Nossaman, Guthner, Knox & Elliott, LLP
18101 Von Karman Avenue, Suite 1800
Irvine, California 92612
Attn: Gregory W. Sanders, Esq.
Telephone: (949) 833-7800
Telexcopy: (949) 833-7878

12.6 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

12.7 Litigation Expenses. If either party to this Agreement commences an action against another party to this Agreement arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, expert witness fees, costs of investigation, and costs of suit from the losing party.

12.8 Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement, the parties hereto are formally bound to the provisions of this Agreement.

[signatures on next page]
IN WITNESS WHEREOF, City, TJPA, and Developer have executed this Agreement as of the date first written above.

"CITY"

CITY OF SAN CLEMENTE,
a municipal corporation

By: [Signature]
Mayor

ATTEST:
[Signature]
City Clerk

APPROVED AS TO FORM:
[Signature]
Jeffrey M. Oderman
City Attorney

"TJPA"

TALEG A JOINT PLANNING AUTHORITY,
a joint powers authority existing under Section 6500, et seq., of the Government Code

By: [Signature]
Chairman of the Board 2/27/06

ATTEST:
[Signature]
Secretary

APPROVED AS TO FORM:
[Signature]
Authority Counsel
"TALEGA"

TALEGA ASSOCIATES, LLC,
a Delaware limited liability company

By: ____________________________

Its: ____________________________
EXHIBIT 1 TO AGREEMENT

LEGAL DESCRIPTION OF COVERED PROPERTY

That certain real property located in the County of Orange, State of California more particularly described as follows:

[see attached]
PARCEL 1


EXCEPTING THEREFROM Tract No. 13685 filed in Book 781, Pages 47 through 50 of Miscellaneous Maps in said Office of the County Recorder.

EXCEPTING THEREFROM Tract No. 13684 filed in Book 782, Pages 1 through 7 of Miscellaneous Maps in said Office of the County Recorder.

EXCEPTING THEREFROM Tract No. 13683 filed in Book 781, Pages 39 through 46 of Miscellaneous Maps in said Office of the County Recorder.

EXCEPTING THEREFROM Tract No. 14228 filed in Book 804, Pages 14 through 17 of Miscellaneous Maps in said Office of the County Recorder.

EXCEPTING THEREFROM Tract No. 15947 filed in Book 804, Pages 34 through 36 of Miscellaneous Maps in said Office of the County Recorder.


EXCEPTING THEREFROM Amended Tract No. 14224 filed in Book 834, Pages 33 through 41 of Miscellaneous Maps in said Office of the County Recorder.

EXCEPTING THEREFROM Amended Tract No. 14225 filed in Book 819, Pages 44 through 48 of Miscellaneous Maps in said Office of the County Recorder.

EXCEPTING THEREFROM all those certain parcels of land described in a Grant Deed to Santa Margarita Water District, recorded November 30, 2000 as Instrument No. 20000661017 of Official Records in said Office of the County Recorder.

EXCEPTING THEREFROM Avenida Pico as described in that certain Irrevocable Offer of Dedication of Easement recorded April 16, 1990 as Instrument No. 19900276257 of Official Records in said Office of the County Recorder.

EXCEPTING THEREFROM Tract No. 15756 filed in Book 782, Pages 14 through 18 of Miscellaneous Maps in said Office of the County Recorder.

EXCEPTING THEREFROM Tract No. 13588 filed in Book 782, Pages 8 through 13 of Miscellaneous Maps in said Office of the County Recorder.

EXCEPTING THEREFROM Tract No. 13935 filed in Book 825, Pages 1 through 5 of Miscellaneous Maps in said Office of the County Recorder.

EXCEPTING THEREFROM Tract No. 16837 filed in Book 837, Pages 12 through 21 of Miscellaneous Maps in said Office of the County Recorder.

EXCEPTING THEREFROM all those certain parcels of land described in a Grant Deed to Capistrano Unified School District recorded December 21, 2001 as Instrument No. 20010935145 of Official Records in said Office of the County Recorder.

EXCEPTING THEREFROM that certain parcel of land described as follows:
BEGINNING at the southwesterly terminus of that certain course shown as
"North 60°54'19" East 545.33 feet" in the southeasterly boundary of said Tract No. 15947;
thence along said southeasterly boundary North 60°54'19" East 545.33 feet; thence
South 66°24'28" East 39.78 feet; thence South 24°00'00" East 33.00 feet; thence
South 38°30'00" East 81.00 feet; thence South 14°58'00" East 57.00 feet; thence
South 04°16'00" West 27.00 feet; thence South 81°20'00" East 54.00 feet; thence
South 18°17'00" East 49.50 feet; thence South 07°16'00" East 63.00 feet; thence
South 22°37'00" West 31.50 feet; thence South 49°12'00" West 63.50 feet; thence
South 63°29'00" West 30.00 feet; thence South 04°12'00" West 56.50 feet; thence
South 70°22'00" West 22.00 feet; thence North 67°27'00" West 80.00 feet; thence
North 74°22'00" West 127.00 feet; thence North 06°50'17" West 85.00 feet to the easterly
prolongation of the southerly line of Lot "BB" of said Amended Tract No. 14224; thence
along said easterly prolongation South 83°09'43" West 267.38 feet to the general
northerly boundary line of said Amended Tract No. 14224; thence along said general
northerly boundary line North 52°30'58" West 38.64 feet to the POINT OF BEGINNING.

CONTAINING: 528.730 Acres, More or Less.

ALSO EXCEPTING THEREFROM that certain parcel of land depicted on the attached map as Planning Area
G-2.
EXHIBIT 2 TO AGREEMENT

LEGAL DESCRIPTION OF PUBLIC AGENCY PROPERTY

That certain real property located in the County of Orange, State of California more particularly described as follows:

[Attached]
LEGAL DESCRIPTION

STREET RIGHT-OF-WAY DEDICATION
OF AVENIDA VISTA HERMOSA,
AVENIDA LA PATA AND CALLE SALUDA

Those certain parcels of land situated in the City of San Clemente, County of Orange, State of California, being those portions of Parcel 1 as described in Lot Line Adjustment No. 96-83 recorded November 2, 1998 as Instrument No. 19980743412 of Official Records in the Office of the County Recorder of said Orange County described as follows:

Parcel 1 (Avenida La Pata)

COMMENCING at the northwesterly terminus of that certain course on the centerline of Avenida La Pata shown as "North 26°19'08" West 455.79 feet" on the map of Tract No. 15264 filed in Book 744, Pages 5 through 8 of Miscellaneous Maps, in Office of the County Recorder; thence along the prolongation of said course, hereinafter referred to as Course "A", North 26°19'08" West 29.68 feet to the beginning of a tangent curve concave easterly and having a radius of 2350.00 feet, said curve is hereinafter referred to as Curve "Z"; thence along said curve northerly 702.08 feet through a central angle of 17°07'03"; thence tangent from said curve along a course hereinafter referred to as Course "B" North 09°12'05" West 287.98 feet to the beginning of a tangent curve concave westerly and having a radius of 2350.00 feet, said curve is hereinafter referred to as Curve "Y"; thence along said curve northerly and northwesterly 910.80 feet through a central angle of 22°12'23"; thence tangent from said curve along a course hereinafter referred to as Course "C" North 31°24'28" West 2111.18 feet to the beginning of a tangent curve concave northeasterly and having a radius of 2650.00 feet, said curve is hereinafter referred to as Curve "X"; thence along said curve northwesterly 299.90 feet through a central angle of 06°29'03" to the TRUE POINT OF BEGINNING; thence radially from said curve North 65°04'35" East 57.00 feet; thence South 62°16'13" East 33.95 feet; thence South 26°11'35" East 30.00 feet to a point hereinafter referred to as Point "A"; thence continuing South 26°11'35" East 30.00 feet; thence South 09°53'02" West 33.95 feet to a point on a non-tangent curve concave northeasterly and having a radius of 2593.00
feet concentric with and 57.00 feet northeasterly of said Curve "X", a radial line of said concentric curve from said point bears North 62°32'15" East; thence along said curve southeasterly 178.55 feet through a central angle of 03°56'43" to the tangent intersection with a line parallel with and 57.00 feet northeasterly of said Course "C"; thence along said parallel line South 31°24'28" East 621.94 feet; thence South 32°26'58" East 880.15 feet to a line parallel with and 73.00 feet northeasterly of said Course "C"; thence along said parallel line South 31°24'28" East 235.34 feet to a point hereinafter referred to as Point "B"; thence South 30°41'19" East 159.30 feet to a point on a line parallel with and 71.00 feet northeasterly of said Course "C", said point is hereinafter referred to as Point "C"; thence along said parallel line South 31°24'28" East 214.62 feet to the beginning of a tangent curve concave southwesterly and having a radius of 2421.00 feet concentric with and 71.00 feet easterly of said Curve "Y"; thence along said concentric curve southeasterly 335.25 feet through a central angle of 07°56'03" to a point of compound curvature with a curve concave westerly and having a radius of 2259.00 feet, a radial line of said curves from said point bears South 66°31'35" West; thence along said curve southerly 562.71 feet through a central angle of 14°16'20" to the tangent intersection with a line parallel with and 66.00 feet easterly of said Course "B"; thence along said parallel line South 09°12'05" East 327.92 feet to the beginning of a tangent curve concave easterly and having a radius of 2284.00 feet concentric with and 66.00 feet easterly of said Curve "Z"; thence along said concentric curve southerly 682.36 feet through a central angle of 17°07'03" to the tangent intersection with a line parallel with and 66.00 feet northeasterly of said Course "A"; thence along said parallel line South 26°19'08" East 63.18 feet to the southerly line of said Parcel 1 of Lot Line Adjustment LL 98-83; thence along said southerly line North 89°24'37" West 142.42 feet to a point on a non-tangent curve concave northeasterly and having a radius of 2411.00 feet concentric with and 61.00 feet westerly of said Curve "Z", a radial line of said concentric curve from said point bears North 63°42'41" East; thence along said curve northerly 239.80 feet through a central angle of 05°41'55"; thence radially from said curve South 69°24'36" West 27.00 feet to a non-tangent curve having a radius of 2438.00 feet concentric with last said curve; thence along said concentric curve northerly 285.29 feet through a central angle of 06°42'17"; thence radially from said curve North 76°06'53" East 27.00 feet to a non-tangent curve having a radius of 2411.00 feet concentric with last said curve; thence along said concentric curve northerly 102.60 feet through a central angle of 02°26'18"; thence radially from said curve South 78°33'11" West 16.00 feet to a point on a non-tangent curve having a radius of 2427.00 feet concentric with and 77.00 feet westerly of said Curve "Z", a radial line of said concentric curve from said point bears North 78°33'11" East; thence along said curve
northerly 95.12 feet through a central angle of 02°14'44" to the tangent intersection with a line parallel with and 77.00 feet westerly of said Course "B"; thence along said parallel line North 09°12'05" West 281.74 feet; thence North 80°47'55" East 16.00 feet to a line parallel with and 61.00 feet westerly of said Course "B"; thence along said parallel line North 09°12'05" West 6.24 feet to the beginning of a tangent curve concave westerly and having a radius of 2289.00 feet concentric with and 61.00 feet westerly of said Curve "Y"; thence along said concentric curve northerly and northwesterly 495.84 feet through a central angle of 12°24'41" to a point of compound curvature with a curve concave southwesterly and having a radius of 1946.00 feet, a radial line of said curves from said point bears South 68°23'14" West; thence along said curve northwesterly 332.68 feet through a central angle of 09°47'42" to the tangent intersection with a line parallel with and 66.00 feet southwesterly of said Course "C"; thence along said parallel line North 31°24'28" West 124.04 feet; thence South 58°35'32" West 3.00 feet to a line parallel with and 69.00 feet southwesterly of said Course "C"; thence along said parallel line North 31°24'28" West 144.06 feet to a point hereinafter referred to as Point "D"; thence North 32°51'43" West 157.64 feet to a point on a line parallel with and 73.00 feet southwesterly of said Course "C", said point is hereinafter referred to as Point "E"; thence along said parallel line North 31°24'28" West 192.98 feet to the beginning of a tangent curve concave northeasterly and having a radius of 380.56 feet; thence along said curve northwesterly 49.20 feet through a central angle of 07°24'24"; thence tangent from said curve North 24°00'04" West 47.36 feet to the beginning of a tangent curve concave southwesterly and having a radius of 445.71 feet; thence along said curve northwesterly 57.62 feet through a central angle of 07°24'24" to the tangent intersection with a line parallel with and 60.00 feet southwesterly of said Course "C"; thence along said parallel line tangent from said curve North 31°24'28" West 45.40 feet; thence North 30°22'07" West 275.65 feet to a line parallel with and 55.00 feet southwesterly of said Course "C"; thence along said parallel line North 31°24'28" West 1076.37 feet to the beginning of a tangent curve concave northeasterly and having a radius of 2705.00 feet concentric with and 55.00 feet southwesterly of said Curve "X"; thence along said concentric curve northeasterly 306.13 feet through a central angle of 06°29'03"; thence radially from said curve North 65°04'35" East 55.00 feet to the TRUE POINT OF BEGINNING.

CONTAINING: 12.921 Acres, more or less.

Parcel 2 (Calle Saluda)

A strip of land 60.00 feet wide, the centerline of which is described as follows:
BEGINNING at the intersection of the westerly terminus of the centerline of Calle Saluda with the westerly boundary line of Tract No. 16337, both as shown on a map thereof filed in Book 837, Pages 12 through 21 of Miscellaneous Maps in said Office of the County Recorder, said terminus being on a curve concave southerly and having a radius of 1400.00 feet, a radial line of said curve from said terminus bears South 15°06'41" East; thence along the continuation of said curve westerly 270.78 feet through a central angle of 11°04'54" to the tangent intersection with a line which bears South 63°48'25" West and passes through Point "A" described hereinafter in Parcel 1; thence along said line South 63°48'25" West 269.02 feet to said Point "A".

Said strip of land shall be lengthened or shortened easterly so as to terminate in said westerly boundary line of Tract No. 16337.

CONTAINING: 0.744 Acres, more or less.

Parcel 3 (Avenida Vista Hermosa)

COMMENCING at the intersection of the westerly terminus of the centerline of Avenida Vista Hermosa with the westerly boundary line of Tract No. 16337, both as shown on a map thereof filed in Book 837, Pages 12 through 21 of Miscellaneous Maps in said Office of the County Recorder, said terminus being on a curve concave southeasterly and having a radius of 2150.00 feet, a radial line of said curve from said terminus bears South 26°11'32" East; thence along the continuation of said curve southwesterly 123.74 feet through a central angle of 03°17'51" to a point on the northeasterly line of hereinafter described Parcel 1, said point is hereinafter referred to as Point "F" and is also the TRUE POINT OF BEGINNING; thence along said northeasterly line North 30°41'19" West 82.27 feet to Point "B" described hereinafter in said Parcel 1; thence South 71°03'15" East 29.84 feet to a point on a non-tangent curve concave southeasterly and having a radius of 2210.00 feet concentric with and 50.00 feet northwesterly of the curve described hereinafter as having a radius of 2150.00 feet, a radial line of said concentric curve from said point bears South 29°01'15" East; thence along said curve northeasterly 116.36 feet through a central angle of 03°01'00" to a non-tangent intersection with said westerly boundary line of Tract No. 16337; thence along said westerly boundary line and the westerly boundary line of Tract No. 16253 as shown on a map thereof filed in Book 830, Pages 13 through 22 of Miscellaneous Maps, in said Office of the County Recorder, South 19°17'34" East 109.79 feet to a point on a non-tangent curve
concave southeasterly and having a radius of 2101.00 feet concentric with and 49.00 feet southeasterly of said curve described hereinbefore as having a radius of 2150.00 feet, a radial line of said concentric curve from said point bears South 26°21'14" East; thence along said curve southwesterly 88.05 feet through a central angle of 02°24'04"; thence non-tangent from said curve South 12°48'56" West 37.64 feet to Point "C" described hereinbefore in said Parcel 1; thence along said northeasterly line of Parcel 1 North 30°41'19" West 77.03 feet to the TRUE POINT OF BEGINNING.

CONTAINING: 0.326 Acres, more or less.

Parcel 4 (Avenida Vista Hermosa)

COMMENCING at Point "F" described hereinbefore in Parcel 3, said point being on a curve concave southeasterly and having a radius of 2150.00 feet, said curve is hereinafter referred to as Curve "W", a radial line of said curve from said point bears South 29°29'23" East; thence along said curve southwesterly 427.78 feet through a central angle of 11°24'00"; thence tangent from said curve along a course hereinafter referred to as Course "D" South 49°06'37" West 400.00 feet to the beginning of a tangent curve concave northwesterly and having a radius of 1800.00 feet, said curve is hereinafter referred to as Curve "V"; thence along said curve southwesterly 455.53 feet through a central angle of 14°30'00" to a point hereinafter referred to as Point "G" and also the TRUE POINT OF BEGINNING; thence radially from said curve North 26°23'23" West 54.00 feet to a non-tangent curve concave northwesterly and having a radius of 1746.00 feet concentric with and 54.00 feet northwesterly of said Curve "V"; thence along said concentric curve northeasterly 234.87 feet through a central angle of 07°42'27"; thence radially from said curve North 34°05'50" West 3.00 feet to a non-tangent curve having a radius of 1743.00 feet concentric with last said curve; thence along said concentric curve northeasterly 86.50 feet through a central angle of 02°50'36"; thence radially from said curve South 36°56'26" East 3.00 feet to a point on a non-tangent curve concave northwesterly and having a radius of 1746.00 feet concentric with and 54.00 feet northwesterly of said Curve "V", a radial line of said concentric curve from said point bears North 36°56'26" West; thence along said curve northeasterly 120.34 feet through a central angle of 03°56'57" to the tangent intersection with a line parallel with and 54.00 feet northwesterly of said Course "D"; thence along said parallel line North 49°06'37" East 199.76 feet to the beginning of a tangent curve concave northwesterly and having a radius of 1803.00 feet; thence along said curve northeasterly 90.02 feet through a central angle of 02°51'38" to a point of
reverse curvature with a curve concave southeasterly and having a radius of 2209.00 feet concentric with and 59.00 feet northwesterly of said curve "W", a radial line of said reverse curve from said point bears South 43°45'01" East; thence along said curve northeasterly 87.75 feet through a central angle of 02°16'34"; thence radially from said curve North 41°28'27" West 3.00 feet to a non-tangent curve having a radius of 2112.00 feet concentric with last said curve; thence along said concentric curve northeasterly 191.34 feet through a central angle of 04°57'22"; thence radially from said curve South 36°31'05" East 3.00 feet to a point on a non-tangent curve concave southeasterly and having a radius of 2209.00 feet, concentric with and 59.00 feet northwesterly of said curve "W", a radial line of said concentric curve from said point bears South 36°31'05" East; thence along said curve northeasterly 102.84 feet through a central angle of 02°40'03"; thence non-tangent from said curve North 18°59'05" East 27.45 feet to Point "E" described hereinbefore in Parcel 1; thence along the southwesterly line of said Parcel 1 South 32°51'43" East 157.64 feet to Point "D" described hereinbefore in said Parcel 1; thence North 77°43'14" West 31.95 feet to a point on a non-tangent curve concave southeasterly and having a radius of 2091.00 feet concentric with and 59.00 feet southeasterly of said curve "W", a radial line of said concentric curve from said point bears South 33°55'57" East; thence along said curve southwesterly 253.90 feet through a central angle of 06°57'26" to a point of reverse curvature with a curve concave northwesterly and having a radius of 524.80 feet, a radial line of said curve from said point bears North 40°53'23" West; thence along said curve southwesterly 53.18 feet through a central angle of 05°48'20" to a point of reverse curvature with a curve concave southeasterly and having a radius of 457.21 feet, a radial line of said curve from said point bears South 35°05'03" East; thence along said curve southwesterly 39.21 feet through a central angle of 04°54'47"; thence tangent from said curve South 50°00'10" West 336.63 feet to the beginning of a tangent curve concave northwesterly and having a radius of 1849.00 feet concentric with and 49.00 feet southeasterly of said curve "W"; thence along said concentric curve southwesterly 439.13 feet through a central angle of 13°36'27" to a radial line which bears South 26°23'23" East from said Point "G"; thence along said radial line North 26°23'23" West 49.00 feet to the TRUE POINT OF BEGINNING.

CONTAINING: 2.869 Acres, more or less.

Parcel 5 (Avenida Vista Hermosa)

A variable width strip of land the reference line of which is described as
BEGGING at Point "G" described hereinbefore in Parcel 4, said point being the southwesterly terminus of a curve concave northwesterly and having a radius of 1800.00 feet, a radial line of said curve from said terminus bears North 26°23'23" West; thence tangent from said curve South 63°36'37" West 233.12 feet to a point hereinafter referred to as Point "H"; thence continuing South 63°36'37" West 511.32 feet to the beginning of a tangent curve concave southeasterly and having a radius of 1800.00 feet; thence along said curve southeasterly 412.92 feet through a central angle of 13°06'37" to a point hereinafter referred to as Point "I"; thence continuing along said curve southeasterly 110.54 feet through a central angle of 03°31'07" to a point hereinafter referred to as Point "J"; thence continuing along said curve southeasterly 78.29 feet through a central angle of 02°29'31" to a point hereinafter referred to as Point "K"; thence continuing along said curve southeasterly 241.38 feet through a central angle of 07°41'00" to a point hereinafter referred to as Point "L"; thence continuing along said curve southeasterly 164.02 feet through a central angle of 05°13'15" to the tangent intersection with a line, the southeasterly terminus of which is tangent to the northeasterly continuation of that certain curve shown as being concave northwesterly and having a radius of 1450.00 feet along the centerline of Avenida Vista Hermosa on the map of Tract No. 16212 filed in Book 828, Pages 1 through 10 of Miscellaneous Maps, in said Office of the County Recorder; thence along said line South 31°33'07" West 10.98 feet to a point hereinafter referred to as Point "M"; thence continuing South 31°33'07" West 45.84 feet to a point hereinafter referred to as Point "N"; thence continuing South 31°33'07" West 81.62 feet to a point hereinafter referred to as Point "O"; thence continuing South 31°33'07" West 22.53 feet to a point hereinafter referred to as Point "P"; thence continuing South 31°33'07" West 211.32 feet to said tangent intersection with the curve having a radius of 1450.00 feet; thence along said curve southeasterly 563.83 feet through a central angle of 22°16'46" to the northeasterly line of said Tract No. 16212 and a point hereinafter referred to as Point "Q".

Said strip of land shall be 103.00 feet wide lying 54.00 feet northwesterly and 49.00 feet southeasterly of said reference line between Points "G" and "H", between Points "I" and "J", between Points "K" and "L", between Points "M" and "N" and between Points "O" and "P".

Said strip of land shall be 120.00 feet wide lying 71.00 feet northwesterly and
49.00 feet southeasterly of said reference line between Points "H" and "I".

Said strip of land shall be 106.00 feet wide lying 57.00 feet northwesterly and 49.00 feet southeasterly of said reference line between Points "J" and "K" and between Points "N" and "O".

Said strip of land shall be 114.00 feet wide lying 54.00 feet northwesterly and 60.00 feet southeasterly of said reference line between Points "L" and "M".

Said strip of land shall be 127.00 feet wide lying 54.00 feet northwesterly and 73.00 feet southeasterly of said reference line between Points "P" and "Q".

EXCEPTING THEREFROM that portion lying southwesterly of the southerly line of said Parcel 1 of Lot Line Adjustment LL 98-83.

CONTAINING: 5.546 Acres, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.
MEMORANDUM OF AMENDED AND RESTATED IMPLEMENTATION AGREEMENT FOR AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR TALEGA PROPERTY

This MEMORANDUM OF AMENDED AND RESTATED IMPLEMENTATION AGREEMENT FOR AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR TALEGA PROPERTY ("Memorandum") is entered into on this 14th day of FEB, 2006, by the CITY OF SAN CLEMENTE, a California municipal corporation ("City"), the TALEGA JOINT PLANNING AUTHORITY, a joint powers authority organized under and existing pursuant to Section 6500, et seq. of the Government Code of the State of California ("TJPA"), and TALEGA ASSOCIATES, LLC, a Delaware limited liability company ("Developer"). City and TJPA are collectively referred to herein as the "Public Agency Parties" and individually as a "Public Agency Party."

This Memorandum is made with reference to the following:

1. Developer is the owner of that certain real property located in the County of Orange, State of California, more particularly described on the legal description attached hereto as Exhibit "1" ("Covered Property").

2. The Public Agency Parties each own a portion of that certain real property located in the County of Orange, State of California, more particularly described on the legal description attached hereto as Exhibit "2" ("Public Agency Property").

3. On or about the date of this Memorandum, City, TJPA and Developer entered into that certain Amended and Restated Implementation Agreement for Amended and Restated Development Agreement for Talega Property ("Implementation Agreement"). The Implementation Agreement is available for inspection at City Hall located at 100 Avenida Presidio, San Clemente, CA 92672. The definitions of all terms contained in the Implementation Agreement shall apply to this Memorandum.

4. The parties wish to memorialize that Sections 2.1 and 2.2 of the Implementation Agreement provide as follows:

2.1 Covenant Not to Sue. Developer, and each and every individual, partnership, corporation, and entity of Developer, on behalf of itself and
themselves and their respective partners and principals and its and their agents, employees, attorneys, other representatives, heirs, successors and assigns hereby consents to and waives and right of protest with regard to, and covenants not to file, initiate, maintain, or prosecute, or voluntarily support, participate in, or encourage any third party in the filing, initiation, maintenance, or prosecution, of any administrative proceeding or judicial action against the Public Agency Parties or their respective officers, officials, employees, agents or representatives based upon or relating to, any of the following ("Covered Claims") in connection with the ongoing, planned, or future development of any portion of the Talega Property located within the boundaries of Villages 4, 5 and 6, with the exception of the area encompassed by Vesting Tentative Tract Map No. 16370 ("Covered Property"), which Covered Property is more particularly described in the legal description attached hereto as Exhibit "1": (a) the establishment, imposition, and enforcement of each Public Agency Party's business license tax in effect as of the date of this Agreement and the extent and manner in which each Public Agency Party applies and interprets its business license tax as of the date of this Agreement, including the classification of persons engaged in the development of real property (e.g., developers and builders) as a "profession and occupation" subject to the business license tax levied under subsection (B) of Section 5.08.030 of the Municipal Code; (b) the establishment, imposition, and enforcement of each Public Agency Party's building permit fees as such fees exist and are assessed by each Public Agency Party as of the date of this Agreement, including the manner in which such fees were adopted by a Public Agency Party, the amount of such fees charged by a Public Agency Party as of the date of this Agreement, and any future increases in the amount of such fees provided the increases do not exceed increases in the fee schedules set forth in the version of the Uniform Building Code adopted by the Public Agency Parties, as those schedules may be increased from time to time; and (c) any acts or matters related to the foregoing (a) or (b).

In the event the amount of the business license tax charged by a Public Agency Party is increased after the date of this Agreement, or the amount of any building permit fee charged by a Public Agency Party is increased after the date of this Agreement and the increase exceeds the increase in the fee schedule in the Uniform Building Code as further explained in clause (b) of the last sentence of the preceding paragraph, the establishment, imposition, and enforcement of such increased portion of the business license tax and/or building permit fee shall not be a Covered Claim and, accordingly, the foregoing covenant shall not be applicable as to the amount of the increase. Notwithstanding the foregoing, Developer understands and acknowledges that even in the event of such an increase, the underlying business license tax and building permit fee as well as the amount of the tax and fee charged as of the date of this Agreement shall continue to constitute Covered Claims and shall be subject to the covenants set forth in the first paragraph of this Section 2.1.

2.2 Covenant to Run With the Land. All of the Covered Property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied and improved
subject to the covenants, conditions, and restrictions set forth herein. The
covenants, conditions, restrictions, reservations, equitable servitudes, liens and
charges set forth in Section 2.1 shall run with the Covered Property and shall be
binding upon all persons having any right, title or interest in the Covered
Property, or any part thereof, their heirs, successive owners and assigns; shall
inure to the benefit of each of the Public Agency Parties and their successors and
assigns, including but not limited to their successors in interest with fee or
easement interests in the Public Agency Property (as defined below); and may be
enforced by the Public Agency Parties and their successors and assigns. The
covenants established in Section 2.1 of this Agreement shall, without regard to
technical classification and designation, be binding for the benefit and in favor of
each of the Public Agency Parties and their successors and assigns, and the parties
hereto expressly agree that this Agreement and the covenants herein shall run in
favor of each of the Public Agency Parties, without regard to whether the Public
Agency Party is an owner of the Public Agency Property or any portion thereof.
This Agreement is further designed to create equitable servitudes and covenants
appurtenant to all real property owned by each of the Public Agency Parties
including without limitation the property described in the legal description
attached hereto as Exhibit "2" ("Public Agency Property") and running with the
Covered Property in accordance with the provisions of Civil Code Section 1468.
The Public Agency Parties are deemed the beneficiaries of the terms and
provisions of this Agreement and of the covenants running with the land, for and
in their own rights and for the purposes of protecting the interests of the
community and other parties, public or private, in whose favor and for whose
benefit this Agreement and the covenants running with the land have been
provided. Developer hereby declares its understanding and intent that the burden
of the covenants set forth herein touch and concern the land. Developer hereby
further declares its understanding and intent that the benefit of such covenants
touch and concern the land by enhancing and increasing the enjoyment and use of
the Public Agency Property by the citizens of the Public Agency Parties and by
furthering the health, safety, and welfare of the residents of the Public Agency
Parties. The Public Agency Parties shall have the right to designate other or
additional real property as benefited by the covenants contained herein.
Developer agrees to cooperate in executing any document necessary to designate
such other real property as the benefited property. Developer further agrees that
in the event a Public Agency Party no longer owns or has easement rights in all or
any part of the Public Agency Property, (a) the covenants, conditions, restrictions,
equitable servitudes, liens and charges set forth in this Agreement will continue to
be binding upon all persons having any right, title, or interest in the Covered
Property, or any part thereof, their heirs, successive owners, and assigns, and (b)
Developer and Developer’s heirs, successive owners, and assigns shall be
estopped from arguing that the covenants, conditions, restrictions, equitable
servitudes, liens and charges set forth herein are unenforceable. The covenants
contained in this Agreement shall be construed as covenants running with the land
and not as conditions which might result in forfeiture of title.
5. This Memorandum shall automatically be removed of record as to any parcel of the Covered Property as of the date such parcel of the Covered Property is purchased by a member of the homebuying public. The parties shall not be required to record any instrument confirming such removal of record. Nevertheless, upon the request of Developer or its successor owners of the given parcel of the Covered Property, the Public Agency Parties shall cooperate with the requesting persons, at no cost to the Public Agency Parties, to execute in recordable form and to record any instrument reasonably necessary to confirm of record any such removal of this Memorandum.

6. This Memorandum may be signed in any number of counterparts, each of which shall be an original and all of which shall constitute the same instrument.

7. This Memorandum is for purposes of giving record notice only and is not intended to modify the terms and provisions of the Implementation Agreement in any respect.

[signatures on next page]
IN WITNESS WHEREOF, this Memorandum of Agreement was executed as of the date and year first above written.

"CITY"

CITY OF SAN CLEMENTE,
a municipal corporation

By: G. WAYNE EGGLESTON

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Jeffrey M. Odleman
City Attorney

"TJPA"

TALEGIA JOINT PLANNING AUTHORITY,
a joint powers authority existing under Section 6500, et seq., of the Government Code

By: JAMES S. DAHL

Chairman of the Board

ATTEST:

Secretary

APPROVED AS TO FORM:

Authority Counsel
“TALEGA”

TALEGA ASSOCIATES, LLC,
a Delaware limited liability company

By: ____________________________

Its: _____________________________

General Manager
STATE OF CALIFORNIA  
COUNTY OF ORANGE  
CITY OF SAN CLEMENTE

On January 22, 2007, before me, Myrna Erway, City Clerk of the City of San Clemente, personally appeared Patrick Hayes, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Myrna Erway, City Clerk
City of San Clemente, California

REF: GC #8200
CC #1181
STATE OF CALIFORNIA  )
COUNTY OF ORANGE    ) SS.
CITY OF SAN CLEMENTE  )

On January 24, 2007, before me, Myrna Erway, personally appeared G. Wayne Eggleston, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature  [Signature]
Myrna Erway, City Clerk
City of San Clemente, California
STATE OF CALIFORNIA  
COUNTY OF ORANGE  
CITY OF SAN CLEMENTE  

On January 24, 2007, before me, Myrna Erway, personally appeared James S. Dahl, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature  
Myrna Erway, City Clerk  
City of San Clemente, California
EXHIBIT “1” TO MEMORANDUM

LEGAL DESCRIPTION OF COVERED PROPERTY

That certain real property located in the County of Orange, State of California, described as follows:

[see attached]
PARCEL 1


EXCEPTING THEREFROM Tract No. 13685 filed in Book 781, Pages 47 through 50 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 13684 filed in Book 782, Pages 1 through 7 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 13683 filed in Book 781, Pages 39 through 46 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 14228 filed in Book 804, Pages 14 through 17 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 15047 filed in Book 804, Pages 34 through 36 of Miscellaneous Maps in said Office of the County Recorder.


ALSO EXCEPTING THEREFROM Amended Tract No. 14224 filed in Book 834, Pages 33 through 41 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Amended Tract No. 14225 filed in Book 819, Pages 44 through 49 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM all those certain parcels of land described in a Grant Deed to Santa Margarita Water District, recorded November 30, 2000 as Instrument No. 20000651017 of Official Records in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Avenida Pico as described in that certain Irrevocable Offer of Dedication of Easement recorded April 16, 1999 as Instrument No. 19990276757 of Official Records in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 15756 filed in Book 782, Pages 14 through 18 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 13686 filed in Book 782, Pages 8 through 13 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 13935 filed in Book 625, Pages 1 through 5 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM Tract No. 16337 filed in Book 837, Pages 12 through 21 of Miscellaneous Maps in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM all those certain parcels of land described in a Grant Deed to Capistrano Unified School District recorded December 21, 2001 as Instrument No. 20010935145 of Official Records in said Office of the County Recorder.

ALSO EXCEPTING THEREFROM that certain parcel of land described as follows:
BEGINNING at the southwesterly terminus of that certain course shown as
"North 60°54'19" East 545.33 feet" in the southeasterly boundary of said Tract No. 15947;
then east along said southeasterly boundary North 50°54'19" East 545.33 feet; thence
South 66°24'28" East 39.78 feet; thence South 24°00'00" East 33.00 feet; thence
South 38°30'00" East 81.00 feet; thence South 14°00'00" East 57.00 feet; thence
South 81°20'00" West 22.00 feet; thence South 18°17'00" East 49.50 feet; thence South 07°16'00" East 63.00 feet; thence
South 22°37'00" West 31.50 feet; thence South 49°12'00" West 63.50 feet; thence
South 63°29'00" West 30.00 feet; thence South 84°12'00" West 56.50 feet; thence
South 70°22'00" West 22.00 feet; thence North 67°27'00" West 80.00 feet; thence
North 74°22'00" West 127.00 feet; thence North 06°50'17" West 85.00 feet to the easterly
prolongation of the southerly line of Lot "BB" of said Amended Tract No. 14224; thence
along said easterly prolongation South 83°09'43" West 267.38 feet to the general
northerly boundary line of said Amended Tract No. 14224; thence along said general
northerly-boundary line North 62°30'58" West 38.64 feet to the POINT OF BEGINNING.

CONTAINING: 529.730 Acres, More or less.

ALSO EXCEPTING THEREFROM that certain parcel of land depicted on the attached map as Planning Area
G-2.
LEGEND

LIMITS OF PLANNING AREA G-2
(TENTATIVE TRACT NO. 16370)

TALEGA
OF SAN CLEMENTE
SPECIFIC PLAN

PLANNING AREA G-2
EXHIBIT "2" TO MEMORANDUM

LEGAL DESCRIPTION OF PUBLIC AGENCY PROPERTY

That certain real property located in the County of Orange, State of California, described as follows:

[Attached]
LEGAL DESCRIPTION

STREET RIGHT-OF-WAY DEDICATION
OF AVENIDA VISTA HERMOSA,
AVENIDA LA PATA AND CALLE SALUDA

Those certain parcels of land situated in the City of San Clemente, County of Orange, State of California, being those portions of Parcel 1 as described in Lot Line Adjustment No. 98-83 recorded November 2, 1998 as Instrument No. 19980743412 of Official Records in the Office of the County Recorder of said Orange County described as follows:

Parcel 1 (Avenida La Pata)

COMMENCING at the northwesterly terminus of that certain course on the centerline of Avenida La Pata shown as "North 26°19'08" West 455.79 feet" on the map of Tract No. 15264 filed in Book 744, Pages 5 through 8 of Miscellaneous Maps, in Office of the County Recorder; thence along the prolongation of said course, hereinafter referred to as Course "A", North 26°19'08" West 29.68 feet to the beginning of a tangent curve concave easterly and having a radius of 2350.00 feet, said curve is hereinafter referred to as Curve "Z"; thence along said curve northerly 702.08 feet through a central angle of 17°07'03"; thence tangent from said curve along a course hereinafter referred to as Course "B" North 09°12'05" West 287.98 feet to the beginning of a tangent curve concave westerly and having a radius of 2350.00 feet, said curve is hereinafter referred to as Curve "Y"; thence along said curve northerly and northwesterly 910.80 feet through a central angle of 22°12'23"; thence tangent from said curve along a course hereinafter referred to as Course "C" North 31°24'28" West 2111.18 feet to the beginning of a tangent curve concave northeasterly and having a radius of 2650.00 feet, said curve is hereinafter referred to as Curve "X"; thence along said curve northwesterly 299.90 feet through a central angle of 06°29'03" to the TRUE POINT OF BEGINNING; thence radially from said curve North 65°04'35" East 57.00 feet; thence South 62°16'13" East 33.95 feet; thence South 26°11'35" East 30.00 feet to a point hereinafter referred to as Point "A"; thence continuing South 26°11'35" East 30.00 feet; thence South 09°53'02" West 33.95 feet to a point on a non-tangent curve concave northeasterly and having a radius of 2593.00
feet concentric with and 57.00 feet northeasterly of said Curve "X", a radial line of said concentric curve from said point bears North 62°32'15" East; thence along said curve southeasterly 178.55 feet through a central angle of 03°56'43" to the tangent intersection with a line parallel with and 57.00 feet northeasterly of said Course "C"; thence along said parallel line South 31°24'28" East 621.94 feet; thence South 32°26'58" East 880.15 feet to a line parallel with and 73.00 feet northeasterly of said Course "C"; thence along said parallel line South 31°24'28" East 235.34 feet to a point hereinafter referred to as Point "B"; thence South 30°41'19" East 159.30 feet to a point on a line parallel with and 71.00 feet northeasterly of said Course "C", said point is hereinafter referred to as Point "C"; thence along said parallel line South 31°24'28" East 214.62 feet to the beginning of a tangent curve concave southwesterly and having a radius of 2421.00 feet concentric with and 71.00 feet easterly of said Curve "Y"; thence along said concentric curve southeasterly 335.25 feet through a central angle of 07°56'03" to a point of compound curvature with a curve concave westerly and having a radius of 2259.00 feet, a radial line of said curves from said point bears South 66°31'35" West; thence along said curve southerly 562.71 feet through a central angle of 14°16'20" to the tangent intersection with a line parallel with and 66.00 feet easterly of said Course "B"; thence along said parallel line South 09°12'05" East 327.92 feet to the beginning of a tangent curve concave easterly and having a radius of 2284.00 feet concentric with and 66.00 feet easterly of said Curve "Z"; thence along said concentric curve southerly 682.36 feet through a central angle of 17°07'03" to the tangent intersection with a line parallel with and 66.00 feet northeasterly of said Course "A"; thence along said parallel line South 26°19'08" East 63.18 feet to the southerly line of said Parcel 1 of Lot Line Adjustment LL 98-83; thence along said southerly line North 89°24'37" West 142.42 feet to a point on a non-tangent curve concave northeasterly and having a radius of 2411.00 feet concentric with and 61.00 feet westerly of said Curve "Z", a radial line of said concentric curve from said point bears North 63°42'41" East; thence along said curve northerly 239.80 feet through a central angle of 05°41'55"; thence radially from said curve South 69°24'36" West 27.00 feet to a non-tangent curve having a radius of 2438.00 feet concentric with last said curve; thence along said concentric curve northerly 285.29 feet through a central angle of 06°42'17"; thence radially from said curve North 76°06'53" East 27.00 feet to a non-tangent curve having a radius of 2411.00 feet concentric with last said curve; thence along said concentric curve northerly 102.60 feet through a central angle of 02°26'18"; thence radially from said curve South 78°33'11" West 16.00 feet to a point on a non-tangent curve having a radius of 2427.00 feet concentric with and 77.00 feet westerly of said Curve "Z", a radial line of said concentric curve from said point bears North 78°33'11" East; thence along said curve
northerly 95.12 feet through a central angle of 02°14'44" to the tangent
intersection with a line parallel with and 77.00 feet westerly of said Course
"B"; thence along said parallel line North 09°12'05" West 281.74 feet; thence
North 80°47'55" East 16.00 feet to a line parallel with and 61.00 feet westerly
of said Course "B"; thence along said parallel line North 09°12'05" West 6.24
feet to the beginning of a tangent curve concave westerly and having a radius of
2289.00 feet concentric with and 61.00 feet westerly of said Curve "Y"; thence
along said concentric curve northerly and northwesterly 495.84 feet through a
central angle of 12°24'41" to a point of compound curvature with a curve concave
southwesterly and having a radius of 1946.00 feet, a radial line of said curves
from said point bears South 68°23'14" West; thence along said curve northwesterly
332.68 feet through a central angle of 09°47'42" to the tangent intersection with
a line parallel with and 66.00 feet southwesterly of said Course "C"; thence
along said parallel line North 31°24'28" West 124.04 feet; thence
South 58°35'32" West 3.00 feet to a line parallel with and 69.00 feet
southwesterly of said Curve "C"; thence along said parallel line
North 31°24'28" West 144.06 feet to a point hereinafter referred to as Point "B"
; thence North 32°51'43" West 157.64 feet to a point on a line parallel with and
73.00 feet southwesterly of said Course "C", said point is hereinafter referred
to as Point "E"; thence along said parallel line North 31°24'28" West 192.98 feet
to the beginning of a tangent curve concave northeasterly and having a radius of
380.56 feet; thence along said curve northwesterly 49.20 feet through a central
angle of 07°24'24"; thence tangent from said curve North 24°00'04" West 47.36
feet to the beginning of a tangent curve concave southwesterly and having a
radius of 445.71 feet; thence along said curve northwesterly 57.62 feet through
a central angle of 07°24'24" to the tangent intersection with a line parallel
with and 60.00 feet southwesterly of said Course "C"; thence along said parallel
line tangent from said curve North 31°24'28" West 45.40 feet; thence
North 30°22'07" West 275.65 feet to a line parallel with and 55.00 feet
southwesterly of said Course "C"; thence along said parallel line
North 31°24'28" West 1076.37 feet to the beginning of a tangent curve concave
northeasterly and having a radius of 2705.00 feet concentric with and 55.00 feet
southwesterly of said Curve "X"; thence along said concentric curve northwesterly
306.13 feet through a central angle of 06°29'03"; thence radially from said curve
North 65°04'35" East 55.00 feet to the TRUE POINT OF BEGINNING.

CONTAINING: 12.921 Acres, more or less.

Parcel 2 (Calle Saluda)

A strip of land 60.00 feet wide, the centerline of which is described as follows:
BEGINNING at the intersection of the westerly terminus of the centerline of Calle Saluda with the westerly boundary line of Tract No. 16337, both as shown on a map thereof filed in Book 837, Pages 12 through 21 of Miscellaneous Maps in said Office of the County Recorder, said terminus being on a curve concave southerly and having a radius of 1400.00 feet, a radial line of said curve from said terminus bears South 15°06'41" East; thence along the continuation of said curve westerly 270.78 feet through a central angle of 11°04'54" to the tangent intersection with a line which bears South 63°48'25" West and passes through Point "A" described hereinbefore in Parcel 1; thence along said line South 63°48'25" West 269.02 feet to said Point "A".

Said strip of land shall be lengthened or shortened easterly so as to terminate in said westerly boundary line of Tract No. 16337.

CONTAINING: 0.744 Acres, more or less.

Parcel 3 (Avenida Vista Hermosa)

COMMENCING at the intersection of the westerly terminus of the centerline of Avenida Vista Hermosa with the westerly boundary line of Tract No. 16337, both as shown on a map thereof filed in Book 837, Pages 12 through 21 of Miscellaneous Maps in said Office of the County Recorder, said terminus being on a curve concave southeasterly and having a radius of 2150.00 feet, a radial line of said curve from said terminus bears South 26°11'32" East; thence along the continuation of said curve southeasterly 123.74 feet through a central angle of 03°17'51" to a point on the northeasterly line of hereinbefore described Parcel 1, said point is hereinafter referred to as Point "F" and is also the TRUE POINT OF BEGINNING; thence along said northeasterly line North 30°41'19" West 82.27 feet to Point "B" described hereinbefore in said Parcel 1; thence South 71°03'15" East 29.84 feet to a point on a non-tangent curve concave southeasterly and having a radius of 2210.00 feet concentric with and 60.00 feet northwesterly of the curve described hereinbefore as having a radius of 2150.00 feet, a radial line of said concentric curve from said point bears South 29°01'15" East; thence along said curve northeasterly 116.36 feet through a central angle of 03°01'00" to a non-tangent intersection with said westerly boundary line of Tract No. 16337; thence along said westerly boundary line and the westerly boundary line of Tract No. 16253 as shown on a map thereof filed in Book 830, Pages 13 through 22 of Miscellaneous Maps, in said Office of the County Recorder, South 19°17'34" East 109.79 feet to a point on a non-tangent curve.
concave southeasterly and having a radius of 2101.00 feet concentric with and 49.00 feet southeasterly of said curve described hereinbefore as having a radius of 2150.00 feet, a radial line of said concentric curve from said point bears South 26°21′14″ East; thence along said curve southeasterly 88.05 feet through a central angle of 02°24′04″; thence non-tangent from said curve South 12°48′56″ West 37.64 feet to Point "C" described hereinbefore in said Parcel 1; thence along said northeasterly line of Parcel 1 North 30°41′19″ West 77.03 feet to the TRUE POINT OF BEGINNING.

CONTAINING: 0.326 Acres, more or less.

Parcel 4 (Avenida Vista Hermosa)

COMMENCING at Point "F" described hereinbefore in Parcel 3, said point being on a curve concave southeasterly and having a radius of 2150.00 feet, said curve is hereinafter referred to as Curve "W", a radial line of said curve from said point bears South 29°29′23″ East; thence along said curve southeasterly 427.78 feet through a central angle of 11°24′00″; thence tangent from said curve along a course hereinafter referred to as Course "D" South 49°06′37″ West 400.00 feet to the beginning of a tangent curve concave northwesterly and having a radius of 1800.00 feet, said curve is hereinafter referred to as Curve "V"; thence along said curve northwesterly 455.53 feet through a central angle of 14°30′00″ to a point hereinafter referred to as Point "G" and also the TRUE POINT OF BEGINNING; thence radially from said curve North 26°23′23″ West 54.00 feet to a non-tangent curve concave northwesterly and having a radius of 1746.00 feet concentric with and 54.00 feet northwesterly of said Curve "V"; thence along said concentric curve northwesterly 234.87 feet through a central angle of 07°42′27″; thence radially from said curve North 34°05′50″ West 3.00 feet to a non-tangent curve having a radius of 1743.00 feet concentric with last said curve; thence along said concentric curve northeasterly 86.50 feet through a central angle of 02°50′36″; thence radially from said curve South 36°56′26″ East 3.00 feet to a point on a non-tangent curve concave northwesterly and having a radius of 1746.00 feet concentric with and 54.00 feet northwesterly of said Curve "V", a radial line of said concentric curve from said point bears North 36°56′26″ West; thence along said curve northwesterly 120.34 feet through a central angle of 03°56′57″ to the tangent intersection with a line parallel with and 54.00 feet northwesterly of said Course "D"; thence along said parallel line North 49°06′37″ East 199.76 feet to the beginning of a tangent curve concave northwesterly and having a radius of 1803.00 feet; thence along said curve northeasterly 90.02 feet through a central angle of 02°51′38″ to a point of
reverse curvature with a curve concave southeasterly and having a radius of 2209.00 feet concentric with and 59.00 feet northwesterly of said Curve "W", a radial line of said reverse curve from said point bears South 43°45'01" East; thence along said curve northeasterly 87.75 feet through a central angle of 02°16'34"; thence radially from said curve North 41°28'27" West 3.00 feet to a non-tangent curve having a radius of 2112.00 feet concentric with last said curve; thence along said concentric curve northeasterly 191.34 feet through a central angle of 04°57'22"; thence radially from said curve South 36°31'05" East 3.00 feet to a point on a non-tangent curve concave southeasterly and having a radius of 2209.00 feet, concentric with and 59.00 feet northwesterly of said Curve "W", a radial line of said concentric curve from said point bears South 36°31'05" East; thence along said curve northeasterly 102.84 feet through a central angle of 02°40'03"; thence non-tangent from said curve North 18°59'05" East 27.45 feet to Point "E" described hereinbefore in Parcel 1; thence along the southwesterly line of said Parcel 1 South 32°51'43" East 157.64 feet to Point "D" described hereinbefore in said Parcel 1; thence North 77°43'14" West 31.95 feet to a point on a non-tangent curve concave southeasterly and having a radius of 2091.00 feet concentric with and 59.00 feet southeasterly of said Curve "W", a radial line of said concentric curve from said point bears South 33°55'57" East; thence along said curve southwesterly 253.90 feet through a central angle of 06°57'26" to a point of reverse curvature with a curve concave northwesterly and having a radius of 524.80 feet, a radial line of said curve from said point bears North 40°53'23" West; thence along said curve southwesterly 53.18 feet through a central angle of 05°48'20" to a point of reverse curvature with a curve concave southeasterly and having a radius of 457.21 feet, a radial line of said curve from said point bears South 35°05'03" East; thence along said curve southwesterly 39.21 feet through a central angle of 04°54'47"; thence tangent from said curve South 50°00'10" West 336.63 feet to the beginning of a tangent curve concave northwesterly and having a radius of 1849.00 feet concentric with and 49.00 feet southeasterly of said Curve "V"; thence along said concentric curve southwesterly 439.13 feet through a central angle of 13°36'27" to a radial line which bears South 26°23'23" East from said Point "G"; thence along said radial line North 26°23'23" West 49.00 feet to the TRUE POINT OF BEGINNING.

CONTAINING: 2.869 Acres, more or less.

Parcel 5 (Avenida Vista Hermosa)

A variable width strip of land the reference line of which is described as
follows:

BEGINNING at Point "G" described hereinbefore in Parcel 4, said point being the southwesterly terminus of a curve concave northwesterly and having a radius of 1800.00 feet, a radial line of said curve from said terminus bears North 26°23'23" West; thence tangent from said curve South 63°36'37" West 233.12 feet to a point hereinafter referred to as Point "H"; thence continuing South 63°36'37" West 511.32 feet to the beginning of a tangent curve concave southeasterly and having a radius of 1800.00 feet; thence along said curve southeasterly 412.92 feet through a central angle of 13°08'37" to a point hereinafter referred to as Point "I"; thence continuing along said curve southeasterly 110.54 feet through a central angle of 03°31'07" to a point hereinafter referred to as Point "J"; thence continuing along said curve southeasterly 78.29 feet through a central angle of 02°29'31" to a point hereinafter referred to as Point "K"; thence continuing along said curve southeasterly 241.38 feet through a central angle of 07°41'00" to a point hereinafter referred to as Point "L"; thence continuing along said curve southeasterly 164.02 feet through a central angle of 05°13'15" to the tangent intersection with a line, the southwesterly terminus of which is tangent to the northeasterly continuation of that certain curve shown as being concave northwesterly and having a radius of 1450.00 feet along the centerline of Avenida Vista Hermosa on the map of Tract No. 16212 filed in Book 828, Pages 1 through 10 of Miscellaneous Maps, in said Office of the County Recorder; thence along said line South 31°33'07" West 10.98 feet to a point hereinafter referred to as Point "M"; thence continuing South 31°33'07" West 45.84 feet to a point hereinafter referred to as Point "N"; thence continuing South 31°33'07" West 81.62 feet to a point hereinafter referred to as Point "O"; thence continuing South 31°33'07" West 22.53 feet to a point hereinafter referred to as Point "P"; thence continuing South 31°33'07" West 211.32 feet to said tangent intersection with the curve having a radius of 1450.00 feet; thence along said curve southeasterly 563.83 feet through a central angle of 22°16'46" to the northeasterly line of said Tract No. 16212 and a point hereinafter referred to as Point "Q".

Said strip of land shall be 103.00 feet wide lying 54.00 feet northwesterly and 49.00 feet southeasterly of said reference line between Points "G" and "H", between Points "I" and "J", between Points "K" and "L", between Points "M" and "N" and between Points "O" and "P".

Said strip of land shall be 120.00 feet wide lying 71.00 feet northwesterly and
49.00 feet southeasterly of said reference line between Points "H" and "I".

Said strip of land shall be 106.00 feet wide lying 57.00 feet northwesterly and 49.00 feet southeasterly of said reference line between Points "J" and "K" and between Points "M" and "O".

Said strip of land shall be 114.00 feet wide lying 54.00 feet northwesterly and 60.00 feet southeasterly of said reference line between Points "L" and "N".

Said strip of land shall be 127.00 feet wide lying 54.00 feet northwesterly and 73.00 feet southeasterly of said reference line between Points "P" and "Q".

EXCEPTING THEREFROM that portion lying southwesterly of the southerly line of said Parcel 1 of Lot Line Adjustment LL 98-83.

CONTAINING: 5.546 Acres, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

Gregory A. Helmer, P.L.S. 5134
EXHIBIT "4" TO AGREEMENT

LA PATA WIDENING IMPROVEMENTS

[Attached]
EXHIBIT "5" TO AGREEMENT

OCTA MANUAL

[Attached]
Procedures For Receiving Funds

The consultant contract, right-of-way acquisition process, or construction contract for approved projects under Tier I must be awarded within the fiscal year funds are programmed. Once work is initiated, the local agency can undertake the process for receiving payment of CTFP funds.\(^{10}\)

Funds will be released through two payments. The initial payment will constitute 90 percent of the contract award or programmed amount, whichever is less. The final payment will be disbursed after approval of the final report.

90 Percent Payment

Once the contract has been awarded, the Agency shall submit the following documents to the Project Administrator:

A. Your request for Transportation Program funds must include a Certification from the Public Works Director stating the following:

1. The project is designed to city/county and other participating jurisdiction’s (e.g., Caltrans) standards (if applicable)
2. The project contract has been awarded
3. The total cost of the contract based on the award
4. The city/county has committed matching funds to the project (if required)
5. Right-of-way was acquired in conformance with city/county procedures (if applicable)
6. All required environmental documentation is complete and certified (if applicable)

A Minute Order, Agency Resolution, or other Council/Board Action showing award of the contract and the contract amount must be submitted with your funding request. Exhibit 13-1 is a sample resolution. **No Combined Transportation Funding Program funds will be disbursed until these items are received.**

\(^{10}\) RSTP and LSTP funds will undertake a separate process. Local agencies must contact Caltrans Local Streets and Roads for reimbursement.
B. (If Applicable) Certification of PS&E (Exhibit 13-2) signed by the Agency Engineer. This will certify that the local agency has properly prepared and approved plans and specifications in accordance with authorized procedures and adopted standards, followed approved scope of work and incorporated materials report.

C. A Revised Cost Estimate in the form provided with the application package.

D. An invoice for the lesser amount of either 90% of the program project allocation or the contract amount.

E. For Right-of-way, also submit:
   1. Copy of appraiser’s bill for completion of work.
   2. Copy of written offer(s).
   3. Council/Board action to start project (i.e. minute order, resolution, budget action).
   4. Order of immediate possession (if applicable).
   5. Excess right-of-way disposal plan (if applicable)

Availability of Funds

The funds allocated by OCTA for each project will be available on July 1 of the Fiscal Year for which the project was programmed. After bids are opened and a contractor selected, the final allocation will be the lesser amount of the original allocation or the revised project cost estimate.

Once the construction/consultant contract is awarded, or the right-of-way process is underway, your agency may request 90 percent of the Measure M allocation. Examples of calculating the initial funding request are described below.

Example A - contract is awarded for less than the estimated construction cost.

Given:

\[
\begin{align*}
200,000 &= \text{Total Combined Transportation Funds programmed for Project X} \\
200,000 &= \text{Estimated construction cost} \\
160,000 &= \text{Construction contract award}
\end{align*}
\]
Chapter 13

Approved Projects

Calculations:

90 percent of contract amount = $160,000 x 0.9 = $144,000.

Example B - Contract is awarded for more than the estimated construction cost.

Given:

$200,000 = Total Combined Transportation Funds programmed for Project Y
$200,000 = Estimated construction cost
$280,000 = Construction contract award

Calculations:

Construction costs = $280,000
Since this amount exceeds $200,000 programmed, need to adjust down to $200,000.
90 percent of contract amount = $200,000 x 0.9 = $180,000.

Cancellation of Project

If a local agency, for whatever reason, decides to cancel a project, the agency shall notify OCTA as soon as possible thereafter. Funds for the canceled project will revert to a program-specific unallocated fund.

Notice of Completion

After the project has been completed, a Notice of Completion shall be submitted to OCTA.
Chapter 13

Approved Projects

Final Report

The Final Report must be submitted to the Orange County Transportation Authority within 120 days after acceptance of the improvements, study, or project (i.e., Notice of Completion) by the city council/County Board. If for some reason this 120-day limit cannot be met (such as contractual arrangements with Caltrans), please notify OCTA so that a final report can be submitted at a later date. The Authority will review these reports to determine the items eligible for reimbursement. After review and approval of the final report, the local agency will be requested to submit the final project billing.

Form of Report:

The local agency should prepare a Final Report for the project in the form of Exhibit 13-3 for construction projects, Exhibit 13-4 for right-of-way projects, and Exhibit 13-5 for all other types of projects.

General lump sum pay items, appraisal cost, design and construction engineering should be distributed in the same ratio as the total right-of-way acquisition or construction costs.

Delinquent Final Report:

Final reports shall be considered delinquent if not submitted prior to 120 days after the project Notice of Completion. If no final report is submitted by an agency within these 120 days, it may be found ineligible for program participation.

Final Payment

The remaining balance, approximately 10 percent in Combined Transportation Program funds, will be released when the project is completed and a Final Report on the project is accepted by OCTA. The balance is determined based on final costs for Combined Transportation Funding Programs eligible expenditures as stated in the program from where funds were programmed. Prior to submitting the report, review the section in this manual discussing the final report process.
Chapter 13

Approved Projects

Project Cost Changes

If the contract price is lower than the amount programmed and additional items and/or change orders were needed during construction/study, additional funding, up to the allocation programmed, may be approved when the final report for the project is filed. OCTA and the auditor will review these reports to determine: 1) the reason for the change order(s), 2) the items eligible for reimbursement, and 3) the original scope of the project. You should provide information supporting the need for the change orders in the final report. Changes in project limits for construction projects are not eligible for reimbursement.

Audit

Once the final report is submitted to OCTA, an audit will be conducted on the project. OCTA will hire an auditing firm to complete the reviews. The cost estimate forms submitted with the project applications (revised where appropriate), your project accounting records and the final report will be the primary items used for the audit. Separate records must be maintained for your projects (i.e., expenditures, interest) to ensure compliance. Only Combined Transportation Funding Programs’ eligible items listed on your cost estimate form will be reimbursed.

Project Advancement

An agency may begin work for an approved CTFP project prior to the fiscal year it is programmed. One of the two processes, described below, must be followed to advance a project.

Local Agency Project Advancement

A local agency has two options available to them for the advancement of an approved project. The first option is called Local Agency Project Advancement (LAPA). With this option, the local agency may begin work on any approved CTFP project prior to the fiscal year funds are programmed. The eligible expenses will then be reimbursed to the local agency at the beginning of the fiscal year that the project’s funds were programmed (up to the programmed amount or contract value, whichever is less). In order to be eligible for consideration under LAPA the OCTA must be notified that the local agency intends to proceed with the project prior to the project’s start-up.
EXHIBIT “7” TO AGREEMENT

DEPICTION OF LOWER PORTION OF LARGE OFFSITE PAD

[Attached]
EXHIBIT “8” TO AGREEMENT

DEPICTION OF COMMUNITY PARK SITE

[Attached]
EXHIBIT "9" TO AGREEMENT

COMMUNITY PARK ROUGH GRADING PLAN

[Attached]
EXHIBIT "10" TO AGREEMENT

COMMUNITY PARK PHASING PLAN

[Attached]
EXHIBIT "11" TO AGREEMENT

GRADING TOLERANCES

[Attached]
AVH / ALP Community Park Site
Rough Grading Specifications for
Horizontal and Vertical Tolerances

The following is a list of horizontal and vertical tolerances for the rough grading of the San Clemente Community Park Site located near the southwest corner of Avenida La Pata and Avenida Vista Hermosa:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>HORIZONTAL</th>
<th>VERTICAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Sections</td>
<td>+/- 0.5' (5/10 of one foot)</td>
<td>+/- 0.2' (2/10 of one foot)</td>
</tr>
<tr>
<td>Pads</td>
<td>N/A</td>
<td>+/- 0.1' (1/10 of one foot)</td>
</tr>
<tr>
<td>Large Pads</td>
<td>N/A</td>
<td>+/- 0.2' (2/10 of one foot)</td>
</tr>
<tr>
<td>Tops not at property lines</td>
<td>+/- 1.0' (one foot)</td>
<td>+/- 0.2' (2/10 of one foot)</td>
</tr>
<tr>
<td>Toes</td>
<td>+/- 0.3' (3/10 of one foot)</td>
<td>+/- 0.2' (2/10 of one foot)</td>
</tr>
<tr>
<td>Slope Inclination</td>
<td>+/- 0.3' (3/10 of one foot) normal to the plane of the slope for slopes less than ten feet (10') in height and +/- 0.5' (5/10 of one foot) for slopes higher than ten feet (10')</td>
<td></td>
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</table>

Note: Rough grade acceptance shall be based upon ninety percent (90%) of the field measurements meeting the tolerances noted above. The tolerances above are not to be used for ease of grading, and are not to be used in order to increase or decrease quantities.

The rough grading of the Community Park Site shall be completed to the specified tolerances in a manner that does not impose an additional burden on the City to import or export more than three hundred fifty (350) cubic yards of earth to another phase of the Community Park Site.

Developer shall at all times comply with the schedule deadlines for completion and certification of rough grading of phases as set forth in Section 8.2.3 of the Amended and Restated Implementation Agreement ("Agreement"). In addition to the requirements Developer must satisfy pursuant to Section 8.2.3, Developer's civil engineer, RBF Consulting, will perform for each phase a check on the earthwork quantities ("Earthwork Quantity Statement") based upon field survey information and the proposed rough grades for the Community Park Site per the AVH/ALP Rough Grading Plans, Revision No. 5, as approved by the City. The Earthwork Quantity Statement will be used for verification of earthwork balance impacts and compliance with the 350 cubic yard allowance set forth above;
provided, however, that the 350 cubic yard allowance shall not include any topsoil, soil amendments, or other soil related material that the City or its contractors may import onto the Community Park Site in advance of the preparation of the Earthwork Quantity Statement.

The Earthwork Quantity Statement for each phase shall be provided to City no later than fifteen (15) days after the schedule deadline set forth in Section 8.2.3 for the applicable phase. In the event Developer has not complied with the earthwork balance impact requirements set forth herein, the City Engineer, in his sole and absolute discretion, may, but has no obligation to, allow Developer an additional amount of time to conduct any remedial grading in order to comply with the requirements herein and in Section 8.2.3.

Nothing in this Note shall affect or impact City's rights under Section 8.2.5 (concerning City's right to complete rough grading on and after August 1, 2006), or any other rights set forth in Section 8 of the Agreement.
EXHIBIT “12” TO AGREEMENT

SOIL SUITABILITY SPECIFICATIONS

[Attached]
December 16, 2005

Mr. Bill Cameron  
CITY OF SAN CLEMENTE  
910 Calle Negocio, Suite 100  
San Clemente, CA 92673

GMU Project No. 99-60-10  
Permit No. GP021-02

Subject: Supplemental Recommendations for Imported Fill Material, Cultural Use Site, Talega, City of San Clemente, California

Reference: Our “Recommendations for Imported Fill Material, Cultural Use Site, Talega, City of San Clemente, California”, dated December 8, 2005 (GMU Project 99-60-10)

Dear Mr. Cameron:

This correspondence provides our supplemental recommendations pertaining to the placement of import material at the Cultural Use Site (City Park Site) in Talega, City of San Clemente, California. Based on conversations with Talega Associates, it is our understanding that the City is concerned that rock materials may be present in the upper 2 feet of the park site. Due to these concerns, we recommend that reasonable efforts be made to keep the upper two feet of fill within the park site areas free of rock materials greater than 8 inches in diameter.

Please call if you have any questions regarding this correspondence.

Respectfully submitted,

GMU GEOTECHNICAL, INC.

Gary K. Urban, GE 2237  
Geotechnical Engineer

cc: Talega Associates  
Attn: Mr. Jim Yates  
Mr. Brian Mangano

City of San Clemente  
Attn: Mr. John Beck  
Mr. Heath McMahon

99-60-10FP2 import_fill (12-16-05)
December 8, 2005

Mr. Bill Cameron
CITY OF SAN CLEMENTE
910 Calle Negocio, Suite 100
San Clemente, CA 92673

GMU Project No. 99-60-10
Permit No. GP021-02

Subject: Recommendations for Imported Fill Material, Cultural Use Site, Talega, City of San Clemente, California

References: (1) Our "Report of Geotechnical Studies, Avenida Vista Hermosa, Avenida La Pata and Cultural Center Site, City of San Clemente, California," dated May 7, 2001 (Project No. 99-60-00)

(2) County of Orange Grading Manual, Board of Supervisors Resolution No. 81-1358

Dear Mr. Cameron:

This correspondence serves to clarify the geotechnical specifications for imported fill material at the Cultural Use Site in Talega. According to the project specifications (i.e., our reference (1) report), fill material used at the site should be free of the following materials:

1. Decomposable organic debris
2. Rock materials larger than 12 inches in diameter
3. Trash and construction debris

It is our understanding that all imported fill material will be derived from the adjacent Talega development. Provided that the above conditions are met, the imported fill material is considered suitable for use at the Cultural Use Site. These specifications are in accordance with "Section 9.3 -- Fill Material" of the reference (2) County of Orange Grading Manual; Section 9.3 is attached for ease of reference.
In addition, all fill materials are being placed subject to our observation and testing and the soil materials being imported to the site are being observed by our field technician to confirm that these materials meet the project specifications. If materials do not meet the specifications, the contractor is notified and these materials are removed from the fill.

Please call if you have any questions regarding this correspondence.

Respectfully submitted,

GMU GEOTECHNICAL, INC.

Alan B. Mutchnick, CEG 1789
Engineering Geologist

Gary K. Urban, GE 2237
Geotechnical Engineer

cc: Talega Associates
Attn: Mr. Jim Yates

City of San Clemente
Attn: Mr. John Beck

City of San Clemente
Attn: Mr. Heath McMahon

99-60-101 import fill (12-8-05)
Recommendations in the soil engineering and/or engineering geology report for cut slopes to be steeper than 2:1 shall be accompanied by a slope stability analysis for all slopes greater than five (5) feet in height. The soil engineer shall consider both gross and surficial stability of the slope and provide a written statement approving the slope stability.

SUBARTICLE 9. FILLS

9.1 Fill Location

Fill slopes shall not be constructed on natural slopes steeper than two (2) horizontal to one (1) vertical (2:1) or where the fill slope toes out within twelve (12) feet horizontally of the top of existing or planned cut slopes, outside the permit area boundary, except in the case of slopes of minor height when approved by the Building Official.

9.2 Preparation of Ground

The ground surface shall be prepared to receive fill by removing vegetation; noncomplying fill; topsoil and other unsuitable materials; and by scarifying to provide a bond with the newfill. Where existing slopes exceed five (5) feet in height and/or are steeper than five horizontal to one vertical (i.e., 5:1), the ground shall be prepared by benching into sound bedrock or other competent material, as determined by the soil engineer and/or engineering geologist and approved by the Building Official. The lowermost bench beneath the toe of a fill slope shall be a minimum ten (10) feet in width. The ground surface below the toe of fill shall be prepared for sheet flow runoff, or a paved drain shall be provided.

Where fill is to be placed over a cut slope, the bench under the toe of the fill shall be at least fifteen (15) feet wide, but the cut slope must be made before placing fill and shall meet the approval of the soil engineer and/or engineering geologist as suitable foundation for fill.

Unsuitable soil is soil which, is not dense, firm or unyielding, is highly fractured or has a high organic content and in the opinion of the Building Official, civil engineer, soil engineer, or engineering geologist is not competent to support other soil or fill, to support structures or to satisfactorily perform the other functions for which the soil is intended.

9.3 Fill Material

Detrimental amounts of organic material shall not be permitted in fills. Except as outlined below, no rock or similar irreducible material with a maximum dimension greater than twelve (12) inches shall be buried or placed in fills.

The Building Official may permit placement of larger rock when the soil engineer properly devises a method of placement, continuously inspects placement, and approves the fill stability and competency. The following conditions shall also apply:

a. Prior to issuance of the grading permit, potential rock disposal area(s) shall be delineated on the grading plan.
b. Rock sizes greater than twelve (12) inches in maximum dimension shall be ten (10) feet or more below grade, measured vertically. This depth may be reduced upon recommendation of the soil engineer and approval of the Building Official providing that the permitted use of the property will not be impaired.

c. Rocks greater than twelve (12) inches shall be placed so as to be completely surrounded by soils; no nesting of rocks will be permitted.

9.4 Compaction

All fills shall be compacted to a minimum of ninety (90) percent of maximum density as determined by Uniform Building Code Standard No. 70-1 or equivalent, as approved by the Building Official. Field density shall be determined in accordance with the Uniform Building Code Standard No. 70-2, or equivalent, as approved by the Building Official.

Locations of field density tests shall be determined by the soil engineer or approved testing agency and shall be sufficient in both horizontal and vertical placement to provide representative testing of all fill placed. Testing in areas of critical nature or special emphasis shall be in addition to the normal representative samplings.

Exceptions:

a. Fills excepted in Section 7-1-805, Grading Permits, of the Grading Code and where the Building Official determines that compaction is not a necessary safety measure to aid in preventing saturation, settlement, slipping, or erosion.

b. Where lower density and very high potential expansion characteristics as defined by Table No. 29-6 of the Uniform Building Code exist, lesser compaction may be granted by the Building Official upon justification and recommendation by the soil engineer.

Fill slopes shall be compacted to the finish slope face as specified above. The soil engineer shall provide specifications for the method of placement and compaction of the soil within the zone of the slope face.

Sufficient maximum density determinations by test method, Uniform Building Code standard No. 70-1 or approved equivalent, shall be performed during the grading operations to verify that the maximum density curves used are representative of the material placed throughout the fill.

9.5 Slope

Fill slopes shall be no steeper than two horizontal to one vertical (2:1). In special circumstances where no evidence of previous instability exists and when recommended in the soil engineering report and approved by the Building Official, slopes may be constructed steeper than 2:1. In no case shall slopes steeper than 2:1 be approved if 2:1 or flatter slopes are required as a condition of approval of any project by the Planning Commission, Zoning Administrator, Subdivision Committee, or the Board of Supervisors without appropriate revision of said condition by the approving body.
APPENDIX B

TALEGA PLANT PALETTE

GENERAL PLANT PALETTES BY ZONE:

A. INTERIOR ZONE:

1. Trees:

   Agonis flexuosa - Peppermint Tree
   Arbutus unedo - Strawberry Tree
   Bauhinia purpurea - Purple Orchid Tree
   Chamaerops humilis - Mediterranean Fan Palm
   Chorisia speciosa - Floss Silk Tree
   Citrus - NCN
   Eriobotrya deflexa - Bronze Loquat
   Erythrina caffra/sykesi - Coral Tree
   Eucalyptus camaldulensis - Red Gum
   Eucalyptus citriodora - Lemon Scented Gum
   Eucalyptus cladocalyx - Sugar Gum
   Eucalyptus lehmannii - Bushy Yate
   Eucalyptus leucoxylon - White Ironbark
   Eucalyptus torquate - Coral Gum
   Feijoa sellowiana - Pineapple Guava
   Ficus rubiginosa - Rusty Leaf Fig
   Lagerstroemia x fauriei - Crape Myrtle
   Melaleuca nesophila - Pink Melaleuca
   Metrosideros excelsis - New Zealand Christmas Tree
   Nerium oleander - Oleander
   Phoenix canariensis - Canary Island Date Palm
   Pinus eldarica mondell - Mondell Pine
   Pinus pinea - Stone Pine
   Pinus torreyana - Torrey Pine
   Pittosporum undulatum - Victorian Box
   Platanus racemosa - California Sycamore
   Podocarpus gracilior - Fern Pine
   Prunus caroliniana - Carolina Laurel Cherry
   Quercus agrifolia - Coast Live Oak
   Quercus ilex - Holly Oak
   Trachycarpus fortunei - Windmill Palm
   Tristania conferta - Brisbane Box
2. Shrubs

Agapanthus africanus - Lily of the Nile
Agave attenuata - Agave
Aloe striata - Coral Aloe
Bougainvillea - Bougainvillea
Calliandra haematocephala - Pink Powder Puff
Carissa grandiflora - Natal Plum
Escallonia fradesii - Pink Princess Escallonia
Hemerocallis hybrida - Daylily
Ilex vomitoria - Yaupon
Lantana camara - Lantana
Limonium perezii - Sea Lavender
Nerium oleander - Oleander
Phormium tenax ‘Dwarf’ - Dwarf New Zealand Flax
Pittosporum tobira - Japanese Pittosporum
Raphiolepis indica - India Hawthorne
Strelizia reginae - Bird of Paradise
Tecomaria capensis - Cape Honeysuckle
Viburnum suspensum - Sandankwa viburnum
Xylosma congestum ‘Compacta’ - Compact Shiny Xylosma

3. Ground Cover:

Acacia redolens - NCN
Carissa ‘Green Carpet’ - Natal Plum
Coprosma kirkii - Creeping Coprosma
Myoporum pacificum - Pacific Myoporum
Myoporum parvifolia - NCN
Rosmarinus officianalis ‘Prostratus’ - Prostrate Rosemary
Trachelospermum jasminoides - Star Jasmine

B. PERIPHERAL ZONE;

1. Trees:

Agonis flexuosa - Peppermint Tree
Heteromeles arbutifolia - Toyon
Melaleuca nesophila - Pink Maleleuca
Pinus torreyana - Torrey Pine
Pittosporum undulatum - Victorian Box
Platanus racemosa - California Sycamore
Quercus agrifolia - Coast Live Oak
Rhus lancea - African Sumac
Schinus molle - California Pepper
Appendix G: Talega Plant Palette

2. Shrubs:

Acacia pecoff-verde - NCN
Agave - Agave
Arbutus unedo ‘Compacta’ - Compact Strawberry
Baccharis consanguinea - Coyote Brush
Ceanothus - Wild Lilac
Cistus spp. - Rockrose
Dendromecon rigida - Bush Poppy
Encelia californica - California Encelia
Galvezia speciosa - Island Bush Snapdragon
Lantana camara - Lantana
Lantana montevidensis - Lantana
Mahonia compacta - Compact Oregon Grape
Mimulus aurantiacus - Monkey Flower
Prunus lyonii - Catalina Cherry
Rhus integrifolia - Lemonade Berry
Rhus ovata - Sugar Bush
Ribes speciosa - Fuschia - Flowering Gooseberry
Rosa California - California Wild Rose
Salvia spp. - Sage
Xylosma congestum ‘Compacta’ - Compact Shiny Xylosma

3. Ground Cover:

Arctostaphylos ‘John Dourley’ John Dourley Manzanita
Acacia redolens ‘Desert Carpet’ - Trailing Acacia
Baccharis pilularis - Prostrate Coyote Brush
Cistus spp. - Rockrose
Heuchera hydrids - Hybrid Coral Bells
Myoporum pacificum - Pacific Myoporum
Myoporum parvifolium - NC
Salvia spp. - Sage
Rosmarinus officianalis ‘Prostatus’ - Prostate Rosemary

C. TRANSITION ZONE:

1. Trees:

Agonis flexuosa - Peppermint Tree
Arbutus unedo - Strawberry Tree
Bauhinia purpurea - Purple Orchid Tree
Eucalyptus camaldulensis - Red Gum
Eucalyptus cladocalyx - Sugar Gum
Eucalyptus lehmanii - Bushy Yate
Appendix G: Talega Plant Palette

Eucalyptus leucoxylon - White Ironbark
Lagerstroemia x fauerei - Crape Myrtle
Melaleuca nesophila - Pink Melaleuca
Metrosideros excelsus - New Zealand Christmas Tree
Pinus eldarica mondell - Mondell Pine
Pinus halepensis - Aleppo Pine
Pinus pinea - Stone Pine
Pinus torreyana - Torrey Pine
Pittosporum undulatum - Victorian Box
Platanus racemosa - California Sycamore
Podocarpus gracilior - Fern Pine
Prunus caroliniana - Carolina Laurel Cherry
Quercus agrifolia - Coast Live Oak
Schinus molle - California Pepper
Tristania conferta - Brisbane Box

2. Shrubs:

Acacia pecoff-verde - NCN
Agapanthus africanus - Lily of the Nile
Agave americana - Century Plant
Agave attenuata - Agave
Aloe striata - Coral Aloe
Arbustus unedo ‘Compacta’ - Compact Strawberry Tree
Baccharis consanguinea - Coyote Brush
Bougainvillea - NCN
Calliandra haematocephala - Pink Powder Puff
Carissa grandiflora - Natal Plum
Ceanothus - Wild Lilac
Cistus spp. - Rockrose
Dendromecon rigida - Bush Poppy
Encelia californica - California Encelia
Escallonia fradessi - Pink Princess Escallonia
Hemerocallis hybrida - Daylily
Ilex vomitoria - Yaupon
Lantana montevidensis - Trailling Lantana
Limonium perezii - Sea Lavender
Nerium oleander - Oleander
Pittosporum tobira - Japanese Pittosporum
Raphiolepis indica - India Hawthorne
Rhus integrifolia - Lemonade Berry
Rhus laurina - Laurel Sumac
Rhus ovata - Sugar Bush
Tecomaria capensis - Cape Honeysuckle
Viburnum suspensum - Sandankwa viburnum
Sylosma congestum ‘Compacta’ - Compact Shiny Xylosma
Appendix G: Talega Plant Palette

3. **Ground Cover:**

   Acacia redolens ‘Desert Carpet’ - Trailing Acacia  
   Baccharis pilularis - Prostrate Coyote Brush  
   Carissa ‘Green Carpet’ - Natal Plum  
   Cactus spp. - Rockrose  
   Corposma kirkii - Creeping Corposma  
   Myoporum pacificum - Pacific Myoporum  
   Myoporum Parvifolium - NCN  
   Rosmarinus officinalis ‘Prostratus’ - Prostrate Rosemary  
   Trachelospermum jasminoides - Star Jasmine

D. **LIST OF INVASIVE AND UNDESIRABLE PLANT SPECIES PROHIBITED IN ALL ZONES**

1. **Vinca major** - Periwinkle. This species is highly invasive, particularly in riparian areas. It thrives in the moist, shaded habitats found along stream areas and will dominate the habitat along the banks. Its habitat value to animals is not known.

2. **Lonicer japonica ‘Halliana’** - Hall’s honeysuckle. Honeysuckle is a vining shrub that can be somewhat invasive. The cultivated Hall’s honeysuckle is especially prone to escape from cultivation and invade natural habitats. Its habitat value to animals is probably similar to the native honeysuckle species (prohibited in peripheral zones only).

3. **Bromus mollis, B. rubens and Avena barbata** - Soft grass, red brome and wild oats. These grasses are non-native and highly invasive. The bromes are commonly referred to as foxtail grasses. Slender wild oats was deliberately introduced as forage for cattle and sheep by the Spanish. These grasses could be used for hydroseeding since they naturally revegetate and dominate disturbed areas. In addition, red brome and slender wild oats tend to dominate the areas in which they are found and prohibit the growth of other plant species. Their habitat value to animals is limited (prohibited in peripheral zones only).

4. **Washingtonia robusta** - Mexican Fan Palm. Becomes invasive only along open space (prohibited in peripheral zones only).

5. **Carprosbroton edulis** - Hottentot fig. Also commonly known as iceplant. This is a very invasive plant, and will dominate the vegetation in a given area. Particularly successful on slopes. It provides only limited habitat value.

6. **Koelaria pyrimidata** - Junegrass, commonly used for erosion control, tends to be somewhat invasive. It provides only limited habitat value.

7. **Eucalyptus globulas** - Naturalizes and replaces native habitat (prohibited in peripheral zones only).
Appendix G: Talega Plant Palette

8. **Cortaderia hubata** - Pampas grass. Highly invasive grass that will take over wetlands. Its habitat value is extremely limited.

9. **Senecio mikanioides** - German ivy. Not a true ivy, but a perennial vine. Very weedy, invasive plant in coastal California. It provides no real habitat value.

10. **Tamarix spp.** - Tamarisk. Tamarisk are water lovers and become quickly established along drainage courses. They are very difficult to eradicate. Its habitat value is limited.

11. **Arundo donax** - Giant reed. Extremely invasive and difficult to control, particularly along drainages. Its habitat value is extremely limited.

12. **Ricinus communis** - Castor bean. Extremely invasive; common in degraded wetland areas. Its habitat value is unknown.

13. **Schinus terebinthifolius** - Naturalizes and replaces native habitat (prohibited in peripheral zones only).
JOINT POWERS AGREEMENT CREATING
THE TALEGA JOINT PLANNING AUTHORITY

by and between

CITY OF SAN CLEMENTE

and

COUNTY OF ORANGE
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JOINT POWERS AGREEMENT CREATING THE
TALEGA JOINT PLANNING AUTHORITY

This JOINT POWERS AGREEMENT CREATING THE TALEGA JOINT PLANNING AUTHORITY ("Agreement") is made this 15th day of July, 1999 (the "Effective Date"), by and between the CITY OF SAN CLEMENTE, a California municipal corporation ("City"), and the COUNTY OF ORANGE, a political subdivision of the State of California ("County"). City and County are collectively referred to herein as the "Member Agencies" and individually as a "Member Agency."

RECIPIENTS:

A. Government Code Section 6500 et seg. provides that two or more public agencies may, by agreement, jointly exercise any power common to the contracting parties.

B. City and County are public agencies as defined by Government Code Section 6500 et seg. and are authorized and empowered to contract for the joint exercise of powers common to each member of the joint powers authority created hereby.

C. City and County now wish to jointly exercise their powers to provide for the regulation of the development of that certain real property consisting of approximately seven hundred ninety-two (792) acres of land located in unincorporated territory of the County adjacent to and within the sphere of influence of the City (the "Talega Property"). The Talega Property is more particularly described in the legal description attached hereto as Exhibit "A."

AGREEMENT:

Based upon the foregoing Recitals, which are incorporated herein by this reference and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and County agree as follows:

1. PURPOSE AND POWERS.

1.1 Purpose. The Member Agencies have the power to regulate land use and development within their respective jurisdictions. This regulatory authority includes the power to adopt and enforce building, zoning, planning, and other land use regulations. The purpose of this Agreement is to create a joint powers authority pursuant to Government Code Section 6500 et seg. to regulate and control the development of the Talega Property.

1.2 Creation of Authority. Pursuant to Government Code Section 6500 et seg., there is hereby created a public entity separate and apart from the Member Agencies hereto to be known as the "Talega Joint Planning Authority" (the "Authority"). Pursuant to Government Code Section 6508.1, the debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, and obligations of the Member Agencies.

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1.3 Powers of the Authority.

1.3.1 General Powers. The Authority shall exercise in the manner provided herein the powers which are common to the Member Agencies and necessary to the accomplishment of the purposes of this Agreement.

1.3.2 Specific Powers. The Authority shall have the power to do any of the following in its own name:

(a) To exercise the police powers of the Member Agencies to regulate the planning and development of the Talega Property, including without limitation (i) the adoption and amendment of a general plan, specific plan, and zoning ordinance applicable to the Talega Property, (ii) the power to process and approve, conditionally approve, and deny area plans, tentative and final subdivision maps, parcel maps, conditional use permits and variances, grading permits, site plans and/or architectural reviews, plans for landscaping, signage, and other similar improvements, public works improvement plans, building permits, and similar development and building plans and permits, (iii) the adoption, enforcement, and implementation of requirements for (A) the dedication of land, (B) the levying and collection of development and building fees, processing and plan-check fees, and fees for inspection of public and private works of improvement, and (C) other exactions and charges imposed upon development and building, and (iv) to enforce all federal, state, and local laws, rules, and regulations that are within the jurisdiction of City or County to enforce with respect to the items referred to in clauses (i)-(iii), including without limitation and to the extent applicable the provisions of the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.).

(b) To contract for professional, legal, administrative, technical, and other services to be provided to the Authority as may be necessary to accomplish the purposes of this Agreement. It is specifically contemplated that the Authority will contract with City for City to provide the administrative engineering, planning, and building services required for the development of the Talega Property.

(c) To enforce the rules and regulations adopted by the Authority as well as State law pertaining to planning and development.

(d) To incur debts, liabilities, and obligations consistent with the purposes of this Agreement.

(e) To invest and manage funds.

(f) To sue and be sued in its own name.

(g) To carry out and enforce all provisions of this Agreement.
1.3.3 Manner of Exercise of Powers: Initial Land Use Regulations. Except as expressly set forth in Section 1.3.4 herein, and pursuant to California Government Code Section 6509, the powers of the Authority are subject to the restrictions that are imposed upon City’s exercise of similar powers. In this regard, the land use regulations and development standards of City set forth in Exhibit "B" attached hereto (the "Initial Land Use Regulations") shall be applicable to the development and planning of the Talega Property on the Effective Date (without the need for execution of any further document or the taking of any further action by County, City, or the Authority). Except as expressly set forth in Section 1.3.4 herein, nothing herein is intended as a limitation on Authority’s right to amend the Initial Land Use Regulations from time to time during the term of this Agreement and to adopt such other requirements and regulations governing the planning and development of the Talega Property as Authority deems appropriate. The amendment of the Initial Land Use Regulations by the Authority shall not require the amendment of this Agreement by the Member Agencies. Except as expressly set forth in clauses (i) and (ii) of Section 1.3.4(e), in the event of any conflict between the Initial Land Use Regulations, as the same may be amended from time to time, and the provisions set forth in Section 1.3.4 of this Agreement, the provisions set forth in Section 1.3.4 of this Agreement shall prevail.

1.3.4 Limitation on Powers of Authority: Regulations Governing the Development of the Talega Property. In addition to the Initial Land Use Regulations, the development standards and land use regulations set forth in this Section 1.3.4 shall be applicable to the development and planning of the Talega Property on the Effective Date (without the need for execution of any further document or the taking of any further action by County, City, or the Authority). The Authority may not adopt any ordinances, resolutions, or other rules, regulations or policies which are in conflict with the provisions set forth in this Section 1.3.4.

(a) In no event shall the Authority have the power to implement or enforce the provisions of Chapter 15.44 of City’s Municipal Code, as the same now exists or may hereafter be amended, or any regulation, rule, or official policy of City adopted pursuant thereto, and in regard to controls on the timing and phasing of development (whether based upon a limit on the number of residential building permits, such as exists with Chapter 15.44 of City’s Municipal Code, or otherwise), the powers of the Authority shall be exercised in the manner County exercises its authority on the Effective Date of this Agreement.

(b) With respect to that portion of the Talega Property encompassed within Tentative Tract Map Nos. 13873, 13878, 13880, 13894, 15798, and 15799 which were approved by the County prior to the Effective Date, the powers of the Authority with respect to land use and development standards (i.e., General Plan, Specific Plan, Feature Plan, Area Plan, zoning, subdivision, and other similar discretionary development standards) shall be exercised in the manner County exercises its authority on the Effective Date of this Agreement; provided, however, that
the powers of the Authority with respect to non-discretionary building, public works, grading, and similar standards shall be exercised in the manner City exercises its authority at the time the relevant actions are taken.

(c) With respect to any tentative maps for financing and conveyance purposes only which were approved by the County prior to the Effective Date, the powers of the Authority with respect to final map approval shall be exercised in the manner County exercises its authority on the Effective Date of this Agreement.

(d) With respect to Tentative Tract Map Nos. 13917 and 13918 which were approved by the County prior to the Effective Date, the powers of the Authority with respect to final map approval shall be exercised in the manner County exercises its authority on the Effective Date of this Agreement; provided, however, that the powers of the Authority with respect to site plan review and approval shall be exercised in accordance with the Initial Land Use Regulations, as the same may be amended from time to time.

(e) The Rolling Hills Feature Plan for the Talega Property adopted by the Orange County Board of Supervisors on May 4, 1998, and all amendments thereto through the Effective Date (the "Feature Plan") shall be applicable to the development of the Talega Property, subject to the following limitations and exceptions: (i) in the event of any conflict between the Initial Land Use Regulations, as the same may be amended from time to time, and the provisions of the Feature Plan, the Initial Land Use Regulations shall govern; (ii) the Feature Plan shall be superseded by the comprehensive amendment to the Talega Specific Plan referred to in paragraph 17 of Exhibit "B," to the extent the same is adopted by the Authority; and (iii) with regard to precise grading permits for model homes within the Talega Property, the requirements of the Feature Plan set forth in the last sentence of Section 3(30)(d) of County's Ordinance No. 3765 shall be satisfied by approval of a precise grading plan for each model home or model home complex by the Authority Planning Commission prior to approval of a final tract map.

(f) In exercising its powers hereunder, the Authority shall not issue a building permit for any building (other than a model home) within any portion of the Talega Property unless both of the following conditions have been satisfied: (i) a petition for annexation into the City of the portion of the Talega Property on which such building is located has been certified as sufficient by the Orange County Local Agency Formation Commission pursuant to Government Code Section 56706; and (ii) the City Manager of City or his or her designee shall have approved the phasing plan to be submitted by the master developer of the Talega Property.

(g) In exercising its powers hereunder, the Authority shall not authorize the permanent occupancy of model homes
within any portion of the Talega Property for which the annexation into the City has not been completed.

(h) The setback standards set forth in this subparagraph (h) shall apply to the development of the Talega Property:

(i) with regard to planned unit developments (as that term is defined in Chapter 7 of the Talega Specific Plan referred to in paragraph 17 of Exhibit "B"); minimum front setbacks for habitable spaces, porches, and projections shall be no less than the setback set forth in the Uniform Building Code, as such code is adopted and amended by the Authority from time to time;

(ii) rear setbacks for planned unit developments shall be no less than 5'0"; and

(iii) front setbacks for garage doors of attached homes shall be no less than 5'0", measured from face of curb (or center of drainage in rolled curbs) where the garage is equipped with a roll-up garage door, with the further provision that no garage door shall be set back a dimension greater than 5'0" and less than 18'0".

In addition to the minimum setback standards above, each block of a project shall have median setbacks no less than the dimensions set forth below:

(i) with regard to planned unit developments, median front setbacks for habitable spaces, porches, and projections shall be no less than 10'0";

(ii) median rear setbacks for planned unit developments shall be no less than 10'0"; and

(iii) median front setbacks for garage doors for attached homes shall be no less than 11'6".

Median setbacks shall be calculated using the single minimum dimension for each dwelling unit. For the purposes of this subparagraph, the term "block" shall mean those dwellings on one side of a public or private street between intersecting streets or between an intersecting street and the centerline extension at the end of a cul-de-sac.

(i) Subject to the approval of the Orange County Fire Authority, the powers of the Authority with regard to determining cul-de-sac lengths shall be exercised in the manner County exercises its authority; provided, however, that in no event shall the maximum length of cul-de-sacs in the Talega Property be greater than One Thousand (1000) feet.

(j) The maximum number of feet between catch basins in the Talega Property shall be as determined by the Authority on
a case-by-case basis based on good engineering design and operational practices.

(k) Nothing in this Agreement is intended to supersede or replace any County jurisdiction or control over the Talega Property that exists prior to the completion of annexation into the City, as set forth in Titles 1-6 of the Codified Ordinances of County, as the same may be amended from time to time.

2. ORGANIZATION OF AUTHORITY.

2.1 Board of Directors.

2.1.1 Establishment of Board and Designation of Directors. The Authority shall be governed by the Board of Directors ("Board") which shall be comprised of five (5) members. Each person who is a member of the Board is referred to herein as a "Director." Three (3) of the Directors shall be appointed by the City Council of City (the "City Directors"). The remaining two (2) Directors (the "County Directors") shall be appointed by the Board of Supervisors of County.

2.1.2 Term of Directors. The term of each Director shall commence on the Effective Date and shall continue until the appointment of a successor by the City Council of City or the Board of Supervisors of County, whichever governing body appointed the Director. Each Director shall serve at the pleasure of his or her appointing body and may be removed at any time, with or without cause, at the sole discretion of the appointing body.

2.1.3 No Compensation. No Director will receive compensation from the Authority for his or her services.

2.1.4 Procedures. The Board may establish and adopt bylaws, policies, rules, regulations, and procedures to govern its operations consistent with the limits of authority granted to authority pursuant to Section 1.3 of this Agreement.

2.1.5 Adoption of General Budget. At the Initial Organizational Meeting (as that term is defined in Section 3.1) and annually thereafter, no later than the Annual Meeting (as that term is defined in Section 3.2), the Board shall review and approve a general budget for the Authority. Thereafter, at or prior to the Annual Meeting, the Board shall adopt a general budget for the following Fiscal Year by a vote of at least a majority of all of the Directors. As used herein, the term "Fiscal Year" shall mean the period from July 1 to the following June 30.

2.1.6 Assessments. The Board may levy an assessment against City for the necessary and proper expenses of Authority, but may not levy an assessment against the County for any expenses of the Authority.

2.1.7 Annual Audit. The Board shall arrange and provide for an annual audit of the accounts and records of the Authority by
an auditor in accordance with the requirements set forth in Government Code Section 6505.

2.2 Officers.

2.2.1 Chairperson and Vice Chairperson. Within thirty (30) days following the Effective Date, the Board shall hold a meeting (the "Initial Organizational Meeting") at which the Board shall elect from among its Directors a Chairperson and a Vice-Chairperson. Those elected to the position of Chairperson and Vice Chairperson at the Initial Organizational Meeting shall serve until the Annual Meeting. Subsequent terms for the Chairperson and Vice Chairperson shall run for one (1) year, with elections held at each Annual Meeting. The Chairperson shall preside over the Board, conduct all meetings of the Board, and execute all contracts, deeds, warrants, and other official documents on behalf of the Authority as authorized by the Board. The Vice Chairperson shall perform all of the duties of the Chairperson in the Chairperson’s absence.

2.2.2 Secretary. The City Clerk of City shall serve as Secretary of the Authority. The Secretary shall take and hold minutes of Board meetings, attest to contracts and other documents, record documents as necessary, keep and maintain records, and perform such other administrative functions as may be imposed upon the Secretary by the Board.

2.2.3 Treasurer. The Finance and Administrative Services Director of City shall serve as Treasurer of the Authority. Pursuant to Section 6505.2 of the Government Code, the Treasurer shall have charge of, handle, and have access to all accounts, funds, and money of the Authority and all records of the Authority relating thereto. In accordance with Section 6505.1 of the Government Code, the Treasurer shall file an official bond with the Board in an amount determined by the Board.

2.3 Authority Planning Commission. There is hereby established a planning commission to act as an advisory agency to the Board (the "Authority Planning Commission"). The Authority Planning Commission shall perform all of the functions that otherwise would be performed and shall have all of the duties and responsibilities that would be possessed by the Planning Commission of City if the Talega Property were located in the City’s boundaries.

The Authority Planning Commission shall be comprised of five (5) members. Each person who is a member of the Authority Planning Commission is referred to herein as a "Planning Commissioner." Two (2) of the Planning Commissioners shall be City staff members and shall be appointed by the City. Two (2) of the Planning Commissioners shall be County staff members and shall be appointed by the County. The fifth (5th) Planning Commissioner shall be a staff representative from the Orange County Fire Authority ("OCFA") and shall be appointed by the governing body of the OCFA; provided, however, that in the event the OCFA ceases to provide fire services to the Talega Property or fails or refuses to appoint a representative to serve as a Planning Commissioner, the fifth (5th) Planning Commissioner shall
be a neutral person appointed by a majority of the other four (4) Planning Commissioners. Each Planning Commissioner shall serve at the pleasure of his or her appointing body and may be removed at any time, with or without cause, at the sole discretion of that appointing body.

3. MEETINGS OF THE BOARD OF DIRECTORS.

3.1 Initial Organization Meeting. Within thirty (30) days following the Effective Date of this Agreement, the Directors shall hold a meeting (the "Initial Organizational Meeting") and organize the Authority by electing and appointing officers as specified herein, and taking such other actions as may be required or appropriate.

3.2 Regular Meetings. Authority shall hold a regular annual meeting in June of each year (the "Annual Meeting") and, by resolution, may provide for the holding of regular meetings at more frequent intervals. The time and place of the regular meetings of the Board shall be determined by resolution adopted by the Board. All Board meetings, including regular, adjourned, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.).

3.3 Conduct of Meetings. The Chairperson, or in the absence of the Chairperson, the Vice-Chairperson, shall conduct the meetings of the Board. Meetings shall be conducted pursuant to the most current edition of "Robert's Rules of Order" unless otherwise provided by any rule, regulation, or bylaw of the Board.

3.4 Voting. Each Director shall be entitled to one (1) vote. Unless otherwise provided in this Agreement, a vote of the majority of those present and qualified to vote shall be sufficient for the adoption of any motion, resolution, or order and to take any other action deemed appropriate to carry forward the objectives of the Authority.

3.5 Minutes. The Secretary of the Board shall cause minutes of regular, adjourned regular, and special meetings to be kept.

4. TERM.

4.1 Effective Date. This Agreement shall become effective and the Authority shall be formed after each Member Agency has adopted a resolution authorizing entering into this Agreement and upon the date when this Agreement shall have been executed by the last public official authorized to execute and bind his or her Member Agency, which date shall be inserted into the preamble of this Agreement. Upon the Effective Date of this Agreement, the Authority shall timely file all required statements and documents with the County Clerk of the County of Orange and the Secretary of State of the State of California.

4.2 Termination. This Agreement shall terminate as to individual lots, parcels, and portions of the Talega Property as and when the annexation of such lots, parcels, and portions of the Talega
Property into the City becomes effective. This Agreement shall terminate in its entirety upon the effective date of the annexation of all of the Talega Property into the City. Upon the termination of this Agreement, any surplus funds of Authority shall be distributed to the Member Agencies in proportion to the funds each Member Agency provided to the Authority.

5. MISCELLANEOUS.

5.1 Fire and Police Services. City, at no cost to County, shall provide fire, police, and sheriff services to portions of the Talega Property as and when the building permits for such portions are issued by the Authority. In addition to any other remedies available to County, should City abandon the provision of police and sheriff services required by this Agreement, City shall pay to County the sum of Two Hundred Dollars ($200) per residential unit for each residential unit remaining in unincorporated territory as to which such service has been abandoned. Payment shall be due on the later of: (i) eighteen (18) months after the issuance of a building permit for each residential unit as to which the City abandons providing said services or (ii) thirty (30) days after City receives a notice of abandonment from County and a demand for payment. In the event City receives a notice of abandonment and demand for payment from County, City shall have thirty (30) days from receipt of notice to either resume service (in which case no payment shall be due hereunder) or to pay County as required herein.

5.2 Notices. Formal notices, demands, and communications between City and the Authority shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

County:

County of Orange
P.O. Box 149
Santa Ana, California 92702
Attn: Tom Matthews

Copy to:

County Counsel's Office
P. O. Box 1379
Santa Ana, California 92702
Attn: Benjamin P. de Mayo

City:

City of San Clemente
City Hall
100 Avenida Presidio
San Clemente, California 92672
Attn: City Manager

Copy to:

Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, California 92625
Attn: Jeffrey M. Oderman, Esq.
Notices shall be deemed effective upon receipt if notice is given pursuant to clause (i) or (ii) of the preceding sentence; notices shall be deemed effective three (3) business days after deposit in the mail if given pursuant to clause (iii) of the preceding sentence. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either party may from time to time designate by mail.

5.3 Rights and Remedies are Cumulative. Except as may be expressly set forth in this Agreement, the rights and remedies of the Member Agencies are cumulative and the exercise by either Member Agency of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such Member Agency, at the same or different times, of any other rights or remedies to which such Member Agency may be entitled.

5.4 Entire Agreement, Waivers, and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Member Agencies with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Member Agency to be charged. All amendments and modifications hereto must be in writing and signed by the appropriate authorities of each Member Agency.

5.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.6 No Third Party Beneficiaries. Notwithstanding any other provision of this Agreement to the contrary, nothing herein is intended to create any third party beneficiaries to this Agreement, and no person or entity other than City and County, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.

5.7 Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

(signatures on next page)
IN WITNESS WHEREOF the Member Agencies hereto have executed this Agreement to be effective as of the Effective Date.

"CITY"

CITY OF SAN CLEMENTE,
a California municipal corporation

By: __________________________
    Lee Berg

Its: __________________________
    Mayor

ATTEST:

______________________________
    City Clerk

APPROVED AS TO FORM:

______________________________
    City Attorney
    Jeffrey M. Oderman

"COUNTY"

COUNTY OF ORANGE,
a political subdivision of the State of California

By: __________________________
    Chairman of the Board of Supervisors

APPROVED AS TO FORM:

______________________________
    LAWRENCE M. WATSON
    County Counsel

By: __________________________
    Deputy
EXHIBIT "A"

LEGAL DESCRIPTION OF TALEGA PROPERTY

Talega Valley Conveyance Parcel A:

Parcel 1, as shown on and described in that certain Certificate of Compliance No. 87-06, recorded August 7, 1987 as Instrument No. 87-449971, Official Records.

Talega Valley Conveyance Parcel C1:

Lots 1 to 5 inclusive, 10 to 33 inclusive, and Lots A, B, C, D, E and F of Tract No. 13872, as shown on a Map recorded in Book 683, Pages 1 to 22 inclusive, of Miscellaneous Maps, records of Orange County, California.

Excepting from said Lot 3 that portion of the land deeded to Santa Margarita Water District by a Partnership Grant Deed recorded December 31, 1991 as Instrument No. 91-722005 and re-recorded March 5, 1992 as Instrument No. 92-134990, both of Official Records of said Orange County.

Also excepting from said Lot 1 that portion of the land deeded to San Diego Gas & Electric Company by a Partnership Grant Deed recorded December 23, 1992 as Instrument No. 92-880675 of said Official Records.

Talega Valley Conveyance Parcel C2:

Parcels 1, 2, 3, 4, 5 and A, as shown on that certain Certificate of Compliance No. CC 96-003 recorded February 7, 1997 as Instrument No. 19970060841 of Official Records of Orange County, California.
EXHIBIT "B"

INITIAL LAND USE REGULATIONS

1. City of San Clemente General Plan (Adopted May 6, 1993)
2. City of San Clemente Housing Element (Adopted December 20, 1989)
6. Title 13 Public Services - San Clemente Municipal Code (Codified 1996)
8. Title 16 Subdivisions - San Clemente Municipal Code (Codified 1996)
10. City of San Clemente Engineering Division Standard No. 1801, Street Light Standard
11. City of San Clemente Engineering Division Standard No. 101, Trench and Roadway Repair
13. Design Guidelines City of San Clemente (Adopted November 6, 1991)
15. City of San Clemente Park and Recreation Master Plan (Adopted 1998) *
16. Regional Circulation Financing and Phasing Program (Adopted April 15, 1989; Amended July 19, 1995 and December 17, 1997)
17. Talega Specific Plan (Adopted July 1, 1992; Amended November 18, 1998; Comprehensive amendment in process)
19. Talega Master Local Park Implementation Plan (Approved February 15, 1989) **
21. Interim Habitat Loss Mitigation Plan of the Talega Valley Development (Dated October 6, 1998)
22. Talega Area Plan Preliminary Public Safety (Fire/EMS) Services Plan (Dated January 15, 1999)
23. San Clemente Fire Station Location Study (Draft April, 1998; document not yet final)

Notes:
* Santa Margarita Water District, Capistrano Unified School District, Orange County Fire Authority, and other appropriate agencies have policies and fees which are applicable to development in the Talega Valley Specific Plan area. Fees for said agencies are collected by the individual agencies.
** The City of San Clemente Parks and Recreation Master Plan is currently being updated. The most recent draft, dated March 1999, incorporates the Talega Local Park Implementation Plan. If the Master Plan is adopted as such, Item 19 will be deleted from the list.
ORDINANCE NO. 1230

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING A JOINT POWERS AGREEMENT CREATING THE TALEGA JOINT PLANNING AUTHORITY

WHEREAS, Government Code Section 6500 et seq. provides that two or more public agencies may, by agreement, jointly exercise any power common to the contracting parties; and

WHEREAS, the City of San Clemente ("City") and the County of Orange ("County") are public agencies as defined by Government Code Section 6500 et seq. and are authorized and empowered to contract for the joint exercise of powers common to each of them; and

WHEREAS, there currently exists certain real property consisting of approximately seven hundred ninety-two (792) acres of undeveloped land in unincorporated territory of the County of Orange adjacent to and within the sphere of influence of the City (the "Rolling Hills Planned Community"); and

WHEREAS, on September 2, 1998, this City Council adopted its Ordinance No. 1209 approving a Development Agreement with Talega Associates LLC, the owner of the Rolling Hills Planned Community and certain adjacent real property located within the City limits ("Developer"); and

WHEREAS, Section 9.4.1 of said Development Agreement provides for the City and Developer to cooperate in the annexation of the Rolling Hills Planned Community into the City pursuant to the Cortese/Knox Local Government Reorganization Act of 1985, Government Code 56000 et seq.; and

WHEREAS, Developer has filed a petition with the Orange County Local Agency Formation Commission for the annexation of a portion of the Rolling Hills Planned Community into the City; and

WHEREAS, the City and County have negotiated and prepared that certain Joint Powers Agreement Creating the Talega Joint Planning Authority ("Agreement") attached hereto as Exhibit "A" and incorporated herein by this reference, which Agreement is the subject of this Ordinance; and

WHEREAS, the Agreement creates the Talega Joint Planning Authority (the "Authority") and provides for the Authority to jointly exercise the powers of the County and City with respect to the regulation of the planning and development of the Rolling Hills Planned Community prior to the effective date of the annexation of successive portions of said property; and

WHEREAS, pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq. ("CEQA"), and the State CEQA Guidelines, Title 14 of the California Code of Regulations, Section 15000 et seq. (the "State CEQA Guidelines"), the
City prepared an Initial Study and an Addendum to Environmental Impact Report 84-02 for the annexation of the Rolling Hills Planned Community to the City, approval of the Agreement, and creation of the Authority; and

WHEREAS, on June 16, 1999, this City Council adopted its Resolution No. 99-63 certifying that the Initial Study and Addendum to EIR 84-02 have been completed in compliance with CEQA and the State CEQA Guidelines, the City Council has reviewed and considered said documents and the information contained therein, and the Initial Study and Addendum reflect the independent judgment of the City;

NOW, THEREFORE, the City Council of the City of San Clemente HEREBY ORDAINS AS FOLLOWS:

Section 1. All of the recitals set forth hereinafore are true and correct and incorporated herein.

Section 2. The Agreement is consistent with the objectives, policies, general land uses, and programs of the General Plan of the City.

Section 3. The City Council hereby approves the Agreement, the Mayor is hereby authorized to execute the Agreement with the County on behalf of the City, and the City Manager is hereby authorized to take all necessary and appropriate actions to implement the Agreement.

Section 4. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published in the manner required by law. This Ordinance shall become effective upon the expiration of thirty (30) days from and after its passage.

APPROVED AND ADOPTED this 21st day of July, 1999.

Lori Berg
Mayor of the City of San Clemente, California

ATTEST:

CITY CLERK of the City of San Clemente, California
STATE OF CALIFORNIA )
COUNTY OF ORANGE ) ss
CITY OF SAN CLEMENTE )

I, MYRNA ERWAY, City Clerk of the City of San Clemente, California, do hereby certify that Ordinance No. 1230 was introduced at the meeting of July 8, 1999, the reading in full thereof unanimously waived, and was adopted at a regular meeting of the City Council held on the 21st day of July, 1999, by the following vote:

AYES: DAHL, DIEHL, EGGLESTON, RITSHEL, MAYOR BERG
NOES: NONE
ABSENT: NONE

City Clerk of the City of San Clemente, California

APPROVED AS TO FORM:

Jeffrey M. Oderman, City Attorney
EXHIBIT "A"

JOINT POWERS AGREEMENT CREATING THE TALEGA JOINT PLANNING AUTHORITY

[attached]
JOINT POWERS AGREEMENT CREATING
THE TALEGA JOINT PLANNING AUTHORITY

by and between

CITY OF SAN CLEMENTE

and

COUNTY OF ORANGE
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JOINT POWERS AGREEMENT CREATING THE
TALEG A JOINT PLANNING AUTHORITY

This JOINT POWERS AGREEMENT CREATING THE TALEGA JOINT PLANNING AUTHORITY ("Agreement") is made this ___ day of _____, 1999 (the "Effective Date"), by and between the CITY OF SAN CLEMENTE, a California municipal corporation ("City"), and the COUNTY OF ORANGE, a political subdivision of the State of California ("County"). City and County are collectively referred to herein as the "Member Agencies" and individually as a "Member Agency."

REQUITALS:

A. Government Code Section 6500 et seq. provides that two or more public agencies may, by agreement, jointly exercise any power common to the contracting parties.

B. City and County are public agencies as defined by Government Code Section 6500 et seq. and are authorized and empowered to contract for the joint exercise of powers common to each member of the joint powers authority created hereby.

C. City and County now wish to jointly exercise their powers to provide for the regulation of the development of that certain real property consisting of approximately seven hundred ninety-two (792) acres of land located in unincorporated territory of the County adjacent to and within the sphere of influence of the City (the "Talega Property"). The Talega Property is more particularly described in the legal description attached hereto as Exhibit "A."

AGREEMENT:

Based upon the foregoing Recitals, which are incorporated herein by this reference and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and County agree as follows:

1. PURPOSE AND POWERS.

1.1 Purpose. The Member Agencies have the power to regulate land use and development within their respective jurisdictions. This regulatory authority includes the power to adopt and enforce building, zoning, planning, and other land use regulations. The purpose of this Agreement is to create a joint powers authority pursuant to Government Code Section 6500 et seq. to regulate and control the development of the Talega Property.

1.2 Creation of Authority. Pursuant to Government Code Section 6500 et seq., there is hereby created a public entity separate and apart from the Member Agencies hereto to be known as the "Talega Joint Planning Authority" (the "Authority"). Pursuant to Government Code Section 6508.1, the debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, and obligations of the Member Agencies.
1.3 Powers of the Authority.

1.3.1 General Powers. The Authority shall exercise in the manner provided herein the powers which are common to the Member Agencies and necessary to the accomplishment of the purposes of this Agreement.

1.3.2 Specific Powers. The Authority shall have the power to do any of the following in its own name:

(a) To exercise the police powers of the Member Agencies to regulate the planning and development of the Talega Property, including without limitation (i) the adoption and amendment of a general plan, specific plan, and zoning ordinance applicable to the Talega Property, (ii) the power to process and approve, conditionally approve, and deny area plans, tentative and final subdivision maps, parcel maps, conditional use permits and variances, grading permits, site plans and/or architectural reviews, plans for landscaping, signage, and other similar improvements, public works improvement plans, building permits, and similar development and building plans and permits, (iii) the adoption, enforcement, and implementation of requirements for (A) the dedication of land, (B) the levying and collection of development and building fees, processing and plan-check fees, and fees for inspection of public and private works of improvement, and (C) other exactions and charges imposed upon development and building, and (iv) to enforce all federal, state, and local laws, rules, and regulations that are within the jurisdiction of City or County to enforce with respect to the items referred to in clauses (i)-(iii), including without limitation and to the extent applicable the provisions of the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.).

(b) To contract for professional, legal, administrative, technical, and other services to be provided to the Authority as may be necessary to accomplish the purposes of this Agreement. It is specifically contemplated that the Authority will contract with City for City to provide the administrative engineering, planning, and building services required for the development of the Talega Property.

(c) To enforce the rules and regulations adopted by the Authority as well as State law pertaining to planning and development.

(d) To incur debts, liabilities, and obligations consistent with the purposes of this Agreement.

(e) To invest and manage funds.

(f) To sue and be sued in its own name.

(g) To carry out and enforce all provisions of this Agreement.
1.3.3 Manner of Exercise of Powers; Initial Land Use Regulations. Except as expressly set forth in Section 1.3.4 herein, and pursuant to California Government Code Section 6509, the powers of the Authority are subject to the restrictions that are imposed upon City’s exercise of similar powers. In this regard, the land use regulations and development standards of City set forth in Exhibit "B" attached hereto (the "Initial Land Use Regulations") shall be applicable to the development and planning of the Talega Property on the Effective Date (without the need for execution of any further document or the taking of any further action by County, City, or the Authority). Except as expressly set forth in Section 1.3.4 herein, nothing herein is intended as a limitation on Authority’s right to amend the Initial Land Use Regulations from time to time during the term of this Agreement and to adopt such other requirements and regulations governing the planning and development of the Talega Property as Authority deems appropriate. The amendment of the Initial Land Use Regulations by the Authority shall not require the amendment of this Agreement by the Member Agencies. Except as expressly set forth in clauses (i) and (ii) of Section 1.3.4(e), in the event of any conflict between the Initial Land Use Regulations, as the same may be amended from time to time, and the provisions set forth in Section 1.3.4 of this Agreement, the provisions set forth in Section 1.3.4 of this Agreement shall prevail.

1.3.4 Limitation on Powers of Authority; Regulations Governing the Development of the Talega Property. In addition to the Initial Land Use Regulations, the development standards and land use regulations set forth in this Section 1.3.4 shall be applicable to the development and planning of the Talega Property on the Effective Date (without the need for execution of any further document or the taking of any further action by County, City, or the Authority). The Authority may not adopt any ordinances, resolutions, or other rules, regulations or policies which are in conflict with the provisions set forth in this Section 1.3.4.

(a) In no event shall the Authority have the power to implement or enforce the provisions of Chapter 15.44 of City’s Municipal Code, as the same now exists or may hereafter be amended, or any regulation, rule, or official policy of City adopted pursuant thereto, and in regard to controls on the timing and phasing of development (whether based upon a limit on the number of residential building permits, such as exists with Chapter 15.44 of City’s Municipal Code, or otherwise), the powers of the Authority shall be exercised in the manner County exercises its authority on the Effective Date of this Agreement.

(b) With respect to that portion of the Talega Property encompassed within Tentative Tract Map Nos. 13873, 13878, 13880, 13894, 15798, and 15799 which were approved by the County prior to the Effective Date, the powers of the Authority with respect to land use and development standards (i.e., General Plan, Specific Plan, Feature Plan, Area Plan, zoning, subdivision, and other similar discretionary development standards) shall be exercised in the manner County exercises its authority on the Effective Date of this Agreement; provided, however, that
the powers of the Authority with respect to non-discretionary building, public works, grading, and similar standards shall be exercised in the manner City exercises its authority at the time the relevant actions are taken.

(c) With respect to any tentative maps for financing and conveyance purposes only which were approved by the County prior to the Effective Date, the powers of the Authority with respect to final map approval shall be exercised in the manner County exercises its authority on the Effective Date of this Agreement.

(d) With respect to Tentative Tract Map Nos. 13917 and 13918 which were approved by the County prior to the Effective Date, the powers of the Authority with respect to final map approval shall be exercised in the manner County exercises its authority on the Effective Date of this Agreement; provided, however, that the powers of the Authority with respect to site plan review and approval shall be exercised in accordance with the Initial Land Use Regulations, as the same may be amended from time to time.

(e) The Rolling Hills Feature Plan for the Talega Property adopted by the Orange County Board of Supervisors on May 4, 1998, and all amendments thereto through the Effective Date (the "Feature Plan") shall be applicable to the development of the Talega Property, subject to the following limitations and exceptions: (i) in the event of any conflict between the Initial Land Use Regulations, as the same may be amended from time to time, and the provisions of the Feature Plan, the Initial Land Use Regulations shall govern; (ii) the Feature Plan shall be superseded by the comprehensive amendment to the Talega Specific Plan referred to in paragraph 17 of Exhibit "B," to the extent the same is adopted by the Authority; and (iii) with regard to precise grading permits for model homes within the Talega Property, the requirements of the Feature Plan set forth in the last sentence of Section 3(30)(d) of County's Ordinance No. 3765 shall be satisfied by approval of a precise grading plan for each model home or model home complex by the Authority Planning Commission prior to approval of a final tract map.

(f) In exercising its powers hereunder, the Authority shall not issue a building permit for any building (other than a model home) within any portion of the Talega Property unless both of the following conditions have been satisfied: (i) a petition for annexation into the City of the portion of the Talega Property on which such building is located has been certified as sufficient by the Orange County Local Agency Formation Commission pursuant to Government Code Section 56706; and (ii) the City Manager of City or his or her designee shall have approved the phasing plan to be submitted by the master developer of the Talega Property.

(g) In exercising its powers hereunder, the Authority shall not authorize the permanent occupancy of model homes
within any portion of the Talega Property for which the annexation into the City has not been completed.

(h) The setback standards set forth in this subparagraph (h) shall apply to the development of the Talega Property:

(i) with regard to planned unit developments (as that term is defined in Chapter 7 of the Talega Specific Plan referred to in paragraph 17 of Exhibit "B"), minimum front setbacks for habitable spaces, porches, and projections shall be no less than the setback set forth in the Uniform Building Code, as such code is adopted and amended by the Authority from time to time;

(ii) rear setbacks for planned unit developments shall be no less than 5'0"; and

(iii) front setbacks for garage doors of attached homes shall be no less than 5'0", measured from face of curb (or center of drainage in rolled curbs) where the garage is equipped with a roll-up garage door, with the further provision that no garage door shall be set back a dimension greater than 5'0" and less than 18'0".

In addition to the minimum setback standards above, each block of a project shall have median setbacks no less than the dimensions set forth below:

(i) with regard to planned unit developments, median front setbacks for habitable spaces, porches, and projections shall be no less than 10'0";

(ii) median rear setbacks for planned unit developments shall be no less than 10'0"; and

(iii) median front setbacks for garage doors for attached homes shall be no less than 11'6".

Median setbacks shall be calculated using the single minimum dimension for each dwelling unit. For the purposes of this subparagraph, the term "block" shall mean those dwellings on one side of a public or private street between intersecting streets or between an intersecting street and the centerline extension at the end of a cul-de-sac.

(i) Subject to the approval of the Orange County Fire Authority, the powers of the Authority with regard to determining cul-de-sac lengths shall be exercised in the manner County exercises its authority; provided, however, that in no event shall the maximum length of cul-de-sacs in the Talega Property be greater than One Thousand (1000) feet.

(j) The maximum number of feet between catch basins in the Talega Property shall be as determined by the Authority on
a case-by-case basis based on good engineering design and operational practices.

(k) Nothing in this Agreement is intended to supersede or replace any County jurisdiction or control over the Talega Property that exists prior to the completion of annexation into the City, as set forth in Titles 1-6 of the Codified Ordinances of County, as the same may be amended from time to time.

2. ORGANIZATION OF AUTHORITY.

2.1 Board of Directors.

2.1.1 Establishment of Board and Designation of Directors. The Authority shall be governed by the Board of Directors ("Board") which shall be comprised of five (5) members. Each person who is a member of the Board is referred to herein as a "Director." Three (3) of the Directors shall be appointed by the City Council of City (the "City Directors"). The remaining two (2) Directors (the "County Directors") shall be appointed by the Board of Supervisors of County.

2.1.2 Term of Directors. The term of each Director shall commence on the Effective Date and shall continue until the appointment of a successor by the City Council of City or the Board of Supervisors of County, whichever governing body appointed the Director. Each Director shall serve at the pleasure of his or her appointing body and may be removed at any time, with or without cause, at the sole discretion of the appointing body.

2.1.3 No Compensation. No Director will receive compensation from the Authority for his or her services.

2.1.4 Procedures. The Board may establish and adopt by-laws, policies, rules, regulations, and procedures to govern its operations consistent with the limits of authority granted to authority pursuant to Section 1.3 of this Agreement.

2.1.5 Adoption of General Budget. At the Initial Organizational Meeting (as that term is defined in Section 3.1) and annually thereafter, no later than the Annual Meeting (as that term is defined in Section 3.2), the Board shall review and approve a general budget for the Authority. Thereafter, at or prior to the Annual Meeting, the Board shall adopt a general budget for the following Fiscal Year by a vote of at least a majority of all of the Directors. As used herein, the term "Fiscal Year" shall mean the period from July 1 to the following June 30.

2.1.6 Assessments. The Board may levy an assessment against City for the necessary and proper expenses of Authority, but may not levy an assessment against the County for any expenses of the Authority.

2.1.7 Annual Audit. The Board shall arrange and provide for an annual audit of the accounts and records of the Authority by
an auditor in accordance with the requirements set forth in Government Code Section 6505.

2.2 Officers.

2.2.1 Chairperson and Vice Chairperson. Within thirty (30) days following the Effective Date, the Board shall hold a meeting (the "Initial Organizational Meeting") at which the Board shall elect from among its Directors a Chairperson and a Vice-Chairperson. Those elected to the position of Chairperson and Vice Chairperson at the Initial Organizational Meeting shall serve until the Annual Meeting. Subsequent terms for the Chairperson and Vice Chairperson shall run for one (1) year, with elections held at each Annual Meeting. The Chairperson shall preside over the Board, conduct all meetings of the Board, and execute all contracts, deeds, warrants, and other official documents on behalf of the Authority as authorized by the Board. The Vice Chairperson shall perform all of the duties of the Chairperson in the Chairperson's absence.

2.2.2 Secretary. The City Clerk of City shall serve as Secretary of the Authority. The Secretary shall take and hold minutes of Board meetings, attest to contracts and other documents, record documents as necessary, keep and maintain records, and perform such other administrative functions as may be imposed upon the Secretary by the Board.

2.2.3 Treasurer. The Finance and Administrative Services Director of City shall serve as Treasurer of the Authority. Pursuant to Section 6505.2 of the Government Code, the Treasurer shall have charge of, handle, and have access to all accounts, funds, and money of the Authority and all records of the Authority relating thereto. In accordance with Section 6505.1 of the Government Code, the Treasurer shall file an official bond with the Board in an amount determined by the Board.

2.3 Authority Planning Commission. There is hereby established a planning commission to act as an advisory agency to the Board (the "Authority Planning Commission"). The Authority Planning Commission shall perform all of the functions that otherwise would be performed and shall have all of the duties and responsibilities that would be possessed by the Planning Commission of City if the Talega Property were located in the City's boundaries.

The Authority Planning Commission shall be comprised of five (5) members. Each person who is a member of the Authority Planning Commission is referred to herein as a "Planning Commissioner." Two (2) of the Planning Commissioners shall be City staff members and shall be appointed by the City. Two (2) of the Planning Commissioners shall be County staff members and shall be appointed by the County. The fifth (5th) Planning Commissioner shall be a staff representative from the Orange County Fire Authority ("OCFA") and shall be appointed by the governing body of the OCFA; provided, however, that in the event the OCFA ceases to provide fire services to the Talega Property or fails or refuses to appoint a representative to serve as a Planning Commissioner, the fifth (5th) Planning Commissioner shall
be a neutral person appointed by a majority of the other four (4) Planning Commissioners. Each Planning Commissioner shall serve at the pleasure of his or her appointing body and may be removed at any time, with or without cause, at the sole discretion of that appointing body.

3. MEETINGS OF THE BOARD OF DIRECTORS.

3.1 Initial Organization Meeting. Within thirty (30) days following the Effective Date of this Agreement, the Directors shall hold a meeting (the "Initial Organizational Meeting") and organize the Authority by electing and appointing officers as specified herein, and taking such other actions as may be required or appropriate.

3.2 Regular Meetings. Authority shall hold a regular annual meeting in June of each year (the "Annual Meeting") and, by resolution, may provide for the holding of regular meetings at more frequent intervals. The time and place of the regular meetings of the Board shall be determined by resolution adopted by the Board. All Board meetings, including regular, adjourned, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.).

3.3 Conduct of Meetings. The Chairperson, or in the absence of the Chairperson, the Vice-Chairperson, shall conduct the meetings of the Board. Meetings shall be conducted pursuant to the most current edition of "Robert's Rules of Order" unless otherwise provided by any rule, regulation, or bylaw of the Board.

3.4 Voting. Each Director shall be entitled to one (1) vote. Unless otherwise provided in this Agreement, a vote of the majority of those present and qualified to vote shall be sufficient for the adoption of any motion, resolution, or order and to take any other action deemed appropriate to carry forward the objectives of the Authority.

3.5 Minutes. The Secretary of the Board shall cause minutes of regular, adjourned regular, and special meetings to be kept.

4. TERM.

4.1 Effective Date. This Agreement shall become effective and the Authority shall be formed after each Member Agency has adopted a resolution authorizing entering into this Agreement and upon the date when this Agreement shall have been executed by the last public official authorized to execute and bind his or her Member Agency, which date shall be inserted into the preamble of this Agreement. Upon the Effective Date of this Agreement, the Authority shall timely file all required statements and documents with the County Clerk of the County of Orange and the Secretary of State of the State of California.

4.2 Termination. This Agreement shall terminate as to individual lots, parcels, and portions of the Talega Property as and when the annexation of such lots, parcels, and portions of the Talega
Property into the City becomes effective. This Agreement shall terminate in its entirety upon the effective date of the annexation of all of the Talega Property into the City. Upon the termination of this Agreement, any surplus funds of Authority shall be distributed to the Member Agencies in proportion to the funds each Member Agency provided to the Authority.

5. MISCELLANEOUS.

5.1 Fire and Police Services. City, at no cost to County, shall provide fire, police, and sheriff services to portions of the Talega Property as and when the building permits for such portions are issued by the Authority. In addition to any other remedies available to County, should City abandon the provision of police and sheriff services required by this Agreement, City shall pay to County the sum of Two Hundred Dollars ($200) per residential unit for each residential unit remaining in unincorporated territory as to which such service has been abandoned. Payment shall be due on the later of: (i) eighteen (18) months after the issuance of a building permit for each residential unit as to which the City abandons providing said services or (ii) thirty (30) days after City receives a notice of abandonment from County and a demand for payment. In the event City receives a notice of abandonment and demand for payment from County, City shall have thirty (30) days from receipt of notice to either resume service (in which case no payment shall be due hereunder) or to pay County as required herein.

5.2 Notices. Formal notices, demands, and communications between City and the Authority shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

County: Country of Orange
P.O. Box 149
Santa Ana, California 92702
Attn: Tom Matthews

Copy to: County Counsel's Office
P. O. Box 1379
Santa Ana, California 92702
Attn: Benjamin P. de Mayo

City: City of San Clemente
City Hall
100 Avenida Presidio
San Clemente, California 92672
Attn: City Manager

Copy to: Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, California 92626
Attn: Jeffrey M. Oderman, Esq.
Notices shall be deemed effective upon receipt if notice is given pursuant to clause (i) or (ii) of the preceding sentence; notices shall be deemed effective three (3) business days after deposit in the mail if given pursuant to clause (iii) of the preceding sentence. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either party may from time to time designate by mail.

5.3 Rights and Remedies are Cumulative. Except as may be expressly set forth in this Agreement, the rights and remedies of the Member Agencies are cumulative and the exercise by either Member Agency of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such Member Agency, at the same or different times, of any other rights or remedies to which such Member Agency may be entitled.

5.4 Entire Agreement, Waivers, and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Member Agencies with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Member Agency to be charged. All amendments and modifications hereto must be in writing and signed by the appropriate authorities of each Member Agency.

5.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.6 No Third Party Beneficiaries. Notwithstanding any other provision of this Agreement to the contrary, nothing herein is intended to create any third party beneficiaries to this Agreement, and no person or entity other than City and County, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.

5.7 Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

(signatures on next page)
IN WITNESS WHEREOF the Member Agencies hereto have executed this Agreement to be effective as of the Effective Date.

"CITY"

CITY OF SAN CLEMENTE,
a California municipal corporation

By: __________________________

Its: _________________________

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY
Jeffrey M. Oderman

"COUNTY"

COUNTY OF ORANGE,
a political subdivision of the State of California

By: __________________________
Chairman of the Board of Supervisors

APPROVED AS TO FORM:

LAWRENCE M. WATSON
COUNTY COUNSEL

By: _________________________
DEPUTY
EXHIBIT "A"

LEGAL DESCRIPTION OF TALEGA PROPERTY

Talega Valley Conveyance Parcel A:

Parcel 1, as shown on and described in that certain Certificate of Compliance No. 87-06, recorded August 7, 1987 as Instrument No. 87-449971, Official Records.

Talega Valley Conveyance Parcel C1:

Lots 1 to 5 inclusive, 10 to 33 inclusive, and Lots A, B, C, D, E and F of Tract No. 13872, as shown on a Map recorded in Book 683, Pages 1 to 22 inclusive, of Miscellaneous Maps, records of Orange County, California.

Excepting from said Lot 3 that portion of the land deeded to Santa Margarita Water District by a Partnership Grant Deed recorded December 31, 1991 as Instrument No. 91-722005 and re-recorded March 5, 1992 as Instrument No. 92-134990, both of Official Records of said Orange County.

Also excepting from said Lot 1 that portion of the land deeded to San Diego Gas & Electric Company by a Partnership Grant Deed recorded December 23, 1992 as Instrument No. 92-880675 of said Official Records.

Talega Valley Conveyance Parcel C2:

Parcels 1, 2, 3, 4, 5 and A, as shown on that certain Certificate of Compliance No. CC 96-003 recorded February 7, 1997 as Instrument No. 19970060841 of Official Records of Orange County, California.
INITIAL LAND USE REGULATIONS

1. City of San Clemente General Plan (Adopted May 6, 1993)
2. City of San Clemente Housing Element (Adopted December 20, 1989)
6. Title 13 Public Services- San Clemente Municipal Code (Codified 1996)
8. Title 16 Subdivisions- San Clemente Municipal Code (Codified 1996)
10. City of San Clemente Engineering Division Standard No. 1801, Street Light Standard
11. City of San Clemente Engineering Division Standard No. 101, Trench and Roadway Repair
13. Design Guidelines City of San Clemente (Adopted November 6, 1991)
15. City of San Clemente Park and Recreation Master Plan (Adopted 1998)*
16. Regional Circulation Financing and Phasing Program (Adopted April 15, 1989; Amended July 19, 1995 and December 17, 1997)
17. Talega Specific Plan (Adopted July 1, 1992; Amended November 18, 1998; Comprehensive amendment in process)
19. Talega Master Local Park Implementation Plan (Approved February 15, 1989)**
21. Interim Habitat Loss Mitigation Plan of the Talega Valley Development (Dated October 6, 1998)
22. Talega Area Plan Preliminary Public Safety (Fire/EMS) Services Plan (Dated January 15, 1999)
23. San Clemente Fire Station Location Study (Draft April, 1998; document not yet final)

Notes:
* Santa Margarita Water District, Capistrano Unified School District, Orange County Fire Authority, and other appropriate agencies have policies and fees which are applicable to development in the Talega Valley Specific Plan area. Fees for said agencies are collected by the individual agencies.
** The City of San Clemente Parks and Recreation Master Plan is currently being updated. The most recent draft, dated March 1999, incorporates the Talega Local Park Implementation Plan. If the Master Plan is adopted as such, item 19 will be deleted from the list.
ORDINANCE NO. __________

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, MAKING ENVIRONMENTAL DETERMINATIONS AND APPROVING A JOINT POWERS AGREEMENT CREATING THE TALEGA JOINT PLANNING AUTHORITY

WHEREAS, Government Code Section 6500 et seq. provides that two or more public agencies may, by agreement, jointly exercise any power common to the contracting parties; and

WHEREAS, the City of San Clemente ("City") and the County of Orange ("County") are public agencies as defined by Government Code Section 6500 et seq. and are authorized and empowered to contract for the joint exercise of powers common to each of them; and

WHEREAS, there currently exists certain real property consisting of approximately seven hundred ninety-two (792) acres of undeveloped land in unincorporated territory of the County of Orange adjacent to and within the sphere of influence of the City (the "Rolling Hills Planned Community"); and

WHEREAS, on September 2, 1998, this City Council adopted its Ordinance No. 1209 approving a Development Agreement with the Talega Associates LLC, the owner of the Rolling Hills Planned Community and certain adjacent real property located within the City limits ("Developer"); and

WHEREAS, Section 9.4.1 of said Development Agreement provides for the City and Developer to cooperate in the annexation of the Rolling Hills Planned Community into the City pursuant to the Cortese/Knox Local Government Reorganization Act of 1985, Government Code 56000 et seq.; and

WHEREAS, Developer has filed a petition with the Orange County Local Agency Formation Commission for the annexation of a portion of the Rolling Hills Planned Community into the City; and

WHEREAS, the City and County have negotiated and prepared that certain Joint Powers Agreement Creating the Talega Joint Planning Authority ("Agreement") attached hereto as Exhibit "A" and incorporated herein by this reference, which Agreement is the subject of this Ordinance; and

WHEREAS, the Agreement creates the Talega Joint Planning Authority (the "Authority") and provides for the Authority to jointly exercise the powers of the County and City with respect to the regulation of the planning and development of the Rolling Hills Planned Community prior to the effective date of the annexation of successive portions of said property; and

WHEREAS, pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq. ("CEQA"), and the State CEQA Guidelines, Title 14 of the
California Code of Regulations, Section 15000 et seq. (the "State CEQA Guidelines"), the City prepared an Initial Study and an Addendum to Environmental Impact Report 84-02 for the annexation of the Rolling Hills Planned Community to the City, approval of the Agreement, and creation of the Authority; and

WHEREAS, based upon the environmental analysis set forth in said Initial Study and Addendum, the City has determined that: (1) there have not been substantial changes in the project that require major revisions to the previous EIR because of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) there have not been substantial changes with respect to the circumstances under which the project is undertaken which will require major revisions to the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) there is no new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete that shows any of the following: (a) that the project will have one or more significant effects not discussed in the previous EIR; (b) that significant effects previously examined will be substantially more severe than shown in the previous EIR; (c) that mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponent declined to adopt the mitigation measure or alternative; or (d) mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponent has declined to adopt the mitigation measure or alternative; and

WHEREAS, the Initial Study and Addendum to EIR 84-02 have been completed in compliance with CEQA and the State CEQA Guidelines, the City Council has reviewed and considered said documents and the information contained therein, and the Initial Study and Addendum reflect the independent judgment of the City;

NOW, THEREFORE, the City Council of the City of San Clemente HEREBY ORDAINS AS FOLLOWS:

Section 1. All of the recitals set forth hereinabove are true and correct and incorporated herein.

Section 2. The Agreement is consistent with the objectives, policies, general land uses, and programs of the General Plan of the City.

Section 3. The City Council hereby approves the Agreement, the Mayor is hereby authorized to execute the Agreement with the County on behalf of the City, and the City Manager is hereby authorized to take all necessary and appropriate actions to implement the Agreement.

Section 4. Copies of the Initial Study, the Addendum to EIR 84-02, EIR 84-02, and all public records relating thereto shall be maintained and shall be available for public inspection and copying in the offices of the Planning Division of the City located at 910 Calle Negocio, San Clemente, CA 92673.
Section 5. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published in the manner required by law. This Ordinance shall become effective upon the expiration of thirty (30) days from and after its passage.

APPROVED AND ADOPTED this ____ day of ____________, 1999.

__________________________
Mayor of the City of San Clemente, California

ATTEST:

__________________________
CITY CLERK of the City of San Clemente, California

STATE OF CALIFORNIA )
COUNTY OF ORANGE ) ss
CITY OF SAN CLEMENTE )

I, MYRNA ERWAY, City Clerk of the City of San Clemente, California, do hereby certify that Ordinance No. ______ was introduced at the meeting of ______________, 1999, the reading in full thereof unanimously waived, and was adopted at a regular meeting of the City Council held on the _____ day of ____________, 1999, by the following vote:

AYES:
NOES:
ABSENT:

__________________________
City Clerk of the City of San Clemente, California

APPROVED AS TO FORM:

__________________________
Jeffrey M. Oderman, City Attorney

538/062266-0165/3304870.1 e06/15/99

-3-
EXHIBIT "A"

JOINT POWERS AGREEMENT CREATING THE TALEGA JOINT PLANNING AUTHORITY

[attached]
INITIAL STUDY AND ADDENDUM TO EIR 84-02
FOR THE TALEGA VALLEY DEVELOPMENT
ANNEXATION TO THE CITY OF SAN CLEMENTE AND
FORMATION OF THE JOINT PLANNING AUTHORITY

Prepared for:

City of San Clemente
Planning and Community Development
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San Clemente, California 92673

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Property Owner:

Talega Associates, LLC
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Contact: Kathleen Brady, AICP

June 4, 1999
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Attachment A County of Orange Mitigation Monitoring Program for EIR 482
ADDENDUM TO EIR 84-02
TALEGA VALLEY DEVELOPMENT
ANNEXATION AND JOINT PLANNING AUTHORITY

1.0 PROJECT LOCATION

The Talega Valley Development is located in the southern portion of the County of Orange, north and south of Avenida Pico and west of Cristianitos Road. In its entirety, Talega Valley Development encompasses 3,510 acres; 1,906 acres are located within unincorporated Orange County, while 1,604 acres are within the City of San Clemente. Exhibit 1 depicts the regional location and Exhibit 2 provides a local vicinity map.

2.0 PROJECT BACKGROUND

Approvals were granted for the Talega Valley Development in 1988 by both the City of San Clemente and the County of Orange. Final environmental impact report (EIR) 84-02 was prepared by the City of San Clemente to address the entire Talega Valley Development site (both the City and unincorporated portions). The San Clemente City Council certified the document as adequate and complete on August 26, 1988 and approved the zone change associated with the Specific Plan. Following certification of final EIR 84-02, the City of San Clemente approved five tentative tract maps and grading permits have been issued. Grading and construction activities were initiated.

Concurrent with the City approvals, the County of Orange approved development within the unincorporated portion of the project, known as the Rolling Hills Planned Community. Final EIR No. 482 for the Rolling Hills Planned Community was prepared and was certified by the County of Orange Board of Supervisors on May 4, 1988. Following certification of final EIR No. 482, the County of Orange approved 22 tract maps and 16 grading permits within the Rolling Hills Planned Community.

The Talega Valley Development was purchased by Talega Associates, LLC, in May 1997. Permits for mass grading operations were reactivated following certification of a first addendum to EIR 84-02 in March 1998. The City of San Clemente approved a development agreement in August 1998, pursuant to a second addendum to EIR 84-02. Finally, a third addendum was approved in March 1999 which specifically addressed an Area Plan for a portion of the development located in the City. A development agreement is being negotiated for the County portion of the project and is expected to be approved in Summer 1999. Grading and construction is currently underway for portions of the project in both the City and County areas, north of Avenida Pico.

Permits by State and federal agencies have been required for the development of the proposed project. A streambed alteration agreement was obtained from the California Department of Fish and Game (CDFG) pursuant to Section 1600 of the California Fish and Game Code. Required permits pursuant to Section 404 of the Clean Water Act were previously obtained by the project applicant for the project; however, due to lack of activity, the permits expired. A new Section 404 Nationwide permit for the blue line stream within the portion of the project currently under construction was granted by the Army Corps of Engineers (ACOE) on March 9, 1998. An individual Section 404 permit for the remaining portion of the Talega Valley Development is pending. Additionally, a Section 4(d) permit was granted by the United States Fish and Wildlife Service (USFWS) on February 10, 1998 for the removal of coastal sage scrub on 713.2 acres (288.6 ha) of the Talega Valley Development.
3.0 PROJECT DESCRIPTION

The proposed project has two components: (1) the annexation of the County portion of the Talega Valley Development by the City of San Clemente, and (2) creation and formation of the Talega Joint Planning Authority (JPA) for purposes of regulating and controlling development within the Talega Development. The Local Agency Formation Commission (LAFCO) will be the approving body for the annexation; however, the City of San Clemente must provide a notice of intent to annex the subject area. The City of San Clemente and the County of Orange would both be approving bodies for the formation of the JPA. The following provides a more detailed description of the project.

3.1 Annexation

The Rolling Hills Planned Community (the portion of the Talega Valley Development currently in unincorporated Orange County) is located in the sphere of influence of the City of San Clemente. The City development agreement, approved in August 1998, requires that the owner diligently pursue annexation of the property to the City. The owner, City, and staff for the Orange County Planning and Development Services Department and LAFCO have agreed upon a process for phased annexation of the property. The proposed annexation process assumes that a portion of the property approved for non-residential development in accordance with the development approvals shall be annexed in bulk as part of the first phase of annexations. An annexation application for non-residential development was submitted to LAFCO in September 1998. The proposed annexation process further provides that the portion of the property approved for residential development will be annexed in phases after issuance of building permits by the County and prior to issuance of occupancy permits. Application for the annexation of the residential portion shall occur as soon as possible following the issuance of residential building permits by the County. This concept is also outlined in the draft development agreement with the County. The County’s draft development agreement states that “upon annexation of the property, or any portion thereof, to the City, the City shall succeed to the benefits and rights and be bound by the obligations and duties of the County, the same as if the City were a signatory of the development agreement”.

As part of the initial action on the project, the LAFCO Board of Directors will be asked to approve the phased concept for the annexation of the County portion of the project to the City of San Clemente and authorize the first increment of the annexation, which includes a portion of non-residential land uses of the Rolling Hills Planned Community. An action requiring CEQA documentation would be required by both the City of San Clemente and LAFCO. The City would need to approve a notice of intent to annex and LAFCO would approve the actual annexation.

3.2 Joint Planning Authority

Recognizing the project is located in both the County and the City of San Clemente, the project proposes the creation of a Talega Joint Planning Authority (JPA) for purposes of regulating and controlling development within the Talega Valley Development. This will help ensure that consistent development standards are used throughout the Talega Valley site. The concept of the JPA builds upon the development agreements between the landowner and the City of San Clemente and the County of Orange, which provides for ultimate annexation of the County portion of the Talega Valley Development to the City.

The joint powers agreement creating the JPA will be implemented, pursuant to Government Code Section 6500 et seq. The code states that two or more public agencies may jointly exercise any
Regional Location
Talega Valley Development

Exhibit 1
power which is common to those entities. This agreement empowers the JPA to adopt and enforce building, zoning, planning, and other land use regulations. The powers to be entrusted to the JPA are specified in the agreement and summarized below:

(a) To exercise the police powers of the Member Agencies to regulate the planning and development of the Talega Property, including: the adoption and amendment of a general plan, specific plan, and zoning ordinance applicable to the Talega Property, the power to process and approve, conditionally approve, and deny area plans, tentative and final subdivision maps, parcel maps, conditional use permits and variances, grading permits, site plans and/or architectural reviews, plans for landscaping, signage, and other similar improvements, public works improvement plans, building permits, and similar development and building plans and permits, the adoption, enforcement, and implementation of requirements for the dedication of land, the levying and collection of development and building fees, processing and plan check fees, and fees for inspection of public and private works of improvement, and other exactions and charges imposed upon development and building; and enforce all federal, state, and local laws, rules, and regulations that are within the jurisdiction of City or County. The land use regulations and development standards of City shall be applicable to the development and planning of the Talega Property except as identified on Section 1.3.4 of the Agreement.

(b) To contract for professional, legal, administrative, technical, and other services to be provided to the JPA as may be necessary to accomplish the purposes of this Agreement.

(c) To enforce the rules and regulations adopted by the JPA as well as State law pertaining to planning and development.

(d) To incur debts, liabilities, and obligations consistent with the purposes of this Agreement.

(e) To invest and manage funds.

(f) To sue and be sued in its own name.

(g) To carry out and enforce all provisions of this Agreement.

The JPA Board of Directors would consist of five members (Directors), three from the City of San Clemente and two from the County of Orange. The City Directors will be appointed by the City of San Clemente City Council, and the County Directors will be appointed by the Board of Supervisors of the County of Orange. The governing term of each director is at the discretion of the appointing body.

Both the City of San Clemente and the County of Orange would need to approve the formation of the JPA. The formation of the JPA has been determined by the City and the County to be an action pursuant to CEQA.
4.0 USE OF AN EIR ADDENDUM

Section 15164 of the CEQA Guidelines states that “The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred.” Summarized, Section 15162 of the CEQA Guidelines states that a subsequent EIR is required if:

1. substantial changes are proposed in the project that require major revisions to the previous EIR because of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

2. substantial changes have occurred with respect to the circumstances under which the project is undertaken, which will require major revisions to the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significance effects; or

3. new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified as complete shows any of the following: (a) the project will have one or more significant effects not discussed in the previous EIR; (b) significant effects previously examined will be substantially more severe than shown in the previous EIR, (c) mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effect of the project, but the project proponents decline to adopt the mitigation measure or alternative; or (d) mitigation measures or alternatives which are considerably different from those analyzed in the final EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

This document is intended to be used by both the City of San Clemente and LAFCO as the CEQA documentation for the annexation and formation of the JPA. To determine the appropriate type of documentation required pursuant to CEQA, the City of San Clemente and LAFCO have evaluated final EIR 84-02 to determine if there has been a substantial change in the project, circumstance under which the project is being implemented, or the availability of new information that would result in a new significant impact that was not previously identified in final EIR 84-02. Section 5 provides an analysis of the proposed project and circumstances which have changed since certification of final EIR No. 84-02 to determine if any of the situations described above requiring the preparation of a subsequent EIR apply. The analysis considers the effect annexation of the project into the City of San Clemente and formation of a Joint Planning Authority would have on the environment.

This addendum, when considered with final EIR 84-02, is intended to serve as the environmental document for action taken on the annexation and formation of JPA.

5.0 ENVIRONMENTAL ANALYSIS

This section documents the environmental conditions and potential environmental impacts associated with the approval of the annexation and formation of the JPA. The analysis has been structured to follow the topical issues identified in the CEQA Environmental Checklist. As a basis for the evaluation, all mitigation measures adopted as part of final EIR 84-02 are assumed to apply
to the project. Though this is an addendum to the City's EIR, since the annexation is assumed to be phased and building permits for residential uses in the County portion of the project would be issued by the County, the mitigation measures adopted as part of final EIR 482 would apply to the County portion of the Talega Valley Development. The Mitigation Monitoring Program adopted in January 1999 for the Rolling Hills Planned Community is included as Attachment A.

The analysis considers if there would be any new impacts or if the impacts would be of a greater level of significance than what was evaluated in the final EIR 84-02. The physical impacts associated with the project would be the same with or without the annexation and formation of the JPA. The annexation would result in a change in jurisdiction of the site, but not in the type, density, or development standards for the site. This is especially true for the residential uses since the development will actually be constructed under County of Orange building permits. The formation of the JPA does not permit any levels of development beyond what the site is currently entitled for through the Feature Plan. However, the JPA will have the power to regulate the type of land use should changes to the land use be requested in the future.

Issues such as growth inducement, cumulative impacts, and the long-term versus short-term productivity of the site were addressed in final EIR 84-02. The Final EIR identified the potential long-term growth inducing effect of this project, combined with the development of the other backcountry areas of San Clemente. The growth inducing, cumulative impacts, and the long-term versus short-term productivity of the site would not be expected to change as a result of the annexation or formation of the JPA.

5.1 AESTHETICS

EIR 84-02

The change in visual appearance and aesthetics as a result of development of the Talega Valley Development was identified as a significant impact in final EIR 84-02. Both design and landscape mitigation measures were adopted which would reduce the impacts to a level of less than significant. The following mitigation measures were adopted as part of final EIR 84-02 pertaining to visual resources and aesthetics:

- Prior to approval of each subdivision map, a detailed landscape plan prepared by a licensed landscape architect for that area within the subdivision shall be approved by the City Planning Department. The plans shall conform to specifications and requirements of the City's Conservation/Open Space Element, Scenic Highways Element, and Parks and Recreation Element. Landscape plans, grading plans, and architecture shall also conform to the Hillside Development Ordinance to include such provisions as roof lines that correspond to the silhouette and cross-sectional contours of topography, smooth transitions in height from building to building, and harmonious mixture of materials, colors, and forms. Landscaping shall emphasize use of drought-resistant, fire-retardant vegetation, and low-precipitation slope irrigation.

- Development onsite shall implement the general guidelines and development standards identified in the text of the Specific Plan.

- Development onsite shall conform to guidelines of the City of San Clemente Hillside Development Ordinance.
Prior to approval of any grading or development plans within proposed Planning Areas 65, 66, 2, 3, 4, 5, 8, 9, 25, 26, 27, 71, and 69, a site-specific study shall be prepared by the applicant addressing the visual impact of proposed grading and development. Each study shall clearly demonstrate that proposed structures shall not project above the ridge silhouette as visible from City-designated viewpoints. The visual impact study shall be an integral part of the formal approval process for grading plans and tract or parcel maps in these designated areas, and based on these studies and staff recommendations, development in these areas may be conditioned to ensure avoidance and/or mitigation of impacts.

Would the project:

a. Have a substantial adverse effect on a scenic vista open to the public? **NO NEW IMPACTS**

b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? **NO NEW IMPACTS**

c. Substantially degrade the existing visual character or quality of the site and its surroundings? **NO NEW IMPACTS**

d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? **NO NEW IMPACTS**

The project site is adjacent to the open space/urban fringe backcountry area of San Clemente. The overall visual environment is characteristic of southern California coast foothills, exhibiting primarily grassy and rolling terrain. The portion of the site north of Avenida Pico is currently being developed. The Talega Valley Development will change the present visual character and the aesthetic qualities of the site. Grading activities will modify the terrain of the site, remove portions of the existing vegetation and much of what is now passive grazing land will be transformed to active urban community. The visual impacts were addressed in Final EIR 84-02 and mitigation, in the form of dedication of open space and design guidelines, were adopted.

The City of San Clemente and County of Orange do not identify any designated scenic highway within the project area; therefore, the project would not affect any designated scenic highway.

The visual conditions surrounding the Talega Valley Development, as well as the visual conditions throughout most of the project site has remained the same as addressed in the final EIR, with the exception of the area currently being developed. The development of urban uses as adopted in the final EIR would introduce light sources from homes and street lights into an area that is currently unlit in the evening.

The City’s annexation of the County portion of the Talega Valley Development and formation of the JPA would not affect scenic views or a designated scenic highway, nor would it degrade the visual quality or create light and glare beyond the project boundary. The JPA would have the power to review, approve, and alter grading plans in conformance with applicable criteria.

There are no proposed changes to other project characteristics evaluated in the final EIR; therefore, the impacts identified in the final EIR would remain the same.
5.2 AGRICULTURAL RESOURCES

The conversion of agricultural properties and the agricultural resources impact was not addressed in EIR 84-02 because the site does not support any agricultural activities nor does the site have lands that have been designated as prime farmland, unique farmland, or farmland of statewide importance.

Would the project:

a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? NO NEW IMPACT

b. Conflict with existing zoning for agricultural use, or a Williamson Act contract? NO NEW IMPACT

c. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? NO NEW IMPACT

As previously indicated, based on the 1997 Natural Resource Conservation Service mapping, the site does not have any soils that are considered “Prime,” “Unique,” or of “Statewide Importance” as shown on the State Farmland Mapping and Monitoring Program. The site has not historically and does not currently support agricultural operations, nor is it in an agricultural preserve pursuant to the Williamson Act.

Annexation and formation of the JPA would not involve changes in the environment that will result in conversion of farmland to non-agricultural use. The JPA will have the power to regulate any type of land use that would cause negative effects. No adverse impacts would be anticipated as a result of annexation and formation of the JPA.

5.3 AIR QUALITY

EIR 84-02

The air quality analysis presented in final EIR 84-02 considered short-term (construction-related), and long-term (operational) impacts. The short-term air quality impacts were identified in the final EIR as not being significant. Final EIR 84-02 found that there would be significant, cumulative long-term air quality impacts that would be partially mitigated. The following mitigation measures were adopted as part of final EIR 84-02 pertaining to air quality:

- The Specific Plan and subsequent site plans shall include provisions for well-lit public bikeways, walkways, and carpool parking areas. Bus facilities shall be provided as demand necessitates.
- During grading onsite, dust suppression measures shall be implemented. These shall include grading during the spring (as much as possible) when soil moisture content is relatively high, frequent watering of fill material, early paving, and frequent cleaning of haul roads.

Would the project:

a. Conflict with or obstruct implementation of the applicable air quality plan? NO NEW IMPACT
b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation? **NO NEW IMPACT**

c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? **NO NEW IMPACT**

d. Expose sensitive receptors to substantial pollutant concentrations? **NO NEW IMPACT**

e. Create objectionable odors affecting a substantial number of people? **NO NEW IMPACT**

The project site is located in the South Coast Air Basin and is the responsibility of the South Coast Air Quality Management District (SCAQMD) and the California Air Resources Board (CARB). The SCAQMD sets and enforces regulations for stationary sources in the basin. The CARB is responsible with controlling motor vehicle emissions.

The Saddleback Valley monitoring station is the closest facility that provides existing ambient air quality data. Ozone is the air pollution of primary concern. In 1996 and 1997, the state ozone standard was exceeded and the federal standard was exceeded twice each year. No other exceedances were monitored.

Although the nature of the project is unchanged, the regulatory environment, the basis for calculating emissions, and the thresholds for determining whether a project has significant air quality impacts have changed since the EIR was certified. The California Clean Air Act (CCAA) was adopted in 1989 and the federal Clean Air Act (CAA) was amended in 1990. Both Clean Air Acts designate the South Coast Air Basin as an extreme ozone non-attainment area and specify strict control requirements which the air district must meet. Both acts require periodic amendments to the regional Air Quality Management Plan (AQMP). As part of the strict control strategy requirements, the SCAQMD revised its CEQA thresholds of significance and its Air Quality Handbook containing guidelines for assessing air quality impacts in November 1993.

The 1982 AQMP, which was cited in final EIR 84-02, has been amended four times since the EIR was certified. Currently, there are two adopted AQMPs which apply to the region: the 1994 AQMP, which was approved by the U.S. Environmental Protection Agency as the State Implementation Plan (SIP) for the region, and the 1997 AQMP, which was adopted by the SCAQMD in November 1996 and which deleted some of the controls specified in the 1994 AQMP because further analysis showed that the region could meet national air quality standards on schedule without them. The EPA has not yet approved the 1997 AQMP as the SIP for the region. All AQMP revisions incorporate the latest growth forecasts projected by Southern California Association of Governments (SCAG). SCAG used the OCP-92 projections in its regional planning forecasts in both the 1994 and 1997 AQMP revisions. The project is contained in emission forecasts in both documents and is therefore consistent with both AQMPs. SCAG has determined that if a project is within the overall growth projections for a subregion to the year 2015, the emission increases are mitigated by the adopted AQMP. Therefore, the project would not have significant air quality impacts.

Vehicle emissions generated by the proposed project were determined in the previous EIR to be cumulatively significant. Information provided in the traffic report was used for this analysis, as well as emission factors from the April 1987 edition of the SCAQMD Air Quality Handbook. The vehicle emission factors have been updated several times since certification of final EIR 84-02, which used EMFAC6D. The most recently released emission factors are EMFAC7G. These newest emission factors reflect the greatly reduced per-vehicle emission anticipated in future years as a result of both enhanced inspection maintenance programs and the strict emission controls on new vehicles that have since been implemented, beginning with the 1993 model year.
Although the projected vehicle miles for the project have not changed, total project emissions in the year 2000 will be substantially lower than those forecast in final EIR 84-02.

Utility emissions were forecast in the final EIR under the heading Stationary Sources, based on emission factors in the 1987 Air Quality Handbook. These emissions would also be substantially lower if they were reanalyzed because of controls adopted by the SCAQMD since certification of the final EIR. Natural gas emissions are lower because of new District regulations. Emissions from the generation of electricity no longer need to be counted because emissions from electric generation have been capped in the South Coast Air Basin through SCAQMD Regulation XX and Rule 1135. Any increase in emissions from electricity generation in the air basin must be offset by reducing emissions from another source or securing additional electricity from non-polluting sources or from outside the air basin.

Because of the new regulations cited above, as well as a number of other controls enacted since the previous EIR, air quality has significantly improved. For the five years shown in final EIR 84-02, peak ozone readings at the El Toro station averaged 0.27 parts per million; for the most recent five years of data released by the SCAQMD, peak ozone concentrations averaged 0.18 parts per million.

The air quality impacts associated with the Talega Valley Development would be less than what was addressed in final EIR 84-02. The proposed project (annexation and the formation of a JPA) would not result in any new air quality impacts.

5.4 BIOLOGICAL RESOURCES

EIR 84-02

The project has the potential to have direct significant impacts on biological resources. Final EIR 84-02 identified potential impacts to vegetation and wildlife, including sensitive biological resources. The potential indirect impacts on sensitive species due to the introduction of exotic ornamental vegetation, and human activity (noise, light and glare, and introduction of feral animals) was also identified. Mitigation of these impacts was provided through the dedication of the Rancho Mission Viejo Land Conservancy (identified in the EIR as the Preserve Area), as well as oak tree preservation guidelines and buffer areas. With the implementation of these measures the biological impacts were reduced to a level of less than significant.

The following mitigation measures were adopted as part of the final EIR 84-02 pertaining to biological resources:

- In order to prevent impacts on the sensitive biological resources of the Reserve area, and to offset adverse impacts of the proposed development in the non-reserve area, the Reserve area shall be redesignated a Preserve area, permanently limiting uses within the Preserve to natural open space, limited passive recreation (equestrian trails, bike trails and hiking trails) and light cattle grazing. Cattle grazing shall be limited to a level of intensity similar to current practice onsite. Coincident with designation of the Preserve, the applicant shall prepare a Resource Management Plan for review and approval by both the County and the City. The Plan shall identify maintenance and ownership of the Preserve, permitted uses (and intensity of use), access points, preservation policies, etc.

- In areas identified by blue lines on U.S.G.S. 7.5 Quad Sheets, the applicant shall consult with the California Department of Fish and Game as a requirement of Section
1601-6 of the State Fish and Game Code which gives the Department of Fish and Game review authority over projects which could alter drainages containing significant habitat.

- In development areas containing oak woodland resources, the applicant should consider the following guidelines:
  
  - The existing grades within the dripline, and 3' on either side of oak trees, shall not be altered.
  
  - The operation of heavy construction equipment shall avoid the area within the driplines of oaks.
  
  - Retaining walls shall be used to protect the existing grades within the driplines of oaks from surrounding cut and fill. However, these shall not alter drainage from around trees.
  
  - No type of surface, either pervious or impervious, shall be placed within a six foot radius of oak trunk trunks. These areas shall remain uncovered, natural, and dry, particularly during the summer.
  
  - Alternative pervious types of paving shall be utilized in oak environments, such as gravel, redwood chips, porous brick with sand joints, etc.
  
  - Only one trench shall be dug to accommodate all utilities for lots and the trees shall be carefully pruned by a specialist in proportion to the total amount of root zone lost.
  
  - The boring of a conduit for underground utilities shall be used where possible.
  
  - No ornamental ground covers, or any other vegetation requiring year-round watering, shall be planted against tree trunks or around root crown areas.
  
  - Surface runoff shall be directed away from the trunk areas.
  
  - Water shall not be allowed to pond or collect within the dripline of oak trees; otherwise, the tree will drown.

- The applicant shall provide to the City and County a list of potentially invasive plant species that should be excluded from landscape palettes for public and private areas as potentially threatening to significant habitat areas. This list shall be reviewed and adopted by the City prior to approval of any landscape plans within Talega. Landscape plans in Talega shall exclude plant species identified in the adopted list.

- Prior to approval of grading or development permits in Planning Areas 1, 2, 65, 56, 13, 46, 47, 53, 54, 85, 91, 100, and 101, the applicant shall submit oak tree preservation guidelines. The guidelines shall be based on a site specific mapping (1:500 scale) and inventory of oak tree stands prepared by a professional arborist. The inventory shall determine which stands are in fact significant and healthy enough to merit preservation. Preservation of oak tree stands shall be reviewed and approved individually for each Planning Area, based on detailed grading and/or development plans, the inventory, and site specific geotechnical engineering constraints.
If the reserve area is not preserved, mitigation measures within the development area must be more severe and would include the following:

- Prior to approval of any grading plans or subdivision maps for development purposes within portions of the site containing natural grassland, oak woodland, and riparian habitats, the applicant shall submit a biological resources management plan for approval by the City Planning Department and the County EMA, as appropriate, and the California Department of Fish and Game. The management plan shall include a detailed mapping of habitats onsite at a scale of 1:500 and a rating of areas within each ecotone type according to habitat value. The plan shall also include a biological resources constraints map of the Talega site, based on the Orange County Master Environmental Assessment (OCMEA) Biological/Cultural/Scientific Resources Environmental Constraints Map for the San Clemente area. The mapping shall include biological resource constraints in areas of Talega not included in the OCMEA, based on data provided in the 1:500 scale habitat map. The Talega biological constraints map shall employ the constraints categories used in the OCMEA constraints map. The 1:500 scale habitat map and the biological constraints map shall be prepared by a qualified biologist.

The biological resources management plan shall provide specific measures to implement the following:

- In areas identified as "buffer areas" on the OCMEA map (biological resources category code 21) and on the Talega biological constraints map, the management plan shall retain at least 20 percent of the area in its existing condition, preferably by preserving natural open space adjacent to borders or areas possessing high sensitivity.

- Where required, fuel modification zones employing a graduated clearing approach may make up a portion of the buffer zone. Recreation open space, agriculture, and greenbelts may also be substituted as a portion of the zone; however, dense tree and shrub plantings at the edge of areas of high sensitivity should not be included. Overall, this zone should provide a 300-foot development setback from the edge of areas of high ecological sensitivity.

- The biological resources management plan shall include an oak tree preservation and management plan to provide specific guidelines to preserve oak woodland habitat in place as open space. The plan shall conform to the General Plan policies and incorporate development criteria necessary to maximize the protection and preservation of onsite woodland resources. The plan shall include the following requirements:

  - The existing grades within the dripline, and three feet on either side of oak trees, shall not be altered.

  - The operation of heavy construction equipment shall avoid the area within the driplines of oaks.

  - Retaining walls shall be used to protect the existing grades within the driplines of oaks from surrounding cut and fill. However, these shall not alter drainage from around trees.
- No type of surface, either pervious or impervious, shall be place within a six foot radius of oak tree trunks. These areas shall remain uncovered, natural, and dry, particularly during the summer.

- Alternative pervious types of paving shall be utilized in oak environments, such as gravel, redwood chips, porous brick with sand joints, etc.

- Only one trench shall be dug to accommodate all utilities for lots and the trees shall be carefully pruned by a specialist in proportion to the total amount of root zone lost.

- The boring of a conduit for underground utilities shall be used where possible.

- No ornamental ground covers, or any other vegetation requiring year-round watering, shall be planted against tree trunks or around root crown areas.

- Surface runoff shall be directed away from the trunk areas.

- Water shall not be allowed to pond or collect within the dripline of oak trees; otherwise, the tree will drown.

- In areas identified as significant "link between high sensitivity areas with locally significant habitats" on the CCMEA map (biological resources category code 22) and on the Talega biological constraints map, the management plan shall retain 20 percent of the area as natural open space in the form of a network of contiguous corridors, preferably around and along drainage courses. Individual corridors to be retained in natural condition shall be no less than 100 feet wide in order to be effective.

- In areas identified as riparian habitat the management plan shall include preservation of existing habitat as open space. The plan shall include consultation with the California Department of Fish and Game as a requirement of Sections 1601-6 of the State Fish and Game Code which gives the Department of Fish and Game review authority over projects which could alter drainages containing significant habitat. Through consultation with Fish and Game, it shall be determined whether additional protective actions shall be required, such as:
  - Set backs and edge screening of adjacent development to allow continued use of entire habitat available to wildlife.
  - The use of fencing and other means of controlling access and disturbance.
  - Diversion or control of increased flood runoff from adjacent and upstream urban developments to prevent the scouring of bottom and bank vegetation.
  - Maintenance of existing water supply for the continued support of habitats.

- A comprehensive erosion and sedimentation control plan shall be prepared for all development areas. The plan shall address the project during and after construction.

- Setbacks and dense screening/buffers shall be provided where development envelopes abut woodlands areas. Setbacks shall be a minimum of 150 feet. Edge
screening should make use of plant materials which are compatible and, as much as possible, taxonomically related or the same as native trees and shrubs in woodland area. General to be considered shall include Rhus, Quercus, Platanus, Ceanothus, and Toyon, as well as others.

- Revegetation of cut and fill slopes and other graded areas shall be accomplished with plant palettes containing predominantly native species. Steeper slopes shall be revegetated with a mixture of coastal sage scrub species, while more level areas shall be revegetated with species of native perennial grasses in an attempt to reestablish native grassland. An expert in landscape revegetation, who is knowledgeable and qualified in native plant mixes shall be consulted in this regard.

- The biological resources management plan shall demonstrate that at least 50 percent of all chaparral and coastal sage scrub habitat within the Talega Specific Plan is wither preserved or restored in compliance with the Open Space/Conservation Element of the City’s General Plan.

Would the project:

a. Have a substantial adverse effect, either directly or through habitat modification, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? **NO NEW IMPACT**

b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? **NO NEW IMPACT**

c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? **NO NEW IMPACT**

d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native nursery sites? **NO NEW IMPACT**

e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? **NO NEW IMPACT**

f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? **NO NEW IMPACT**

Since the certification of the Final EIR 84-02 there have been several changes to the environment in which the project is being implemented, predominantly due to new regulations and grading of the project site. The most substantial change that affects biological resources on the project site is the elevation of status and corresponding regulatory actions related to the coastal California gnatcatcher (*Polioptila californica*). In final EIR 84-02, the gnatcatcher was not yet considered a species that warranted listing as endangered or threatened by state or federal resource agencies. However, final EIR 84-02 did identify that the project would have significant impacts on sensitive biological resources, including vegetation and wildlife.

To address the concern over the gnatcatcher and other sensitive species, the USFWS, CDFG, local agencies and major landowners (including the project proponent) are developing the Southern Subregional Natural Communities Conservation Planning (NCCP) program. The
The Talega Development site habitat block is approximately 1,400 acres. It is located east of Forster Ranch, south of the proposed Prima Desheca Regional Park, west of the Talega Reserve, and north of the urban development. The site is dominated by annual grassland and disturbed habitat, with a few small patches of CSS (coastal sage scrub). Because of its high level of disturbance, lack of CSS and target species, and location on the periphery of large blocks of habitat, this area is relatively unimportant to the reserve design.

In 1997, when vegetation mapping was completed, the following plant communities were supported on site: scrub, chaparral, grassland, oak woodlands, and riparian communities, as well as, open water and disturbed areas. In February 1998, the scrub habitat was removed from a portion of the site pursuant to the Special Rule in accordance with Section 4(d) of the Federal Endangered Species Act (FESA). In the spring of 1997, focused surveys were conducted to determine the presence or absence of the gnatcatcher on the entire Talega Development Project. The surveys were conducted according to guidelines established by the United States Fish and Wildlife Service (USFWS) and by biologists with the necessary survey permits. A total of three pairs of coastal California gnatcatchers were recorded within the southern portion of the Talega Valley Development. One pair was located within the City of San Clemente portion of the Talega Valley Development. The remaining two pairs occurred with the County of Orange portion of the Talega Valley Development, south of Avenida Pico. In addition, three juvenile gnatcatchers were observed in coastal sage scrub immediately north of Avenida Pico, two of which were located within the County of Orange portion of the project site. The coastal sage scrub where the two juvenile gnatcatchers were observed was removed, as permitted by Section 4(d) permit. To mitigate for the impacts to gnatcatchers, the project applicant submitted an Interim Habitat Loss Mitigation Plan and Findings for the proposed project pursuant to the Special Rule in accordance with Section 4(d) of the FESA. The plan provided for the restoration of 48.6 acres of coastal sage scrub, as well as the previous dedication of 1,180 acres for the Rancho Mission Viejo Land Conservancy.

In addition to focused surveys for sensitive wildlife species, focused plant surveys were conducted in 1998. The endangered thread leaved brodiaea was identified as existing on site. Exhibit 3 depicts the location of the sensitive habitat and species. This exhibit identifies the resources for the entire Talega Valley Development (County and City portions), with the exception of the reserve area.

As identified, the Talega Valley Development Project had the potential to result in significant biological impacts. Previously adopted mitigation measures that would reduce the impacts to less
than significant include the dedication of the Rancho Mission Viejo Land Conservancy (identified in the final EIR as the Preserve Area), oak tree preservation guidelines, and buffer areas.

Annexation and formation of the JPA would not alter the type or extent of biological impacts anticipated from the implementation of the Talega Valley Development; nor would it change the adopted mitigation measures. The JPA would be subject to all the same permitting requirements as the County and City.

Annexation of the property into the City of San Clemente and the formation of the JPA would not affect endangered or rare species or their habitats, locally designated species or natural communities, wetland habitats, wildlife dispersal or migration corridors, and adopted conservation plans and policies. No adverse impacts would be anticipated as a result of annexation of property to the City of San Clemente or the creation of the JPA.

5.5 CULTURAL RESOURCES

EIR 84-02

Direct and indirect impacts to cultural resources were identified in final EIR 84-02. For archaeological resources, mitigation measures required site testing and data recovery. To protect both archaeological and paleontological resources onsite monitoring during mass grading activities is required. These measures would reduce the potential impacts to less than significant.

The following mitigation measures were adopted as part of Final EIR 84-02 pertaining to paleontological and cultural resources:

- A certified paleontologist from the County's list of qualified paleontologists shall be retained to be onsite during all mass-grading to observe operations to salvage exposed fossils. He shall receive prior notification of pre-grade meetings. The paleontologist and his assistants shall be authorized to divert or direct grading in specific areas to facilitate salvage of exposed finds. Collected fossils deemed of scientific value shall be donated to a non-profit institution whose purpose is to preserve paleontological resources.

- Immediately upon approval of a Specific Plan for Talega Valley, the developers shall have the materials presently exposed at the surface at locality RR 621 collected by an Orange County-certified paleontologist. These fossils shall be donated to a non-profit institution whose purpose is to preserve paleontological resources. This measure is deemed necessary because of increased exposure to potential disturbance resulting from proposed land uses at and around the exposed site and increased public access.

- A test-level investigation of sites CA-Org-907 (A&B), -909, 910 (A&B), -911, -1027, -362, -780, -770, -908, and -1028, shall be conducted by an archaeologist who meets the qualifications of the County of Orange approved list of archaeological consultants. The investigation shall include subsurface testing of deposits through auger holes and test pits to determine vertical depth, horizontal distribution, and internal complexity of the cultural deposit. Subsurface investigations shall comply with appropriate local, State and Federal guidelines for Native American involvement. Recovered resources shall be analyzed in an attempt to date the sites and determine the relationship to other known sites in the region. The investigation shall include a careful clearing and resurvey of the northeastern portion of the property. Dense vegetation growth prevented a thorough walkover survey in this area and it is anticipated that additional
archaeological sites may be found as well as a more complete determination of the known sites boundaries would be possible. Findings from this investigation shall be made available in a detailed report submitted to the City and to the Regional Office of the State Archaeological Site Survey at UCLA. The findings shall establish whether further excavation is warranted at these sites, or if the information to be gathered from these sites has been sufficiently exhausted through surface collection and test excavation.

- Based on the results of the test-level investigation, a comprehensive resource management program shall be developed which shall include such requirements as further analysis of sites, resource recovery, or in situ preservation. Measures to protect resources in areas proposed as open space will also be included. The program shall be implemented according to a schedule which conforms to the proposed phasing of development.

Would the project:

a. Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5? **NO NEW IMPACT**  
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5? **NO NEW IMPACT**  
c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? **NO NEW IMPACT**  
d. Disturb any human resources, including those interred outside of formal cemeteries? **NO NEW IMPACT**

The project area lies within the 1845 Rancho Mission Viejo Mexican Land Grant on the San Clemente USGS 7.5 Quad. Review of the National Register of Historic Places, California Inventory of Historic, and California Historic Landmarks revealed that no historical landmarks or monuments are recorded in these documents. However, an archival records search indicated that two historical sites are located within the Talega Valley Development. The two historical sites are located within the northeastern portion of the Talega Valley Development.

The impacts and mitigations would be the same with or without the annexation and formation of the JPA. Annexation and the formation of the JPA would not have unavoidable adverse impacts on archaeological, paleontological, historic resources, and ethnic cultural values. No adverse impacts would be anticipated as a result of annexation of property to the City of San Clemente or the creation of the JPA.

5.6 GEOLOGY AND SOILS

EIR 84-02

EIR 84-02 identified potential constraints and impacts onsite due to slope instability, problematic soil conditions, seismic activity, poor rippability of bedrock materials and erosion. Extensive mitigation measures were adopted to address these constraints. Compliance with these measures reduced the level of impact to less than significant. The following mitigation measures were adopted as part of final EIR 84-02 pertaining to geology and soils:

- Development of the site shall conform to general recommendations present in the geotechnical studies (Irvine Soils Engineering, Inc., 1980, 1981, and 1983), including
specifications for site preparation, landslide treatment, treatment of cut and fill, slope stability, soils engineering, and surface and subsurface drainage, and recommendations for further study.

- Prior to approval of a tentative map for development purposes, the developer shall submit a conceptual grading plan. The conceptual grading plan shall show proposed areas of cut and fill, topography, steepness of slope, locations and extent of buttresses and bench drains, and shall illustrate conformance with the City's and County's grading ordinances.

- Prior to approval of the final tract map, rough grading plans will be approved, and prior to building permit issuance, a precise grading plan will be approved. Both rough and precise plans shall be prepared by a Civil Engineering and be based on recommendations of the Soils Engineer and an Engineering Geologist subsequent to completion of detailed soils and geologic investigation for each subdivision area. The site specific geotechnical studies shall provide specific feasible recommendations for mitigation of landslides, slope stabilization, liquefaction potential, soils engineering, and appropriate drains and subdrains in each area. Grading plans shall be reviewed by the City Engineer and Planning Department and County EMA and shall be subject to a grading permit.

- All grading plans shall conform to the City's Hillside Development Ordinance. All grading onsite shall conform to Subsection 15.6.A.6 of the ordinance which specifies standards for slope contours.

- Rough grading plans shall include an erosion, siltation, and dust control plan to be approved by the Community Development Department of the City and the County EMA. The plan shall include provisions for measures such as immediate planting of vegetation on all exposed slopes, temporary sedimentation basins and sandbagging, if necessary, and a watering and compaction program. The plan shall ensure that discharge of surface runoff from the project during construction activities will not result in increased erosion or siltation immediately downstream of the property.

Would the project:

a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
   i. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42. NO NEW IMPACT
   ii. Strong seismic ground shaking? NO NEW IMPACT
   iii. Seismic-related ground failure, including liquefaction? NO NEW IMPACT
   iv. Landslides? NO NEW IMPACT

b. Result in a substantial soil erosion or the loss of topsoil? NO NEW IMPACT

c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in onsite or offsite landslide, lateral spreading, subsidence, liquefaction, or collapse? NO NEW IMPACT

d. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? NO NEW IMPACT

e. Have soils incapable of adequately supporting the use of septic tanks or alternative waste
water disposal systems where sewers are not available for the disposal of waste water?  

NO NEW IMPACT

The project site is located within the western coastal foothills of the Peninsular Ranges geological province. The Talega Valley Development site is characterized by rolling hills and valleys. A dominant topographic feature of the area is a major ridgeline which trends northeast-southwest through the central portion of the site.

The project site is located in Southern California, a tectonically (seismically) active region which faces an ongoing threat from major earthquakes. The type and magnitude of seismic hazards affecting the site are dependent on the distance to active faults. Known active or potentially active faults which are capable of inducing seismic hazards include Newport-Inglewood fault, Elsinore fault, San Jacinto fault, and the San Andreas fault. The closest fault to the project site is the offshore extension of the Newport-Inglewood fault which lies approximately ten miles to the west. However, because of the distance of the project site from these faults, the potential for exposure to surface rupture is considered minimal.

Annexation of the property into the City of San Clemente and formation of the JPA would not change the geophysical characteristics of the site or the constraints to development. Impacts due to soils, seismicity and geologic features, fault rupture, landslides or mudslides, erosion, and subsidence of the land would remain unchanged. No adverse impacts would be anticipated at the result of the annexation and formation of the JPA.

5.7 HAZARDS AND HAZARDOUS MATERIALS (Public Safety)

EIR 84-02

Final EIR 84-02 addressed potential impacts associated with Hazards under public safety. Additional hazards issues were evaluated under geology and soils and fire protection.

Final EIR 84-02 addressed potential safety issues such as the operations at TRW, San Onofre Nuclear Generating Station, the San Diego Pipeline Company (SDPC) petroleum pipeline which traverses the property, and emergency facilities. No significant impacts were identified; however, a mitigation measure was adopted that required compliance with applicable codes for safety in the vicinity of the pipeline.

The following mitigation measures were adopted as part of the final EIR 84-02 pertaining to public safety impacts:

- Prior to approval of subdivision maps for development purposes, the project applicant shall provide to the County and City, maps at a 1:400 scale depicting alignment of San Diego Pipeline Company’s 16 inch pipeline and the alignment of the 10 inch pipeline. Prior to approval of any maps which include the 10-inch pipeline, the applicant shall demonstrate to the satisfaction of the City and/or County that the structure, location, and proposed operation of the pipeline meets the standards of the State Fire Marshal, the City and/or County Fire Marshal, and requirements of Title 49, Code of Federal Regulations, Part 195, and American National Standards Institute/American Society of Mechanical Engineers Code B31.4, and will not interfere with public safety or proposed land uses. Maintenance and regular inspection of the pipelines shall be the responsibility of the SDPC.
Would the project:

a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? **NO NEW IMPACT**

b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? **NO NEW IMPACT**

c. Emit hazardous emissions for handle hazardous or acutely hazardous materials, substances, or waste within one-quarter-mile of an existing or proposed school? **NO NEW IMPACT**

d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? **NO NEW IMPACT**

e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or people residing or working in a project area? **NO NEW IMPACT**

f. For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? **NO NEW IMPACT**

g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? **NO NEW IMPACT**

h. Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? **NO NEW IMPACT**

A report by VISTA Environmental Solution, Inc. was prepared to identify the presence of and potential for hazardous materials and/or waste contamination to soils or groundwater resources within the project site area and within the site vicinity from existing and historical onsite uses. According to the VISTA report there are no known sources of hazardous waste on the project site.

The Talega Valley Development would not generate or require the transportation of hazardous materials beyond what is commonly associated with urban and residential uses. At this time no precise uses for the business park have been identified. Various pesticides and fertilizers would be used on the golf course.

Annexation of the property into the City of San Clemente and formation of the JPA would not create hazardous emissions or expose people to sources of health hazards, and would not affect the state requirements for the handling and transport of hazardous materials. These actions would not interfere with an adopted emergency evacuation plan or expose people and structures to risk related to wildland fires. No adverse impacts would be anticipated as a result of the annexation and creation of the JPA.

5.8 HYDROLOGY AND WATER QUALITY

EIR 84-02

EIR 84-02 identified that runoff from the project would increase by 35 to 50 percent as a result of the increase in impervious surfaces. Additionally, landscape and irrigation practices of the proposed golf course and urban uses may impact downstream hydrology. To reduce these potential impacts to a level of less than significant, mitigation measures were adopted that required improvement of flood control facilities, including the Segunda Deshecha channel. The golf courses were conditioned to submit a Landscape Management Plan that addresses
landscape materials to be used, irrigation systems, and regulations for application of fertilizers and pesticides.

The following mitigation measures were adopted as part of final EIR 84-02 pertaining to hydrology and water quality:

- Prior to the recodation of any final tract map within the Segunda Deshecha Canada drainage area onsite (as defined by the City's Drainage Master Plan, Lowry and Associates, 1982, Plate 1), the project proponent shall construct improvements or shall have bonded for construction of improvements to the Segunda Deshecha channel to accommodate runoff generated onsite under developed conditions, and to control the runoff downstream in a manner acceptable to the City. These improvements shall be constructed in accordance with final engineering drawings which specify dimensions, capacity, and precise alignment. Improvements in the City will be approved by the City Engineer. If annexation is anticipated, improvements in the County will be approved by County EMA and the City Engineer.

- The developer shall construct storm drains coincident with development of each subdivision map area. These improvements shall also be constructed according to final engineering drawings. Coincident with improvements with each area, necessary downstream improvements shall also be constructed. Improvements in the City portion will be approved by the City Engineer; improvements in the County will be approved by the County, and the City if annexation is anticipated.

- The developer shall be responsible for providing regular streetsweeping on all private roadways onsite. This service shall be conducted to the satisfaction of the City Engineer for City areas, and the County EMA in County areas. Streetsweeping shall be initiated immediately after paving of each roadway.

- Prior to approval of grading and/or development plans in Planning Areas containing the existing channel of Segunda Deshecha Canada, the applicant shall demonstrate that preservation of the channel in open space will be achieved to the maximum extent feasible. The degree of preservation of the streambed in open space areas shall be to the satisfaction of the City, and shall take into account geotechnical engineering constraints of the site. Affected Planning Areas include: 61, 57, 45, 11, 49, 7, 10, 50, 15, 16, 47, 54, and 13.

- Prior to approval of any subdivision maps for development purposes in the Talega Specific Plan area, the City Engineer shall certify that downstream improvements to the Segunda Deshecha channel are adequate to accommodate developed flows as proposed in the applicant's master drainage plan. Confirmation of this adequacy shall be based on consultation with the project applicant's engineer, Caltrans, and County of Orange EMA. The developer shall be responsible for construction of the facilities in a manner acceptable to the City Engineer.

- In order to prevent adverse impacts on water quality in the San Mateo-Cristianitos Creeks Watersheds, surface runoff from development areas shall be diverted away from the watershed and directed toward Segunda Deshecha.

- Prior to issuance of grading permits for each of the golf courses, the project applicant shall submit for review and approval by the City Planning Department and City Engineer a
Landscape Management Plan. The Landscape Management Plan shall consists of: (1) a Landscape Plan identifying landscape materials (plant species) including turf species proposed to be planted on-site; (2) an Irrigation System Plan which identifies elements of the irrigation system and procedures for its use; (3) Regulations and Guidelines for the Application of Fertilizers and Pesticides on-site.

Would the project:

a. Violate any water quality standards or waste discharge requirements? **NO NEW IMPACT**
b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted? **NO NEW IMPACT**
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation onsite or offsite? **NO NEW IMPACT**
d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding onsite or offsite? **NO NEW IMPACT**
e. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of pollutant runoff? **NO NEW IMPACT**
f. Otherwise substantially degrade water quality? **NO NEW IMPACT**
g. Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? **NO NEW IMPACT**
h. Place within a 100-year flood hazard area structures which would impede or redirect flood flows? **NO NEW IMPACT**
i. Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam? **NO NEW IMPACT**
j. Inundation by seiche, tsunami, or mudflow? **NO NEW IMPACT**

The project site is located between two major watersheds, the Segunda Deshecha Cañada and the Cristianitos Canyon watershed. A ridgeline running north-south divides the two watersheds, as well as the project site. The final EIR identified that runoff from the Talega Valley Development site would increase by 35 to 50 percent as a result of increases in impervious surfaces. The site is currently being developed. Drainage improvements were made onsite, as well as downstream of the project, when construction was initiated in the early 1990s.

To address potential issues stemming from the increase in runoff from the project, a Runoff Management Plan was prepared and adopted for the project site. The plan analyzes the existing and proposed site hydrology, runoff mitigation, and sediment yield from the site. The Runoff Management Plan was initially prepared in August 1988, and has been revised on multiple occasions to incorporate more detailed engineering. The most recent amendment to the plan was prepared in April 1998, for the M02 P08 storm drain.

Final EIR 84-02 identified that the increased onsite irrigation related to the golf course could result in onsite and downstream erosion and siltation and the introduction of fertilizers and pesticides into the watercourses. The Landscape Management Plan and implementation of Best
Management Practices (BMPs) address these issues. In addition, the Statewide General Construction Storm Water National Pollutant Discharge and Elimination System (NPDES) Permit issued by the California Water Resource Board requires that a Stormwater Pollution Prevention Plan (SWPPP) be prepared for all aspects of a unified development. A SWPPP was submitted in October 1992 and has been updated to reflect the refinements in the grading plan.

Annexation of the property into the City of San Clemente and formation of the JPA would not affect the overall hydrologic conditions of the Talega development site. These actions would not contribute to runoff, change in direction of flood flows, and exposure of people or structures to hazards related to flooding, inundation by seiche, tsunami, or mudflow.

Annexation of the property into the City of San Clemente and formation of the JPA would not cause any impacts related to water quality standards or waste discharge requirements, groundwater supplies, and water quality. All activities related to water quality issues, such as improvement plans and grading would be required to be reviewed, approved or regulated by the JPA. The established water quality standards would not change with the formation of the JPA. No adverse impacts would be anticipated as a result of the annexation and creation of the JPA.

5.9 LAND USE AND PLANNING

EIR 84-02

Final EIR 84-02 identified potential land use impacts due to inconsistencies with the General Plan, development being proposed within alignment alternatives being considered for the Foothill Transportation Corridor (FTC), inconsistencies with the Local Park Requirements, and impacts associated with densities and phasing. To address these issues mitigation measures were adopted that required the identification of natural and passive open space areas to ensure consistency with the intent of the General Plan in its Natural Preservation designation. Requirements such as the preparation of Annual Monitoring Reports and a Comprehensive Local Park Implementation Plan also were adopted to address potential significant impacts. With regards to the FTC, a measure was adopted requiring the preservation of sufficient right-of-way for the BX, E and C alignments until an alignment for the corridor was selected. With the adoption of these measures, all land use impacts were mitigated to a level of less than significant.

The following mitigation measures were adopted as part of final EIR 84-02 pertaining to land use:

- The Specific Plan shall differentiate between areas of natural and passive open space. Natural open space areas shall include only those areas which remain ungraded and are not directly impacted by development, i.e., areas left in their natural state. Natural areas shall comply with the intent of the General Plan in its designation of Natural Preservation Areas. Areas indicated in the General Plan as Required Open Space shall follow the intent of the General Plan by being designated in the Specific Plan as either natural areas or passive open space. The Specific Plan shall identify permitted uses for both designations.

- In order to achieve consistency with the Open Space/Conservation Element of the City’s General Plan, the proposed land use plan and grading plan shall be revised so as to minimize intrusion of land uses and grading in City-designated Natural Preservation Areas, Required Open Space Areas, and Secondary Ridgeline Areas. Planning Areas requiring possible modification to meet this conformance are 25, 47, 50, 69, 65, 13, 15, 16, 17, 18, and 19. Grading plans may require modifications in proposed open space areas of 100, 101, 54, and 102. The Specific Plan shall be conditioned such that grading and/or
development plans in these Planning Areas, shall be reviewed by the City on a site-specific basis. Ultimate configurations of these Planning Areas shall take into account a) the relative value of resources intended to be preserved in the designation area - evaluated in the context of the total project site, City, and County portions, and b) the feasibility of minimizing impacts in the area, given geotechnical constraints (i.e., landslides, slope instability).

- The area identified as Lot B in the Orange County Land Use Element shall be dedicated to the County for open space purposes.

- Sufficient right-of-way and setbacks (a 500-foot swath) shall be preserved along the conceptual alignments of Alternatives BX, E, and C for the Foothill Transportation Corridor. Tentative tract or parcel maps for areas within these preserved right-of-ways shall be conditioned to prevent grading or construction within the swaths until an alignment is selected. In the case that an alignment other than Alternative C is selected, a Specific Plan Amendment shall be initiated for Talega to determine reconfiguration of land uses to accommodate the adopted alignment. This Specific Plan shall be subject to a detailed assessment of environmental impacts, and shall be reviewed by decision-making bodies of both the City and County, as appropriate.

- The project applicant shall participate in the City’s requirement for an Annual Monitoring Report.

- The applicant shall prepare and submit a Comprehensive Local Park Implementation Plan to meet local park requirements to the satisfaction of both the County and City.

Would the project:

a. Physically divide an established community? NO NEW IMPACTS

b. Conflict with any applicable land use plans, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? NO NEW IMPACTS

c. Conflict with any applicable habitat conservation plan or natural community conservation plan? NO NEW IMPACTS

A review of the land use analysis presented in final EIR 84-02 was conducted to determine if there have been any changes to the environment in which the project is being implemented or if there is new information that would identify a new significant impact. The analysis can be divided into two general categories: physical land use, and land use plans. With regard to the physical land uses (existing and surrounding land uses), the information presented in the final EIR regarding existing conditions and potential project impacts has not changed substantially. Planned development in other planned communities (Marblehead Inland, Forster Ranch, and Rancho San Clemente) has been implemented; however, the land use impacts associated with the Talega Valley Development as identified in the final EIR would still apply, and would not be considered significant.

With regard to land use plans, final EIR 84-02 addressed the following: City of San Clemente General Plan; San Clemente Hillside Grading Ordinance; County of Orange General Plan; County of Orange Park and Recreation requirements; and planning associated with external land uses (Rancho San Clemente, Marblehead Inland, and Forster Ranch Specific Plans; Prima Deshecha
landfill; TRW; and San Onofre State Beach). The planning for the San Onofre State Beach, County Parks and Recreation requirements, and the Hillside Grading Ordinance has not changed since final EIR 84-02 was prepared. A new use permit has been issued by the County of Orange for the TRW site; however, the uses and associated impacts remain the same. Each of the other above listed plans has been updated since preparation of final EIR 84-02. The relationship of the revised plans to the proposed project is provided below:

- **City of San Clemente General Plan** - The City of San Clemente General Plan was updated in May 1993. The Talega Valley Development represents a substantial part of the undeveloped areas of the City. The portion of the development within the County is now part of the City's official sphere of influence. The Talega Valley Development is considered with the City's updated General Plan and respective elements. No revisions to the EIR are necessary. This information would not result in new significant environmental impacts and would not require new mitigation measures.

- **County of Orange General Plan** - Respective elements of the County's General Plan have been updated since certification of final EIR 84-02. Aspects of the Land Use Element and Recreation Element were specifically discussed in the final EIR. These elements, have been updated. The Specific Plan has not changed in any way that would be considered inconsistent with the County's General Plan.

The County of Orange adopted the Growth Management element of the General Plan on August 3, 1988, following certification of final EIR 84-02. The Growth Management Element was revised in October 1993. The Talega Valley Development is consistent with the goals and policies outlined in the Growth Management and no revisions to the EIR are necessary.

- **City of San Clemente Specific Plans** - The City of San Clemente required that the specific plans for four planned communities in the City (Rancho San Clemente, Forster Ranch, Marblehead Inland, and Talega Valley) be updated to be consistent with the General Plan, the Growth Management Program, and the Urban Design Program. The Talega Valley Specific Plan was updated in July 1992, and included that portion of the project within the County of Orange. The Talega Valley Development is compatible with the respective specific plans. This information does not require revisions to the EIR and would not result in new environmental impacts or require new mitigation measures.

The Forster Ranch Specific Plan was amended in 1998. The overall density was reduced, thereby incrementally reducing some of the impacts associated with this development. Development is no longer proposed east of the ridge within Forster Ranch. The Talega Valley Development agreement recognized this change and incorporated provisions for Talega Valley to extend Avenida Vista Hermosa east of the ridge to ensure that the planned circulation network would be implemented. There would be no new land use impacts associated with the proposed annexation and JPA formation that were not considered in EIR 84-02.

- **Prima Deshecha Landfill** - The EIR evaluated the relationship of the Talega Valley Development to the Prima Deshecha landfill operations. Since the certification of the EIR, the County of Orange prepared a general development plan and EIR for the Prima Deshecha Landfill. The final EIR was certified; however, the general development plan was not approved. The County intends to revise the general development plan. As identified in the final EIR, the landfill operations are sufficient distance from the site that there would be no impacts. No revisions to the final EIR for Talega are necessary.
- **San Onofre State Beach General Plan** - The general plan for the San Onofre State Beach has not been revised since certification of final EIR 84-02; however, the San Mateo Campground within subunit 1 of the State Beach has been constructed. As identified in the final EIR, the State Beach uses would be buffered from the proposed project by existing topography. No revisions or new mitigation measures are required for the final EIR. No new environmental impacts would result from the proposed annexation and JPA creation.

As identified above, final EIR 84-02 also addressed planning activities for the FTC. It identified an ongoing alignment study that was to analyze four alternatives selected as a result of the scoping process (BX, C, D and E alignments). The study being completed at that time was TCA EIR 3, which was certified in October 1991 and resulted in the selection of the Modified C Alignment as the locally preferred alternative by the Transportation Corridor Agencies (TCA) Board of Directors. While the TCA selected the Modified C Alignment as their locally preferred alternative, the Federal Highway Administration (FHWA) will make the final determination on the FTC-South alternative to be implemented. This decision is currently expected in approximately the year 2000. An environmental impact statement/subsequent environmental impact report (EIS/SEIR) is currently being prepared. As part of EIS/SEIR process, the issue of viable alternatives is still being considered. The full scope of alternatives to be evaluated will be decided through the National Environmental Policy Act/Section 404 Integration Process currently ongoing between FHWA and resource agencies. It should be noted that all of the technical studies prepared to date for the project evaluated the BX and CP alignments. The CP Alignment is a modified version of the Modified C Alignment. Similar to the information provided in final EIR 84-02, should an alignment other than the CP Alignment be selected through the EIS/SEIR process that traverses the Talega Valley Development, modifications to land use plans for the Talega Valley Development would be required.

The formation of the JPA involves an agreement between the City of San Clemente and the County of Orange. The current general plan designations, zoning, and applicable environmental plans and policies would apply; therefore, no conflict would occur. The annexation and formation of the JPA would not disrupt the physical arrangement of an established community, and it would not conflict with adjacent, existing or planned land uses. No adverse impacts would be anticipated as a result of the annexation and creation of the JPA.

### 5.10 MINERAL RESOURCES

**EIR 84-02**

Final EIR 84-02 identified that there were no mineral resources that would be considered economically significant and the loss of these resources would be considered negligible. No mitigation measures for mineral resources were adopted.

Would the project:

a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? **NO NEW IMPACTS**

b. Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan? **NO NEW IMPACTS**
The California Division of Mines and Geology (CDMG) is the state agency with the responsibility to oversee the management of mineral resources in California. The CDMG considers a site to be significant in regard to mineral commodities if the site can be mined commercially; there must be enough of the resource to be economically viable. There are no such resources on site.

The annexation and formation of the JPA would not affect a known mineral resource or a locally-important mineral resource recovery site. No adverse impacts would be anticipated as a result of the annexation and formation of the JPA.

5.11 NOISE

EIR 84-02

The traffic associated with the Talega Valley Development, combined with the traffic generated by other Backcountry development would result in noise levels along Vista Hermosa north of Calle Frontera that exceed the 65 CNEL noise standard. Mitigation measures were adopted that require the preparation of an Acoustical Analysis Report prior to recordation of final tract/parcel maps and implementation of necessary mitigation measures to sufficiently reduce the noise levels to comply with local and State standards. Implementation of these measures would reduce the noise impacts to less than significant.

The following mitigation measures were adopted as part of final EIR 84-02 pertaining to noise (acoustic environment):

- Prior to approval of any subsequent subdivision maps for Talega Valley, the developer shall coordinate with the City and developers of other major proposed projects whose traffic will contribute significantly to future noise levels along Vista Hermosa north of Calle Frontera, in providing mitigation of traffic noise impacts on existing residences. Specific mitigation shall include: a) preparation of a detailed acoustical analysis determining precise needs for roadway attenuation, b) construction of any improvements identified in the study as necessary to mitigate adverse impacts, and c) a fair-share assessment of fee responsibilities among the major developers for construction of improvements, based on each major development's contribution to traffic volumes along the impacted roadway.

- For all areas within 60 CNEL roadway contours, residential lots and dwellings shall be sound attenuated against present and projected noise, which shall be the sum of all noise impacting the project, so as not to exceed an exterior standard of 65 dB CNEL in outdoor living areas and an interior standard of 45 dB CNEL in all habitable rooms. Evidence prepared under the supervision of an acoustical consultant that these standards will be satisfied in a manner consistent with applicable zoning regulations shall be submitted as follows:

A. Prior to the recordation of a final tract/parcel map or prior to the issuance of Grading Permits, at the discretion of the City/County (whichever is applicable), an Acoustical Analysis Report shall be submitted to the Manager, Development Services Division, for approval. The report shall describe in detail the exterior noise environment and preliminary mitigation measures. Acoustical design features to achieve interior noise standards may be included in the report in which case it may also satisfy "B" below.

B. Prior to the issuance of any building permits, an acoustical analysis report describing the acoustical design features of the structures required to satisfy the exterior and
interior noise standards shall be submitted to the Manager, Development Services Division in the County or the City Planning Department (whichever is appropriate) for approval along with satisfactory evidence which indicates that the sound attenuation measures specified in the approved acoustical report(s) have been incorporated into the design of the project.

C. Prior to the issuance of any Certificates of Use and Occupancy, field testing in accordance with Title 25 regulations may be required by the Manager, Building Inspection Division for the County, or the City of San Clemente Planning Department, to verify compliance with STC and IIC design standards.

- The County of Orange Noise Ordinance, limiting the hours of construction to normal weekday working hours, shall be enforced for areas in the County as well as the City.

Would the project result in:

a. Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? NO NEW IMPACTS

b. Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? NO NEW IMPACTS

c. A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? NO NEW IMPACT

d. A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? NO NEW IMPACTS

e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? NO NEW IMPACTS

f. For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? NO NEW IMPACTS

The project site is currently undeveloped with a low ambient noise level. As addressed in final EIR 84-02, the primary noise sources associated with the Talega Valley Development would be from traffic along the arterial highways. The traffic generated by the project, as well as the regional and interregional trips are not expected to be substantially different from what was addressed in final EIR 84-02. In addition, Marine Corps Base Camp Pendleton is located southeast of the project site. Helicopter operations in and around the developed areas will occasionally flyover the site. In addition to occasional noise from Camp Pendleton Marine Corps Base, noise levels associated with the TRW testing facilities, which test explosive weapons and rocket motors, occasionally produce short-term high noise levels at the test site. Appropriate mitigation measures have been adopted as part of the final EIR.

Annexation of the property into the City of San Clemente and formation of the JPA would not create any noise impacts, exposing people to excessive noise levels. The current noise standards would be applied with the annexation and formation of the JPA. No adverse impacts would be anticipated as a result of the annexation and creation of the JPA.
5.12 POPULATION AND HOUSING

EIR 84-02

The EIR 84-02 identified concerns regarding the potential impacts associated with the phasing of development and the land use mix of the Talega Valley Development. Mitigation measures were adopted requiring the preparation of annual monitoring reports and the preparation of a phasing program. In addition, the EIR addressed the growth inducing and cumulative impacts of the Talega Valley Development.

The following mitigation measures were adopted as part of final EIR 84-02 pertaining to population and housing:

- The developer shall provide a phasing program discussing both timing and location of residential units and commercial development within Talega Valley, to ensure adequate housing mix, as well as commercial development creating a balanced community.

- The developer shall participate in the City’s annual monitoring reports (AMR) which monitor impacts associated with traffic, fiscal, and land use activities. The developer shall also participate in the necessary and/or required improvements resulting in the AMR as associated with the development within Talega Valley, and the City as a whole.

Would the project:

a. Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through the extension of roads or other infrastructure)? NO NEW IMPACTS
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? NO NEW IMPACTS
c. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? NO NEW IMPACTS

The project site is currently undeveloped; however, the adopted OCP-96 growth projections provide for the Talega Valley Development. The project is located within Regional Statistical Area (RSA) 43 and Community Analysis Area (CAA) 60. The growth has been planned for and incorporated into local and regional planning efforts by the City of San Clemente, County of Orange, Southern California Association of Governments (SCAG) and the South Coast Air Quality Management District (SCAQMD). The annexation of the property into the City of San Clemente and formation of a JPA would not change the development plans for the site. The JPA would have the power to control development and regulate actions; however, any changes that would have a substantial effect on the population and housing of the area would be subject to CEQA. Separate environmental documentation would be required to address and mitigate for the potential adverse impacts.

Annexation of the property into the City of San Clemente and formation of the JPA is not anticipated to cause any population and housing related impacts, and it would not induce growth, displace existing housing or cause cumulative impacts to regional populations projections. No adverse impacts would be anticipated as a result of the annexation and creation of the JPA.
5.13 PUBLIC SERVICES

EIR 84-02

Final EIR 84-02 addressed the potential impacts on public services if the Talega Valley Development were implemented. The entire project site is located in the Capistrano Unified School District. At the time the EIR was certified, the City of San Clemente Police and Fire departments provided emergency services to the City portion of the project and the Orange County Fire Department and Sheriffs Department provided service to the unincorporated portion of the project site. Park facilities were incorporated into the plan and would have been administered by the City or the County for their respective portion of the project site. To ensure that impacts were reduced to a level of less than significant, the following mitigation measures were adopted as part of final EIR 84-02 pertaining to public services:

- If the County portion is annexed to the City in the future, a police substation may be necessary. Subsequent planning stages for the County area should provide for the possible need to accommodate a substation onsite.

- Site plans shall incorporate "defensible space" design considerations, such as well-lighted walkways and parking areas, street lighting and easily read street signs and numbers. The San Clemente Police Department shall review all development plans in their respective jurisdictions to ensure that appropriate crime prevention site design is used to the extent feasible.

- The project applicant shall participate in a fund of assessed fees from new developments within the City to provide improvements to public safety services (police and fire).

- The City, County, and developer shall enter into a fire protection agreement to coordinate inspection, fees, and fire protection and emergency medical care at the site.

- Development onsite shall comply with the City's Fire Code requirements, including fire-flow requirements, sprinkling of all occupancies, compliance with the City's roof ordinances, and establishing fuel modification zones between the urban and rural interface. Street grades, widths, and configurations throughout the development shall be designed to accommodate major fire apparatus.

- The San Clemente Fire Department and the County Fire Department shall review all development plans in their respective jurisdictions to ensure that appropriate fire protection site design is incorporated into the plans.

- The project applicant shall participate in a fund of assessed fees from new developments within the City to provide improvements to public safety services (police and fire). In the event that the City Fire Department determines a need for a fire station within the Talega property, the developer shall provide an appropriate site which satisfies the Department's needs.

- The County Library Services Division will reevaluate its needs based on more current population projections. In coordination with the City, the County will define funding mechanisms for providing additional facilities.

- The developer shall contribute fees required per City ordinance to mitigate impacts to
existing school facilities. Construction of the schools proposed within Talega shall be completed as deemed necessary by the Capistrano Unified School District. The developer shall guarantee to the District that a funding mechanism (Mello-Roos district, or other mechanism) is available to construct the onsite school facilities. The nature of the funding mechanism shall be approved by the School District. Prior to recordation of any final Tract Map, the project applicant shall provide certification from the School District that the applicant has completed proceedings for the purpose of providing school facilities deemed necessary for the tract.

Would the project:

a. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered government facilities, need for new or physically altered government facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:

   Fire protection? **NO NEW IMPACTS**
   Police protection? **NO NEW IMPACTS**
   Schools? **NO NEW IMPACTS**
   Parks? **NO NEW IMPACTS**
   Other public facilities? **NO NEW IMPACTS**

A change since final EIR 84-02 was certified pertains to impacts to fire protection and law enforcement services. The EIR identified that services within the City would be provided by the San Clemente Police and Fire Departments; however, these services are now provided by the Orange County Fire Authority (OCFA) and Orange County Sheriff. The level of impact identified in the final EIR would remain the same, just the service provider has changed. These same service providers also serve the County portion of the Talega Valley Development. Mitigation measures were adopted that required the applicant to pay development fees for public safety services, as well as enter into a fire protection agreement to mitigate impacts to a level of less than significant. These measures would still be applicable. The annexation of the County portion of the project to the City and formation of the JPA would not alter the level of impact nor change the service providers. The Orange County Sheriff and OCFA would continue to serve the entire project site.

Another consideration is the adoption of the Growth Management Element of the City of San Clemente General Plan in May 1993. Level of service standards are identified for emergency response times, amount of library spaces required, drainage and flood control, open space, parks, schools, sewers, water, traffic, and parking. The mitigation measures that were adopted as part of EIR would require compliance with the standards outlined in the Growth Management Element. The standards associated with fire, police, and emergency medical services all detail specific response times that are required. The mitigation measures in the EIR require that the project applicant participate in a fund of assessed fees to provide improvements to public safety services. In addition, both the City development agreement and the draft County development agreement address measures for ensuring adequate emergency response times are provided, provisions for a new kindergarten through eighth grade school, and incorporation of park facilities.

The Talega Valley Development, once developed, would require periodic maintenance of public facilities, including roads. The need for this service would remain unchanged with the formation of the JPA; however, as a result of the annexation of the County portion of the site to the City of
San Clemente the agency responsible for this maintenance would shift from the County of Orange to the City of San Clemente. The tax increment would also be directed to the City to offset the additional costs. The demand for maintenance would be considered consistent with the amount and type of development proposed. These responsibilities were considered by the City when establishing the sphere of influence and requiring the annexation of County lands as part of the City development agreement.

The project site would be served by the San Clemente Library, which opened in 1982. The library was developed to accommodate growth in the San Clemente backcountry; therefore, sufficient library facilities are available to service the project site. The annexation of the property to the City of San Clemente would not increase the demand on library facilities beyond what is currently planned.

The annexation of the property into the City of San Clemente and formation of the JPA would not alter the demand for public services or change the service provider, with the exception of facilities maintenance. No government services would be adversely affected by the project.

5.14  RECREATION

EIR 84-02

The EIR 84-02 did not discuss recreation impacts in a separate section of the EIR. The need for parkland and recreational opportunities was addressed as a land use issue and incorporated into the Specific Plan.

a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? NO NEW IMPACTS

b. Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment? NO NEW IMPACTS

More than 1,500 acres of the Talega Valley Development is classified as open space and for recreational use. Recreational uses have been designated on 233.1 acres within the City portion of the development and 103.5 acres within the County. A comprehensive internal trail system and the regional trail network serve the Talega Valley Development. The City development agreement, which was approved since the certification of the EIR states that Talega Valley Development's park requirements are to be satisfied with the provision of 24 acres of public park land and payment of $15.5 million in park fees. This would address the requirements for the entire project site.

Annexation of the property into the City of San Clemente and formation of the JPA would not increase the use of existing recreational facilities or require expansion of the existing facilities beyond what is proposed in the Talega Valley Specific Plan. It would not conflict with the adopted recreational plans or polices. No adverse impacts would be anticipated as a result of the annexation of the property to the City of San Clemente and creation of the JPA.
5.15 TRANSPORTATION/TRAFFIC

EIR 84-02

The traffic analysis included in final EIR No. 84-02 considered Year 2010 augmented traffic forecasts for the area based on the various development forecasts. The traffic projections took into consideration not only development of the Talega Valley Development but also other San Clemente Backcountry developments. The final EIR concluded that with implementation of the identified mitigation measures, project specific significant impacts could be reduced to a level considered less than significant. The following mitigation measures were adopted as part of final EIR 84-02:

- Prior to approval of any subdivision map within the Talega Valley Specific Plan area, the project applicant shall participate in a circulation system monitoring program in coordination with the City Planning department, the City Engineer, and developers of the other Backcountry ranches. The program shall monitor zoned development in the city and the surrounding area, and provide an updated assessment of impacts on the circulation system. The purpose of the monitoring program shall be to identify more precisely at what point in time critical improvements are necessary to the system, as required to accommodate development of Talega Valley.

- Prior to approval of any subdivision map for the project, in either the City of the County portion, the developer shall demonstrate to the satisfaction of the City, and the satisfaction of the County if the map is in the unincorporated County, that sufficient roadway capacity exists to accommodate traffic generated from the areas within the map, or that adequate mitigation, provided by the developer, shall provide adequate capacity.

- Right-of-way reserve shall be provided for Avenida Pico between Avenida La Pata and Foothill Transportation Corridor, and for Avenida La Pata between Avenida Pico and Ortega Highway. The reserve shall provide for a six-lane major arterial.

- The Circulation Element of the City’s General Plan shall be amended to reclassify Avenida Vista Hermosa from a secondary arterial (four-lane undivided) to a primary arterial highway (four-lane divided). The County’s Master Plan of Arterial Highways shall also be amended to reflect Specific Plan designations.

Would the project:

a. Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicles trips, the volume to capacity ratio on roads, or congestion at intersections)? **NO NEW IMPACT**

b. Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways? **NO NEW IMPACT**

c. Result in a change in air traffic patterns, including either an increase in traffic levels or change in location that results in substantial safety risks? **NO NEW IMPACT**

d. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? **NO NEW IMPACT**

e. Result in inadequate emergency access? **NO NEW IMPACT**

f. Result in inadequate parking capacity? **NO NEW IMPACT**
g. Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? **NO NEW IMPACT**

Since the preparation of the EIR there are several factors that would have the potential to change the circulation environment and associated impacts. The first is that the population and housing information used in preparation of the traffic analysis has been updated. At the time the EIR was prepared, the Orange County Preferred Projection-1985 (OCP-85) was the adopted socioeconomic data base. Three updated versions of the OCP projections have been adopted since certification of the final EIR: OCP-88, -92, and -96. OCP-96 takes into consideration the approval of the Talega Valley Development by the City of San Clemente and County of Orange. The project is consistent with the regional traffic projections because there are no proposed changes to the land use plans associated with the annexation of the property to the City of San Clemente and the formation of the JPA.

An updated traffic report was prepared by RKJK and Associates in November 1998 to address the distribution of the traffic on the local circulation network. The updated traffic report uses the new socioeconomic data and the new traffic model that has been developed. Additionally, it evaluates both a long-range scenario (year 2020), as well as the short-term (year 2004) impacts. The study identifies that in the year 2004, there will be two intersections operating below LOS D without the project (Calle Amanecer/Avenida Pico in the a.m. peak hour and the I-5 southbound ramps at Avenida Pico in the p.m. peak hour). Both of these intersections are projected to operate at LOS F. With the Talega Valley Development there will only be one intersection operating below LOS D. The Calle Amanecer/Avenida Pico intersection would operate at LOS E. In the short-term, the implementation of the Talega Valley Development would improve the local circulation.

For build-out conditions, with the Talega Valley Development there would be two intersections operating at a deficient level of service. The Avenida La Pata/Avenida Pico intersection would operate at LOS F and the Calle Amanecer/Avenida Pico intersection would operate at LOS E in the p.m. peak hour. The Talega Valley Development would contribute to the long-range impact at the two identified intersections; however, these impacts are a result of build-out of the San Clemente General Plan. Additionally, mitigation for circulation impacts within the City of San Clemente have been addressed as part of the Development Agreement between the City and Talega Associates. As part of earlier conditions and the Development Agreement, the Talega Valley project has been conditioned by the City of San Clemente to participate in the Regional Circulation Financing and Phasing Program (RCFP) which is designed to address necessary circulation improvements.

The annexation of the property into the City of San Clemente and formation of the JPA would not result in any new circulation impacts.

### 5.16 UTILITIES AND SERVICE SYSTEMS

**EIR 84-02**

Information was provided in final EIR 84-02 regarding water, wastewater, electricity and natural gas, and solid waste. Final EIR 84-02 states that the Talega Valley Development would result in impacts to electricity and natural gas that would be only partially mitigated and cumulatively significant. No significant impacts were identified. The following mitigation measures were adopted as part of the final EIR:
• The Specific Plan shall provide design features that conserve water, such as: controlled irrigation systems which employ drip irrigation, soil moisture sensors, and automatic systems that minimize runoff and evaporation; landscaping that emphasizes drought-tolerant species; low-flush toilets and low-flow faucets; insulation of hot water lines in water-recirculating systems; drinking fountains with self-closing valves and public flush valve-operated water closets with three-gallon flush; and use of mulch on top of soil to improve water-holding capacity of public landscaped areas.

• The City of San Clemente Engineering Department requests that in order to help relieve area-wide seasonal water supply shortages, the Santa Margarita Water District explore the feasibility of cooperating with the City in a joint venture for providing seasonal water storage in the vicinity of Talega.

• Irrigation systems within Talega shall be designed to use recycled water to the maximum extent possible in public landscaped areas such as slopes, parks, and street medians, as well as for irrigation of the proposed golf courses.

• Impacts associated with the underground installation of utility lines can be substantially mitigated through concurrent installation of all utility lines including, but not limited to, gas, electricity, telephone, and cable television. A master infrastructure plan shall be developed which will allow construction and undergrounding of all systems required for project completion prior to, or concurrent with, the onset of development. This will provide greater system efficiency, as well as save time and reduce costs associated with incremental infrastructure, planning, and development.

• All structures shall comply with building standards in Title 24 of the California Administrative Code. Provisions for natural heating and cooling through techniques including, but not limited to, variable shading, overhangs, clerestory windows, louvers, and energy efficient building orientation shall be included in project design to the extent feasible. Energy efficient lighting shall also be used (e.g., high pressure sodium outdoor lighting and fluorescent indoor lighting).

• The Specific Plan shall include provisions for the continued unobstructed access to and along the SDG&E transmission facilities for patrol, repair, and maintenance. Proposed grading, improvements, and other encroachments into the transmission right-of-way shall be reviewed and approved by SDG&E.

Would the project:

a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? NO NEW IMPACTS
b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? NO NEW IMPACTS
c. Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? NO NEW IMPACTS
d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? NO NEW IMPACTS
e. Result in a determination by the wastewater treatment provider which serves or may serve
the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? **NO NEW IMPACTS**

f. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs? **NO NEW IMPACTS**

g. Comply with federal, state, and local statutes and regulations related to solid waste? **NO NEW IMPACTS**

The demand for utilities from the Talega Valley Development would be the same as identified in final EIR 84-02 because the development plan has not been substantially modified. The service providers have assumed the implementation of the Talega Valley Development in their long-term plans. The demand for electrical and gas loads have identified as being within the parameters of the projected loads anticipated by San Diego Gas and Electric (SDG&E) for future growth within the area. To address this demand, SDG&E has planned a new Pico substation that will serve the Talega Valley Development, as well as other uses in the City of San Clemente. The service providers would not change as a result of the annexation of the property into the City of San Clemente or formation of the JPA.

There have not been any substantial changes in the environment since the certification of the final EIR, however, the Santa Margarita Water District has installed many of the planned improvements identified in the EIR. The improvements include major transmission lines for the main utilities (water, sewer, and storm drain) in Avenida Pico. These utilities have been stubbed out in future streets to service future development. Additionally, the City and County development agreements have provisions for payment of the debt service on the $62 million of general obligation bonds that encumber the property within the incorporate limits of the City of San Clemente.

### 6.0 CONCLUSION

As discussed in Section 4, of this document, an addendum to final EIR No. 84-02 is the appropriate documentation if some changes or additions are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred. The City of San Clemente finds that:

1. there have not been substantial changes in the project that require major revisions to the previous EIR because of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

2. there have not been substantial changes with respect to the circumstances under which the project is undertaken, which will require major revisions to the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

3. there is no new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified as complete which shows any of the following: (a) the project will have one or more significant effects not discussed in the previous EIR; (b) significant effects previously examined will be substantially more severe than shown in the previous EIR, (c) mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effect of the project, but the project proponents decline to adopt the mitigation measure or alternative; or (d) mitigation measures or alternatives which are considerably different from those analyzed in the final EIR would substantially reduce one or more significant effects on...
the environment, but the project proponents decline to adopt the mitigation measure or alternative.

This Initial Study provides the documentation regarding potential changes to the project, the environment in which it is being implemented, and any new information and therefore, serves as the addendum to final EIR No. 84-02.
ATTACHMENT A

COUNTY OF ORANGE MITIGATION MONITORING PROGRAM FOR EIR 482
MITIGATION MONITORING PROGRAM
FOR
THE ROLLING HILLS PLANNED COMMUNITY

Prepared for:

County of Orange
Planning and Development Services
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Santa Ana, California 92702

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Property Owner:

Talega Associates, LLC
951 Calle Negocio, Suite D
San Clemente, California 92673

Contact: Bryan Austin

Prepared by:

BonTerra Consulting
151 Kalmus Drive, Suite E-200
Costa Mesa, California 92626

Contact: Kathleen Brady, AICP

January 1999
INTRODUCTION

The portion of the Talega Valley Development within unincorporated Orange County was previously known as the Rolling Hills Planned Community. Final environmental impact report (EIR) No. 482 for the Rolling Hills Planned Community was prepared pursuant to the requirements of the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and County of Orange Environmental Analysis Procedures. Final EIR No. 482 addressed the environmental effects, mitigation measures, and project alternatives associated with proposed Zone Change 86-31P, Planned Community District Regulations, Rolling Hills Feature Plan 88-1P and Development Agreement (DA 87-14), and was certified by the County of Orange Board of Supervisors as adequate and complete on May 4, 1988.

At the time Final EIR 482 was certified there were no requirements for monitoring the implementation of mitigation measures. Since development of the planned community was initiated shortly after the project was approved in 1988 a number of the mitigation measures identified in Final EIR 482 have been implemented. With the restart of the project, the County of Orange has requested that a Mitigation Monitoring Program (MMP) be developed to ensure that mitigation measures outlined in Final EIR 482 for the Rolling Hills Planned Community are implemented as required and provide documentation of those measures that have already been implemented. The MMP has been prepared in conformance with Section 21081.6 of the Public Resources Code and the County of Orange Mitigation Monitoring requirements.

MITIGATION MONITORING RESPONSIBILITIES

The County of Orange Planning and Development Services Department (PDSD) is the designated lead agency for the MMP. The PDSD is responsible for review of all monitoring reports, enforcement actions, and document disposition. The applicant is responsible for implementation of most of the mitigation measures. PDSD can require the applicant to provide the necessary documentation to substantiate that the mitigation measure has been complied with.

MITIGATION MONITORING PROGRAM FORMAT

The MMP is provided in matrix format to facilitate effective tracking and documentation of the status of mitigation measures. The matrix provides for the following categories:

- Approval Document -- At this time, the MMP only includes mitigation measures that have been required pursuant to Final EIR 482. However, the MMP provides the framework to effectively track additional mitigation measures that may be applied to the Rolling Hills Planned Community as part of subsequent approvals.

- Mitigation Number -- The numbering corresponds to the number assigned to the measure in the approving document.

- Timing of Condition -- This column of the matrix has been provided to highlight the timing when verification of implementation should occur. To highlight this, boldface type has been used for the timing of the measure. For the mitigation measures required by Final EIR 482 the appropriate timing has been identified as part of this MMP if it was not clearly identified as part of the mitigation measure.
- **Mitigation Measure** – This column provides a verbatim listing of the mitigation measure from the approving document.

- **Approving Authority** – This identifies where the approval authority lies for the determination if the mitigation measure has been adequately complied with. Given the age of Final EIR 482, some of the mitigation measures identify the Environmental Management Agency (EMA) as the approving authority. In these cases, the appropriate department in the County’s current structure has been identified.

- **Form of Compliance** – This provides a brief statement on how the measure will be complied with.

- **Status of Compliance** – This column provides for a recording of the status on the implementation of the measure. This provides a record of when measures have been deemed satisfied.

- **Responsible Party** – The party responsible for implementation of the measure is identified here. In most all cases, the applicant is party responsible for implementing the measures.

- **Notes** – This provides a space for including notation that is pertinent to the mitigation measure.

**MATRIX ACRONYMS**

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>AMR</td>
<td>Annual Monitoring Report</td>
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<td>BMP</td>
<td>Best Management Practices</td>
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<td>CAA</td>
<td>Community Analysis Area</td>
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<td>CDFG</td>
<td>California Department of Fish and Game</td>
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<td>Capistrano Unified School District</td>
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<td>Environmental Management Agency</td>
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<td>Federal Highway Administration</td>
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<td>Feature Plan Amendment</td>
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<td>Foothill Transportation Corridor</td>
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<td>Master Plan of Arterial Highways</td>
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<td>MPCB</td>
<td>Master Plan of Countywide Bikeways</td>
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<td>NPDES</td>
<td>National Pollutant Discharge Elimination Systems</td>
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<td>Orange County Environmental Management Agency</td>
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<td>OCFA</td>
<td>Orange County Fire Authority</td>
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<td>OCP</td>
<td>Orange County Preferred (socioeconomic data set)</td>
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<td>PA</td>
<td>Planning Area</td>
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<td>Planning and Development Services Department</td>
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<td>Public Facilities and Resources Department</td>
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<td>Rolling Hills Planned Community</td>
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<td>Regional Water Quality Control Board</td>
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<td>South Coast Air Quality Management District</td>
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<td>San Diego Gas and Electric</td>
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<td>State Historic Preservation Officer</td>
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<td>Santa Margarita Water District</td>
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<td>TCA</td>
<td>Transportation Corridor Agencies</td>
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<td>TTM/TPM</td>
<td>Tentative Tract Map/Tentative Parcel Map</td>
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<td>Approval Doc.</td>
<td>Mitigation No.</td>
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| EIR 482 | 23 | Prior to issuance of finished grade grading permits for the golf course. | Guidelines (in the Regulations and Guidelines for the Application of Fertilizers and Pesticides) shall specify which pesticides may be used on-site; only EPA-identified application methods and practices (including dosages and frequency of application) which will prevent hazards to humans and domestic animals. These Regulations and Guidelines shall be reviewed by the Regional Water Quality Control Board prior to County approval. | PFRO/Design Manager and RWQCB | Inclusion in the Landscape Management Plan. | Implemented through the use of BMPs and National Pollutant Discharge Elimination Systems (NPDES) permit. | Project applicant |

<p>| EIR 482 | 24 | Throughout construction. | The pollutant load available for wash-off to the drainage courses shall be reduced to the practicable extent possible through a program of street cleaning and developing a program with the homeowners association to eliminate the use of household pollutant sources (i.e., fertilizer types, pesticides, specific paints, plaster, roofing materials). | PFRO/Design Manager | Notes on tentative tract map. | Implemented through the use of BMPs. | Project applicant |
| EIR 482 | 25 | Ongoing, through life of the project. | Runoff generated from the golf course shall be of suitable quality prior to discharging into the natural drainage courses through establishment of a water quality monitoring program at the downstream reach of the project storm drain system. This would eliminate excessive nutrient loading from the golf course. The current drainage patterns for the proposed golf course provide that the runoff be collected and discharged into the lake/water features. These lakes will also provide the stormwater detention required to mitigate the increase in development runoff. It is recommended that two storm runoff events be sampled annually for five years, unless the analysis of the samples show unacceptable levels of the following target parameters: Electric conductivity, pH, nitrate and nitrite, Ammonia, total nitrogen, phosphate, lead, zinc, copper, mercury, pesticides and herbicides, chromium, suspended solids, oil and grease. The water quality monitoring program should be in place at the time the golf course construction is complete. The golf course operator should be required to retain a qualified consultant to install and maintain the necessary equipment, collect samples, make provisions for having the samples analyzed. In the event the operator detects a water quality problem then the mitigation measure would be to install sand filters in the bottom of the detention ponds. By merely allowing the runoff from the golf course to be detained in the ponds reduces the pollutant loading by almost 50% (reference: 'Urban Stormwater Management', American Public Works Association, 1981.). | PFRD/Design Manager | Implementation of Runoff Management Plan, BMPs, and NPDES permit provisions. | Complete. Incorporated into design of the golf course. | Project applicant and golf course management | An updated Runoff Management Plan for the project was approved for the project on July 1, 1998. |
| EIR 482 | 28 | Prior to recordation of the first tentative tract map. | Prior to recordation of the first tentative tract map the applicant shall prepare for the review and approval of the Planning Commission, a runoff management plan. Said plan shall evaluate methods of conveying project related runoff into adjacent regional facilities with no net downstream impact. | PFRD/Design Manager | Preparation of a Runoff Management Plan. | Complete. | Project applicant |
| EIR 482 | 27 | At the time of dedication of the Reserve Area | In order to prevent impacts on the sensitive biological resources of the Reserve area, and to offset potential indirect adverse impacts of the proposed development on the Reserve area, the Reserve area shall limit uses to natural open space and limited passive recreation (equestrian trails, bike trails and hiking trails). | Board of Supervisors | Uses identified with the offer of dedication. | Complete. | County of Orange and Land Conservancy | An offer of dedication for the Reserve was given on April 24, 1990. |</p>
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<th>EIR 482</th>
<th>Page</th>
<th>Description</th>
<th>Additional Information</th>
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<tr>
<td>28</td>
<td>In conjunction with the submittal of an application for CDFG Agreement.</td>
<td>In areas identified by blue lines on U.S.G.S. 7.5 Quad Sheets, the applicant shall consult with the California Department of Fish and Game as a requirement of Sections 1601-6 of the State Fish and Game Code which gives the Department of Fish and Game review authority over projects which could alter drainage containing significant habitat. Also, if necessary, the Army Corps of Engineers shall be consulted pursuant to Section 404 of the Clean Water Act.</td>
<td>CDFG</td>
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<td>29</td>
<td>As part of the Resource Management Plan.</td>
<td>Most of the oak woodland habitat presently occurring within the site will be incorporated within the golf course development complex. Golf course irrigation will be regulated in a manner to assure rapid establishment of newly planted vegetation, while at the same time avoiding over-watering of oak trees. Golf course irrigation will be kept at an appropriate distance from oak trees. Drainage improvements will be designed so as to minimize damage to trees from runoff and erosion.</td>
<td>Planning Commission</td>
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<td>30</td>
<td>As part of the Resource Management Plan.</td>
<td>The major oak groves occurring onsite are proposed for retention and maintenance as permanent open space to frame development areas and add to the open space linkage system within Rolling Hills. Additionally, development will generally be limited in a manner to avoid jeopardizing the survival of individual oak trees, though removal of a few individuals will be necessary. Guidelines to ensure preservation and continues welfare of groves and individual trees have been developed in accordance with County of Orange Oak Tree preservation guidelines established by Harbors, Beaches and Parks Department, Environmental Management Agency, and are included as a component of the feature plan.</td>
<td>Planning Commission</td>
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<td>30 cont.</td>
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<td>31</td>
<td>Prior to approval of site development plans.</td>
<td>Prior to approval of site development plans, the applicant shall submit landscape plans for any development area adjacent to the natural open space area or Reserve area. These plans shall specifically identify all plant materials proposed for use in the area. The plans shall provide evidence that none of the plants proposed will be invasive into the surrounding natural open space areas. These plans shall be approved by Director, Environmental management Agency.</td>
<td>PDS/S/Subdivisio n and Grading</td>
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Mitigation Monitoring Program
<p>| EIR 482 | 32 | Prior to final tentative tract maps | The project proponent shall irrevocably offer to the County of Orange Department of Harbors, Beaches, and Parks, dedication of a Resource Preservation Easement for the 1,200 acre Reserve Area, which is within both the City and County jurisdictions. The Resource Preservation Easement shall serve to protect the Reserve's natural resources (e.g., major ridgelines, cliffs in their natural state) provide and open space transition area at the private/public property interface, and limit uses to areas which are recreational and agricultural in nature and improvements intended to retain open space character. | Board of Supervisors | Offer of dedication. | Complete. | Project applicant | An offer of dedication for the Reserve was given on April 24, 1990. |
| EIR 482 | 33 | Prior to recordation of the first tentative tract map | Prior to recordation of the first tentative tract map, the applicant shall submit a Local Park Implementation Plan satisfying the County requirements for local parks within the Rolling Hills project. The Local Park Implementation Plan shall be approved by the Director of the Environmental Management Agency. | PFRD Director | Approval of a Local Park Implementation Plan. | Pending approval of &quot;B&quot; level tentative tract maps. | Project applicant | The City of Clementa is preparing a Local Parks Implementation Plan that addresses the entire Talega Valley Development. |</p>
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<tr>
<th>EIR 482</th>
<th>34</th>
<th>Prior to the recording of the first tentative tract map.</th>
<th>Prior to the recording of the first tentative tract map, the applicant shall submit for the review and approval of the Planning Commission, a resource management plan. Said plan shall review and propose acceptable mitigation measures for on-site natural resources, including, but not limited to, the several major groves of oak trees on the property.</th>
<th>Planning Commission</th>
<th>Approval of a Resource Management Plan.</th>
<th>Complete.</th>
<th>Project applicant</th>
<th>A Resource Management Plan was approved by the County Planning Commission on March 13, 1969.</th>
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| EIR 482 | 35 | Prior to issuance of a grading permit. | Prior to issuance of a grading permit, the project applicant shall provide written evidence to the Managers of the Environmental Management Agency, the Harbors, Beaches, and Parks Department, and the Program Planning Division that a County-certified paleontologist has been retained by the applicant to observe grading activities and salvage fossils as necessary. The paleontologist shall be present at the pre-grading conference, shall establish procedures for paleontological resource surveillance, and shall establish, in cooperation with the project developer, procedures for temporarily halting or redirecting work to permit sampling, identification, and evaluation of the fossils.

If major paleontological resources are discovered which require long-term halting or redirecting of grading, the paleontologist shall report such findings to the project developer and to the Manager, Environmental Analysis Division.

The paleontologist shall determine appropriate actions, in cooperation with the project developer, which insure proper exploration and/or salvage. These actions, as well as final mitigation and disposition of the resources, shall be subject to approval by the Manager, Environmental Analysis Division.

If significant fossils are found, the paleontologist shall submit a follow-up report for approval by the Manager, Environmental Analysis Division, which shall include the period of inspection, an analysis of the fossils found, and present repository of the fossils. | PFRD/Historical Programs | Written evidence that a county-certified paleontologist has been retained. | Complete for current tract maps. | Project applicant | Initial grading for the current tentative tract maps was done in 1989 through January 1991. Resources would have been discovered at that time. |
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<tbody>
<tr>
<td>EIR 482</td>
<td>36</td>
<td>In conjunction with grading and construction activities.</td>
<td>The landowner shall offer the salvaged fossils to the County of Orange or a County designee on a first refusal basis.</td>
<td>PFRD/Historical Programs</td>
<td>Written evidence of donation.</td>
<td>Complete for current tract maps.</td>
<td>Project applicant</td>
<td></td>
</tr>
</tbody>
</table>
Prior to the issuance of a TTM/TPM grading permit, a County-certified archaeologist shall be retained by the applicant to perform a subsurface test level investigation and surface collection as appropriate. The test level report evaluating the site shall include discussion of significance (depth, nature, condition, and extent of the resources), final mitigation recommendations, and cost estimates. Excavated finds shall be offered to County of Orange, or designee, on a first refusal basis. Applicant may retain said finds if written assurance is provided that they will be properly preserved in Orange County, unless said finds are of special significance, or a museum in Orange County indicates desire to study and/or display them at this time, in which case items shall be donated to County, or designee. Final mitigation shall be carried out based upon the report recommendations and determination as to the site's disposition by the Manager, Parks and Recreation/Program Planning Division. Possible determinations include, but are not limited to, preservation, salvage, partial salvage, or no mitigation necessary.

Prior to the issuance of a grading permit, a County-certified archaeologist shall be retained by the applicant to perform a subsurface test level investigation and surface collection as appropriate. The test level report evaluating the site shall include discussion of significance (depth, nature, condition, and extent of the resources), final mitigation recommendations and cost estimates. Excavated finds shall be offered to County of Orange, or designee, on a first refusal basis. Applicant may retain said finds if written assurance is provided that they will be properly preserved in Orange County, unless said finds are of special significance, or a museum in Orange County indicates desire to study and/or display them at this time, in which case items shall be donated to County, or designee. Prior to the issuance of a grading permit based on the report recommendations and County policy, final mitigation shall be carried out based upon the determination as to the site's disposition by the Manager, Parks and Recreation/Program Planning Division. Possible determinations include, but are not limited to, preservation, salvage, partial salvage, or no mitigation necessary.
<p>| EIR 482 | 38 | Prior to the issuance of a grading permit. | Prior to the issuance of a grading permit, the project applicant shall provide written evidence to the Chief, EMA/Regulations/Grading Section that a County-certified archaeologist has been retained, shall be present at the pre-grading conference, shall establish procedures for archaeological resource surveillance, and shall establish, in cooperation with the project developer, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts as appropriate. If additional or unexpected archaeological features are discovered, the archaeologist shall report such findings to the project developer and to the manager, Parks and Recreation/Program Planning Division. If the archaeological resources are found to be significant, the archaeological observer shall determine appropriate actions, in cooperation with the project developer, for exploration and/or salvage. Excavated finds shall be offered to County of Orange, or designee, on a first refusal basis. Applicant may retain said findings if written assurance is provided that they will be properly preserved in Orange County, unless said finds are of special significance, or a museum in Orange County indicates desire to study and/or display them at this time, in which case items shall be donated to County, or designee. These actions, as well as final mitigation and disposition of the resources, shall be subject to the approval of the Manager, Parks and Recreation/Program Planning Division. | PFRO/Historical Programs | Written evidence that a county-certified archaeologist has been retained. | Complete for current tentative tract maps. | Project applicant | Initial grading for the current tentative tract maps was done in 1989 though January 1991. Any resources would have been discovered at that time. |
| EIR 482 | 39 | Upon selection of a preferred FTC Alignment Alternative. | Upon selection of a preferred FTC Alignment Alternative, the project proponent shall comply with any Federal requirements pertaining to preservation/salvage of archaeological sites within the project site and preferred alignment alternative. | FHWA and State Historic Preservation Officer (SHPO) | Completion of the Section 106 process | Pending selection of precise alignment. | TCA. | Cultural report. Compliance with the requirements of Section 106 have been submitted to SHPO. |
| EIR 482 | 40 | In conjunction with grading activities. | To ensure that those sites which are indirectly impacted are not accidentally impacted during construction, the locations of the archaeological sites shall be generally plotted on grading plan maps and fenced prior to construction. Those sites which lie just outside the area of direct impact as determined by a qualified archaeologist should be marked with a permanent datum, mapped, and surfaced collected. | PFRO/Historical Programs | Inclusion in Grading Plans. | Complete for current tentative tract maps. | Project applicant. | |</p>
<table>
<thead>
<tr>
<th>EIR 482</th>
<th>41</th>
<th>After project approval by the Board of Supervisors.</th>
<th>Pending project approval by the Board of Supervisors, modifications of the CAA growth forecasts by the County Forecast and Analysis Center shall occur so as to distribute more growth to CAA 60.</th>
<th>Board of Supervisors</th>
<th>Modifications of the CAA growth for CAA 60.</th>
<th>Complete.</th>
<th>County Forecast and Analysis Center</th>
<th>The updated projections were incorporated into the OCP-BBM database.</th>
</tr>
</thead>
<tbody>
<tr>
<td>EIR 482</td>
<td>42</td>
<td>In conjunction with design and construction of all onsite arterial highways.</td>
<td>The project applicant shall be responsible for design and construction of all onsite arterial highway facilities required for implementation of the Orange County MPAH.</td>
<td>Subdivision committee.</td>
<td>Through the tentative tract map process.</td>
<td>Complete for tentative tract maps currently being processed.</td>
<td>Project applicant</td>
<td>Avenida Pico has been graded to full arterial width.</td>
</tr>
<tr>
<td>EIR 482</td>
<td>43</td>
<td>Issuance of building permits.</td>
<td>The project applicant shall participate in the construction of the Foothill Transportation Corridor per Resolution No. 82-598 of the Orange County Board of Supervisors.</td>
<td>TCA</td>
<td>Payment of fee.</td>
<td>Payment of fees will be phased with the issuance of building permits.</td>
<td>Project applicant</td>
<td></td>
</tr>
<tr>
<td>EIR 482</td>
<td>44</td>
<td>Annually throughout project construction.</td>
<td>The landowner shall participate in the AMR/DMP process to assess the traffic impact of development of the project on the existing and planned arterial system in the general vicinity of the project. The annual monitoring report shall be submitted to the County Administrative Office and the environmental Management Agency every year until the project is completed.</td>
<td>PDSO/Environmental and Project Planning Department.</td>
<td>Continued participation in the County's requirement for preparing an Annual Monitoring Report.</td>
<td>An AMR was submitted in March 1998.</td>
<td>Project applicant</td>
<td></td>
</tr>
<tr>
<td>EIR 482</td>
<td>45</td>
<td>In conjunction with tentative tract map approvals.</td>
<td>Right-of-way shall be reserved onsite for Avenida Pico between Avenida La Pata and the FTC. The right-of-way reserve shall be of adequate width to accommodate a six-lane major arterial highway.</td>
<td>Subdivision Committee</td>
<td>Inclusion of sufficient right-of-way on tentative tract maps.</td>
<td>Tentative Tract Map.</td>
<td>Project applicant</td>
<td></td>
</tr>
<tr>
<td>EIR 482</td>
<td>46</td>
<td>During review of tentative tract maps.</td>
<td>The internal circulation system shall be subject to additional planning analysis during review of tentative tract maps to conform to county and city emergency access requirements.</td>
<td>PFRD/Design Manager and OCFA.</td>
<td>Conditions on tentative tract maps. If additional provisions are required.</td>
<td>Complete for tentative tract maps currently being processed.</td>
<td>Project applicant</td>
<td>OCFA study has been conducted... evaluate emergency response plans.</td>
</tr>
<tr>
<td>EIR 482</td>
<td>47</td>
<td>In conjunction with approval of tentative tract maps.</td>
<td>Sufficient right-of-way and setbacks (a 500 foot swath) shall be preserved along the conceptual alignments of Alternative E and C for the foothill Transportation Corridor. Tentative tract or parcel maps for areas within these preserved right-of-ways shall be conditioned to prevent grading or construction within the alignment swaths until an alignment is selected. In the case that an alignment other than Alternative C is selected which would transverse areas within Rolling Hills proposed for development, a Specific Plan Amendment shall be initiated to determine reconfiguration of land uses to accommodate the adopted alignment.</td>
<td>Subdivision Committee</td>
<td>Inclusion of right-of-way on tentative tract maps.</td>
<td>Pending.</td>
<td>Project applicant</td>
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<tr>
<td>EIR 482</td>
<td>48</td>
<td>During grading.</td>
<td>To minimize dust generation during grading operations SCAGMO Rule 403 shall be adhered to which will require watering during earth moving operations.</td>
<td>PDSO/Subdivision and Grading Manager</td>
<td>Inclusion of requirements in contractor specification.</td>
<td>Ongoing, complete for current tentative tract maps.</td>
<td>Project applicant</td>
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</tr>
<tr>
<td>EIR 482</td>
<td>49</td>
<td>As part of the Feature Plan and tentative tract maps</td>
<td>The applicant shall encourage the use of alternate transportation modes by promoting public transit usage and providing secure bicycle facilities, including bicycle and bicycle amenities in accordance with the Master Plan of Countywide Bikeways (MPCB).</td>
<td>Subdivision Committee.</td>
<td>Incorporation of trails and bikeways into project design.</td>
<td>Ongoing. Complete for current tentative tract maps.</td>
<td>Project applicant</td>
<td></td>
</tr>
<tr>
<td>EIR 482</td>
<td>50</td>
<td>As part of tentative tract maps</td>
<td>The applicant shall provide mass transit accommodations, such as bus turnaround lanes, park and ride areas, and bus shelters.</td>
<td>Subdivision Committee</td>
<td>Inclusion in of right-of-way in tentative tract maps, if deemed necessary.</td>
<td>Ongoing.</td>
<td>Project applicant</td>
<td></td>
</tr>
<tr>
<td>EIR 482</td>
<td>51</td>
<td>In conjunction with tentative tract maps.</td>
<td>The applicant shall provide energy conserving street lighting.</td>
<td>Subdivision Committee</td>
<td>Use of lighting fixtures that meet County standards.</td>
<td>Ongoing.</td>
<td>Project applicant</td>
<td></td>
</tr>
<tr>
<td>EIR 482</td>
<td>52</td>
<td>In conjunction with tentative tract maps.</td>
<td>The applicant shall provide traffic signal synchronization where feasible.</td>
<td>Subdivision Committee</td>
<td>Review of traffic signal plans.</td>
<td>Ongoing, Complete for current tentative tract maps.</td>
<td>Project applicant</td>
<td></td>
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<tr>
<td>EIR 482</td>
<td>53</td>
<td>Prior to the recordation of a final tract/parcel map or prior to the issuance of Grading Permits, at the sole discretion of the County, an Acoustical Analysis Report shall be submitted to the Manager, Development Services Division, for approval. The report shall describe in detail the exterior noise environment and preliminary mitigation measures. Acoustical design features to achieve interior noise standards may be included in the report in which case it may also satisfy &quot;B&quot; below (Mitigation Measure 60).</td>
<td>PDSO/Subdivision and Grading Manager.</td>
<td>Submittal of an Acoustical Analysis Report, if deemed necessary.</td>
<td>Ongoing.</td>
<td>Project applicant</td>
<td></td>
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<tr>
<td>EIR 482</td>
<td>54</td>
<td>Prior to the issuance of any building permits.</td>
<td>Prior to the issuance of any building permits, an acoustical analysis report describing the acoustical design features of the structures required to satisfy the exterior and interior noise standards shall be submitted to the Manager, Development Services Division for approval along with satisfactory evidence which indicates that the sound attenuation measures specified in the approved acoustical report(s) have been incorporated into the design of the project.</td>
<td>PDSD/Manager, Development Services Division.</td>
<td>Submittal of an Acoustical Analysis Report.</td>
<td>Ongoing.</td>
<td>Project applicant</td>
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<tr>
<td>EIR 482</td>
<td>55</td>
<td>Prior to the issuance of any Certificates of Use and Occupancy.</td>
<td>Prior to the issuance of any Certificates of Use and Occupancy, field testing in accordance with Title 25 regulations may be required by the Manager, Building Inspection Division, to verify compliance with STC and IIC design standards.</td>
<td>PDSD/Manager, Building Inspection Division</td>
<td>Field testing, if required.</td>
<td>Pending with Use and Occupancy permits.</td>
<td>Project applicant</td>
<td></td>
</tr>
<tr>
<td>EIR 482</td>
<td>56</td>
<td>In conjunction with construction and grading activities.</td>
<td>Enforcement of the County of Orange Noise Ordinance that limits the hours of construction to the normal weekday working hours should minimize any potential noise impacts from construction activities.</td>
<td>PDSD/Manager, Development Services Division.</td>
<td>Notes on grading and building permits.</td>
<td>Ongoing.</td>
<td>Project applicant and building contractors</td>
<td></td>
</tr>
<tr>
<td>EIR 482</td>
<td>57</td>
<td>Prior to final design.</td>
<td>A noise barrier of undetermined height may be required along residences that abut Alternative Alignment C of the Foothill Transportation Corridor.</td>
<td>PDSD/Manager, Development Services Division.</td>
<td>Conditions on tentative tract map, if applicable.</td>
<td>Pending selection of precise alignment for the FTC-South.</td>
<td>TCA or project applicant.</td>
<td></td>
</tr>
<tr>
<td>EIR 482</td>
<td>58</td>
<td>Prior to issuance of any building permits.</td>
<td>Prior to issuance of any building permits, at the sole discretion of the County, additional acoustical analysis may be required addressing noise related impacts associated with the selection of an FTC Alignment Alternative other than FTC Alignment C.</td>
<td>PDSD/Manager, Development Services Division.</td>
<td>Submittal of an Acoustical Analysis Report, if required.</td>
<td>Pending selection of precise alignment.</td>
<td>TCA or project applicant.</td>
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<tr>
<td>EIR 482</td>
<td>59</td>
<td>Prior to the issuance of any building permits.</td>
<td>Prior to the issuance of any building permits, a feasibility analysis for offsite noise mitigation measures shall be approved by the Director, EMA for existing residences on the east side of Vista Hermosa between Calle Frontera and Via Turqueta.</td>
<td>PDSD Director, in coordination with the City of San Clemente.</td>
<td>Approval of an Acoustical Analysis Report addressing the feasibility analysis of offsite noise mitigation.</td>
<td>Required prior to issuance of building permits.</td>
<td>Project applicant</td>
<td></td>
</tr>
</tbody>
</table>
| EIR 482 | 60 | Prior to recordation of (a) final map, (b) building permit, and (c) use and occupancy. | All residential lots and dwellings units shall be sound attenuated against present and projected noise, which shall be the sum of all noise impacting the project, so as not to exceed an exterior standard of 65 dB CNEL in outdoor living areas and an interior standard of 45 dB CNEL in all habitable rooms. Evidence prepared under the supervision of a County-certified acoustical consultant that these standards will be satisfied in a manner consistent with applicable zoning regulations shall be submitted as follows:

a. Prior to the recordation of a final parcel/tract map or prior to the issuance of any grading permits, an acoustical analysis report shall be submitted to the Manager, Development Services Division, for approval. The report shall describe in detail the exterior noise environment and preliminary mitigation measures. Acoustical design features to achieve interior noise standards may be included in the report in which case it may also satisfy “b” below.

b. Prior to the issuance of any building permits, an acoustical analysis report describing the acoustical design features of the structures required to satisfy the exterior and interior noise standards shall be submitted to the Manager, Development Services Division for approval along with satisfactory evidence which indicates that the sound attenuation measures specified in the approved acoustics report have been incorporated into the design of the project.

c. Prior to the issuance of any certificates of use and occupancy, field testing in accordance with Title 25 regulations may be required by the Manager, Building Inspection Division, to verify compliance with STC and IIC design standards. | PBSD/Manager, Development Services Division | Approval of an Acoustical Analysis Report | Pending | Project applicant |
| EIR 482 | 61 | Prior to the issuance of any grading permit and during grading activities. | Prior to the issuance of any grading permit, the project proponent shall produce evidence acceptable to the Manager, Development Services, that:

d. All construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers.

b. All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).

c. Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings. | PDSD/Subdivision and Grading Manager. | Conditions on inclusion in grading plans. | Ongoing. Complete for the grading permits that have been issued. | Project applicant |

| EIR 482 | 62 | Prior to recordation of each final tract/parcel map, the subdivider shall either place a notice on a final tract/parcel map or record a notice with the map that states that this property may be subject to impacts from the Foothill Transportation Corridor in a manner meeting the approval of the Manager, Development Services Division. | Prior to recordation of each final tract/parcel map, the subdivider shall either place a notice on a final tract/parcel map or record a notice. | Placement of a note on a final tract/parcel map or record a notice. | Pending. | Project applicant |

<p>| EIR 482 | 63 | Prior to the issuance of certificates of use and occupancy. | Prior to the issuance of certificates of use and occupancy, the developer shall provide evidence to the Manager, Development Services Division, that the Department of Real Estate has been notified that the project area is adjacent to a major regional transportation corridor which is shown on the Orange County Master Plan of Arterial Highways and which will pass along the side of (____ feet _____ from) the subdivision (_____ project). The corridor is expected to be a high capacity, high-speed, limited-access facility for motor vehicles, and will have provisions for bus lanes and other mass transit type facilities along it. | PDSD/Manager, Development Services Division. | Note on tentative tract map and approval of buyer notification program. | Pending selection of an alignment. | Project applicant |
| EIR 482 | 64 | In conjunction with tentative tract maps. | Landscaping shall be provided throughout the development with a series of design guidelines established by the Rolling Hills Feature Plan to soften visual impacts, promote a cohesive reinforcement of community character and ensure a consistency in the area's visual image. These guidelines include a variety of landscape treatments for streets, entry points, development edges, development/open space transition areas, and other common areas within the site. | PDSO/Subdivision and Grading. | Landscape plan submittal with tentative tract maps. | Tentative Tract Maps and Site Plan. | Project applicant |
| EIR 482 | 65 | At the tentative tract map and site plan approvals. | Specific design attention shall be given to the entryways and perimeters of the site where landscape treatments, entry monumentation, golf course view windows, and a unifying open space system are proposed to buffer and soften the visual impacts of development and provide a sense of continuity and relationship between various uses and location within the community. | PDSO/Subdivision and Grading. | Verify Inclusion of Feature Plan. | Tentative Tract Maps and Site Plan. | Project applican |
| EIR 482 | 66 | As part of the Feature Plan. | Architectural design guidelines shall be established by the Rolling Hills Feature Plan to provide guidance to developers, builders, engineers, architects, landscape architects and other design professionals in order to maintain design continuity during the extended period of development. | Planning Commission | Inclusion Feature Plan. | Complete with Feature Plan. | Project applicant |
| EIR 482 | 67 | Prior to final design. | Where feasible, prominent natural features within Rolling Hills shall be maintained in a natural state and incorporated into the landscape concept. The roof lines of the proposed development within the vicinity of <em>Nob Hill</em> landform shall not exceed above the ridge line. In addition, oak tree stands and riparian areas are to be maintained and enhanced where possible, and defining landforms (ridge lines and hillsides) will be preserved. | Planning Commission | Inclusion in the Feature Plan. | Complete with Feature Plan. | Project applicant |
| EIR 482 | 68 | Prior to recordation of each final tract/parcel map. | Prior to recordation of each final tract/parcel map, the subdivider shall either place a notice on the final tract/parcel map or record a notice with the map that states that this property may be subject to impacts from the Foothill Transportation Corridor in a manner meeting the approval of the Manager, Development Services Division. | Manager, Development Services Division. | Note on final tract/parcel map or recorded notice. | Ongoing. | Project applicant |</p>
<table>
<thead>
<tr>
<th>EIR 482</th>
<th>69</th>
<th>Prior to approval of Specific Plan for the City's development</th>
<th>The developer shall provide a fire station site in a manner meeting the approval of the Fire Chief.</th>
<th>OCFA</th>
<th>Fire station site identified on Feature Plan or Specific Plan (for City portion).</th>
<th>Pending.</th>
<th>Project applicant and OCFA</th>
<th>OCFA is conducting a study to determine the fire response needs for the Talega Valley Development.</th>
</tr>
</thead>
<tbody>
<tr>
<td>EIR 482</td>
<td>70</td>
<td>Prior to recording of the first tentative tract map.</td>
<td>Prior to recording of the first tentative tract map, the applicant shall submit a Fire Service Implementation Plan identifying the site location, design criteria, equipment and manpower needs, phasing of improvements, and the financing mechanisms for implementation. The Fire Service Implementation Plan shall be approved by the Director of the Environmental Management Agency.</td>
<td>OCFA</td>
<td>Submittal of a Fire Service Implementation Plan.</td>
<td>Tentative Tract Maps and Site Plan.</td>
<td>Orange County Fire Authority and the project applicant.</td>
<td></td>
</tr>
<tr>
<td>EIR 482</td>
<td>71</td>
<td>Prior to issuance of a building permit.</td>
<td>The developer shall comply with Ordinance No. 3570, the community facilities development fee program through the County Administrative Office for fire stations. Cost of providing a fire station site will be credited towards fee requirements.</td>
<td>OCFA and PDSO/Subdivision and Grading</td>
<td>Inclusion on tentative tract maps.</td>
<td>Ongoing.</td>
<td>Project applicant.</td>
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</tr>
<tr>
<td>EIR 482</td>
<td>72</td>
<td>As part of grading and tentative tract maps.</td>
<td>The developer shall provide fire flow/water systems and fuel modification at wildland interface and give special consideration to include residential fire sprinkler systems.</td>
<td>PDSO/Subdivision and Grading</td>
<td>Inclusion of fuel modification provisions in grading plans and special considerations as part of tentative tract maps</td>
<td>Complete for current maps. Ongoing through tentative tract maps and site plan process.</td>
<td>Project applicant.</td>
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</tr>
<tr>
<td>EIR 482</td>
<td>73</td>
<td>Prior to approval of Feature Plan.</td>
<td>The feature plan shall include technical report documentation in order to establish a water system for reservoirs and pump stations needed to satisfy the requirements of the proposed land uses and applicable county and water districts standards.</td>
<td>Planning Commission</td>
<td>Inclusion in Feature Plan.</td>
<td>Complete.</td>
<td>Project applicant</td>
<td></td>
</tr>
<tr>
<td>EIR 482</td>
<td>74</td>
<td>In conjunction with tentative tract map approval.</td>
<td>Phasing of the water systems infrastructure improvements shall occur concurrently with development of the project.</td>
<td>PDSO/Subdivision and Grading</td>
<td>Improvements identified on tentative tract maps.</td>
<td>Complete for current tentative tract maps with Santa Margarita Water District (SMWD) Master Improvement Program.</td>
<td>Project applicant</td>
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</tr>
<tr>
<td>EIR 462</td>
<td>75</td>
<td>Prior to approval of Feature Plan and tentative tract maps.</td>
<td>The feature plan will provide design features that ensure implementation of water conservation measure. The following measures will be implemented as required by state law.</td>
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<td>a. Low-flush toilets (section 17921.3 of the Health and Safety code).</td>
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<td>b. Low-flow showers and faucets (California Administrative code, title 24, Part 6, Article 1, T20-1406F).</td>
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<td>c. Insulation of hot water lines in water recirculating systems (California Energy Commission regulations).</td>
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<td>Planning Commission for the Feature Plan and PUSD/Subdivision and Grading for tentative tract maps.</td>
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<td>Inclusion in Feature Plan and notes on tentative tract maps.</td>
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<td></td>
<td>Complete with SMWD Master Improvement Program.</td>
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<td></td>
<td></td>
<td>Project applicant</td>
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</table>
| EIR 482 | 76 | Prior to approval of final tentative tract maps. | In addition, the State Department of Water Resources recommends implementation of several interior and exterior water conservation measures which vary in their applicability and practicality for any one particular development proposal. These measures will be considered for use in the proposed development. These measures include, but are not limited to:

**Interior Measures**
- Reduce water pressure in supply lines to 50 pounds per square inch (psi) or less by means of pressure reducing valves.
- Insulate all hot water lines to provide hot water faster with less water waste, and to keep hot pipes from heating cold pipes.
- Use conservation remainders in commercial rooms and rest rooms; utilize thermostatically controlled mixing valves; utilize water conserving washers for laundry facilities and dishwashers; and serve drinking water upon request only.

**Exterior Measures**
- Utilize drought-tolerant landscaping materials.
- Install efficient irrigation systems which minimize runoff and evaporation and maximize the amount of water reaching the plant roots. Drip irrigation, soil moisture sensors, and automatic irrigation systems and effective methods of increasing irrigation efficiency.
- Use mulch extensively in all landscaped area. Mulch applied on top of the soil will improve soil water holding capacity by reducing evaporation and soil compaction (enhances and maintains soil permeability).

| EIR 482 | 77 | Incorporation into the Feature Plan. | The feature plan shall provide design features that ensure implementation of water conservation measures as outlined in Section 4.3 (Water) of this document.

<p>| PDSD/Subdivision and Grading | Notes on tentative tract maps, as applicable. | Ongoing through the use of BMP's. | Project applicant. |</p>
<table>
<thead>
<tr>
<th>EIR 482</th>
<th>78</th>
<th>Prior to approval of Feature Plan.</th>
<th>The feature plan shall include technical report documentation in order to establish a wastewater service system needed to satisfy the requirements of the proposed land uses and applicable county and water district standards.</th>
<th>Planning Commission</th>
<th>Inclusion in Feature Plan.</th>
<th>Complete, implemented through SMWD Master Improvement Program.</th>
<th>Project applicant and SMWD.</th>
</tr>
</thead>
<tbody>
<tr>
<td>EIR 482</td>
<td>79</td>
<td>In conjunction with tentative tract map approval.</td>
<td>Phasing of the wastewater systems infrastructure improvements shall occur concurrently with development of the project and shall be complete before business and residence areas are established.</td>
<td>PDSI/Subdivisions and Grading</td>
<td>Improvements identified on tentative tract maps.</td>
<td>Complete for current tentative tract maps with SMWD Master Improvement Program.</td>
<td>Project applicant</td>
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<tr>
<td>EIR 482</td>
<td>80</td>
<td>Prior to issuance of any occupancy permit of any building.</td>
<td>Prior to issuance of any occupancy permit of any building, a program for the sorting of recyclable materials from other solid waste shall be developed and approved by the Planning Department.</td>
<td>Contractor with solid waste hauling contract.</td>
<td>Recycle program for solid waste hauler.</td>
<td>Complete.</td>
<td>Solid Waste Hauler.</td>
</tr>
<tr>
<td>EIR 482</td>
<td>81</td>
<td>Prior to approval of tentative tract map.</td>
<td>The proposed project shall provide unobstructed access to and along the existing (electrical) transmission facilities for patrol, repair, and maintenance.</td>
<td>PDSI/Subdivisions and Grading</td>
<td>Inclusion of access easement in plans.</td>
<td>Ongoing.</td>
<td>Project applicant</td>
</tr>
<tr>
<td>EIR 482</td>
<td>82</td>
<td>Prior to issuance of a grading plan permit.</td>
<td>Any proposed grading, improvements or other encroachments into the transmission right-of-way shall be reviewed and approved by San Diego Gas and Electric (SDG&amp;E).</td>
<td>PDSI/Subdivisions and Grading and SDG&amp;E</td>
<td>Review of plans.</td>
<td>Tentative Tract Maps and Grading Plan.</td>
<td>Project applicant and SDG&amp;E</td>
</tr>
<tr>
<td>EIR 482</td>
<td>83</td>
<td>Prior to issuing a grading plan permit.</td>
<td>Prior to issuing a grading plan permit drainage into the SDG&amp;E right-of-way shall be examined.</td>
<td>PDSI/Subdivisions and Grading and SDG&amp;E</td>
<td>Review of plans.</td>
<td>Tentative Tract Maps and Grading Plan.</td>
<td>Project applicant and SDG&amp;E</td>
</tr>
<tr>
<td>EIR 482</td>
<td>84</td>
<td>Prior to issuance of use and occupancy permits.</td>
<td>The developer shall work closely with Pacific Bell in order to efficiently provide telephone service to the project site.</td>
<td>Pacific Bell</td>
<td>Review of plans and specifications.</td>
<td>Ongoing.</td>
<td>Project applicant and Pacific Bell.</td>
</tr>
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<tr>
<td>EIR 482</td>
<td>85</td>
<td>Prior to recordation of the first tentative tract map.</td>
<td>The developer shall contribute, if necessary, to the funding of additional police protection, manpower, and equipment as determined by the Orange County Sheriff's Department.</td>
<td>PDS and OC Sheriff</td>
<td>Provisions, as necessary in the Development Agreement.</td>
<td>Pending, the Development Agreement is in process.</td>
<td>Project applicant.</td>
</tr>
<tr>
<td>EIR 482</td>
<td>86</td>
<td>As part of the Specific Plan Amendment in the City of San Clemente.</td>
<td>The developer shall reserve a future elementary school site. Location and size of this site must be approved by the Capistrano Unified School District (CUSD).</td>
<td>CUSD</td>
<td>Written evidence a future elementary school site is reserved.</td>
<td>Pending. A school site has been identified in the City portion of the Talega Valley Development.</td>
<td>Project applicant and CUSD.</td>
</tr>
<tr>
<td>EIR 482</td>
<td>87</td>
<td>In conjunction with issuance of building permits.</td>
<td>The developer shall take proactive steps to ensure that financing is available for needed additional school facilities.</td>
<td>PDS/Subdivision and Grading</td>
<td>Payment of fees in compliance with Senate Bill 50.</td>
<td>Ongoing.</td>
<td>Project applicant.</td>
</tr>
<tr>
<td>EIR 482</td>
<td>88</td>
<td>In conjunction with tentative tract maps.</td>
<td>The applicant shall provide for a total of 18.281 acres of local parks consistent with County regulations.</td>
<td>PDS/Subdivision and Grading</td>
<td>Parks depicted on tentative tract maps and offer of dedication.</td>
<td>Tentative Tract Maps.</td>
<td>Project applicant. The Feature Plan currently provides for 42.3 acres of local parks within the RHPC.</td>
</tr>
</tbody>
</table>
The Ordinance adopting the Joint Powers Agreement Creating the Talega Joint Planning Authority will be couriered to Council as part of Tuesday's supplemental packet.
FIRST AMENDMENT

TO

JOINT POWERS AGREEMENT CREATING THE
TALEGA JOINT PLANNING AUTHORITY

This FIRST AMENDMENT TO JOINT POWERS AGREEMENT CREATING THE TALEGA JOINT PLANNING AUTHORITY ("Amendment") is entered into this 21st day of October, 2008 (the "Amendment Effective Date"), by and between the CITY OF SAN CLEMENTE, a California municipal corporation ("City"), and the COUNTY OF ORANGE, a political subdivision of the State of California ("County"). City and County are collectively referred to herein as the "Member Agencies" and individually as a "Member Agency."

RE C I T A L S


B. The Joint Powers Agreement, pursuant to Section 4.2 therein, terminates in its entirety upon the effective date of the annexation of all of the Talega Property (as defined therein) to the City.

C. As of the date of this Amendment, all of the Talega Property (as defined in the Joint Powers Agreement) has been annexed to the City.

D. City and County wish to enter into this Amendment to perfect and complete the dissolution of the Authority, as more specifically provided herein.

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and County hereby agree as follows:

SECTION 1. Any capitalized terms contained in this Amendment which are not defined herein shall have the meaning given in the Joint Powers Agreement, unless expressly provided to the contrary.

SECTION 2. Section 4.3 is added to the Joint Powers Agreement to read:

"4.3. Dissolution of Authority. The Authority shall be dissolved, and is hereby deemed to be dissolved, no later than the earliest of:
(i) The termination date of the Joint Powers Agreement in accordance with Section 4.2 of the Joint Powers Agreement; or
(ii) The Amendment Effective Date; or (iii) September 29, 2008
(the earliest being the "Dissolution Date"). Upon the Dissolution Date, the Authority shall cease to exist as a separate agency or entity created pursuant to the Joint Exercise of Powers Act, Government Code section 6500 et seq."

SECTION 3. Except as specifically amended by this Amendment, the terms, covenants, and conditions in the Joint Powers Agreement remain in full force and effect.

SECTION 4. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

[signatures on next page]
IN WITNESS WHEREOF, City and County have executed this Amendment as of the date first written above.

"CITY"

CITY OF SAN CLEMENTE,
a municipal corporation

By: [Signature]
Its: [Title]

ATTEST:
[Signature]
City Clerk

APPROVED AS TO FORM:

/s/ Jeffrey M. Oderman
Jeffrey M. Oderman
City Attorney

"COUNTY"

COUNTY OF ORANGE,
a political subdivision of the State of California

By: [Signature]
Its: [Title]

ATTEST:

Secretary

APPROVED AS TO FORM:

[Signature]
Authority Counsel

[Signature]
Senior Assistant
COUNTY COUNCIL

FACSIMILE SIGNATURE AUTHORIZED
PER G.C. SEC. 25103, RESO 79-1535
SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIR OF THE BOARD

ATTEST:

[Signature]
Clerk of the Board of Supervisors
ORANGE COUNTY, CALIFORNIA
RESOLUTION NO. 88-64
RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SAN CLEMENTE, CALIFORNIA ADOPTING THE
TALEGA VALLEY SPECIFIC PLAN (SP-84-02)

WHEREAS, an application has been made by the Talega Valley Partnership to the City of San Clemente for the Talega Valley Specific Plan; and

WHEREAS, Environmental Impact Report 84-02 provided an environmental assessment of the proposed Specific Plan in accordance with the California Environmental Quality Act and State CEQA Guidelines; and

WHEREAS, the Planning Commission held duly-noticed Public Hearings on February 23, March 1, March 22, April 5, April 14, May 3 and June 2 to consider evidence and testimony presented by the Planning staff, consultants, the applicant and interested members of the public and on June 2, 1988, recommended approval of the proposed Specific Plan; and

WHEREAS, The City Council has held a duly noticed Public Hearing to consider evidence and testimony presented by the Planning staff, consultants and other interested parties on the proposed Specific Plan; and

WHEREAS, the proposed Specific Plan is compatible with the objectives, policies and goals specified in General Plan Amendment No. 88-02;

WHEREAS, the City Council hereby finds that the Talega Valley Specific Plan (SP 84-02), as conditioned herein, will be consistent with ordinance No. 963 in the areas of traffic generation, flood control, park land dedication, and the provision of police, fire, and paramedic service.

NOW, THEREFORE, BE IT RESOLVED that the City Council approves and adopts Resolution No. 88-64 subject to 53 conditions of approval (attached hereto as Attachment A).

ADOPTED this 10th day of August, 1988.

ATTEST:

[Signature]
CITY CLERK of the City of San Clemente, California

[Signature]
MAYOR of the City of San Clemente, California
STATE OF CALIFORNIA )
COUNTY OF ORANGE ) ss.
CITY OF SAN CLEMENTE )

I, MYRNA ERWAY, City Clerk of the City of San Clemente,
California, do hereby certify that Resolution No. 88-64 was
introduced and adopted at a regular meeting of the City Council of
the City of San Clemente held on the 10th day of August, 1988, by
the following vote:

COUNCIL MEMBERS:

AYES: LIMBERG, MECHAM, RICE, VEALE,
      MAYOR LORCH
NOES: NONE

ABSENT: NONE

 MYRNA ERWAY
CITY CLERK of the City of
San Clemente, California

Approved as to Form:

City Attorney
RESOLUTION NO. 88-64
ATTACHMENT "A"

TALEGA VALLEY

CONDITIONS OF APPROVAL

1. Fiscal

Prior to Council approval of the first final map, the applicant shall execute an agreement with the City that provides for the formation of a community facilities maintenance district or other financing mechanism to provide for the financing of public improvements, services, facilities, and ongoing related operation and maintenance requirements. Financing of public services through said agreement shall be subject to a "rational nexus" test to ensure direct benefit to the future residents of Talega Valley. The cost of public services for existing or future residents outside the project shall not be included in the agreement.

Said agreement shall provide for an annual accounting of all project related revenues and costs related to the provision of all public services and related operation and maintenance necessary to adequately serve the project. Service adequacy will be determined by the City, consistent with standards applied elsewhere in the City.

The agreement shall provide for an accounting procedure which shall establish a method for tabulating the cost and revenue factors associated with the project. The accounting procedure will include a system of crediting revenue generated by normal sources, including property tax, sales tax, and other taxes and fees collected by the City. Development of the accounting procedure shall be the responsibility of the applicant, subject to the review of a consultant to be chosen by the City, and subject to the approval of the City. The accounting procedure will be based on and consistent with Generally Accepted Accounting Principles (GAAP) and other pertinent standards promulgated by the National Committee on Governmental Accounting.

2. Master Plan of Arterial Highways

Prior to, or concurrent with, Council approval of the first final map, including maps for financing purposes, the applicant shall enter into an agreement with the City to dedicate the right-of-way and construct all on site arterial highways which are required for implementation of the Circulation Element of the General Plan. Off site construction may be required to extend an arterial to the nearest appropriate linkage in a manner meeting acceptable engineering standards. Such off site construction is intended to provide necessary connections to the nearest links, intersections, or interchanges as deemed appropriate by the City Engineer. The length of such an off site arterial extension shall not exceed one-half mile.
3. **Annual Circulation Phasing Report**

Prior to Council approval of the first final map, including maps for financing purposes, the applicant shall submit for the review and approval of the City of San Clemente an annual Arterial Highway Phasing Program and Traffic Study, which may be incorporated into the project's Annual Monitoring Report that will identify the increments of on site and off site arterial highway improvements necessary to implement the project and ensure that adequate levels of service are maintained or guaranteed.

4. **Circulation Facilities Phasing Plan**

Prior to Council approval of the first final map, the applicant shall prepare and submit for the review and approval of the City of San Clemente, an on site and off site circulation facilities phasing plan. The intent of this plan is to indicate the increments of circulation improvements necessary to accommodate each phase of development and to ensure that the objectives of the City of San Clemente (currently defined as Level of Service C on links and Level of Service D at intersections) regarding acceptable level of service conditions are maintained. Said plan shall be submitted to the City of San Juan Capistrano for review and comment.

Any development proposed within the Specific Plan Area that would cause highway capacity within any portion of the City's arterial street network to exceed acceptable levels of service as determined by the City Council will not be permitted. Prior to development, the applicant shall be responsible for constructing or participating in the construction of traffic improvements within the City's arterial street network that are necessary to maintain acceptable levels of service at intersections to accommodate development within the Specific Plan Area.

5. **Traffic Model**

Prior to Council approval of the first subdivision map, the applicant shall either:

a. Execute an agreement with the city in participation with the other backcountry ranches (Marblehead Inland and Coastal, Rancho San Clemente, Forster) that guarantees individual fair share participation in the development of a city-wide traffic model, as determined by the City Engineer, which will address city-wide street improvement phasing. The model shall have the ability to directly relate project development to available highway capacities at Level of Service "C" and
intersection capacities at Level of Service "D." The traffic model shall be prepared by a qualified traffic engineering firm selected by the city. Preparation of the traffic model shall be funded by the backcountry developers; or

b. If a fee program is adopted by the city prior to approval of the first subdivision map, for the purpose of collecting the applicant's prorata share of the cost of developing and updating the traffic model, then the applicant shall pay fees as prescribed in the fee program.

If a fee program is adopted pursuant to "b," above, and an agreement between the city and the backcountry ranches has already been adopted, the action to adopt a fee program shall cause the agreement to be re-negotiated in order that no party ultimately is required to contribute fees or funds in excess of a demonstrated fair share.

6. Circulation Facilities Funding Ordinance

a. Prior to Council approval of the first final map, the applicant shall execute an agreement with the City of San Clemente to fund a proportionate share of any amendments to the ongoing contracts for the preparation of environmental and preliminary engineering studies being conducted for the Avenida Vista Hermosa Interchange project. The agreement shall provide that the applicant will pay to the City a proportionate share of the cost of final engineering design work and construction of the Interchange. The share of the applicant's costs and timing of construction shall be determined by the City Engineer.

b. Prior to Council approval of any final map, the applicant shall execute an agreement with the City of San Clemente to fund a proportionate share of the cost of constructing Avenida La Pata between the City limits and Ortega Highway, should the County of Orange and the City of San Clemente enter into an agreement to construct the road. No connection of Avenida La Pata to Ortega Highway shall be made unless and until Antonio Parkway is extended from Ortega Highway to Crown Valley Parkway, or to Oso Parkway, if Crown Valley Parkway is not extended to intersect with Antonio Parkway. The cost to the applicant shall be on a proportionate share basis, as determined by the City Engineer.

c. Prior to Council approval of the first final map, the applicant shall execute an agreement to participate in the City's proposed Arterial Road Completion Program (ARCP). The
ARCP shall identify the applicant's fair share contribution toward the roadway improvements necessary to accommodate demand generated by the project. Such roadway improvements may include:

Avenida Vista Hermosa/I-5 Interchange
Avenida Pico/I-5 Interchange improvements
Avenida Vista Hermosa links and intersections
Avenida Pico links and intersections
Avenida La Pata links and intersections
Camino Las Ramblas links and intersections
Camino de Los Mares links and intersections
Antonio Parkway links and intersections

The ARCP shall require the participation of the owners of Rancho San Clemente, Forster Ranch, Marblehead Inland and Marblehead Coastal. The ARCP shall identify the circulation improvement cost estimates, a phasing and implementation program, and method(s) of financing the program improvements. All participating developers will be required to comply with, and pay fees to, the Arterial Road Completion Program, as adopted.

7. Foothill Transportation Corridor Grading

Prior to Council approval of the first final map, the subdivider shall enter into an agreement to grade, or to provide financial security for the cost of grading, the alignment of the Foothill Transportation Corridor within the limits of the property in a manner meeting the approval of the Chief Engineer of the Transportation Corridor Agency, and as necessary, to implement the final alignment selected by the Transportation Corridor Agency.

8. Foothill Transportation Corridor Fee Program

Prior to issuance of each building permit, payment of fees will be required as prescribed in the Major Thoroughfare and Bridge Fee Program for the Foothill Transportation Corridor. Subject to the approval of the Joint Powers Agency, the applicant's FTC fee obligation may be reduced for improvements made to the FTC in accordance with the provisions of City adopted Major Thoroughfare and Bridge Fee Program for the FTC.

9. Arterial Highway Alignments

a. Notwithstanding the conceptual alignment of arterial highways shown on the Specific Plan or subdivision maps, the applicant shall prepare necessary engineering plans to support establishment of the final alignments for all arterial highways within the project limits. Said plans shall be
submitted for the approval of the Engineering Division prior to or concurrent with Council approval of any subdivision map adjacent to said arterials.

b. Proposed alignments for Avenida La Pata and Talega Valley Drive shall be reviewed at the time grading plans are submitted. Site-specific studies shall be prepared by the applicant addressing the visual impact of proposed grading for these alignments -- specifically, where these arterials traverse any recognized ridgeline. These studies and the associated alignments and grading shall be reviewed and approved by the City of San Clemente (City Planning Division and City Engineer). The County EMA and the City of San Juan Capistrano Planning Department shall be provided the opportunity to review and comment on the alignments, studies and the associated impacts and mitigation measures.

10. Foothill Transportation Corridor Alignments

Prior to Council approval of the first final map, including maps for financing purposes, the applicant shall show a right-of-way reserve on any such map affected for all Foothill Transportation Corridor (FTC) alignments known at this time (date of adoption) in a manner meeting the approval of the City Engineer in consultation with the Chief Engineer of the Transportation Corridor Agencies. No development shall occur within this reserve area prior to the selection of the ultimate FTC alignment, except for grading and landscaping of the golf course and roadway improvements as identified in the Specific Plan. If said improvements interfere with the FTC alignment adopted by the Transportation Corridor Agency (TCA), the applicant shall bear the cost of relocating improvements including changing the golf course design to remove it from the Corridor right-of-way and providing necessary right-of-way to the satisfaction of the TCA all within a schedule approved by the TCA. In the case that an alignment other than Alternative C is selected which would traverse areas within Champion Hills proposed for development, a Specific Plan Amendment shall be initiated as necessary to determine reconfiguration of land uses to accommodate the adopted alignment.

11. Foothill Transportation Corridor Offer of Dedication

Prior to or concurrent with Council approval of the first final map, the subdivider shall enter into an agreement to make an irrevocable offer of dedication of the ultimate right-of-way necessary for implementation of the FTC, within the property limits, when a final alignment has been selected by the Transportation Corridor Agency.
12. **Reserve Area/Ecological Conservancy**

a. Prior to Council approval of the first final map, excluding maps for financing purposes only, the landowner/applicant shall make an irrevocable, continuing offer of dedication, in perpetuity, pursuant to Government Code Section 7050 to the County of Orange or its designee, and the City of San Clemente or its designee, of an Open Space Easement over the reserve area (Planning Area 64), as described in the Open Space Easement Act of 1974 (beginning with Government Code Section 51070 et seq.), in a form approved by County Counsel and the Director of the Environmental Management Agency or his designee (as to the County easement) and by the City Council (as to the City easement). Said easements shall each contain covenants running with the land, in perpetuity, providing that the landowner shall not construct, or permit the construction of, improvements which would be incompatible with maintaining and preserving the natural or scenic character of the land. Maintenance, upkeep and liability of said easement shall remain with the landowner and its successors and assigns, and shall not be included in said offer.

b. In addition to the above dedication offer, prior to Council approval of the first final map, excluding maps for financing purposes only, the landowners shall, pursuant to Government Code section 7050, make an irrevocable, continuing offer to dedication to the City of San Clemente or its designee of the Reserve Area (Planning Area 64) for Ecological Preservation purposes in a form approved by the City Council, which is suitable for recording fee title to the Reserve Area. Excluding the easement granted pursuant to Section 12(a), above, said offer shall be free and clear of all money and all other encumbrances, liens, leases, fees, assessments, and unpaid taxes. All subsequent easements over the property, shall be in a form approved by the City Council. Said offer of dedication shall include all executed deeds and other documents necessary to enable City to accept the dedication.

Said offer of dedication in fee may be accepted by the City only if (1) a conservancy or other mechanism has not been established and obtained fee title to the property on or before June 1, 1989; or (2) such a conservancy or other mechanism has been established but at any time ceases to exist; or (3) the City Council and the County of Orange, jointly, reasonably determine that the conservancy or other mechanism ceases to manage and conserve the property in such
a manner so as to maintain its present character and quality, described as follows:

"Conservancy or other mechanism" means a private, non-profit entity, established for the purpose of managing and conserving the property in order to maintain the property in its present character and quality. Said conservancy shall be approved by the Board of Supervisors at public hearings. At such hearings, said conservancy shall present a proposed set of bylaws describing the organizational structure of the conservancy and a set of guidelines describing the goals and policies for maintenance of Planning Area 64 in its present character and quality. The Conservancy, as established, shall assure the continued appropriate representation of the City of San Clemente as approved by the City Council of San Clemente.

13. Water/Wastewater

Prior to Council approval of the first final map, the applicant shall comply with the following:

a. Submit a technical report to establish a water system for reservoirs and pump stations needed to satisfy the requirement of the proposed land uses and applicable water district standards of the Santa Margarita Water District. The City of San Clemente's fire flow requirements shall be met.

b. Submit a phasing plan for the water system infrastructure improvements which provides for construction prior to or concurrent with development of the project.

c. All development allowed pursuant to this Specific Plan shall provide design features that conserve water, such as controlled irrigation systems which employ drip irrigation, soil moisture sensors, and automatic systems that minimize runoff and evaporation; landscaping that emphasizes drought-tolerant species; low flush toilets and low flow faucets; insulation of hot water lines in water recirculating systems; drinking fountains with self-closing valves and public flush valve-operated water closets with three-gallon flush; and use of mulch on top of soil to improve water holding capacity of public landscaped areas.

d. Irrigation systems within Champion Hills shall be designed to allow use of reclaimed water for the irrigation of the proposed golf course areas.

e. Provide proof of approval by the applicable water/wastewater district to the City Engineer and obtain approval by the
Engineering Division of a master plan of water and wastewater works. The master plan shall include all on site and off site facilities necessary to serve short and long term needs of the project and a general financing program for those facilities which demonstrates sufficient entitlement and wastewater collection and treatment capacity to serve the entire project.

f. Prior to approval of any subdivision map, adjacent to or encompassing any reservoir other than for financing purposes, a visual analysis shall be completed addressing the visual impact and proposed mitigation measures related to any required water reservoir construction. Mitigation measures shall be approved by the City Engineer.

g. The City of San Clemente Engineering Department shall, in cooperation with the Santa Margarita Water District, explore the feasibility of participating in a joint venture for providing seasonal water storage in the vicinity of Talega.

14. Other Utilities

a. Prior to Council approval of the first final map, a Utilities Master Plan shall be approved by the City Engineer. A major function of the plan shall be to facilitate concurrent installation of utility lines (gas, electricity, telephone, and cable television) to the extent feasible in order to minimize the amount of trenching required.

b. There shall be continued unobstructed access to and along the SDG&E transmission facilities for patrol, repair and maintenance. Proposed grading, improvements, and other encroachments into the transmission right-of-way shall be reviewed and approved by SDG&E.

c. Prior to approval of subdivision maps for development purposes, the project applicant shall provide to the County and the City maps at a 1:400 scale depicting alignment of San Diego Pipeline Company's 16-inch pipeline and the alignment of the 10-inch pipeline. Prior to approval of any maps, which include the 10-inch pipe, the applicant shall coordinate with SDPC to ensure that the structure, location and proposed operation of the pipeline will not interfere with, or present a public safety hazard to, proposed land uses. Maintenance and regular inspection of the pipeline shall be the responsibility of SDPC.
15. **Public Safety**

a. Prior to Council approval of the first subdivision map, except for financing purposes, the applicant shall prepare a program for the provision of Public Safety Services (Law Enforcement and Fire/EMS) in the Champion Hills Specific Plan for the review and approval of the City of San Clemente. Said program shall be prepared in conjunction with a similar program required for the Rolling Hills Planned Community and shall include agreements for extended services from the County, if agreed to by mutual consent of the City, County, and applicant. The plan also will provide for any necessary capital improvements, including land acquisition, station construction, and purchase of equipment.

b. Pursuant to the above mentioned program, the applicant shall enter into a secured agreement to provide capital improvements, pay fees to the Public Safety Construction Fund, or some combination thereof, as approved by the Fire Chief.

Should the County of Orange, by mutual consent of the City, County, and applicant, be established as the provider of either Fire/EMS or Law Enforcement Public Safety Services to the Rolling Hills and Champion Hills projects, the program shall provide for a proportionate reduction to the Public Safety Construction fee, in relation to the projected decrease in demand for public safety. Such adjustment in fees shall comply with the provisions of the Public Safety Construction Fee Ordinance and shall be approved by the City Fire Chief.

c. Development on site shall comply with the City's Fire Code requirements, including fire flow requirements, sprinkling of all occupancies, compliance with the City's roof ordinances, and establishing fuel modification zones between the urban and rural interface. Street grades, widths, and configurations throughout the development shall be designed to accommodate major fire apparatus.

16. **Soils, Geology and Grading**

a. The grading associated with the development of this project shall comply with all applicable provisions of the City's Hillside Development Ordinance, Grading Manual and Grading Ordinance. An incremental grading concept shall be utilized as opposed to mass grading. No grading permits shall be issued for development areas within Champion Hills, excluding golf course grading, arterial roads, remedial grading, and geological stabilization until tentative tract maps have been
approved by the City for those development areas. No final precise grading permits shall be issued for any development areas until final tract maps for those areas have been recorded. Project related grading will be limited to the project site and areas immediately adjacent to the project site. Grading shall be conducted in accordance with a grading phasing plan to be developed between the applicant and the City. The grading phasing plan shall be submitted to, and approved by, the City prior to the issuance of any grading permit. The grading phasing plan shall show proposed areas of cut and fill, topography, steepness of slope, locations and extend of buttresses and bench drains, and shall illustrate conformance with the City's grading ordinances. The grading phasing plan shall also include haul routes, which include a description of haul routes, access points to the site, and a watering and sweeping program designed to minimize impacts of haul operations. Notwithstanding Condition 16d, below, under no circumstances should the grading phasing plan allow for the grading of more than 200 acres at any one time, with the exception of remedial grading, geologic stabilization, golf course construction, parks construction, borrow sites, disposal sites, and arterial roads. Issuance of grading permits will be suspended if more than 300 acres lie vacant or unimproved for more than 180 days.

b. Development of the site shall conform to general recommendations presented in the geotechnical studies (Irvine Soils Engineering, Inc., 1980, 1981, 1983), and subsequent, more detailed studies, including specifications for site preparation, landslide treatment, treatment of cut and fill, slope stability, soils engineering, and surface and subsurface drainage, and recommendations for further study.

c. Prior to approval of any final tract map for other than financing purposes, rough grading plans will be approved, and prior to building permit issuance, a precise grading plan will be approved. Both rough and precise grading plans shall be prepared by a Registered Civil Engineer subsequent to completion of detailed soils and geologic investigation for each subdivision area. The site specific geotechnical studies shall provide specific feasible recommendations for mitigation of landslides, slope stabilization, liquefaction potential, soils engineering, and appropriate drains and subdrains in each area. Grading plans shall be reviewed by the City Engineer and Planning Department and shall be subject to the issuance of a grading permit.
d. No subsequent phase of development shall be graded until the exposed slopes in the previous development phase have been temporarily landscaped.

e. Rough grading plans shall include an erosion, siltation, and dust control plan to be approved by the Community Development Department of the City. The plan shall include provisions for measures such as planting of vegetation on all exposed slopes within 90 days, temporary sedimentation basins and sandbagging, if necessary, and a watering and compaction program. The plan shall ensure that discharge of surface runoff from the project during construction activities will not result in increased erosion or siltation immediately downstream of the property.

f. In order to achieve consistency with the Open Space/Conservation Element of the City's General Plan, the proposed land use plan and grading plan shall be designed so as to minimize intrusion of land uses and grading in City-designated Natural Preservation Areas, Required Open Space Areas, and Secondary Ridgeline Areas. Planning Areas requiring possible modification to meet this conformance are 1, 13, 15, 16, 17, 25, 27, 47 and 52A. Grading plans may require modification in the proposed open space area 54. Grading and/or development plans in these Planning Areas shall be reviewed by the City on a site-specific basis. Ultimate configurations of these Planning Areas shall take into account: a) the relative value of resources intended to be preserved in the designation area -- evaluated in the context of the total project site, City and County portions; and b) the feasibility of minimizing impacts in the area, given geotechnical constraints (i.e., landslides, slope instability).

17. Nob Hill Grading

The development of Planning Area 25 will be restricted as follows:

No pad elevation may exceed 660 feet MSL, and no structure may exceed 685 feet MSL, and shall be in substantial conformance with Nob Hill Grading Alternative A, dated May 12, 1988.

18. Regional Riding and Hiking Trails

a. Prior to, or concurrent with, Council approval of each final map, the landowner shall offer for dedication to the County of Orange an easement for recreational trail purposes, in a manner meeting the approval of the Manager, EMA/Harbors, Beaches and Parks. Wherever a regional trail is designated in the Specific Plan, a minimum width of sixteen (16) feet
shall be offered to the County for recreational trail purposes. The precise location of recreational trail easements shall be determined at the time of tentative tract map review. Such easements may vary in width based upon a determination made at the time of tentative tract map review. The recreational trail easements shall remain in the ownership of the property owner or designated homeowners association. The County, upon acceptance of an irrevocable offer to dedicate, shall assume the responsibility for maintenance and liability within the trail dedication. The developer shall be responsible for initial improvements necessary to establish the trail as authorized by the County.

b. Bicycling facilities such as lockers, showers, and racks shall be included in non-residential development centers in order to encourage use of bicycles as an alternative mode of transportation. The feasibility and appropriateness of providing such facilities shall be reviewed on a site specific basis as individual site plans for non-residential centers are submitted for approval.

19. Open Space Easement

a. Prior to Council approval the first final map for other than financing purposes, the landowner shall offer for dedication to the City of San Clemente an open space easement over Planning Areas 53-57 and 59-63 in a form approved by the City of San Clemente Public Services Department, and Planning Division. Title to the land covered by the open space easement shall remain with the property owner or the designated Homeowner's Association. The easement shall be recorded by the landowner by separate document prior to the recordation of the first final subdivision map for other than financing purposes in a manner meeting the approval of the City Attorney. The intent of the easement shall be specifically stated in the recording document as being for the purpose of the permanent retention of the above referenced Planning Areas as open space as defined by the City.

b. The Specific Plan shall differentiate between areas of natural and passive open space. Natural open space areas shall include only those areas which remain ungraded and are not directly impacted by development, i.e., areas left in their natural state. Natural areas shall comply with the intent of the City's General Plan in its designation of Natural Preservation Areas. Areas indicated in the City's General Plan as Required Open Space shall follow the intent of the City's General Plan by being designated in the
Specific Plan as either natural areas or passive open space. The Specific Plan shall identify permitted uses for both designations.

20. Golf Course Easement

Prior to Council approval of the first final map, the applicant shall offer for dedication to the City of San Clemente or its designee a golf course easement over Planning Areas 46-52A in a form approved by the City Attorney and Planning Division. The subdivider shall not grant any easement over any property subject to said easement unless such easements are made subordinate to said easement as approved by the City Attorney and Planning Division. Maintenance, upkeep, and liability of said easement(s) shall remain with the subdivider (applicant) or their successors and assigns and shall not be included in said offer. Limitations and restrictions for said easement shall be recorded by separate document concurrent with recording of subject map meeting the approval of the City Attorney and Planning Division. The intent of the easement(s) shall be specifically stated in the recording document as being for the purpose of permanently restricting the land uses in the above referenced Planning Areas to uses associated with the golf course and golf course operations.


a. Prior to the issuance of any grading permit the landowner shall submit for review and approval of the Engineering Division a Resource Management Plan (RMP). The objective of the RMP is to provide a comprehensive survey and management program which clearly delineates the limits of development (i.e., grading, structural development, haul routes, storage/stockpile/borrow sites, and staging areas, etc.) relative to natural resources (i.e., oak woodland, riparian, grassland, and chaparral vegetative resources, foraging the wildlife movement areas, streams, creeks, springs, rock outcroppings, archeological and paleontological resources, etc.) with provisions for permanent preservation/enhancement and continued management during and after construction.

The RMP shall specifically provide for a preliminary, archeological and paleontological study and preservation plan to be prepared for each tract by a qualified archeologist and paleontologist, and submitted for approval by the Community Development Department. Appropriate mitigation measures, if required, will be determined at that time. No grading permit shall be issued until such time as appropriate assurances are provided that a qualified archeologist and paleontologist has been retained. No grading shall be undertaken within any area identified as significant based on the preliminary study.
without the on site presence of a qualified archeologist and paleontologist acceptable to the City. If artifacts or fossils are discovered during grading, the archeologist and/or paleontologist shall be allowed to direct or redirect grading in the vicinity of the remains in order to evaluate and salvage, if determined necessary, prehistoric artifacts and/or fossils.

b. Immediately upon approval of a Specific Plan for Talega Valley, the developers shall have the materials presently exposed at the surface at locality RR 621 collected by an Orange County-certified paleontologist. These fossils shall be donated to a non-profit institution whose purpose is to preserve paleontological resources. This measure is deemed necessary because of increased exposure to potential disturbance resulting from proposed land uses at and around the exposed site and increased public access.

22. Parks

a. Prior to Council approval of the first final map, including maps for financing purposes, the applicant shall submit to the Parks and Recreation Manager a Local Park Implementation Plan, to be reviewed and approved by the Parks and Recreation Commission. The plan shall indicate the location, size, facilities, and phasing of creditable local park acreage within the Talega Valley Specific Plan.

b. An offer of dedication to the City in conformance with the City Park Code (Sec. 35-26(a)), the payment of full fees or some combination thereof, for parks designated in the Specific Plan will be required. The combined amount of required park fees and/or land dedication shall be based upon the method of calculation specified in the Park Code subject to approval by the Public Services Department. The amount of park acreage to be accepted for public ownership and development within the Specific Plan area and phasing of park development shall be in accordance with the Local Park Implementation Plan as approved by the City. Phasing of park improvements shall be determined by the City in accordance with the Local Park Implementation Plan. Land acquired by the County of Orange for recreation and/or park purposes shall not be calculated as part of the City's park requirements. All public parks shall have frontage on at least one public street.

c. All public park property within the Specific Plan area shall be provided with reclaimed water when feasible and acceptable to the Regional Water Quality Control Board. All public park land shall be provided with necessary phone service to allow
connection to the City's computerized Rainbird Maxicom Irrigation Control System.

23. **Golf Course**

Prior to approval of the first final map, a plan for general public access to, and use of, the Champion Hills Golf Course (Planning Areas 46-50) shall be submitted to, and approved by, the City. The applicant shall be responsible for the preparation and submittal of said plan. Any amendment to said plan shall require review and approval by the City of San Clemente. Additionally, prior to December 31, 1988, the City may present to the applicant a proposal to purchase the golf course site, to which the applicant shall respond within 30 days. The Champion Hills Golf Course shall not be established as, nor converted to, an equity membership course without prior approval by the City of San Clemente.

24. **Landscaping**

a. Prior to Council approval of the first final map, revised Landscape Design Guidelines shall be submitted by the applicant and approved by the Community Development Department. The revised Landscape Design Guidelines shall be in compliance with the Master Landscape Plan as applicable.

b. All landscaping within the City portion of Talega Valley shall include the extensive use of native plant species, particularly shrubs, grasses and ground covers on cut and fill slopes. The vegetation matrix in the City of San Clemente Master Landscape Plan for Scenic Corridors shall be used as a guideline for general recommendations regarding plants that perform well and plants that are invasive and therefore prohibited. Preference shall be given to species native to Coastal Southern California.

The applicant shall provide to the City a list of potentially invasive plant species that shall be excluded from landscape palettes for public and private areas as potentially threatening to significant habitat areas. This list shall be reviewed and adopted jointly by the City and County prior to approval of any landscape plans within Talega. Landscape plans in Talega shall exclude plant species identified in the adopted list.

c. The design and installation of all landscape and irrigation improvements within the public right-of-way including parkways and medians and specified intersections on any arterial highway within the Specific Plan Area shall be completed pursuant to the revised Landscape Design Guidelines
in accordance with the City of San Clemente Master Landscape Plan for Scenic Corridors. The developer shall be responsible for funding and installing all such landscape improvements. The maintenance of the scenic highway landscaping shall be addressed in the following way:

1) The City shall be responsible for maintaining all medians within the public right-of-way. In addition, the City shall prune and keep disease free all parkway trees within the public right-of-way.

2) The private property owner or homeowners association shall be responsible for watering all parkway trees, shrubs, and ground cover within the public right-of-way. In addition, the private property owner shall trim and otherwise maintain parkway shrubs and ground cover.

d. All landscaped parkways, medians, entry statements, common areas, vista points, slopes, bicycle and pedestrian facilities, not located in public right-of-ways shall be privately maintained by master property owners' association(s) or sub-associations.

e. The applicant shall provide exhibits designating all privately and publicly maintained landscape areas (i.e., common areas, streetscapes, etc.) within the Specific Plan area.

f. Prior to the issuance of any grading permit for any residential or business park use adjacent to any open space planning area, a precise landscape/edge treatment plan shall be prepared subject to approval by the Community Development Director. Said plan shall be prepared by a licensed landscape architect in compliance with the approved landscaping plant palette and fuel modification requirements and shall provide a minimum 50% screening within a five-year period. Said plan shall include viewshed cross sections depicting the physical relationship of proposed development to regional dedication areas and shall provide for an annual monitoring to ensure the plan's success.

g. Prior to approval of grading or development permits in Planning Areas 1, 2, 13, 46, 47, 52A, 53, 54 and 56, the applicant shall submit oak tree preservation guidelines. The guidelines shall be based on a site specific mapping (1:400 scale) and inventory of oak tree stands prepared by a professional arborist. The inventory shall determine which stands are in fact significant and healthy enough to merit preservation. Preservation of oak tree stands shall be reviewed and approved individually for each Planning Area,
based on detailed grading and/or development plans, the inventory, and site specific geotechnical engineering constraints.

h. Landscape plans, grading plans, and architecture shall conform to the Hillside Development Ordinance to include such provisions as rooflines that correspond to the silhouette and cross-sectional contours of topography, smooth transitions in height from building to building, and harmonious mixture of materials, colors, and forms. Landscaping shall emphasize use of drought resistant, fire retardant vegetation, and low precipitation slope irrigation.

i. An average minimum building setback of 50 feet, with absolute minimum of 30 feet, shall be required for all land uses adjacent to La Pata and Pico, with an average minimum building setback of 40 feet and an absolute minimum of 25 feet for Vista Hermosa and Talega Valley Drive. Within the setbacks noted above, a landscaped area with a minimum width of 15 feet shall be established, provided with a permanent irrigation system, and maintained by the property owner. In parkways adjacent to residential planning areas, the entire setback shall be landscaped. Maintenance within these setback areas shall be the responsibility of the property owner or homeowners association.

j. All parkway tree planting adjacent streets shall maintain the following distances. All trees shall maintain a distance of:
   - 10'-0" from all water and sewer lines.
   - 5'-0" from all hardscape (sidewalks, curbs, vaults, etc.), except as otherwise approved by the City with deep root containers in conjunction with certain acceptable species.
   - 15'-0" from all drive approaches.
   - 25'-0" from all street intersection curb returns.

k. Prior to Council approval of the first final map, the applicant shall provide within the Specific Plan a maintenance matrix that will describe the maintenance responsibilities for the following items:

   Public parks
   Private recreational facilities
   Golf courses
   Conservancy
   Sports complex
Public streets
Special street pavements
Street signage
Private streets

Streetscapes
- Medians
- Parkways
- Sidewalks
- Street furniture
- Bicycle facilities
- Signage

General Landscaping and Facilities
- Common areas
- Slopes
- Vista points
- Equestrian facilities
- Trails

Utilities
- Water
- Reclaimed water
- Sewer
- Street lighting
- Storm drain system
- Gas
- Electric
- Telephone
- Cable TV
- Etc.

1. All drainage, utilities and slope easements shall be shown and labeled on any final map.

25. Noise

All residential lots and dwellings shall be sound attenuated against present and projected noise, which shall be the sum of all noise impacting the project, so as not to exceed an exterior standard of 65 dB CNEL in outdoor living areas and an indoor standard of 45 dB CNEL in all habitable rooms. Evidence prepared by a County certified acoustical consultant that these standards will be satisfied in a manner consistent with applicable zoning regulations shall be submitted as follows:
a. Prior to Council approval of the first final map or prior to the issuance of a grading permit, at the sole discretion of the Community Development Director, an Acoustical Analysis Report shall be submitted to the Building Division, for approval. The report shall describe in detail the exterior noise environment and preliminary mitigation measures. Acoustical design features to achieve interior noise standards may be included in the report in which case it may also satisfy "b." below.

b. Prior to the issuance of any building permits, an Acoustical Analysis Report describing the acoustical design features of the structures required to satisfy the exterior and interior noise standards shall be submitted to the Building Division, for approval along with satisfactory evidence which indicates that sound attenuation measures specified in the approved acoustical report(s) have been incorporated into the design of the project.

c. Prior to the issuance of certificates of use and occupancy field testing in accordance with Title 25 regulations may be required by the Building Official, to verify compliance with STC and IIC design standards.

d. Prior to the issuance of any grading permits, the project proponent shall provide evidence acceptable to the Manager, Development Services, that:

1. All construction vehicles or equipment, fixed or mobile, operated within 1000 feet of a dwelling unit shall be equipped with properly operating and maintained mufflers.

2. All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).

3. Stockpiling and/or vehicle storage areas shall be located as far as practicable and out of view from dwellings.

e. The City of San Clemente Noise Ordinance, limiting the hours of construction to between 7:00 a.m. and 6:00 p.m., shall be enforced for areas in the City.

f. The final DRE report for residences in Talega shall include notification to buyers of the noises associated with, and the proximity of, the following facilities and operations:

- Camp Pendleton, USMC
- TRW
26. Drainage

a. Prior to Council approval of the first final map for other than financing purposes within the Segunda Deshecha Canada drainage area on site (as defined by the City's Drainage Master Plan, Lowry and Associates, 1982, Plate 1), the project proponent shall construct improvements or shall have bonded for construction of improvements to the Segunda Deshecha channel to accommodate runoff generated on site under developed conditions, and to control the runoff downstream in a manner acceptable to the City. These improvements shall be constructed in accordance with final engineering drawings which specify dimensions, capacity, and precise alignment. Improvements in the City will be approved by the City Engineer and County Flood Control District.

b. The developer shall construct storm drains coincident with development of each subdivision map area. These improvements shall also be constructed according to final engineering drawings. Coincident with the improvements within each area, necessary downstream improvements shall also be constructed only in the event that peak flows off site exceed the natural peak flow rates. Improvements within the City will be approved by the City Engineer and County Flood Control District.

c. The developer shall be responsible for providing regular street sweeping on all private roadways on site. This service shall be conducted to the satisfaction of the City Engineer for City areas. Street sweeping shall be initiated immediately after paving of each roadway.

d. Prior to approval of any final map for development purposes in Talega, the applicant shall certify that downstream improvements to the Segunda Deshecha Channel are adequate to accommodate developed flows as proposed in the Master Drainage Plan for the project. Confirmation of this adequacy shall be based on consultation with the applicant's project engineer, Caltrans, and County of Orange EMA.

e. Prior to issuance of a precise grading permit for any area of either golf course in the City area, the project applicant shall submit for review and approval by the Community Development Department and Public Services Department a Landscape Management Plan for the golf course areas. The Landscape Management Plan shall consist of: (1) a Landscape Plan identifying landscape materials (plant species)

- Ford Aerospace
- Owens-Illinois
including turf species proposed to be planted on site; (2) an Irrigation System Plan which identifies elements of the irrigation system and procedures for its use; (3) Regulations and Guidelines for the Application of Fertilizers and Pesticides on site. The City Planning Department and City Engineer shall also review for approval the Irrigation System Plan and the Regulations and Guidelines for Application of Fertilizer and Pesticides for any golf course areas in the County portion of Talega that drain into the City portion.

f. Runoff generated from the golf course shall be of suitable quality prior to discharging into the natural drainage courses through establishment of a water quality monitoring program at the downstream reach of the project storm drain system. Two storm runoff events shall be sampled annually for five years. The water quality monitoring program shall be in place at the time the golf course construction is complete. The golf course operator shall be required to retain a qualified consultant to install and maintain the necessary equipment, collect samples, make provisions for having the samples analyzed. In the event the operator detects a water quality problem, sand filters shall be installed in the bottom of the detention ponds.

g. Prior to the issuance of a grading permit, the landowner shall submit for the review and approval of the Community Development Department a Runoff Management Plan (ROMP). The objective of the ROMP is to ensure that the quality of runoff water is acceptable and peak runoff rates from the project during 5, 10, 25 and 100 year flood conditions during and after development will be no greater than those experienced under natural conditions.

h. The proponent shall fund and construct all necessary on site flood control facilities. Fee obligation shall be reduced for construction of all on site master plan facilities. In the event that peak flows on site exceed the natural peak flow rates, the proponent shall fund any proportionate share of required off site facilities.

i. Prior to approval of grading and/or development plans in Planning Areas containing the existing primary channel of Segunda Deshecha Canada, the applicant shall demonstrate that preservation of the channel in open space will be achieved to the maximum extent feasible. The degree of preservation of the stream bed in open space areas shall be to the satisfaction of the City, and shall take into account geotechnical engineering constraints of the site and the approved land use plan.
j. In areas identified by blue lines on U.S.G.S. 7.5 Quad Sheets, the applicant shall consult with the California Department of Fish and Game as a requirement of Sections 1601-6 of the State Fish and Game Code which gives the Department of Fish and Game review authority over projects which could alter drainages containing significant habitat.

k. Prior to Council approval of the first final map, a refined drainage plan shall be approved by the City Engineer. Said plan shall conform with the criteria set forth within Ordinance No. 963 and shall satisfy the system design requirements of the City Engineer. System alternatives shall be explored in the event that the City Engineer recommends such analysis. Should the drainage concept be revised to meet the system design requirements of the City Engineer, and such a change would necessitate modifications to the Land Use Plan or any other component of the Specific Plan, a Specific Plan Amendment will be required.

l. All retention basin and drainage channel maintenance shall be the responsibility of the Orange County Flood Control District and/or the project applicant.

27. Backcountry Trails Study

Prior to approval of the first subdivision map, except for financing purposes, the developer in cooperation with the other Backcountry developers shall agree to participate in funding the completion of a Backcountry Trails Study which will evaluate and make recommendations on the location and phasing of trail improvements within the City's Backcountry. The study shall evaluate potential trail linkages between the Ranches, as well as areas outside the City limits and the beach. The precise alignment of trails shall be determined by the Trails Study. The Community Development Department shall determine the specific content and format of the Trails Study, and shall be responsible for selecting a consultant to prepare the Trails Study. Final design plans and details and the phasing of the trail improvements, including provisions for temporary facilities to be installed by the developer at the developer's expense, shall be determined by the City.

28. Beach Parking Study

Prior to approval of the first subdivision map, except for financing purposes, the developer shall agree to participate with the other Backcountry developers in funding the completion of study to analyze the impacts of Backcountry development on beach parking. The study shall be performed by the Backcountry Developers. The Community Development Department will be
responsible for hiring a consultant to prepare the study and will
determine the scope of work and level of detail for the study.
Recommendations of the study shall identify appropriate mitigation
measures for local level and regional impacts on beach recommenda-
tions adopted by the City Council as a result of the study.

29. School Facilities

a. Prior to approval of the first subdivision map, other than
for financing purposes, the applicant shall demonstrate to
the satisfaction of the Community Development Department that
the applicant has pursued in good faith an equitable school
development program in conjunction with the Capistrano
Unified School District (CUSD) to achieve sufficient short
term and long term student capacity. Compliance will be
evaluated through the Annual Monitoring Report. The program
shall comply with applicable state laws, which may include
the following three items:

1. Payment of fees for temporary student housing;

2. Reservation of an adequate number of school sites as
deemed necessary by CUSD for a period of time which
allow reasonable assurance that state funding will be
available to the district for purchase of the sites;

3. Improvement by the project proponent of those sites
which are determined by CUSD to be necessary for meeting
interim housing needs; this improvement shall be in a
manner satisfactory to the District for siting temporary
classrooms pending purchase of the site(s) for permanent
facilities.

Additionally, the applicant shall cooperate with the
School District toward the provision of permanent school
facilities.

b. Prior to the issuance of any building permits, the developer
shall comply with Assembly Bill AB 2926.

30. Transit Center

A transit center having a minimum site area requirement of one (1)
acre shall be located within the Talega Valley Area. This
facility shall provide a park and ride facility, bus stop,
passenger waiting area, etc. Land for the purpose of accommodat-
ing the transit center shall be dedicated or leased to the City or
Orange County Transit District with all lease payments to be made
by the applicant. Improvements shall be funded by either the
applicant or Transit District. A determination of what phase of
development the Transit Center will be constructed shall be made based on information in the Annual Monitoring Report.

The Specific Plan and subsequent site plans shall include provisions for well-lit public bikeways, walkways, and car pool parking areas provided as demand necessitates.

31. **Annual Monitoring Report**

The developer shall prepare Annual Monitoring Reports to be submitted in January of each year subsequent to approval of the Specific Plan. The AMRs shall be funded by the applicant until completion of the build-out of the Specific Plan. The Community Development Department shall be responsible for selecting a consultant to prepare the AMR. The primary purpose of the AMR will be to evaluate the balance between proposed development and public service capacities. The AMR shall project service deficiencies, provide mitigation measures for proposed development and address phasing of public and recreational improvements. Projects which would result in the deterioration of service levels according to information contained in a AMR shall be modified or deferred by the City until adequate service levels can be provided. The specific content and format of the AMR shall be determined by the Community Development Department.

32. **Visual Analysis**

Prior to the approval of any subdivision map, except for financing purposes, in Planning Areas 4, 5, 6, 8, 9, 25 and 37, the applicant shall prepare a viewshed analysis of said Planning Areas based on the final design and grading plans for Talega Valley Drive, Avenida Pico and Avenida Vista Hermosa for review and approval by the City of San Clemente. The intent of this analysis is to evaluate view impacts and to ensure that any grading and development will not extend above Nob Hill or the background ridgeline which forms the northwest property boundary.

**GENERAL CONDITIONS**

33. The number of dwelling units shall not exceed 2,265, including any density bonus allowed, but not including any congregate care units. This number may be reduced if necessary to maintain minimum public service and/or facilities standards. Development on site shall implement the general guidelines and development standards identified in the text of the Specific Plan.

34. All structures shall comply with building standards in Title 24 of the California Administrative Code. Provisions for natural heating and cooling through techniques including but not limited
to variable shading, overhangs, clerestory windows, louvers, and energy efficient building orientation shall be included in project design to the extent feasible. Energy efficient lighting shall also be used (e.g., high pressure sodium outdoor lighting and fluorescent indoor lighting).

35. All tentative subdivision maps processed pursuant to this Specific Plan shall comply with the State of California Subdivision Map Act, all the requirements of the City of San Clemente Subdivision Ordinance, and all other pertinent Ordinances and Codes.

36. All construction related to the development of this Specific Plan shall conform to all applicable City Codes and Ordinances, including, but not limited to, the Uniform Building Code, the Uniform Fire Code, the Zoning Ordinance and the Security Ordinance.

37. All construction related to the development within the Specific Plan shall comply with the adopted City Fire/EMS response standards for new development which are in effect at the time of the issuance of building permits.

38. Residential development pursuant to this Specific Plan is subject to Ordinance No. 922. Prior to the issuance of building permits for any amount of units, a corresponding number of development allocations must be awarded to the project. The development of this project shall incorporate any and all features and elements stipulated through the allocation process.

39. The applicant at the tentative tract stage of development shall provide to the Community Development Department mylar legal and topographic base maps at a scale of 1" = 200' and 1" = 400 so that the City Zoning Maps and Master Utilities Plan can be kept up to date. Prior to approval of the first tentative map, the developer shall coordinate with the other Backcountry Ranches in preparing a mylar composite land use plan for the backcountry at 1" = 800' and 1' = 1,000'.

40. All street names are subject to the approval of the Police and Fire Departments and the Planning Division.

41. Prior to City Council approval of any final map, grading and improvement plans that conform to all applicable City standards, codes and ordinances shall be submitted to the Engineering Division and approved by the City Engineer.

42. Prior to City Council approval of any final map, a soils and geologic report prepared by a certified geologist and a civil engineer that conforms to all applicable City standards, codes and
ordinances shall be submitted to the Engineering Division and approved by the City Engineer.

43. Prior to City Council approval of any final map, a plan shall be submitted by the applicant and approved by the City Engineer which indicates the specific design, type of general location of a decorative street and sidewalk paving, street furniture, and light fixtures and standards.

44. Prior to City Council approval of any final map, the street lighting details and locations shall be reviewed and approved by the Public Services Department.

45. Prior to City Council approval of any final map, the applicant shall pay all applicable required subdivision and final map fees, including, but not limited to, park, drainage, public safety, transportation corridor, and school fees.

46. Prior to recordation of any subdivision map, other than for financing purposes, the developer shall pay the costs of updating the City's Drainage Master Plan as deemed necessary by the City Engineer, within the watershed(s) affected by this project.

47. Prior to any final map recordation pursuant to this Specific Plan, CC&R's or other methods or procedure, including the establishment of a homeowners association or other entity which will guarantee the provision of any extended services and any other private services required at no cost to the City, shall be submitted to and approved by the Community Development Director and the City Attorney, and shall then be recorded prior to issuance of any certificates of use and occupancy.

48. The developer or future assignees shall be aware that the City reserves the right to place additional conditions on the proposed development at the time of each Tentative Map approval.

49. If the property is transferred to other persons or entities, in whole or in part, the provisions of these conditions shall be enforced or applied in such proportions as the City Council, at its sole discretion, deem relevant.

50. Unless otherwise noted, the following revisions shall be made to the Specific Plan within sixty days of approval, and prior to the review of any application filed pursuant to this Specific Plan.

   1. Throughout the document the term "Specific Plan" shall be capitalized.

   2. Page 3 - The continuation of the PROJECT DESCRIPTION is missing.
3. Exhibit 2 - the City boundary in the northwest portion of Champion Hills shall be corrected.

4. Page 5, Marblehead Coastal - delete the entire text under this heading and replace it with the following: "The Specific Plan for this area is still under development and the land use make up and residential unit counts for this development are unknown at this time."

5. Page 5, Forster Ranch - correct the text as follows:
   a. Change overall acreage from 1,770 to 1,719.
   b. Change overall unit count from 3,335 to 3,359.
   c. Change the commercial acreage from 65 to 30.
   d. Delete the 62 acres of institutional uses.
   e. Change the business park acreage from 35 to 27.
   f. Delete the 10 acres of office uses.

6. Page 6, C. Planning Objectives, first paragraph, last sentence - change "Project Area" to "Specific Plan."

7. Page 8, 2. Existing Circulation, first sentence - change the second "to" to "via."

8. Page 8, 5. Geology and Soils, second sentence - add the Silverado formation.

9. Exhibit 3, Land Use Plan - delete the high density category from the map and the legend. Reclassify the high density areas to another density classification.

10. Table 1, Talega Valley Statistical Summary, Page 1 - delete high density category and redistribute the units to other density classifications.

11. Table 1, Talega Valley Statistical Summary, Page 2 - Planning Areas 38-43 shall be modified as necessary to comply with the Local Park Implementation Plan.

12. Page 13, B. Residential Uses, 1. Introduction - delete the high density category in the density ceiling chart and the density distribution chart. Redistribute the units among the remaining density classifications.

14. Page 15, Affordable Housing, second paragraph - correct the text as follows:
   a. Change "project" to "Specific Plan."
   b. Delete Planning Areas 82 and 86.
   c. Revise text to eliminate language inferring a concentration of affordable housing and to incorporate standards which require the equal distribution and phasing of affordable housing units to the satisfaction of the City.

15. Page 15, B. Senior Housing - change "high" to "medium high" and make the appropriate revisions to the referenced Planning Areas. The text should also be revised to reflect the fact that the development standards allow senior housing through a use permit in all residential density categories.

16. Page 16, C. Reserve Area - delete the fourth sentence and replace the fifth sentence with language describing the conservancy.

17. Page 17, 4. Resort Hotel - second paragraph, last sentence - change "will" to "may."

18. Page 19, 4. Community Park - revise the acreage figure to correspond with the acreage required by the Local Park Implementation Plan.

19. Page 19, 5. Local Neighborhood Parks - add language which requires the location and size of all local parks shall be consistent with the Local Park Implementation Plan.

20. Page 19, 6. Schools, second sentence - insert "and needs" between "standards" and "of."

21. Exhibit 5 - add bikeways to the exhibit as follows:
   a. Avenida Pico - Class I
   b. Avenida Vista Hermosa - Class II
   c. Talega Valley Drive - Class II

22. Exhibit 6 - Revise the Exhibit to clearly delineate the required median on Talega Valley Drive, between Avenida Vista Hermosa and Planning Area 36.
23. Exhibit 7b - change "collector (public)" to "collector (private)."

24. Page 24, 3. Community Transit Center - revise text to state that the center is required by the General Plan and list potential planning areas.

25. Exhibit 8 - Revise this exhibit to conform with the current Land Use Plan, specifically in the vicinity of Planning Areas 25, 25A, 25B, 27, 31, 45, 52A and 61.

26. Page 26, 3, Visual Analysis, paragraphs 3 and 4 - viewpoints 4 and 6 appear to be the same. If so, one should be deleted. Viewpoint is one word. A viewpoint(s) should be added along Avenida La Pata east of Avenida Pico, perhaps at Calle Del Cerro or at the Pacific Golf Club.

27. Pages 101-121, D. Landscape Design Guidelines - the Landscape Design Guidelines, text and exhibits, shall be revised as necessary to comply with the City's Master Landscape Plan.

28. Page 114, 5, Oak Tree Protection, b.3) - change the "should" to "shall."

29. Pages 114-116, 5, Oak Tree Protection, -- add the following guidelines to the appropriate subsections.

- The existing grades within the drip line, and 3' on either side of oak trees, shall not be altered.

- The operation of heavy construction equipment shall avoid the area within the drip lines of oaks.

- Retaining walls shall be used to protect the existing grades within the drip lines of oaks from surrounding cut and fill. However, these shall not alter drainage from around trees.

- No type of surface either pervious or impervious, shall be placed within a six-foot radius of oak tree trunks. These areas shall remain uncovered, natural, and dry, particularly during the summer.

- Alternative pervious types of paving shall be utilized in oak environments, such as gravel, redwood chips, porous brick with sand joints, etc.

- Only one trench shall be dug to accommodate all utilities for lots and the trees shall be carefully
pruned by a specialist in proportion to the total amount of root zone lost.

- The boring of a conduit for underground utilities shall be used where possible.

- No ornamental ground covers, or any other vegetation requiring year-round watering, shall be planted against tree trunks or around root crown areas.

- Surface runoff shall be directed away from the trunk areas.

- Water shall not be allowed to pond or collect within the drip line of oak trees; otherwise, the tree will drown.

30. Page 117, 8. Fencing/Project Walls, a. - delete the last sentence and add a new b. as follows:

   b. All trash enclosures shall be of masonry construction unless otherwise approved by the City.

31. Page 118, 8. Fencing/Project Walls, g. - change the "should" to "shall."


33. Page 119, 11. Utilities and Street Furniture, c. - change the "should" to "shall."

34. Exhibit 25, Fuel Modification - add graphics with appropriate labeling to illustrate uphill and downhill conditions.

DEVELOPMENT STANDARDS

35. Page 122, A. Purpose and Intent, 3rd paragraph, "And/or Subdivision Ordinance" should be added to each reference to the "City Zoning Ordinance" in this paragraph.


38. Page 123, B. General Provisions, 8. - delete from this section and place in Definitions section.
39. Page 125, J. Screening, b. - this section needs to be clarified through revised text or graphics or both.

40. Page 127, 4. Landscaping, c. Maintenance - add "All areas proposed for common maintenance shall be designated as separate, lettered lots, the area of which may not be included in the calculations for minimum lot size."

41. Page 127, 5. Signs - capitalize "City."

42. Page 127, C. General Standards, add "6. Subdivision Design: No subdivision for residential uses shall be designed to include a flag lot or any lot accessed by an access easement."

43. Page 135, 1. Purpose and Intent - capitalize "Planning Areas."

44. Throughout Development Standards - lettering designations should be shown as follows:

   a. 
   b. 
   c. 
   Etc.


47. Page 136, 5. Accessory Uses - change heading to "Accessory Uses and Structures."


49. Page 136, 6. Site Development Standards, the format or headings need to be revised to clearly specify what product types are considered "conventional" or "P.U.D."


51. Pages 136, 139, 140, 142, 145 and 146, Site Development Standards, g. Setbacks - All setback standards in the residential designations shall be revised as follows:
<table>
<thead>
<tr>
<th></th>
<th>Conventional</th>
<th>P.U.D.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Front:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>One-Story</td>
<td>10 feet*</td>
<td>TBA</td>
</tr>
<tr>
<td>Two-Story</td>
<td>15 feet*</td>
<td></td>
</tr>
<tr>
<td>2) Side:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interior</td>
<td>5 feet</td>
<td>TBA</td>
</tr>
<tr>
<td>Exterior</td>
<td>10 feet</td>
<td>TBA</td>
</tr>
<tr>
<td>3) Rear:</td>
<td>15 feet</td>
<td>TBA</td>
</tr>
</tbody>
</table>

* 18 feet for front of direct access garage.

TBA: To be arranged through the site plan review process.


53. Page 137, 6. Site Development Standards, i. - change heading to "Required Usable Open Space Per Unit."

54. Page 137, 6. Site Development Standards, j. Parking (Per Unit), 2) Visitor/Guest - standard should be .2 stalls per unit for both columns.

55. Page 137, 6. Site Development Standards, k. Congregate Care Facilities - delete this section.


58. Page 139, 5. Accessory Uses - change heading to "Accessory Uses and Structures."


60. Page 139, 6. Site Development Standards - the format or headings need to be revised to clearly specify what product types are considered "Conventional" or "P.U.D."


63. Page 140, 6. Site Development Standards, i. - change heading to read "Required Usable Open Space Per Unit," and change figures to 500 for conventional and 500 for P.U.D.

64. Page 140, 6. Site Development Standards, j. Parking (Per Unit) - revise as follows:

<table>
<thead>
<tr>
<th>CONVENTIONAL</th>
<th>P.U.D.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Resident</td>
<td></td>
</tr>
<tr>
<td>a) Covered</td>
<td>2</td>
</tr>
<tr>
<td>b) Uncovered</td>
<td>0</td>
</tr>
<tr>
<td>2) Visitor/Guest</td>
<td>.2</td>
</tr>
</tbody>
</table>

65. Page 140, 6. Site Development Standards, k. Congregate Care Facilities - delete this section.


68. Page 142, 5. Accessory Uses - change heading to "Accessory Use and Structures."


70. Page 142, 6. Site Development Standards - the format or headings need to be revised to clearly specify what product types are considered "Conventional" or "P.U.D."


72. Page 143, 6. Site Development Standards, h. Minimum Building Separations - specify linear foot separations for both headings.

73. Page 143, 6. Site Development Standards, i - change heading to read "Required Usable Open Space Per Unit" and change figures to 400 for conventional and 400 for P.U.D.

74. Page 143, 6. Site Development Standards, j. Parking (Per Unit) - revise as follows:
CONVENTIONAL  P.U.D.

1) Resident  
   a) Covered     2      1  
   b) Uncovered   0      1  

2) Visitor/Guest  .2      .2  

75. Page 143, 6. Site Development Standards, k. Congregate Care Facilities - this section shall be modified to comply with the City's Ordinance for Congregate Care Facilities.

76. Page 144, 3. Permitted Uses, add g. Open Space Areas.

77. Page 144, 3. Permitted Uses, add h. Public or Private Parks or Recreational Facilities.


80. Page 145, 6. Site Development Standards, the format or headings need to be revised to clearly specify what product types are considered "Conventional" and "P.U.D."


82. Page 146, 6. Site Development Standards, h. Minimum Building Separation - specify linear foot separations for both headings.

83. Page 146, 6. Site Development Standards, i - change heading to read "Required Usable Open Space Per Unit" and change figures to 300 for conventional and 300 for P.U.D.

84. Page 146, 6. Site Development Standards, j. Parking (Per Unit) - revise as follows:

   CONVENTIONAL  P.U.D.

   1) Resident  
      a) Covered     2      1  
      b) Uncovered   0      1  

   2) Visitor/Guest  .2      .2  

85. Page 146, 6. Site Development Standards, Congregate Care Facilities - this section shall be modified as necessary to
comply with the City's Ordinance for Congregate Care Facilities.

86. Pages 147-149, High Density Residential Standards – delete this section.

87. Pages 150, 3. Uses – change heading to "Permitted Uses."

88. Pages 150-152, Business Park Planning Area Regulations – the text of sections J1 through J6 shall be revised as follows:

J. Business Park Planning Area Regulations

1. Purpose and Intent

The Business Park land use category is established to provide for the development of a wide variety of office, light industrial/assembly, research and development and service uses, which will serve Talega Valley and the surrounding communities. In addition, this land use category allows a limited amount of business, commercial, and personal services that directly serve the users and employees of the Business Park. The Business Park is intended to provide a high quality business environment which will take advantage of convenient access to Avenida Pico, Interstate 5 and the future Foothill Transportation Corridor.

The physical effects of permitted and conditional uses in the Business Park will be limited so that negative impacts, such as noise, odor, glare, visual impacts, and other such effects that could be harmful to life or nearby property, will not be generated. Harmful air contaminants and hazardous wastes which may be associated with permitted or conditional uses will be appropriately monitored, controlled and disposed of as required by law. All permitted and conditional uses shall be conducted entirely within a completely enclosed building, and no outdoor storage of supplies, equipment or materials shall be allowed, except for company vehicles and as otherwise noted herein.

Where a question arises regarding use regulations as they pertain to a particular use request, an interpretation pursuant to Section 11.1 and 11.2 of the City of San Clemente Zoning Ordinance shall be required.
2. **Planning Areas**

Planning Areas 31, 32, 33 and 34 are designated as Business Park planning areas.

3. **Permitted Uses** (Subject to Site Plan Review)

   a. Business Services*
   b. Civic Uses
   c. Clinic Services
   d. Commercial Services*
   e. Food Services, Limited
   f. Light Industrial/Assembly Uses
   g. Office Uses
   h. Personal Services*
   i. Public Safety Uses
   j. Research and Development Uses
   k. Service Uses
   l. Warehouse/Storage Uses
   m. Wholesale Uses

   * Business, commercial and personal service uses combined shall be limited to a total of 20 percent of the gross floor area of structures in the business park.

4. **Conditional Uses** (Subject to a Conditional Use Permit)

   a. Commercial Recreation Uses
   b. Drinking Establishments
   c. Drive-Thru Uses
   d. Educational Uses
   e. Food Services, Unlimited
   f. Major Automotive Service (P.A. 31 only)
   g. Membership Organizations
   h. Minor Automotive Service (P.A. 31 only)
   i. Public Utilities
   j. Religious Uses (not freestanding)

5. **Temporary Uses** (Subject to a Temporary Use Permit)

   a. Christmas Tree Sales*
   b. Halloween Pumpkin Sales*

   * Outdoor storage permitted.

6. **Accessory Uses and Structures Permitted**

   a. Fences and Walls
   b. Security and construction offices, during construction.
c. Security office for warehouse and storage uses.
d. Signs, per the City Zoning Ordinance.
e. Accessory structures or uses the City Planner finds to be consistent with, and subordinate to, a principal use on the same site.


90. Page 152, 7. Site Development Standards, d. Minimum Project Size - change "Project" to "Lot."

91. Page 152, 7. Site Development Standards, g. - revise this section to comply with standard format.

92. Page 152, 7. Site Development Standards, h. Minimum Lot Landscaping - change 10% to 15%.

93. Page 152, 7. Site Development Standards, i. Parking - change heading to "Parking Standards" and make the following revisions:

- Professional/Office 1/250 sq. ft.
- Manufacturing 1/500 sq. ft.
- Warehouse 1/2000 sq. ft.


95. Pages 153 and 154, Permitted Uses and Conditional Uses - the uses listed under these classifications shall be revised to correspond with the revised Definitions section.

96. Page 153, 4. Conditional Uses - delete d. Congregate Care Facilities and h. Senior Housing and add drive thru uses and restaurants with dancing, entertainment or on-sale liquor.


98. Page 154, 6. Accessory Uses - change heading to "Accessory Uses and Structures."

99. Page 154, 7. Site Development Standards, b. Maximum Floor Area Ratio - change to 1.2.

100. Page 155, 7. Site Development Standards, g. - revise this section to comply with standard format.

101. Page 155, 7. Site Development Standards, h. Minimum Lot Landscaping - change 10% to 15%.
102. Page 155, 7. Site Development Standards; i. Parking - change heading to "Parking Standards" and make the following revisions:

- Professional/Office: 1/250 sq. ft.
- Retail: 1/300 sq. ft.
- Restaurant: 1/150 sq. ft.
- Hotel/Motel: 1.1/unit

103. Page 155, 7. Site Development Standards; j. Congregate Care Facilities - this section shall be revised as necessary to comply with the City's Ordinance for Congregate Care Facilities.

104. Page 156, 3. Permitted Uses; c. - revise to read as follows:

"Recreational facilities ancillary to hotel uses including, but not limited to, tennis courts, swimming pools and putting greens."

105. Page 156, General Note - the spacing on this page should be employed throughout the document.

106. General Note - similar or like headings should be the same throughout.


108. Page 157, 7. Site Development Standards; e. Maximum Floor Area Ratio - change to .6.

109. Page 157, 7. Site Development Standards; g. - revise this section to comply with the standard format.

110. Page 157, 7. Site Development Standards; h. Minimum Lot Landscaping - change to 20%.

111. Page 158, 1. Purpose and Intent, revise to read as follows: "The Golf Course Planning Areas are ..."

112. Page 159, 5. Special Site Development Standards; d. - insert "may" between "uses" and "be."

113. Page 160, 1. Purpose and Intent - revise to read as follows: "Park and Open Space Planning Areas ..."
114. Page 162, 1. Transfers of Dwelling Units - Capitalize the following terms throughout:
   a. Planning Area(s)
   b. Specific Plan
   c. City
   d. Commission
   e. Council


116. Page 167, General Notes - make the following additions:
   j) Amount of usable open space required and provided.
   k) Amount of landscaping (square footage and percentage) required and provided.

117. Page 167, 5) - add, "All site plans shall be drawn at an engineering scale and all architectural drawings shall be drawn at an architectural scale."

118. Page 128, Density - revise as follows:

"Density shall mean the number of dwelling units per gross acre permitted in any Planning Area as specified in the Land Use Plan. Density within each Area may vary as long as the overall density within the Planning Area is not exceeded according to the implementation section of the Specific Plan."

119. Pages 128-134 - the following uses, listed in the Definition Section, are not listed in any land use category as either permitted or conditional uses.

   a. Drinking Establishments
   b. Light Industrial Assembly
   c. Limited Wholesaling
   d. Lodging
   e. Membership Organizations
   f. Minor Automotive Services
   g. Major Automotive Services
   h. Minor Repair Services
   i. Mixed Use Center
   j. Municipal Services
   k. Personal Services
   l. Photographic, Reproduction and Graphic Services
m. Professional Services
n. Religious Uses
o. Research and Development Uses
p. Retail Sales
q. Service Uses
r. Warehousing and Storage Uses
s. Wholesaling

These definitions are of no use if the terms are not used elsewhere within the document. These definitions shall all be deleted or the uses shall be added to the appropriate land use designations pursuant to approval of the Planning Division. The definitions that are missing for the uses that are in the document shall be added. The Definitions section shall be revised to comply with the staff definitions transmitted to the applicant on June 30, 1988. Other terms which are subsequently found to be undefined and which require definitions shall be defined by the City.

120. Page 131, Number of Dwelling Units, last sentence - change "exclusive" to "inclusive."

121. Page 131, Open Space Land Use - delete "essentially."

122. Page 132, Planned Unit Development - revise the definition as follows:

"Planned Unit Development shall mean a residential project consisting of a combination of residential uses on a single parcel or a combination of residential lots and privately owned common recreation, open space, circulation and parking areas arranged in a comprehensive design or plan that treats the entire development or subdivision as a single project. The purpose of this type of development is to take advantage of modern site planning techniques in order to provide an environment of stable, desirable character which will be in harmony with existing and potential development of the surrounding community. A planned unit development shall incorporate open space and recreational amenities which adequately compensate for the generally increased densities found in planned unit development proposals. The specific design and land use shall be determined through the Site Plan Review process."

123. Page 127, 4. Landscaping - add d. as follows:

Prior to the issuance of a building permit, detailed landscape and irrigation plans prepared by a registered landscape architect, shall be submitted to, reviewed and approved by the Planning Division. The plan shall provide
for substantial screening and breakup of parking areas, as well as buffering the structural elevations. Failure to maintain all landscape materials and irrigation systems in a permanently healthy and functional manner shall constitute a violation of Section 5.45(k) of the City's Zoning Ordinance. Upon completion of the project and prior to the issuance of a Certificate of Occupancy, the registered landscape architect shall submit a letter of certification to the City stating the landscape and irrigation system have been installed per the approved plans. All landscape and irrigation designs shall meet all current City standards and codes. The detailed landscaped plans shall include the specific palette recommendations and requirements for the area. All landscape and irrigation plans shall incorporate drought tolerant plant material and water efficient irrigation systems.

124. Page 27, J. Phasing Plan and Housing Implementation - delete "and Housing Implementation."

125. Page 126, J. Screening, c. 3) - add the following:

Wrought iron or chain link fencing will not be permitted for screening purposes.

126. Page 125, C., General Standards, 1. Arterial Highways-Setbacks - Revise table at the top of the page, as follows:

<table>
<thead>
<tr>
<th>Roadway</th>
<th>Setbacks from Arterial Right-of-Way</th>
</tr>
</thead>
<tbody>
<tr>
<td>Avenida Pico &amp; Avenida La Pata</td>
<td>50 feet average, 30 feet absolute minimum.</td>
</tr>
<tr>
<td>Avenida Vista Hermosa &amp; Talega Valley Drive</td>
<td>40 feet average, 25 feet absolute minimum.</td>
</tr>
<tr>
<td>Cristianitos Rd.</td>
<td>30 feet average, 20 feet absolute minimum.</td>
</tr>
</tbody>
</table>

127. Page 134, add the following definition:

Usable Open Space shall mean property held in private or common ownership, which is not occupied by structures, driveways, or parking areas. No open space area with a dimension less than ten (10) lineal feet, an area less than two hundred (200) square feet, or a slope of greater than three (3) percent may count toward this requirement. Recreational facilities, such as swimming pools, tennis courts and tot lots may be counted toward this requirement.
Private patios and balconies may also be counted toward this requirement, but only at a ratio of 50 percent, with each 1 square foot equal to 1/2 square foot of usable open space. In order to count as credit toward this requirement, ground level patios shall have a minimum area of 150 square feet with no dimension less than ten (10) feet. Usable open space provided on a balcony shall have a minimum area of 60 square feet, with no dimension less than five (5) feet.

128. Wherever the word hotel appears in the text of the Specific Plan, it shall be replaced with the phrase resort hotel/conference center.

51. Upon the completion of the revisions to the Specific Plan text, as required in the above condition, the final draft of the Specific Plan shall be transferred into the city's word processing system at the applicant's expense. Said transfer of the Specific Plan document shall be complete within 120 days of the Specific Plan approval date.

52. Prior to the approval of the first tentative tract map and each and every tentative tract map thereafter in the Specific Plan area, the applicant shall demonstrate that the proposed tentative tract map complies with the requirements of Ordinance No. 963 (Measure E) in the areas of traffic service, flood control, park land dedication, and the provision of police, fire, and paramedic service. The applicant shall submit all necessary reports and studies to demonstrate such compliance. To the extent that the requirements of any other condition of these Conditions of Approval are inconsistent with the requirements of Measure E, the requirements of Measure E shall prevail.

53. The applicant shall, within 30 days after the approval of this ordinance, submit to the Community Development Department written consent to the above imposed conditions. The applicant understands that this ordinance will be of no force or effect unless such written consent is submitted to the City within such thirty (30) day period.
RESOLUTION NO. 92-71
A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SAN CLEMENTE, CALIFORNIA,
ADOPTING TALEGA SPECIFIC PLAN AMENDMENT 91-58

WHEREAS, Section 65450 et seq. of the California Government Code provides for
the preparation, adoption, and amendment of Specific Plans; and

WHEREAS, an application has been filed to amend the previously-approved Specific
Plan for the 1,604± acres referred to as Talega; and

WHEREAS, the Specific Plan Amendment (SPA) provides a revised Specific Plan
document, which contains an amended Master Land Use Plan for Talega, revisions to certain
planned road alignments, new development standards and design guidelines, and a number
of other new or revised text provisions; and

WHEREAS, the Planning Commission has forwarded the SPA to the City Council
with a recommendation of approval; and

WHEREAS, a public hearing, duly noticed and advertised in the "Daily Sun Post," has
been held at which the City Council received and reviewed evidence and considered Final
Environmental Impact Report (FEIR) 84-02, which addresses the environmental impacts of
the SPA and related applications, and has found said FEIR to be final and complete; and

WHEREAS, in accordance with the planning and zoning laws of the State of
California, the City Council has reviewed the proposed SPA and related applications.

NOW, THEREFORE, the City Council of the City of San Clemente hereby resolves
as follows:

Section 1: The proposed Specific Plan Amendment is compatible with the goals,
objectives, policies, and land use and circulation designations of the General Plan.

Section 2: The proposed Specific Plan Amendment is a necessary and desirable
measure to provide for the orderly planning and development of Talega.

Section 3: The City Council hereby adopts Specific Plan Amendment 91-58,
consisting of the revised Specific Plan text, included by reference.
RESOLUTION NO. 92-71
Page Two

APPROVED AND ADOPTED this 1st day of July, 1992.

Mayor of the City of San Clemente, California

ATTEST:

Myrna Erway
CITY CLERK of the City of San Clemente, California

STATE OF CALIFORNIA    )
COUNTY OF ORANGE       ) ss
CITY OF SAN CLEMENTE    )

I, MYRNA ERWAY, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 92-71, was adopted at a regular meeting of the City Council held on the 1st of July, 1992, by the following vote:

AYES: BENEDICT, DIEHL, HAGGARD, MAYOR ANDERSON

NOES: NONE

ABSENT: LORCH

Myrna Erway
CITY CLERK of the City of San Clemente, California

Approved as to form:

City Attorney
RESOLUTION NO. 98- 79

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING SPECIFIC PLAN AMENDMENT 98-03 FOR REFINEMENTS TO DEVELOPMENT REGULATIONS IN THE TALEGA SPECIFIC PLAN

WHEREAS, on July 2, 1998, an application was submitted, and on September 30, 1998 completed, by Talega Associates, LLC, 951 Calle Negocio, Suite D, San Clemente, California 92673, to request approval of Specific Plan Amendment (SP) 98-03, Talega Specific Plan; and

WHEREAS, the 3,510-acre Talega Development is located northeasterly of the intersection Avenida Pico and Avenida La Pata with approximately 1,604 acres located in the City of San Clemente and approximately 1,906 acres located in the unincorporated County of Orange; and

WHEREAS, the City’s Development Management Team has reviewed the proposed Specific Plan Amendment for consistency with the General Plan policies and other applicable City ordinances and policies; and

WHEREAS, the Planning Division completed an initial study of the project in accordance with the California Environmental Quality Act (CEQA) and the State CEQA Guidelines. Based on the initial study, a determination was made that, in accordance with Article 2 of CEQA, the project has been adequately addressed in previously prepared Environmental Impact Report EIR 84-02 certified in August, 1988, and two subsequent addendums, dated March, 1998 and July, 1998, and that no new environmental documentation is required; and

WHEREAS, on October 20, 1998, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject applications; and

WHEREAS, the item was continued to the public hearing of November 3, 1998 where the Planning Commission considered the subject applications and evidence presented by City staff and other interested parties; and

WHEREAS, on November 18, 1998, the City Council of the City of San Clemente held a duly noticed public hearing on the subject applications and considered evidence presented by City staff and other interested parties; and

NOW THEREFORE, the City Council of the City of San Clemente hereby resolves as follows:
Section 1: Pursuant to CEQA and the CEQA Guidelines, an Environmental Impact Report was prepared and certified for the Talega Specific Plan in August, 1988 and two subsequent addendums were prepared in March, 1998 and July, 1998. After reviewing the previously certified EIR and addendums and the Initial Study on the present amendments, the City Council finds that the present amendments are within the scope of the previous environmental documents, that no additional significant environmental effects will result from the amendments, that no additional mitigation measures or alternatives are required, and that, per Section 15177 of the CEQA Guidelines, no additional environmental documentation is required. All records pertaining to preparation, review and comment on the EIR and subsequent addendums are contained in the Planning Division of the City of San Clemente.

Section 2: The City Council finds and determines as follows with regard to Specific Plan Amendment SP 98-03:

1. The Specific Plan Amendment is compatible with the goals, objectives, policies and programs of the General Plan and is necessary and desirable to implement the provisions of the General Plan.
2. The Development Regulations proposed in the Specific Plan Amendment are compatible with adjacent uses and properties.
3. The Specific Plan Amendment will not adversely affect the public health, safety and welfare.
4. The Specific Plan Amendment will not create internal inconsistencies within the Talega Specific Plan.

Section 3: The City Council approves the following, subject to the preceding findings:

1. Specific Plan Amendment (SPA) 98-03, consisting of:

   a. Revisions to the Permitted Uses and Development Standards regarding the permitted number of stories and regarding the setback requirement for residential garages in Conventional Subdivisions, as shown in the revised Specific Plan pages included in SP-1, attached hereto.

   b. Revisions to the Permitted Uses and Development Standards regarding minimum project size, minimum lot size, setbacks and number of permitted stories allowed in Planned Unit Developments, as shown on the revised Specific Plan pages included in Exhibit SP-1, attached hereto.

   c. Revisions to the Design Guidelines regarding permitted architectural styles, as shown on the revised Specific Plan pages included in Exhibit SP-1, attached hereto.
d. Revisions to the Development Review requirements regarding grading limitations, as shown on the revised Specific Plan pages included in Exhibit SP-1, attached hereto.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of San Clemente on November 18, 1998.

[Signature]
Mayor of the City of San Clemente, California

ATTEST:

[Signature]
CITY CLERK of the City of San Clemente, California

STATE OF CALIFORNIA )
COUNTY OF ORANGE ) §
CITY OF SAN CLEMENTE )

I, MYRNA ERWAY, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 98-79 was adopted at a regular meeting of the City Council of the City of San Clemente held on the 18th day of November, 1998, by the following vote:

AYES: AHLE, ANDERSON, APODACA, BERG, MAYOR DAHL

NOES: NONE

ABSENT: NONE

[Signature]
CITY CLERK of the City of San Clemente, California

Approved as to form:

[Signature]
City Attorney
Chapter 5: Permitted Uses and Development Standards

(Conventional Subdivisions)

e. Swimming pools, spas and related equipment.

f. Other accessory uses and structures determined by the City to be normally incidental to a permitted principal or conditional use.

E. TEMPORARY USES AND STRUCTURES PERMITTED

a. Construction activities, including necessary construction offices and materials and equipment storage.

F. DEVELOPMENT STANDARDS FOR CONVENTIONAL SUBDIVISIONS

1. Applicability - The development standards of this Paragraph F shall apply to conventional subdivisions. Such conventional subdivisions shall be subject to approval of a site plan prior to issuance of building permits.

2. Maximum Height

a. Main Building: Thirty-five (35) feet, not to exceed (2) stories; structures in the Medium and Medium High density zones shall be permitted to contain three (3) stories

b. Accessory Structures: Fifteen (15) feet

3. Building Coverage - No more than fifty (50) percent of any lot or building site shall be covered with structures.

4. Minimum Lot Standards

a. Lot Area for Low Density: 5,000 square feet
Lot Area for Low Medium, Medium and Medium High Density: 4,000 square feet

b. Lot Width for Low Density: 50 feet
Lot Width for Low Medium, Medium and Medium High Density: 40 feet

c. Lot Depth for Low Density: 100 feet
Lot Depth for Low Medium, Medium and Medium High Density: 60 feet
Chapter 5: Permitted Uses and Development Standards

(Conventional Subdivision Standards)

5. **Minimum Usable Open Space Per Resident Lot**
   a. L Low Density: 600 square feet
   b. LM Low Medium Density: 500 square feet
   c. M Medium Density: 400 square feet
   d. MH Medium High Density 300 square feet

6. **Minimum Setbacks for Main Buildings**
   a. Front, to first floor of structure: 15 feet to back of sidewalk, or curb where there is no sidewalk
   b. Front, to second floor of structure: 20 feet to back of sidewalk or curb where there is no sidewalk
   c. Front, to direct access garage opening (straight driveway): 20 feet to back of sidewalk, or curb where there is no sidewalk. *When a roll-up garage door is provided, eighteen (18) feet to back of sidewalk, as measured from the face of the garage door.*
   d. Front, to side access garage opening (turn-in driveway): 10 feet
   e. Side, interior lot: 5 feet
   f. Side, exterior lot abutting a street (other than scenic highways): 10 feet
   g. Rear, to main structure: 15 feet
   h. Rear, to detached accessory structure or open patio cover: 5 feet
   i. From another structure: 10 feet
   j. From scenic highway right-of-way:
Chapter 5: Permitted Uses and Development Standards

(PUD Standards)

Variety, amenity, and workability in the design of residential projects. The overall intent is to provide for increases in project quality over conventional projects, rather than for increases in unit yields or substandard development. All projects within areas subject to this Section shall conform to these standards and shall undergo Site Plan review concurrent with Tentative Tract Map review.

2. **Minimum Site Area** - Five (5) acres-Four (4) acres.

3. **Maximum Site Coverage** - Sixty (60) percent.

4. **Minimum Lot Areas for Single Family** - Where one (1)-attached or detached-unit per lot is proposed, the minimum lot area shall be 4,000 square feet. Minimum lot width and depth shall be determined through the Site Plan process.

5. **Maximum Height of Main Building** - Thirty-five (35) feet, not to exceed two (2) stories in low and low medium, and medium-density areas. In medium and medium high density areas the maximum height is forty (40) feet, not to exceed three (3) stories. Accessory structures shall not exceed fifteen (15) feet.

6. **Bufferyards** - Landscaped bufferyards shall be provided at the project perimeter in addition to any interior open area required by Paragraph 7, following. Said bufferyards shall be the following minimum widths: fifteen (15) feet at any point adjacent to a street; twenty (20) feet average adjacent to a street; and ten (10) feet average adjacent to a street; and ten (10) feet average adjacent to non-street boundaries.

7. **Usable Open Area** - Usable common and/or private open area, including patios, cabanas, ramadas, recreation areas, swimming pools, spas, playgrounds, landscaped areas, and similar open space, shall be provided as follows:

<table>
<thead>
<tr>
<th>L</th>
<th>Low Density</th>
<th>600 square feet per unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>LM</td>
<td>Low Medium Density</td>
<td>500 square feet per unit</td>
</tr>
<tr>
<td>M</td>
<td>Medium Density</td>
<td>400 square feet per unit</td>
</tr>
<tr>
<td>MH</td>
<td>Medium High Density</td>
<td>300 square feet per unit</td>
</tr>
</tbody>
</table>

Areas excluded in computation of such interior open area are required bufferyard areas, dwelling, other buildings, parking areas (although parking lot landscaping in excess of the minimum required by the Zoning Code shall be creditable toward the interior open area requirement), streets, driveways, and slopes greater than ten (10) percent.

8. **Garage Opening** - Garage openings shall be located so that the minimum distance to a public street right of way, sidewalk, or curb is twenty (20) feet. When a roll-up garage door is
provided, a minimum distance of eighteen (18) feet from the face of the garage door to a public street right-of-way, sidewalk or curb.

9. **Setbacks for Single Family Detached and Attached Dwelling Units (one unit per lot):**
   a. Front: 15 feet
   b. Side, abutting a street: 10 feet
   c. Rear: 10 feet

10. **Minimum Building Separation** - Ten (10) feet

11. **Building Setback from Scenic Highway Right of Way:**
   a. La Pata and Pico: 50 feet average
      30 feet average
   b. Vista Hermosa and Talega: 40 feet average
      25 feet minimum

12. **Fences, Walls, and Hedges** - Pursuant to Section 5.11 of the Zoning Code, fences, walls, and hedges serving the same purpose as a fence shall be no greater than six (6) feet in height in required side and rear setbacks and 3.5 feet in height in front setbacks and exterior side setbacks abutting a street. Walls adjacent to scenic highways should conform to Chapter 3 design standards.

13. **Signs** - Signing shall be permitted in accordance with Master Sign Program (see Section 601-H).

14. **Recreational Vehicle Storage** - Parked or stored boats, trailers, motorhomes, recreational vehicles, or similar vehicles shall not be located in the front-yard setback. Additionally, they shall be screened so as not to be visible from Scenic Highways.

15. **Parking** - Parking for PUD's condominiums, and apartments shall be provided in accordance with the requirements for multi-family housing set forth in the Zoning Code.
Chapter 3: Design Guidelines

305 ARCHITECTURAL GUIDELINES

A. PURPOSE

The purpose of the architectural guidelines is to provide a design tool which will contribute to attaining the goal of the San Clemente General Plan's Urban Design Program to preserve and strengthen San Clemente's unique atmosphere and historic identity as "The Spanish Village by the Sea."

B. HISTORICAL STYLES

This description of historic styles for Talega is intended to aide architectural designers in developing an architectural image unique to Talega. The Early California heritage of the ranch and the surrounding City of San Clemente, with its Spanish traditions, is a major influence in promoting a special identity. This heritage has produced several distinct architectural styles.

A description of these architectural styles is presented to provide designers with historical background for guidance and inspiration in creating an image distinctive to Talega. Special attention should be given to the complementary aspects of architectural style to achieve visual harmony between development components. The climate which San Clemente enjoys enables the relationship between indoor and outdoor spaces to become a prominent design feature.

The following five historical architectural styles represent the primary direction for the Talega community. Prominent development such as the Town Center and other commercial, public and community use buildings (such as recreational facilities) shall adhere to these styles. However, contemporary interpretations and variations as well as other architectural styles that are visually complimentary are permitted to enhance variety and uniqueness of the residential neighborhoods and homes to be built at Talega. Instead of exclusive adherence to the historical styles and elements listed below, compatibility of architectural colors and materials and rooflines will be considered. An effort shall be made to create separate and distinct neighborhoods through use of architectural design, landscaping and overall streetscape.

1. Mission Architecture - Mission architecture is characterized by provincial adaptations of classical Mediterranean architecture limited by unskilled designers and laborers and available materials (see Figure 3-7). Some of the design elements include:

a. "Campanario" - A scalloped wall pierced for the hanging of bells.
b. "Espadana" - Ornamental, scalloped front facade for an imposing or monumental impressiveness.
Chapter 6: Development Review

6. **Public Safety** - The Area Plan shall include a description of the proposed program for provision of police, fire and emergency services to the proposed development. The program shall address capital improvements, land acquisition, purchase of equipment, method of funding the required facilities, and the relationship to the City’s Public Safety Construction Fee Ordinance, and on-going operations and maintenance costs. The Area Plan shall depict fuel-modification zones and identify street grades, widths, and configurations that will accommodate major fire apparatus.

7. **Noise** - Efforts shall be made in grading and site design to take advantage of and enhance shielding effects provided by the natural topography.

8. **Soils, Geology, and Grading** - Proposed grading shall be permitted only in areas for which an Area Plan has been approved. An Area Plan shall be approved prior to issuance of any grading permit. If grading is proposed outside the subject planning area for any reason including arterial highways, remedial grading, and/or drainage facilities, it shall be reviewed by the City’s Development Management Team (DMT) prior to issuance of a grading permit. The DMT may determine that an Area Plan is not necessary prior to issuance of a grading permit for remedial or infrastructure purposes, provided that the grading permit is categorically exempt from CEQA or a Negative Declaration is made.

The Area Plan shall depict the proposed grading in sufficient detail to determine compliance with the City’s Hillside Development Ordinance, No. 841, Grading Manual, and the approved Talega Resource Management Plan. A description of the phasing of proposed grading shall be included showing no more than 200 acres of grading for development purposes in any proposed grading phase. Consistent with Chapter 3: Design Guidelines, grading associated with remedial grading, geologic stabilization, golf course or park construction, borrow sites, disposal sites and arterial highways shall be exempt from the 200-acre limit. The grading plan shall show proposed areas of cut and fill, topography, steepness of slope, locations and extent of buttresses and bench drains, a description of haul routes, access points to the site, and a watering and sweeping program designed to minimize impacts of haul operations.

Grading shall be minimized in open space planning areas and in proximity of ridgelines. Grading in open space areas shall be limited to that which is necessary to create surfaces for Open Space uses permitted by Section 507. In the event that a City-approved soils report recommends remedial grading in an Open Space planning area, such proposed grading shall be evaluated in accordance with CEQA; and if approved, shall be conditioned so that a natural appearance is recreated.

The Area Plan shall include a viewshed analysis based on the final design and grading plans for Avenida Talega, Avenida La Pata, Avenida Pico, and
RESOLUTION NO. 01- 76

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE
APPROVING GENERAL PLAN AMENDMENT 98-05, TALEGA SPECIFIC PLAN
AMENDMENT 98-05 AND PARK AND RECREATION MASTER PLAN AMENDMENT

WHEREAS, on August 10, 1988 the City Council of the City of San Clemente approved the Talega Valley Specific Plan for approximately 1,604 acres located northeasterly of the intersection of Avenida Pico and Avenida La Pata; and

WHEREAS, amendments to the Talega Valley Specific Plan were approved by the City Council in 1990, 1992 and 1998; and

WHEREAS, in May 1988, the County of Orange approved Rolling Hills Feature Plan for approximately 1,906 acres northeasterly of the intersection of Avenida Pico and Avenida Vista Hermosa; and

WHEREAS, amendments to the Rolling Hills Feature Plan were approved by the County of Orange in 1990, 1998 and 1999 and by the Talega Joint Planning Authority in 2000; and

WHEREAS, on September 28, 1998, an application was submitted, and on October 11, 2001 completed, by Talega Associates, LLC, 951 Calle Negocio, Suite D, San Clemente, California 92673, to request approval of General Plan Amendment 98-05 and Specific Plan Amendment 98-05; and

WHEREAS, the Talega Specific Plan Amendment would merge the previously approved Talega Valley Specific Plan and Rolling Hills Feature Plan into a Specific Plan for the entire 3,510-acre Talega Development which is located northeasterly of the intersection of Avenida Pico and Avenida La Pata with approximately 1,604 acres located in the City of San Clemente and approximately 1,906 acres located in the unincorporated County of Orange; and

WHEREAS, the proposed General Plan Amendment and Specific Plan Amendment are each internally consistent and consistent with one another; and

WHEREAS, the City’s Development Management Team has reviewed the proposed Specific Plan Amendment for consistency with the General Plan policies and other applicable City ordinances and policies; and

WHEREAS, the Planning Division completed a Final Supplemental Environmental Impact Report (SEIR) for the above-referenced project in accordance with the California Environmental Quality Act (CEQA). The FSEIR incorporates by reference analysis and mitigation as addressed in previously prepared Final EIR 84-02 certified by the City of San Clemente in August, 1988, along with four addenda certified by the City in 1998 through 1999. The FSEIR prepared for this project (State Clearinghouse Number 99031048) addresses impacts
of requested modifications to the General Plan and Specific Plan, updates previous studies and provides new analysis or new mitigation measures as determined necessary; and

WHEREAS, on November 20, 2001, the Planning Commission of the City of San Clemente held a duly noticed public hearing and considered the subject applications and evidence presented by City staff and other interested parties and continued the hearing to December 4, 2001; and

WHEREAS, on December 4, 2001, the Planning Commission recommended approval of the General Plan Amendment and Specific Plan Amendment; and

WHEREAS, on December 11, 2001, the Park and Recreation Commission recommended approval of the Parks and Recreation Master Plan Amendment and

WHEREAS, on December 12, 2001, the City Council of the City of San Clemente held a duly noticed public hearing and considered the subject applications and evidence presented by City staff and other interested parties.

NOW THEREFORE, the City Council of the City of San Clemente hereby finds and determines and resolves as follows:

Section 1:  FSEIR 98-05 considers all environmental impacts of the proposed project and is complete and adequate and fully complies with all requirements of CEQA and the State CEQA Guidelines. Although the FSEIR identifies certain significant environmental effects that will result if the Project is approved, all significant effects that can feasibly be avoided or mitigated will be avoided or mitigated by the imposition of Conditions on the approved Project and the imposition of mitigation measures as set forth in the Statement of Findings and the FSEIR for the proposed Project and implemented in the approved Mitigation Monitoring and Reporting Program. Potential mitigation measures and Project alternatives not incorporated into the Project were rejected as infeasible, based upon specific economic, social and other considerations as set forth in the Statement of Findings and the FSEIR. Furthermore, the City Council finds that the significant unavoidable adverse impacts are clearly outweighed by the economic, social and other benefits of the project, as set forth in the Statement of Overriding Considerations.

Section 2:  The City Council finds and determines as follows with regard to General Plan Amendment 98-05:

A. The General Plan Amendment is internally consistent with those portions of the General Plan that are not being amended in that the current General Plan provides for the adoption of specific plans for the undeveloped ranchlands in the City of San Clemente and anticipates amendments to such plans that would further the goals of the General Plan. The General Plan Amendment, required to accommodate the
Talega Specific Plan Amendment, focuses on land use and circulation changes that either fulfill or are consistent with other policy elements in the General Plan and overall would result in less environmental impacts than the currently approved Plan.

Additionally, the General Plan Amendment lowers the buildout projections for the City of San Clemente and Sphere-of-Influence (future annexation areas) and increases the amount of open space for the City. The jobs/housing ratio would remain above 1.0 as described in the General Plan. As required by City policy, the fiscal impact to the City of San Clemente is projected to remain positive.

B. The General Plan Amendment will not adversely affect the public health, safety and welfare in that the Supplemental Environmental Impact Report for the Talega Specific Plan Amendment indicates that the Project would have no additional significant unmitigated impacts. The General Plan Amendment is required to ensure consistency with the Talega Specific Plan Amendment, as both documents are designed to provide for the orderly development of the City. All potential issues affecting public health, safety and welfare have been addressed in the environmental analysis for the Talega Specific Plan Amendment, in the City review of the plan, and in the public hearing process. These processes, which also determine the scope of the General Plan Amendment, have resulted in environmental mitigations, land use reconfigurations, and changes to the circulation system that are designed to improve the quality of life in the City of San Clemente and assure that the public health, safety and welfare are protected.

**Section 3:** The City Council finds and determines as follows with regard to Specific Plan Amendment 98-05:

A. The Specific Plan Amendment is compatible with the goals, objectives, policies and programs of the General Plan and is necessary and desirable to implement the provisions of the General Plan in that the General Plan requires the adoption of specific plans for the undeveloped ranchlands, including the Talega Specific Plan and anticipates amendments to such plans that would further the goals, objectives, policies and programs of the General Plan. The Talega Specific Plan Amendment focuses on land use and circulation changes that either fulfill or are consistent with other policy elements in the General Plan and overall would result in less environmental impacts than the currently approved Plan.

B. The Development Regulations proposed in the Specific Plan Amendment are compatible with adjacent uses and properties in that the Specific Plan Amendment will merge the previously approved Talega Specific Plan (which established development regulations for the 1,604 acres of the Talega Property within the City of San Clemente) and the previously approved Rolling Hills Feature Plan (which established development regulations for 1,906 acres of the Talega Property within
unincorporated County of Orange). The Specific Plan Amendment is intended to bring the development regulations for the unincorporated portions of the Talega Property into compliance with the General Plan, Talega Specific Plan and City of San Clemente Zoning Ordinance.

C. The Specific Plan Amendment will not adversely affect the public health, safety and welfare in that the Supplemental Environmental Impact Report for the Talega Specific Plan Amendment indicates that the project would have no additional significant unmitigated impacts. All potential issues affecting public health, safety and welfare have been addressed in the environmental analysis for the Talega Specific Plan Amendment, in the City review of the plan, and in the public hearing process. These processes have resulted in environmental mitigations, land use reconfigurations, and changes to the circulation system that are designed to improve the quality of life in the City of San Clemente and assure that the public health, safety and welfare are protected.

D. The Specific Plan Amendment will not create internal inconsistencies within the Talega Specific Plan in that the Specific Plan Amendment will merge the previously approved Talega Specific Plan (which established development regulations for the 1,604 acres of the Talega Property within the City of San Clemente) and the previously approved Rolling Hills Feature Plan (which established development regulations for 1,906 acres of the Talega Property within unincorporated County of Orange). The Specific Plan Amendment is intended to eliminate inconsistencies that existed between the two previously approved policy documents.

**Section 4:** The City Council finds and determines with regard to the Park and Recreation Master Plan Amendment:

A. The relocation of a Community Park from within Talega to a location outside of Talega was anticipated in the previously approved Park and Recreation Master Plan and the amendment is compatible with the goals of the General Plan and Talega Specific Plan in that the relocation of the Community Park is established as policy with the concurrent General Plan Amendment and Talega Specific Plan Amendment.

**Section 5:** The City Council approves the following, subject to the preceding findings:

A. General Plan Amendment (GPA) 98-05, dated November 2001, attached hereto and included herein as set forth in full, consisting of revisions to the General Plan Land Use Map, updates to the Circulation Plan, Relocation of the Talega Community Park to an off-site location at the intersection of Avenida Vista Hermosa and Avenida La Pata within the Forster Ranch Specific Plan, and deletion of the Integrated Development Planning Area.
B. Specific Plan Amendment (SPA) 98-05, dated November 6, 2001 attached hereto and included herein as set forth in full, consisting of:

1. Revisions to the Master Land Use Plan to reconfigure the golf course, relocate the community park, redistribute the residential density, replace 5.8 acres of Commercial with High Density Residential, convert 13.9 acres of Business Park to Commercial, eliminate a designated hotel site, eliminate a sports complex, identify an elementary school, redefine locations for three neighborhood parks, identify a fire station site, establish Institutional land uses and avoid impacts to Waters of the US as defined by the Army Corps of Engineers.

2. Revisions to the Circulation system to include the identification of the location of the CP Alignment of the Foothill Transportation Corridor, realignment of internal collector roads, provision of a collector road (Calle Saluda) between Avenida Talega and Avenida La Pata, truncation of an internal collector road (Calle Portofino), truncation of an internal collector road (Calle Altea), and revisions to requirements for off-site circulation improvements.

3. Revisions to the Permitted Uses and Development Standards regarding parking standards, rear setbacks for accessory structures, residential building coverage, High Density Residential standards, and Institutional standards.

4. Revisions to the Design Guidelines regarding mixed use/pedestrian-oriented design guidelines and grading policies.


C. Park and Recreation Master Plan Amendment, dated December 2001, attached hereto and included herein as set forth in full, consisting of revisions to the discussion of the relocation of a Community Park from within Talega to a location near the intersection of Avenida Vista Hermosa and Avenida La Pata and an adjustment of neighborhood park acreage per the Amended and Restated Development Agreement.

PASSED AND ADOPTED this 12th day of December, 2001.

[Signature]
Mayor of the City of San Clemente, California
Resolution No. 01- 76

ATTEST:

Myrna Erway
CITY CLERK of the City of San Clemente, California

STATE OF CALIFORNIA
COUNTY OF ORANGE ss
CITY OF SAN CLEMENTE)

I, Myrna Erway, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No.01-76 was adopted at a regular meeting of the City Council of the City of San Clemente held on the 12th day of December, 2001, by the following vote:

AYES: DIEHL, DOREY, EGGLESTON, MAYOR DAHL
NOES: NONE
ABSENT: NONE
ABSTAINED: RITSCHEL

Approved as to form:

/s/Jeff Oderman
City Attorney
EXHIBIT 1
CONDITIONS OF APPROVAL
GENERAL PLAN AMENDMENT 98-05, SPECIFIC PLAN AMENDMENT 98-05

GENERAL CONDITIONS

1. The effective date of the Talega Specific Plan shall be no earlier than the effective date of the City Council ordinance adopting the Amended and Restated Development Agreement for Talega Property by and Among the City of San Clemente, Talega Joint Planning Authority, Talega Associates, LLC, BHC Residential, LLC, William Lyon Homes, Inc., Standard Pacific Corp., and Jamboree Housing, LP. (Plng.)

2. This Project is approved subject to the provisions of a Final Environmental Impact Report (FEIR) 84-02 (certified in 1988), 1st Addendum (certified March 1998), 2nd Addendum (certified August 1998), 3rd Addendum (certified March 1999), and 4th Addendum (certified June 1999). (Plng.)

3. This project shall be subject to the mitigation measures adopted with the FEIR 84-02 and FSEIR 98-05 prepared for the Project and included as The Mitigation, Monitoring and Reporting Program for the Talega Specific Plan Amendment/General Plan Amendment as referenced herein. (Plng.)

4. The owner or designee shall defend (or at the City’s discretion), indemnify and hold harmless the City of San Clemente (City), its agents, officers and employees from any claim, action or proceeding against the City, its agents, officers or employees to attack, set aside, void or annul an approval of the City concerning General Plan Amendment 98-05/Specific Plan Amendment 98-05 when such claim, action or proceeding is brought within the time period provided under Government Code Section 66499.37. The City shall notify the owner or designee of any claim, action or proceeding and the City shall cooperate fully in the defense of the above. (Plng.)


6. The applicant shall submit for review and obtain approval from the City Engineer a Conceptual Runoff Management Plan for the Segunda Deshecha Watershed prior to the effective date of the Talega Specific Plan Amendment. (Eng.)

7. Drainage improvements within the Cristianitos Watershed shall include a method of dry weather diversion to a reclaimed water system or sewer system in a manner acceptable to
the Authority Engineer and Santa Margarita Water District. Section 404-C of the Talega Specific Plan Amendment shall be revised to incorporate this requirement. (Eng.)

8. A revised Talega Specific Plan Amendment shall be submitted incorporating the following:

   (Plng.)

   a. The Chapter 2 Master Plan shall be removed and replaced with Appendix D Alternative Master Plan. Graphics and text shall be revised to delete reference to Appendix D.

   b. Grading Criteria as described as Section 302-B, Item 9 on Page 3-7 shall be revised to delete the statement that “Deviations to the City’s Hillside Development Ordinance are allowed”. The remainder of the paragraph shall remain as written.

   c. Grading Criteria as described in Section 302-B, Item 5 on Page 3-7 shall be revised to eliminate the manufacturer’s trademark name “Loffelstein”, and refer to pre-engineered planted retaining walls. Planted retaining walls may be allowed in open space subject to all other retaining wall standards including maximum height.

   d. Grading Criteria as described as Section 302-B, Page 3-7 shall be revised to include Item 10, indicating that, “Downdrains shall not be located on fall-lines of the slope, but shall be designed to be hidden by the topography.”

   e. Section 305-E-6-c, Page 3-53 shall be revised to indicate that tandem parking only meets one covered parking space requirement.

   f. Section 408 shall be revised to include revised and/or new conditions of approval and mitigation measures approved for SPA 98-05 and the certified FSEIR.

   g. Section 502-C-1h, Senior, age-restricted housing shall be revised to indicate Senior, age-restricted housing in accordance with the Zoning Code.

   h. Building Coverage as described as Section 502-F, Item 3 on Page 5-5 shall be revised to indicate that building coverage does not apply to open patio covers 200 square feet or less. For patio covers in excess of 200 feet, the excess surface area will be calculated as lot coverage.

   i. Section 503-C, shall be revised to include kennels as a conditional use and crematoriums as a conditional use within the Business Park.

   j. Section 601 shall be revised to delete the references to acreage within each jurisdiction since annexation process will change the jurisdiction lines.
k. Chapter 7, the definition “City Talega Amended and Restated Development Agreement” shall be revised to indicate that the development agreement may be amended from time to time.

l. Section 502, delete Paragraph C.2.c, thereby eliminating Hotel Uses as a Conditional Use within Planning Area G6.

m. Land Use Plan, amend plans to show Planning Area G-10 as “Open Space”. Tables and other graphics throughout the Specific Plan document shall be adjusted accordingly.

n. Section 504-C, Add a 23rd subsection to list conditionally permitted uses on Page 5-15 to read: “Golf maintenance facilities not to exceed 0.7 acres in size (in satisfaction of Section 3.3 of the City-Talega Amended and Restated Development Agreement).

o. Appendix D, amend the text, tables and exhibits in Appendix D to reflect: The addition of Planning Areas E-8 (0.8 acres of private recreation), and G-12 (7.0 acres of open space), the increase of Planning Areas E-6 (Oak Woodland) from 5.3 to 5.9 acres and E-5 (public and private parkland) from 8.1 to 9.3 acres, the reduction in golf course acreage in Planning Area G-1 from 136.4 to 129.4 acres and reduction in residential acreage in Planning Areas E-4 (from 5.4 to 4.5 acres) and E-2 (from 69.4 to 67.7)
RESOLUTION NO. JPAT 01-05

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE TALEGA JOINT PLANNING AUTHORITY APPROVING GENERAL PLAN AMENDMENT 98-05 AND TALEGA SPECIFIC PLAN AMENDMENT 98-05

WHEREAS, on August 10, 1988 the City Council of the City of San Clemente approved the Talega Valley Specific Plan for approximately 1,604 acres located northeasterly of the intersection of Avenida Pico and Avenida La Pata; and

WHEREAS, amendments to the Talega Valley Specific Plan were approved by the City Council in 1990, 1992 and 1998; and

WHEREAS, in May 1988, the County of Orange approved Rolling Hills Feature Plan for approximately 1,906 acres northeasterly of the intersection of Avenida Pico and Avenida Vista Hermosa; and

WHEREAS, amendments to the Rolling Hills Feature Plan were approved by the County of Orange in 1990, 1998 and 1999 and by the Talega Joint Planning Authority in 2000; and

WHEREAS, on September 28, 1998, an application was submitted, and on October 11, 2001 completed, by Talega Associates, LLC, 951 Calle Negocio, Suite D, San Clemente, California 92673, to request approval of General Plan Amendment 98-05 and Specific Plan Amendment 98-05; and

WHEREAS, the Talega Specific Plan Amendment would merge the previously approved Talega Valley Specific Plan and Rolling Hills Feature Plan into a Specific Plan for the entire 3,510-acre Talega Development which is located northeasterly of the intersection of Avenida Pico and Avenida La Pata with approximately 1,604 acres located in the City of San Clemente and approximately 1,906 acres located in the unincorporated County of Orange; and

WHEREAS, the proposed General Plan Amendment and Specific Plan Amendment are each internally consistent and consistent with one another; and

WHEREAS, the Development Management Team has reviewed the proposed Specific Plan Amendment for consistency with the General Plan policies and other applicable City ordinances and policies; and

WHEREAS, the Planning Division completed a Final Supplemental Environmental Impact Report (SEIR) for the above-referenced project in accordance with the California Environmental Quality Act (CEQA). The FSEIR incorporates by reference analysis and mitigation as addressed in previously prepared Final EIR 84-02 certified by the City of San Clemente in August, 1988, along with four addenda certified by the City in 1998 through 1999. The FSEIR prepared for this project (State Clearinghouse Number 99031048) addresses impacts
of requested modifications to the General Plan and Specific Plan, updates previous studies and provides new analysis or new mitigation measures as determined necessary; and

WHEREAS, on November 15, 2001, the Planning Commission of the Talega Joint Planning Authority held a duly noticed public hearing and considered the subject applications and evidence presented by Authority staff and other interested parties and continued the hearing to November 28, 2001 and again continued the hearing to December 10, 2001; and

WHEREAS, on December 10, 2001, the Planning Commission recommended approval of the General Plan Amendment and Specific Plan Amendment; and

WHEREAS, on December 17, 2001, the Board of Directors of the Talega Joint Planning Authority held a duly noticed public hearing and considered the subject applications and evidence presented by staff and other interested parties.

NOW THEREFORE, the Board of Directors of the Talega Joint Planning Authority hereby finds and determines and resolves as follows:

Section 1: FSEIR 98-05 considers all environmental impacts of the proposed project and is complete and adequate and fully complies with all requirements of CEQA and the State CEQA Guidelines. Although the FSEIR identifies certain significant environmental effects that will result if the Project is approved, all significant effects that can feasibly be avoided or mitigated will be avoided or mitigated by the imposition of Conditions on the approved Project and the imposition of mitigation measures as set forth in the Statement of Findings and the FSEIR for the proposed Project and implemented in the approved Mitigation Monitoring and Reporting Program. Potential mitigation measures and Project alternatives not incorporated into the Project were rejected as infeasible, based upon specific economic, social and other considerations as set forth in the Statement of Findings and the FSEIR. Furthermore, the Board of Directors finds that the significant unavoidable adverse impacts are clearly outweighed by the economic, social and other benefits of the project, as set forth in the Statement of Overriding Considerations.

Section 2: The Board of Directors finds and determines as follows with regard to General Plan Amendment 98-05:

A. The General Plan Amendment is internally consistent with those portions of the General Plan that are not being amended in that the current General Plan provides for the adoption of specific plans for the undeveloped ranchlands in the City of San Clemente and anticipates amendments to such plans that would further the goals of the General Plan. The General Plan Amendment, required to accommodate the Talega Specific Plan Amendment, focuses on land use and circulation changes that either fulfill or are consistent with other policy elements in the General Plan and overall would result in less environmental impacts than the currently approved Plan.
Additionally, the General Plan Amendment lowers the buildout projections for the City of San Clemente and Sphere-of-Influence (future annexation areas) and increases the amount of open space for the City. The jobs/housing ratio would remain above 1.0 as described in the General Plan. As required by City policy, the fiscal impact to the City of San Clemente is projected to remain positive.

B. The General Plan Amendment will not adversely affect the public health, safety and welfare in that the Supplemental Environmental Impact Report for the Talega Specific Plan Amendment indicates that the Project would have no additional significant unmitigated impacts. The General Plan Amendment is required to ensure consistency with the Talega Specific Plan Amendment, as both documents are designed to provide for the orderly development of the City. All potential issues affecting public health, safety and welfare have been addressed in the environmental analysis for the Talega Specific Plan Amendment, in the Authority review of the plan, and in the public hearing process. These processes, which also determine the scope of the General Plan Amendment, have resulted in environmental mitigations, land use reconfigurations, and changes to the circulation system that are designed to improve the quality of life in the City of San Clemente and assure that the public health, safety and welfare are protected.

Section 3: The Board of Directors finds and determines as follows with regard to Specific Plan Amendment 98-05:

A. The Specific Plan Amendment is compatible with the goals, objectives, policies and programs of the General Plan and is necessary and desirable to implement the provisions of the General Plan in that the General Plan requires the adoption of specific plans for the undeveloped ranchlands, including the Talega Specific Plan and anticipates amendments to such plans that would further the goals, objectives, policies and programs of the General Plan. The Talega Specific Plan Amendment focuses on land use and circulation changes that either fulfill or are consistent with other policy elements in the General Plan and overall would result in less environmental impacts than the currently approved Plan.

B. The Development Regulations proposed in the Specific Plan Amendment are compatible with adjacent uses and properties in that the Specific Plan Amendment will merge the previously approved Talega Specific Plan (which established development regulations for the 1,604 acres of the Talega Property within the City of San Clemente) and the previously approved Rolling Hills Feature Plan (which established development regulations for 1,906 acres of the Talega Property within unincorporated County of Orange). The Specific Plan Amendment is intended to bring the development regulations for the unincorporated portions of the Talega
Property into compliance with the General Plan, Talega Specific Plan and City of San Clemente Zoning Ordinance.

C. The Specific Plan Amendment will not adversely affect the public health, safety and welfare in that the Supplemental Environmental Impact Report for the Talega Specific Plan Amendment indicates that the project would have no additional significant unmitigated impacts. All potential issues affecting public health, safety and welfare have been addressed in the environmental analysis for the Talega Specific Plan Amendment, in the City review of the plan, and in the public hearing process. These processes have resulted in environmental mitigations, land use reconfigurations, and changes to the circulation system that are designed to improve the quality of life in the City of San Clemente and assure that the public health, safety and welfare are protected.

D. The Specific Plan Amendment will not create internal inconsistencies within the Talega Specific Plan in that the Specific Plan Amendment will merge the previously approved Talega Specific Plan (which established development regulations for the 1,604 acres of the Talega Property within the City of San Clemente) and the previously approved Rolling Hills Feature Plan (which established development regulations for 1,906 acres of the Talega Property within unincorporated County of Orange). The Specific Plan Amendment is intended to eliminate inconsistencies that existed between the two previously approved policy documents.

Section 4: The Board of Directors approves the following, subject to the preceding findings:

A. General Plan Amendment (GPA) 98-05, dated November 2001, attached hereto and included herein as if set forth in full, consisting of revisions to the General Plan Land Use Map, updates to the Circulation Plan, Relocation of the Talega Community Park to an off-site location at the intersection of Avenida Vista Hermosa and Avenida La Pata within the Forster Ranch Specific Plan, and deletion of the Integrated Development Planning Area.

B. Specific Plan Amendment (SPA) 98-05, dated November 6, 2001, attached hereto and included herein as if set forth in full, consisting of:

1. Revisions to the Master Land Use Plan to reconfigure the golf course, relocate the community park, redistribute the residential density, replace 5.8 acres of Commercial with High Density Residential, convert 13.9 acres of Business Park to Commercial, eliminate a designated hotel site, eliminate a sports complex, identify an elementary school, redefine locations for three neighborhood parks, identify a fire station site, establish Institutional land uses and avoid impacts to Waters of the US as defined by the Army Corps of Engineers.
2. Revisions to the Circulation system to include the identification of the location of the CP Alignment of the Foothill Transportation Corridor, realignment of internal collector roads, provision of a collector road (Calle Saluda) between Avenida Talega and Avenida La Pata, truncation of an internal collector road (Calle Portofino), truncation of an internal collector road (Calle Altea), and revisions to requirements for off-site circulation improvements.

3. Revisions to the Permitted Uses and Development Standards regarding parking standards, rear setbacks for accessory structures, residential building coverage, High Density Residential standards, and Institutional standards.

4. Revisions to the Design Guidelines regarding mixed use/pedestrian-oriented design guidelines and grading policies.


PASSED AND ADOPTED this 17TH day of December, 2001.

Chair
Talega Joint Planning Authority

ATTEST:

SECRETARY
Talega Joint Planning Authority
STATE OF CALIFORNIA  
COUNTY OF ORANGE  
CITY OF SAN CLEMENTE

I, Myrna Erway, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. JPAT 01-05 was adopted at a regular meeting of the Board of Directors of the Talega Joint Planning Authority held on the 17th day of December, 2001, by the following vote:

AYES: DAHL, EGGLESTON, VEALE, WILSON, CHAIR DIEHL

NOES: NONE

ABSENT: NONE

Approved as to form:

/s/ Jeff Oderman
General Counsel

SECRETARY
Talega Joint Planning Authority
EXHIBIT 1
CONDITIONS OF APPROVAL
GENERAL PLAN AMENDMENT 98-05, SPECIFIC PLAN AMENDMENT 98-05

GENERAL CONDITIONS

1. The effective date of the Talega Specific Plan shall be no earlier than the effective date of
   the Board of Directors of the Talega Joint Planning Authority ordinance adopting the
   Amended and Restated Development Agreement for Talega Property by and Among the
   City of San Clemente, Talega Joint Planning Authority, Talega Associates, LLC, BHC
   Residential, LLC, William Lyon Homes, Inc., Standard Pacific Corp., and Jamboree
   Housing, LP.

2. This Project is approved subject to the provisions of a Final Environmental Impact Report
   (FEIR) 84-02 (certified in 1988), 1st Addendum (certified March 1998), 2nd Addendum
   (certified August 1998), 3rd Addendum (certified March 1999), and 4th Addendum
   (certified June 1999).

3. This Project shall be subject to the mitigation measures adopted with the FEIR 84-02 and
   FSEIR 98-05 prepared for the Project and included as The Mitigation, Monitoring and
   Reporting Program for the Talega Specific Plan Amendment/General Plan Amendment as
   referenced herein.

4. The owner or designee shall defend (or at the Authority’s discretion pay for the
   Authority’s defence), indemnify and hold harmless the Talega Joint Planning Authority
   (Authority), its agents, officers and employees from any claim, action or proceeding
   against the Authority, its agents, officers or employees to attack, set aside, void or annul
   an approval of the Authority concerning General Plan Amendment 98-05/Specific Plan
   Amendment 98-05 when such claim, action or proceeding is brought within the time
   period provided under Government Code Section 66499.37. The Authority shall notify
   the owner or designee of any claim, action or proceeding and the Authority shall
   cooperate fully in the defense of the above.

5. Any obligations imposed upon the applicant by way of any permit to develop this
   property shall be performed to the Authority prior to such annexation and, thereafter, to
   the City of San Clemente. Unless otherwise required by law, the City shall automatically
   succeed to any rights and obligations of the Authority with regard to any property covered
   by this approval upon annexation of that property into the City of San Clemente.
   Applicant or Applicant’s successor-in-interest shall consent to an assignment of all rights
   and obligations from the Authority to the City of San Clemente upon annexation of any
   property to which this permit pertains upon such annexation. Applicant or applicant’s
   successor-in-interest shall cooperate with such assignment and execute any and all
   documents necessary to effectuate that assignment.

7. The applicant shall submit for review and obtain approval from the Authority Engineer a Conceptual Runoff Management Plan for the Segunda Deshecha Watershed prior to the effective date of the Talega Specific Plan Amendment.

8. Drainage improvements within the Cristianitos Watershed shall include a method of dry weather diversion to a reclaimed water system or sewer system in a manner acceptable to the Authority Engineer and Santa Margarita Water District. Section 404-C of the Talega Specific Plan Amendment shall be revised to incorporate this requirement.

9. A revised Talega Specific Plan Amendment shall be submitted incorporating the following:

   a. The Chapter 2 Master Plan shall be removed and replaced with Appendix D Alternative Master Plan. Graphics and text shall be revised to delete reference to Appendix D.

   b. Grading Criteria as described as Section 302-B, Item 9 on Page 3-7 shall be revised to delete the statement that “Deviations to the City’s Hillside Development Ordinance are allowed”. The remainder of the paragraph shall remain as written.

   c. Grading Criteria as described in Section 302-B, Item 5 on Page 3-7 shall be revised to eliminate the manufacturer’s trademark name “Loffelstein”, and refer to pre-engineered planted retaining walls. Planted retaining walls may be allowed in open space subject to all other retaining wall standards including maximum height.

   d. Grading Criteria as described as Section 302-B, Page 3-7 shall be revised to include Item 10, indicating that, “Downdrains shall not be located on fall-lines of the slope, but shall be designed to be hidden by the topography.”

   e. Section 305-E-6-c, Page 3-53 shall be revised to indicate that tandem parking only meets one covered parking space requirement.

   f. Section 408 shall be revised to include revised and/or new conditions of approval and mitigation measures approved for SPA 98-05 and the certified FSEIR.

   g. Section 502-C-1h, Senior, age-restricted housing shall be revised to indicate Senior, age-restricted housing in accordance with the Zoning Code.
h. Building Coverage as described as Section 502-F, Item 3 on Page 5-5 shall be revised to indicate that building coverage does not apply to open patio covers 200 square feet or less. For patio covers in excess of 200 feet, the excess surface area will be calculated as lot coverage.

i. Section 503-C, shall be revised to include kennels as a conditional use and crematoriums as a conditional use within the Business Park.

j. Section 601 shall be revised to delete the references to acreage within each jurisdiction since annexation process will change the jurisdiction lines.

k. Chapter 7, the definition “City Talega Amended and Restated Development Agreement” shall be revised to indicate that the development agreement may be amended from time to time.

l. Section 502, delete Paragraph C.2.c, thereby eliminating Hotel Uses as a Conditional Use within Planning Area G6.

m. Land Use Plan, amend plans to show Planning Area G-10 as “Open Space”. Tables and other graphics throughout the Specific Plan document shall be adjusted accordingly.

n. Section 504-C, Add a 23rd subsection to list conditionally permitted uses on Page 5-15 to read: “Golf maintenance facilities not to exceed 0.7 acres in size (in satisfaction of Section 3.3 of the City-Talega Amended and Restated Development Agreement).

o. Appendix D, amend the text, tables and exhibits in Appendix D to reflect: The addition of Planning Areas E-8 (0.8 acres of private recreation), and G-12 (7.0 acres of open space), the increase of Planning Areas E-6 (Oak Woodland) from 5.3 to 5.9 acres and E-5 (public and private parkland) from 8.1 to 9.3 acres, the reduction in golf course acreage in Planning Area G-1 from 136.4 to 129.4 acres and reduction in residential acreage in Planning Areas E-4 (from 5.4 to 4.5 acres) and E-2 (from 69.4 to 67.7

p. Amend text, exhibits and tables to indicate 287 units in Planning Area J-72 and 110 units in Planning Area J-87.
EXHIBIT 1
CONDITIONS OF APPROVAL
GENERAL PLAN AMENDMENT 98-05, SPECIFIC PLAN AMENDMENT 98-05

GENERAL CONDITIONS

1. The effective date of the Talega Specific Plan shall be no earlier than the effective date of the Board of Directors of the Talega Joint Planning Authority ordinance adopting the Amended and Restated Development Agreement for Talega Property by and Among the City of San Clemente, Talega Joint Planning Authority, Talega Associates, LLC, BHC Residential, LLC, William Lyon Homes, Inc., Standard Pacific Corp., and Jamboree Housing, LP.

2. This Project is approved subject to the provisions of a Final Environmental Impact Report (FEIR) 84-02 (certified in 1988), 1st Addendum (certified March 1998), 2nd Addendum (certified August 1998), 3rd Addendum (certified March 1999), and 4th Addendum (certified June 1999).

3. This Project shall be subject to the mitigation measures adopted with the FEIR 84-02 and FSEIR 98-05 prepared for the Project and included as The Mitigation, Monitoring and Reporting Program for the Talega Specific Plan Amendment/General Plan Amendment as referenced herein.

4. The owner or designee shall defend (or at the Authority’s discretion pay for the Authority’s defence), indemnify and hold harmless the Talega Joint Planning Authority (Authority), its agents, officers and employees from any claim, action or proceeding against the Authority, its agents, officers or employees to attack, set aside, void or annul an approval of the Authority concerning General Plan Amendment 98-05/Specific Plan Amendment 98-05 when such claim, action or proceeding is brought within the time period provided under Government Code Section 66499.37. The Authority shall notify the owner or designee of any claim, action or proceeding and the Authority shall cooperate fully in the defense of the above.

5. Any obligations imposed upon the applicant by way of any permit to develop this property shall be performed to the Authority prior to such annexation and, thereafter, to the City of San Clemente. Unless otherwise required by law, the City shall automatically succeed to any rights and obligations of the Authority with regard to any property covered by this approval upon annexation of that property into the City of San Clemente. Applicant or Applicant’s successor-in-interest shall consent to an assignment of all rights and obligations from the Authority to the City of San Clemente upon annexation of any property to which this permit pertains upon such annexation. Applicant or applicant’s successor-in-interest shall cooperate with such assignment and execute any and all documents necessary to effectuate that assignment.
Resolution No. JPAT 01-05


7. The applicant shall submit for review and obtain approval from the Authority Engineer a Conceptual Runoff Management Plan for the Segunda Deshecha Watershed prior to the effective date of the Talega Specific Plan Amendment.

8. Drainage improvements within the Cristianitos Watershed shall include a method of dry weather diversion to a reclaimed water system or sewer system in a manner acceptable to the Authority Engineer and Santa Margarita Water District. Section 404-C of the Talega Specific Plan Amendment shall be revised to incorporate this requirement.

9. A revised Talega Specific Plan Amendment shall be submitted incorporating the following:

   a. The Chapter 2 Master Plan shall be removed and replaced with Appendix D Alternative Master Plan. Graphics and text shall be revised to delete reference to Appendix D.

   b. Grading Criteria as described as Section 302-B, Item 9 on Page 3-7 shall be revised to delete the statement that “Deviations to the City’s Hillside Development Ordinance are allowed”. The remainder of the paragraph shall remain as written.

   c. Grading Criteria as described in Section 302-B, Item 5 on Page 3-7 shall be revised to eliminate the manufacturer’s trademark name “Loffelstein”, and refer to pre-engineered planted retaining walls. Planted retaining walls may be allowed in open space subject to all other retaining wall standards including maximum height.

   d. Grading Criteria as described as Section 302-B, Page 3-7 shall be revised to include Item 10, indicating that, “Downdrains shall not be located on fall-lines of the slope, but shall be designed to be hidden by the topography.”

   e. Section 305-E-6-c, Page 3-53 shall be revised to indicate that tandem parking only meets one covered parking space requirement.

   f. Section 408 shall be revised to include revised and/or new conditions of approval and mitigation measures approved for SPA 98-05 and the certified FSEIR.

   g. Section 502-C-1h, Senior, age-restricted housing shall be revised to indicate Senior, age-restricted housing in accordance with the Zoning Code.
h. Building Coverage as described as Section 502-F, Item 3 on Page 5-5 shall be revised to indicate that building coverage does not apply to open patio covers 200 square feet or less. For patio covers in excess of 200 feet, the excess surface area will be calculated as lot coverage.

i. Section 503-C, shall be revised to include kennels as a conditional use and crematoriums as a conditional use within the Business Park.

j. Section 601 shall be revised to delete the references to acreage within each jurisdiction since annexation process will change the jurisdiction lines.

k. Chapter 7, the definition "City Talega Amended and Restated Development Agreement" shall be revised to indicate that the development agreement may be amended from time to time.
RESOLUTION NO. 02-114

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF SAN CLEMENTE, CALIFORNIA, APPROVING TALEGA SPECIFIC PLAN
AMENDMENT 02-161, TALEGA BUSINESS PARK DEVELOPMENT STANDARDS
REVISIONS

WHEREAS, on December 12, 2001, the City Council of the City of San Clemente adopted the Talega Specific Plan Amendment 98-05 and certified the Final Supplemental Environmental Impact Report (FSEIR) for the 3,510-acre Talega Specific Plan development; and

WHEREAS, on September 4, 2002, an application was submitted, and on October 23, 2002 completed, by Talega Associates, LLC, 951 Calle Negocio, Suite D, San Clemente, California 92673, to request approval of Specific Plan Amendment 02-161; and

WHEREAS, the Talega Specific Plan Amendment would adjust the development standards within Phase II of the Business Park to include an increase in the floor area ratio from 0.35 to 0.50; and

WHEREAS, the City's Development Management Team has reviewed the proposed Specific Plan Amendment for consistency with the General Plan policies and other applicable City ordinances and policies; and

WHEREAS, the Planning Division completed an Environmental Initial Study for the above referenced project in accordance with the California Environmental Quality Act (CEQA). An Addendum was prepared to the previously prepared Final Supplemental Environmental Impact Report (FSEIR), certified December 2001, for Talega Specific Plan Amendment 98-05. The Addendum updates mitigation measures related to traffic impacts associated with the proposed project. The FSEIR (State Clearinghouse Number 99031048) addresses impacts of approved modifications to the General Plan and Talega Specific Plan, updates previous studies and provides new analysis or new mitigation measures as determined necessary; and

WHEREAS, on November 5, 2002, the Planning Commission of the City of San Clemente held a duly noticed public hearing and considered the subject application and evidence presented by City staff and other interested parties and adopted a resolution recommending approval; and

WHEREAS, on December 4, 2002, the City Council of the City of San Clemente held a duly noticed public hearing and considered the subject application and evidence presented by City staff and other interested parties.

NOW THEREFORE, the City Council of the City of San Clemente hereby resolves as follows:
Section 1: Addendum No. 1 to FSEIR 98-05 considers all environmental impacts of the proposed project and is complete and adequate and fully complies with all requirements of CEQA and the State CEQA Guidelines. None of the conditions contained in Public Resources Section 15162 regarding the preparation of a Subsequent or Supplemental EIR exist.

Section 2: The City Council finds and determines as follows with regard to Specific Plan Amendment 02-161:

A. The Specific Plan Amendment is compatible with the goals, objectives, policies and programs of the General Plan and is necessary and desirable to implement the provisions of the General Plan in that the Specific Plan Amendment establishes a floor area ratio of 0.50 for Business Park uses which is consistent with Sections 1.5.3 and 1.26.5 of the General Plan which establish a maximum floor area ratio of 0.50 for Industrial and Business Park uses.

B. The Development Regulations proposed in the Specific Plan Amendment are compatible with adjacent uses and properties in that the adjacent land uses are other Business Park and Commercial uses and that the revised development regulations are limited to an increase in floor area ratio. Furthermore, subsequent projects subject to the Specific Plan Amendment will be subject to all other relevant standards including setbacks, parking requirements building coverage and other standards that also affect adjacent uses.

C. The Specific Plan Amendment will not adversely affect the public health, safety and welfare in that the Addendum to the Final Supplemental Environmental Impact Report for the Talega Specific Plan Amendment indicates that the project would have no additional significant unmitigated impacts. All potential issues affecting public health, safety and welfare have been addressed in the environmental analysis for the Talega Specific Plan Amendment, in the City review of the plan, and in the public hearing process. These processes have resulted in environmental mitigations, land use reconfigurations, and changes to the circulation system that are designed to improve the quality of life in the City of San Clemente and assure that the public health, safety and welfare are protected.

D. The Specific Plan Amendment will not create internal inconsistencies within the Talega Specific Plan in that the Specific Plan Amendment will correct a typographical error related to building coverage within the Specific Plan and establish a floor area ratio which is consistent with the General Plan.

Section 3: The City Council approves Addendum No.1 to the previously certified Final Supplemental EIR for the Talega Specific Plan and approves the following, subject to the preceding findings:
Resolution No. 02-114

A. Specific Plan Amendment (SPA) 02-161, consisting of:

1. Revisions to the Section 503-F-3: "Minimum Building Coverage" shall be revised to "Maximum Building Coverage" to correct a typographical error.

2. Revision to Section 503-F-5: "Floor Area Ratio within Phase II of the Business Park shall not exceed 0.50."

3. Revision to cover to correct date the document is adopted by the City Council and the Talega Joint Planning Authority.

PASSED AND ADOPTED this ___ day of __________, 2002.

[Signature]
Mayor of the City of San Clemente, California

ATTEST:

[Signature]
CITY CLERK of the City of San Clemente, California

STATE OF CALIFORNIA )
COUNTY OF ORANGE ) ss
CITY OF SAN CLEMENTE)

I, Myrna Erway, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 02-114 was adopted at a regular meeting of the City Council of the City of San Clemente held on the ___ day of __________, 2002, by the following vote:

AYES: ANDERSON, DAHL, EGGLESTON, RITSCHEL, MAYOR DOREY
NOES: NONE
ABSENT: NONE

[Signature]
CITY CLERK of the City of San Clemente, California
Resolution No. 02-114

Approved as to form:

[Signature]

City Attorney
EXHIBIT 1
CONDITIONS OF APPROVAL
SPECIFIC PLAN AMENDMENT 02-161

GENERAL CONDITIONS

1. This project is approved subject to the provisions of a Final Supplemental Environmental Impact Report (FSEIR) 98-05 (certified December 2001) and the mitigation measures adopted with FSEIR as the Mitigation Monitoring and Reporting Program, included by reference with these conditions of approval. Furthermore, this project is subject to provisions of Addendum No. 1 to FSEIR 98-05.  ■ ■ (Plng.)

2. The owner or designee shall defend, indemnify and hold harmless the City of San Clemente (City), its agents, officers and employees from any claim, action or proceeding against the City, its agents, officers or employees to attack, set aside, void or annul an approval of the City concerning Specific Plan Amendment 02-161 when such claim, action or proceeding is brought within the time period provided under Government Code Section 66499.37. The City shall notify the owner or designee of any claim, action or proceeding and the City shall cooperate fully in the defense of the above.  (Plng.)

3. All subsequent maps and site plans within the boundaries of the Talega Specific Plan Amendment shall be in conformance with the policies of the Talega Specific Plan Amendment. The Specific Plan Amendment shall replace the Talega Specific Plan Amendment previously adopted by the City of San Clemente on December 12, 2001 and the Talega Joint Planning Authority on December 17, 2001.  ■ ■ (Plng.)

4. Prior to December 2003 or at the time of construction for the extension of Avenida Vista Hermosa whichever occurs first, Talega Associates, LLC shall convert the existing westbound right turn only lane at the intersection of Avenida Vista Hermosa and Frontera to a westbound right turn and straight through lane and make additional related improvements to the satisfaction of the City Engineer.  ■ ■ (Eng.)

5. The City in association with Talega Associates shall monitor the arterial roadways to ensure that all segments will be operating within the acceptable Level of Service standards. Implementation and phasing of any required mitigations will be determined at the appropriate times.  ■ ■ (Eng.)

6. A revised Talega Specific Plan Amendment document shall be submitted incorporating the following:

   a. Revisions to the Section 503-F-3: “Minimum Building Coverage” shall be revised to “Maximum Building Coverage” to correct a typographical error.
RESOLUTION NO. JPAT 02-04

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE TALEGA JOINT PLANNING AUTHORITY, APPROVING TALEGA SPECIFIC PLAN AMENDMENT 02-161, TALEGA BUSINESS PARK DEVELOPMENT STANDARDS REVISIONS

WHEREAS, on December 17, 2001, the Board of Directors of the Talega Joint Planning Authority adopted the Talega Specific Plan Amendment 98-05 and certified the Final Supplemental Environmental Impact Report (FSEIR) for the 3,510-acre Talega Specific Plan development; and

WHEREAS, on September 4, 2002, an application was submitted, and on October 23, 2002 completed, by Talega Associates, LLC, 951 Calle Negocio, Suite D, San Clemente, California 92673, to request approval of Specific Plan Amendment 02-161; and

WHEREAS, the Talega Specific Plan Amendment would adjust the development standards within Phase II of the Business Park to include an increase in the floor area ratio from 0.35 to 0.50; and

WHEREAS, the Development Management Team has reviewed the proposed Specific Plan Amendment for consistency with the General Plan policies and other applicable City ordinances and policies; and

WHEREAS, the Planning Division completed an Environmental Initial Study for the above referenced project in accordance with the California Environmental Quality Act (CEQA). An Addendum was prepared to the previously prepared Final Supplemental Environmental Impact Report (FSEIR), certified December 2001, for Talega Specific Plan Amendment 98-05. The Addendum updates mitigation measures related to traffic impacts associated with the proposed project. The FSEIR (State Clearinghouse Number 99031048) addresses impacts of approved modifications to the General Plan and Talega Specific Plan, updates previous studies and provides new analysis or new mitigation measures as determined necessary; and

WHEREAS, on November 5, 2002, the Planning Commission of the City of San Clemente held a duly noticed public hearing and considered the subject application and evidence presented by City staff and other interested parties and adopted a resolution recommending approval; and

WHEREAS, on December 4, 2002, the City Council of the City of San Clemente held a duly noticed public hearing and considered the subject application and evidence presented by City staff and other interested parties and approved the project; and

WHEREAS, on November 14, 2002, the Planning Commission of the Talega Joint Planning Authority held a duly noticed public hearing and considered the subject application and
evidence presented by staff and other interested parties and adopted a resolution recommending approval.

NOW THEREFORE, the Board of Directors of the Talega Joint Planning Authority hereby resolves as follows:

Section 1: Addendum No. 1 to FSBIR 98-05 considers all environmental impacts of the proposed project and is complete and adequate and fully complies with all requirements of CEQA and the State CEQA Guidelines. None of the conditions contained in Public Resources Section 15162 regarding the preparation of a Subsequent or Supplemental EIR exist.

Section 2: The Board of Directors of the Talega Joint Planning Authority finds and determines as follows with regard to Specific Plan Amendment 02-161:

A. The Specific Plan Amendment is compatible with the goals, objectives, policies and programs of the General Plan and is necessary and desirable to implement the provisions of the General Plan in that the Specific Plan Amendment establishes a floor area ratio of 0.50 for Business Park uses which is consistent with Sections 1.5.3 and 1.26.5 of the General Plan which establish a maximum floor area ratio of 0.50 for Industrial and Business Park uses.

B. The Development Regulations proposed in the Specific Plan Amendment are compatible with adjacent uses and properties in that the adjacent land uses are other Business Park and Commercial uses and that the revised development regulations are limited to an increase in floor area ratio. Furthermore, subsequent projects subject to the Specific Plan Amendment will be subject to all other relevant standards including setbacks, parking requirements building coverage and other standards that also affect adjacent uses.

C. The Specific Plan Amendment will not adversely affect the public health, safety and welfare in that the Addendum to the Final Supplemental Environmental Impact Report for the Talega Specific Plan Amendment indicates that the project would have no additional significant unmitigated impacts. All potential issues affecting public health, safety and welfare have been addressed in the environmental analysis for the Talega Specific Plan Amendment, in the review of the plan, and in the public hearing process. These processes have resulted in environmental mitigations, land use reconfigurations, and changes to the circulation system that are designed to improve the quality of life in the City of San Clemente and assure that the public health, safety and welfare are protected.

D. The Specific Plan Amendment will not create internal inconsistencies within the Talega Specific Plan in that the Specific Plan Amendment will correct a typographical
error related to building coverage within the Specific Plan and establish a floor area ratio which is consistent with the General Plan.

Section 3: The Board of Directors of the Talega Joint Planning Authority approves Addendum No. 1 to the previously certified Final Supplemental EIR for the Talega Specific Plan and approves the following, subject to the preceding findings:

A. Specific Plan Amendment (SPA) 02-161, consisting of:

1. Revisions to the Section 503-F-3: “Minimum Building Coverage” shall be revised to “Maximum Building Coverage” to correct a typographical error.

2. Revision to Section 503-F-5: “Floor Area Ratio within Phase II of the Business Park shall not exceed 0.50.”

3. Revision to cover to correct date the document is adopted by the City Council and the Talega Joint Planning Authority.

PASSED AND ADOPTED this 26th day of Dec. , 2002.

Chair
Talega Joint Planning Authority

ATTEST:

Joanna Baade, Acting
Secretary
Talega Joint Planning Authority

STATE OF CALIFORNIA .)
COUNTY OF ORANGE ) ss
CITY OF SAN CLEMENTE)

I, Myrna E. Ewany, Secretary of the Talega Joint Planning Authority, do hereby certify that Resolution No. 02-04 was adopted at a regular meeting of the Board of Directors of the Talega Joint Planning Authority held on the 26th day of Dec. , 2002, by the following vote:
Resolution No. JPAT 02- 04

AYES: ANDERSON, VEALE, VICE-CHAIRMAN DAHL
NOES: NONE
ABSENT: EGGLERSON, WILSON

[Signature]
SECRETARY
Talega Joint Planning Authority

Approved as to form:

_____________________________
General Counsel
EXHIBIT 1
CONDITIONS OF APPROVAL
SPECIFIC PLAN AMENDMENT 02-161

GENERAL CONDITIONS

1. This project is approved subject to the provisions of a Final Supplemental Environmental Impact Report (FSEIR) 98-05 (certified December 2001) and the mitigation measures adopted with FSEIR as the Mitigation Monitoring and Reporting Program, included by reference with these conditions of approval. Furthermore, this project is subject to provisions of Addendum No. 1 to FSEIR 98-05.

2. The owner or designee shall defend, indemnify and hold harmless the Talega Joint Planning Authority (Authority), its agents, officers and employees from any claim, action or proceeding against the Authority, its agents, officers or employees to attack, set aside, void or annul an approval of the Authority concerning Specific Plan Amendment 02-161 when such claim, action or proceeding is brought within the time period provided under Government Code Section 66499.37. The Authority shall notify the owner or designee of any claim, action or proceeding and the Authority shall cooperate fully in the defense of the above.

3. Any obligations imposed upon the applicant by way of any permit to develop this property shall be performed to the Authority prior to such annexation and, thereafter, to the City of San Clemente. Unless otherwise required by law, the City shall automatically succeed to any rights and obligations of the Authority with regard to any property covered by this approval upon annexation of that property into the City of San Clemente. Applicant or Applicant’s successor-in-interest shall consent to an assignment of all rights and obligations from the Authority to the City of San Clemente upon annexation of any property to which this permit pertains upon such annexation. Applicant or applicant’s successor-in-interest shall cooperate with such assignment and execute any and all documents necessary to effectuate that assignment.

4. All subsequent maps and site plans within the boundaries of the Talega Specific Plan Amendment shall be in conformance with the policies of the Talega Specific Plan Amendment. The Specific Plan Amendment shall replace the Talega Specific Plan Amendment previously adopted by the City of San Clemente on December 12, 2001 and the Talega Joint Planning Authority on December 17, 2001.

5. Prior to December 2003 or at the time of construction for the extension of Avenida Vista Hermosa whichever occurs first, Talega Associates, LLC shall convert the existing westbound right turn only lane at the intersection of Avenida Vista Hermosa and Frontera to a westbound right turn and straight through lane and make additional related improvements to the satisfaction of the Authority Engineer.
6. The Authority in association with Talega Associates shall monitor the arterial roadways to ensure that all segments will be operating within the acceptable Level of Service standards. Implementation and phasing of any required mitigations will be determined at the appropriate times.

7. A revised Talega Specific Plan Amendment document shall be submitted incorporating the following:

   a. Revisions to the Section 503-F-3: “Minimum Building Coverage” shall be revised to “Maximum Building Coverage” to correct a typographical error.

   b. Revision to Section 503-F-5: “Floor Area Ratio within Phase II of the Business Park shall not exceed 0.50.”

   c. Revision to cover to correct dates and resolution numbers that City Council and the Talega Joint Planning Authority adopt the document.
Rita:

I had to give Talega a certified copy of this reso on December 26th so they could close a deal. Because I did that, I'm uncomfortable changing our copy of the resolution in any way. So in this case, please file it in its current form.

Thx,

Joanne

1-6-03

City Atty did not sign
Also, see the above comment.
RESOLUTION NO. 03-94

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, APPROVING GENERAL PLAN AMENDMENT 03-092, SPECIFIC PLAN AMENDMENT 03-91, AREA PLAN AMENDMENT 03-093, TENTATIVE TRACT MAP 16547 AND AMENDMENT TO SITE PLAN PERMIT SPP 90-54 IN PLANNING AREA B6 OF THE TALEGA SPECIFIC PLAN

WHEREAS, on April 3, 1991, the City Council approved Tentative Tract Map 13935 and Site Plan Permit 90-54 to allow the development of a 97 residential unit subdivision on 30.1 acres; and

WHEREAS, on December 12, 2001, the City Council approved Amendment to General Plan 98-05, Talega Specific Plan 98-05 and Talega Area Plan 98-82 which designated Planning Area B-4 as a 1.1 acre Institutional site intended for a fire station; and

WHEREAS, on November 1, 2001, the City Council approved an Amendment to Tentative Tract Map 13935 and Site Plan Permit 09-54 to allow the development of a 38 lot single-family residential project in Planning Area B-6; and

WHEREAS, on July 24, 2003, an application was submitted by Talega Associates, LLC, 951 Calle Negocio, Suite D, San Clemente, California 92673 to request approval of a General Plan Amendment, Amendment to the Talega Specific Plan, Tentative Tract Map 16547 and Amendment to Site Plan 90-54 to change the land use designation of a 1.1 acre site from Institutional to Low-Medium Residential and to allow the development of a 4-unit, residential development; and

WHEREAS, on August 21, 2003, the Development Management Team reviewed the proposed General Plan Amendment, Specific Plan Amendment, Amendment to Tentative Map and Amendment to Site Plan for consistency with the Talega Specific Plan, City of San Clemente General Plan policies and other applicable City ordinances and policies; and

WHEREAS, on September 11, 2003, the Design Review Subcommittee reviewed the application and provided comments to the applicant; and

WHEREAS, the Planning Division completed an Addendum to Final Supplemental Environmental Impact Report (FSEIR) 98-05 for the Talega Specific Plan Amendment 98-05 (State Clearinghouse No. 99031048). The Addendum addresses the impacts of modifications to the General Plan, Specific Plan, Area Plan, Tentative Tract Map and Site Plan, updates previous studies and provides new analysis.
Resolution No. 03-94

WHEREAS, on October 8, 2003, the Planning Commission held a duly noticed public hearing and considered evidence of staff, the applicant and other interested parties and adopted a resolution recommending approval of the project; and

WHEREAS, on November 4, 2003, the City Council held a duly noticed public hearing and considered evidence of staff, the applicant and other interested parties.

NOW THEREFORE, the City Council of the City of San Clemente hereby resolves as follows:

Section 1: Pursuant to state CEQA Guidelines, on December 12, 2001 the San Clemente City Council certified Talega Specific Plan Final Supplemental Environmental Impact Report (FSEIR) 98-05 (SCH 99031048). Certification of the document also included the adoption of Findings of Fact, Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program. Addendum No. 1 was approved by the City Council in December 2001. Addendum No. 2 (October 2003) to FSEIR 98-05 considers all environmental affects of the proposed project and is complete and adequate and fully complies with all requirements of CEQA and the State CEQA Guidelines. Addendum No. 2 to FSEIR 98-05 thoroughly addresses proposed modifications to the Talega project. Based on proposed modifications, no substantial changes are proposed in the project which will require major revisions to the Environmental Impact Report and there is no new information, which was not known and could not have been known at the time the Environmental Impact Report was certified as complete, no new significant environmental impacts would occur, nor would the severity of the impacts previously identified increase. The environmental review pursuant to Section 15164 (Addendum EIR) of the State CEQA Guidelines appropriately addresses environmental considerations associated with project revisions and none of the conditions identified in Section 15162 (Subsequent EIRs) occur. All records pertaining to the FSEIR and Addendum are contained in the Planning Division of the City of San Clemente.

Section 2: The City Council finds and determines as follows with regard to General Plan Amendment 03-092:

A. The General Plan Amendment is internally consistent with those portions of the General Plan that are not being amended in that the current General Plan provides for the adoption of specific plans for the undeveloped ranchlands in the City of San Clemente and anticipates amendments to such plans that would further the goals of the General Plan. The General Plan Amendment, required to accommodate the Talega Specific Plan Amendment, focuses on a single land use change that either fulfills or is consistent with other policy elements in the General Plan.

B. The General Plan Amendment will not adversely affect the public health, safety and welfare in that the Addendum to the Supplemental Environmental Impact
Report for the Talega Specific Plan Amendment indicates that the project would have no additional significant unmitigated impacts. The General Plan Amendment is required to ensure consistency with the Talega Specific Plan Amendment, as both documents are designed to provide for the orderly development of the City. All potential issues affecting public health, safety and welfare have been addressed in the environmental analysis for the Talega Specific Plan Amendment, in the City review of the plan, and in the public hearing process. These processes, which also determine the scope of the General Plan Amendment, have resulted in environmental mitigations, land use reconfigurations, and changes that are designed to improve the quality of life in the City of San Clemente and assure that the public health, safety and welfare are protected.

Section 3: The City Council finds and determines as follows with regard to Specific Plan Amendment 03-091:

A. The Specific Plan Amendment is compatible with the goals, objectives, policies and programs of the General Plan and is necessary and desirable to implement the provisions of the General Plan in that the Specific Plan Amendment is limited to the change in a single land use from Institutional to Low-Medium Residential. The Institutional land use was designated as a location for a future fire station facility; however, that facility has now been located in a more optimal location. The Low-Medium Residential land use is more compatible with the surrounding land uses.

B. The Development Regulations proposed in the Specific Plan Amendment are compatible with adjacent uses and properties in that the adjacent land uses are residential and open space uses and that the revised development regulations are identical to those of similar land use designation. Furthermore, subsequent projects subject to the Specific Plan Amendment will be subject to all other relevant standards including setbacks, parking requirements building coverage and other standards that also affect adjacent uses.

C. The Specific Plan Amendment will not adversely affect the public health, safety and welfare in that the Addendum to the Final Supplemental Environmental Impact Report for the Talega Specific Plan Amendment indicates that the project would have no additional significant unmitigated impacts. All potential issues affecting public health, safety and welfare have been addressed in the environmental analysis for the Talega Specific Plan Amendment, in the City review of the plan, and in the public hearing process. These processes have resulted in environmental mitigations, land use reconfigurations that are designed to improve the quality of life in the City of San Clemente and assure that the public health, safety and welfare are protected.
D. The Specific Plan Amendment will not create internal inconsistencies within the Talega Specific Plan in that the Specific Plan Amendment is limited to a single land use change from Institutional to Low-Medium Residential and all references to Institutional land uses will be eliminated from the Specific Plan.

Section 4: The City Council finds and determines as follows with regard to Area Plan ARP 03-093:

A. The proposed Area Plan is consistent with the goals, objectives, policies and programs of the General Plan, and is necessary and desirable to implement the provisions of the General Plan in that the General Plan provides for the adoption of specific plans for the undeveloped ranchlands in the City of San Clemente and anticipates amendments to such plans that would further the goals of the General Plan. The Area Plan is a more detailed portion of the Talega Specific Plan Amendment and the requested amendment would establish consistency between the General Plan, Specific Plan and Area Plan.

B. The uses proposed in the Area Plan are compatible with adjacent uses and properties in that the Area Plan Amendment is intended to provide additional detail to a 745-acre portion of the Talega Specific Plan.

C. The proposed Area Plan will not affect the public health, safety and welfare in that the Addendum to Final Supplemental Environmental Impact Report 98-05 for the Talega Specific Plan indicates that the project would have no additional significant unmitigated impacts.

D. The proposed Area Plan will not create inconsistencies with the Talega Specific Plan in that the sole purpose of the amendment is to bring the Area Plan into consistency with the Specific Plan as amended by SPA 03-91.

Section 5: The City Council of the City of San Clemente finds and determines as follows with regard to Amendment to Tentative Tract Map 13935:

A. The proposed tract map, together with the provisions for design and improvements as supplemented by the conditions attached hereto as Exhibit 1, are compatible with the objectives, policies, general land uses and programs specified in the Talega Specific Plan and City of San Clemente General Plan in that:

1. The map is consistent with the Land Use Element of the General Plan and the Talega Specific Plan in that the proposal of 4 dwelling units on 1.1 acres in Planning Area B-6 does not exceed the maximum density allowed
in the Low-Medium Density Residential land use designation of the Talega Specific Plan, and City of San Clemente General Plan.

2. The map is consistent with the Biological Resource Element of the City of San Clemente General Plan in that the project complies with the Resource Management Plan approved for the Talega Specific Plan Area.

3. The tract map, as conditioned, is consistent with all other aspects of the City of San Clemente General Plan and Talega Specific Plan with respect to drainage and sanitary facilities and utilities, including all alignments and grades thereof; location and size of all required easements and rights-of-way; lot size and configuration; traffic access; grading; in-lieu fees for park or recreational purposes; and such other specific requirements in the plan and configuration of the entire subdivision as may be necessary or convenient to ensure conformity to, or implementation of, the City of San Clemente General Plan.

B. The site is physically suitable for the proposed type of development in that the 4 lots for single-family residential and private open space development complies with the improvement and land use requirements of the City of San Clemente General Plan land use designations and development standards of the Talega Specific Plan.

C. The site is physically suitable for the proposed density of development in that the 4 single-family residential lots on 1.1-acres results in a density of 3.6 dwelling units per gross acre which complies with the maximum of 7.0 dwelling units per gross acre for Low-Medium Density Residential requirements of the Talega Specific Plan and the City of San Clemente General Plan.

D. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat because implementation of HIR mitigation measures will reduce any potential significant wildlife impacts to a less than significant level.

E. The design of the subdivision and the types of improvements are not likely to cause serious public health problems in that an Initial Study was prepared for the project, as required by CEQA, which indicates that the project will not have a negative impact on public health.

F. The design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through, or use of, property within the proposed subdivision in that there are no easements (either of record or
established by judgment of a court of competent jurisdiction) acquired by the public at large for access through, or use of, property within the proposed subdivision.

G. The proposed map, together with the provisions for design and improvements, is consistent with the Subdivision Map Act and the City of San Clemente Subdivision Ordinance in that:

1. The proposal is for a tentative tract map to subdivide the property into five or more lots.

2. The project meets all applicable provisions of the Subdivision Map Act and City of San Clemente Subdivision Code including, but not limited to, those provisions relating to lot dimensions and configurations, street widths, and open space lots.

H. The proposed map is consistent with the Subdivision Map Act in that it has, to the extent feasible, taken into consideration future passive or natural heating or cooling opportunities.

I. The proposed map is consistent with the Subdivision Map Act in that it has taken into consideration the housing needs of the region balanced with the need for public services.

Section 5: The City Council of the City of San Clemente finds and determines as follows with regard to Amendment to Site Plan Permit SPP 90-54:

A. The proposed residential development is permitted within the subject zone pursuant to the approval of a Site Plan Permit and complies with all of the applicable provisions of the Talega Specific Plan, the goals and objectives of the San Clemente General Plan, and the purpose and intent of the zone in which the development is being proposed in that:

1. The proposed project provides for 4 single-family residential units on 1.1 acres resulting in an overall density of 3.6 dwelling units per acre in Planning Area B6 of the Talega Specific Plan which allows a maximum density 7.0 dwelling units per acre for Low-Medium Density Residential.

2. The proposed project is consistent with the Land Use Element and the Conservation and Open Space Element of the City of San Clemente General Plan in that is has been determined that no ridgeline interruption or encroachment into designated open space will occur as a result of the development of this project.
3. The proposed project is consistent with all other aspects of the City of San Clemente General Plan and the Talega Specific Plan with respect to street alignments, grades and widths; drainage and sanitary facilities, including alignments and grades thereof; location and size of all required easements and rights-of-way; lot size and configuration; traffic circulation and access; and other specific requirements.

B. The site is suitable for the type and intensity of development that is proposed in that Planning Area B-6 is designated for single-family residential development.

C. The proposed residential development, as conditioned, will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity, in that all sewer and water services which will be provided to the site are the responsibility of the owner and his/her designee, and as conditioned, no building permits shall be issued prior to proof that such water and sewer systems can accommodate the project.

D. The proposed residential development, as conditioned, will not be unsightly or create disharmony with its locale and surroundings, and the general appearance of the proposal is in keeping with the character of the neighborhood, in that:

1. The two story homes incorporate substantial single story elements.

2. The project will provide a unified streetscape through use of street trees in required front yards and in open space lots adjacent the residential streets.

E. The proposed residential development will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design or location, and will not be detrimental to the orderly and harmonious development of the City of San Clemente, in that:

1. Adequate yard separations between residences are provided.

2. The project provides adequate driveway lengths to allow vehicles to park on driveways in addition to the provision of adequate onsite parking spaces.

3. Pedestrian sidewalks are proposed through the residential development.

F. The architectural treatment of the residential project complies with the San Clemente General Plan, the Talega Specific Plan, and the San Clemente Zoning
Ordinance in areas including, but not limited to, height, setback and color, etc., in that:

1. The proposed single-family residences comply with the maximum 35-foot height limit of the Talega Specific Plan Low-Medium Density Residential zone.

2. The residential development complies with the minimum front, side and rear yard setbacks of the Talega Specific Plan.

G. The architectural treatment of the residential project complies with the architectural guidelines in the City of San Clemente Design Guidelines and the Talega Specific Plan, in that:

1. Single story elements are incorporated into the two story homes to reduce apparent height.

2. Entry elements, including porches are proposed for the homes.

3. Varied architectural styles are balanced with unifying elements of building materials and project landscaping.

Section 6: The City Council of the City of San Clemente hereby approves General Plan Amendment 03-092, Specific Plan Amendment 03-091, Area Plan Amendment 03-93, Tentative Tract Map 16547 and Amendment to Site Plan Permit 90-54 to allow the change in land use for a 1.1 acre site from Institutional to Low-Medium Residential and development of property for residential uses, subject to the above Findings, and the Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED this 4th day of NOV., 2003.

[Signature]
Mayor of the City of San Clemente, California
Resolution No. 03-94

ATTEST:

Myrna Erway
CITY CLERK of the City of
San Clemente, California

STATE OF CALIFORNIA  }
COUNTY OF ORANGE    }  ss
CITY OF SAN CLEMENTE)

I, Myrna Erway, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 03-94 was adopted at a regular meeting of the City Council of the City of San Clemente held on the 4th day of Nov., 2003, by the following vote:

AYES:    ANDERSON, DAHL, EGGLESTON, RITSCHEL, MAYOR DOREY
NOES:    NONE
ABSENT:  NONE

Myrna Erway
CITY CLERK of the City of
San Clemente, California

Approved as to form:

City Attorney
EXHIBIT 1
CONDITIONS OF APPROVAL GENERAL PLAN AMENDMENT 03-092, SPECIFIC PLAN AMENDMENT 03-091, AREA PLAN AMENDMENT 03-93, TENTATIVE TRACT MAP 16547 AND AMENDMENT TO SITE PLAN PERMIT 90-54

GENERAL CONDITIONS

1. This project is approved subject to the provisions of a Final Supplemental Environmental Impact Report (FSEIR) 98-05 (certified December 2001) and the mitigation measures adopted with FSEIR as the Mitigation Monitoring and Reporting Program, included by reference with these conditions of approval. (Plng.)

2. The owner or designee shall not pave any street under which Cable TV conduit is to be placed without actual notice to Communications or their successor in interest, for the installation of cable conduit. Notice shall be sent to the following address:

   Cox Communications, General Manager
   29947 Avenida de las Banderas
   Rancho Santa Margarita, California 92688

(Plng.)

3. The owner or designee shall defend, indemnify and hold harmless the City of San Clemente, its agents, officers and employees from any claim, action or proceeding against the City of San Clemente, its agents, officers or employees to attack, set aside, void or annul an approval of the City of San Clemente concerning General Plan Amendment 03-092, Specific Plan Amendment 03-091, Area Plan Amendment 03-093, Tentative Tract Map 16547, Amendment to Site Plan Permit 90-54 when such claim, action or proceeding is brought within the time period provided under Government Code Section 66499.37. The City shall notify the owner or designee of any claim, action or proceeding and the City shall cooperate fully in the defense of the above. (Plng.)

4. The owner or designee shall develop the approved project in conformance with Amendment to Site Plan Permit 90-54 and associated elevations (including enhanced treatments on designated homes) and preliminary landscape plan approved by the City Council, except as modified by these Conditions of Approval. (Plng.)

5. The conversion of tandem garage space to an optional bedroom shall not be permitted within any home within the limits of TTM 16547/AM SPP 90-54. A buyer notification and deed restriction stating such shall be provided in a manner acceptable to the City Attorney. (Plng.)

6. Within 30 days of approval of GPA 03-092, SPA 03-091, APA 03-093, TTM 16547, AM SPP 90-54, the owner or designee shall submit to the City Planner the following revised documents as approved by the City Council: 1 copy General Plan Amendment in digital format, 25 printed copies and 1 digital copy of Specific Plan Amendment, 1 printed copy
and 1 digital copy of Area Plan Amendment. Digital copies shall be provided on a CD using Adobe Acrobat or other format as approved by the City Planner.

CONDITIONS PRIOR TO FINAL MAP APPROVAL

7. Prior to the Final Map approval, the owner or designee shall submit written consent to all of these imposed conditions to the Community Development Director or designee. The owner or designee understands that the resolution will be of no force or effect unless such written consent is submitted to the City.

8. Prior to Final Map approval, the owner or designee shall pay all applicable development and Final Map fees, which may include, but are not limited to, City Attorney CC&R review, park acquisition and development, map and grading and improvement plan check, sewer connection, sewer assessment reapportionment, reclaimed water, drainage facilities, water acreage assessment charge, and construction and storm drain inspection.

9. Prior to Final Map approval, the owner or designee shall submit for review, and shall obtain the approval of the City Engineer or designee for, a soils and geologic report prepared by a Registered Geologist and Geotechnical Engineer that conforms to City standards and all other applicable codes, ordinances, statutes and regulations.

10. Prior to Final Map approval, the owner or designee shall submit for review, and shall obtain the approval of the City Engineer or designee for, a hydrology and hydraulic study prepared by a Registered Civil Engineer to determine the sizes and locations of all onsite drainage facilities and modifications to offsite downstream facilities and streets in accordance with all applicable City regulations and drainage standards.

11. Prior to Final Map, the owner or designee shall submit for review, and obtain the approval of the City Building Official or designee for, a preliminary sound attenuation plan. All residential lots and dwellings shall be sound attenuated against present and projected noise, which shall be the sum of all noise impacting the projects, so as not to exceed an exterior standard of 65 dB CNEL (Community Noise Equivalent Level) in outdoor living areas and an indoor standard of 45 dB CNEL in all habitable rooms. Evidence prepared by a County-certified acoustical consultant that these standards will be satisfied in a manner consistent with applicable City Ordinances shall be submitted. The final sound attenuation plan shall be submitted for review and approval prior to precise grading and building permits.

12. Prior to Final Map approval, the owner or designee shall submit for review, and shall obtain approval by the City Engineer or designee for, plans and programs for the regulation and control of pollutant run-off by using Best Management Practices (BMP's). The owner or designee shall demonstrate to the satisfaction of the City Engineer or designee that the project meets all requirements of the Orange County National Pollutant
Discharge Elimination System (NPDES) Storm Drain Program, and Federal, State, County and City guidelines and regulations, in order to control pollutant run-off and shall provide evidence satisfactory to the City Engineer that an NPDES permit has been obtained.

(Eng.)

13. Prior to Final Map approval, unless determined to be excluded by OCFA, the subdivider shall place a notice on the map meeting the approval for the Fire Chief that the property is in a very high fire hazard severity zone due to wildland exposure. All construction within this designation shall comply with the San Clemente Fire and Building Codes for development within very high fire hazard severity zones. Contact the Orange County Fire Authority Development Review Section at (714) 744-0477 for requirements and clearance of this condition.

(Fire)

14. Prior to Final Map approval, the owner or designee shall provide the City with evidence of a certified General Construction Activity Storm Water Permit and a Notice of Intent filed with the California State Water Resources Control Board, or a certified copy of an application for an individual permit from the California State Water Resources Control Board.

(Eng.)

15. Prior to Final Map approval, the owner or designee shall provide the City with a copy of the Storm Water Pollution Prevention Plan as submitted to and approved by the California State Water Resources Control Board for the General Construction Activity Storm Water Permit.

(Eng.)

16. Prior to Final Map approval, the owner or designee shall submit for review and shall obtain approval of the City Engineer or designee, a Water Quality Management Plan in compliance with the provisions of County NPDES Program.

(Eng.)

17. Prior to Final Map approval, submit and obtain approval of an application with Santa Margarita Water District for providing domestic water and sewer service and provide suitable documentation to the City Engineer.

(Eng.)

18. Prior to Final Map approval, the owner or designee shall submit for review, and obtain the approval of the City Engineer and City Planner for, a Construction Phasing and Mitigation Program. The program shall include, but not be limited to, a schedule and the method of performing the grading and construction of all improvements and discussions and depictions of the following: stock-piling, staging and mobilization areas; construction traffic routing and directional signing; types of construction equipment; gate and fencing plan, including green mesh screening; dust and erosion control measures; notification program; and building development phases.

(Eng.)

19. Prior to Final Map approval, the owner or designee shall indicate on the Final Map that all streets, sidewalks, curbs and gutters, storm drain lines, catch basins, slope drains and appurtenances, sewer laterals, landscaping, street lights, street signage and striping
improvements within the interior of this subdivision, except those facilities accepted by public agencies, are private and shall be maintained by the Master Association and/or Sub-association, or such other provision for maintenance which may be subsequently approved by the City Council.

20. Prior to Final Map approval, the owner or designee shall indicate on the Final Map, the location of all easements for open space, trails, storm drains and storm drain maintenance access, utilities, emergency access, slopes and slope maintenance access, and landscaping. All storm drain, sewer and water easements shall be a minimum of 15 feet wide. Storm drain, sewer and water main facilities shall not be located within slopes greater than five feet (5') in height unless otherwise determined by the City Engineer. Improvements other than those intended may not be constructed within any easements to be accepted by the City, without approval of an Encroachment Permit per City Municipal Code. A Hold Harmless agreement approved by the City Attorney shall be required for all encroachments into the public right of way.

21. Prior to Final Map approval, the owner or designee shall demonstrate to the satisfaction of the City Engineer or designee, that quitclaims in favor of the City have been obtained from all persons having any interest in existing rights of way for pipelines for the conveyance of water, unless otherwise approved by the City Engineer. The owner or designee shall convey the right to all underground water, but without right of entry to the surface thereof, to the Santa Margarita Water District. If the Water District elects to not accept these rights to underground water, then the owner or designee shall convey the right to all underground water, but without right of entry to the surface thereof, to the City. The owner or designee shall cause no easements to be granted nor recorded over any portion of the property that conflict with the Tentative Map approval date by the Planning Commission and the recording date of the Final Map by the County Recorder.

22. Prior to Final Map approval, reciprocal parking and utility access easements shall be prepared for recordation by the property owner on the final map, in a manner meeting the approval of the City Attorney. The purpose of the easement shall be specifically stated in the recording document as being for the purpose of the preservation of access, parking and utility availability in accordance with City Ordinances and the State Subdivision Map Act.

23. Prior to Final Map approval, a three foot (3') public utility easement shall be dedicated to the City and a sidewalk easement shall be dedicated to the City on the Final Map along both sides of all street lots for the purposes of placing utilities and not obstructing the minimum sidewalk width of four feet (4'), in manner meeting the approval of the City Attorney.
24. Prior to Final Map approval, vehicular and pedestrian access rights to Street “C” shall be irrevocably offered to the City by the owner on the Final Map, in manner meeting the approval of the City Attorney. (Eng.)

25. Prior to Final Map approval, the owner shall dedicate corner cut-offs for the street right of way at all street intersections on the Final Map, in a manner meeting the approval of the City Attorney. (Eng.)

26. Prior to Final Map approval, the applicant shall obtain approval of the Fire Chief of all fire protection access easements and shall dedicate them to the City. The CC&R’s shall contain provisions which prohibit obstructions within the fire protection access easement. The approval of the Fire Chief is required for any modifications such as speed bumps, control gates or other changes within said easement. The gradient for fire access rods shall not exceed 10 percent. The gradient may be increased to a maximum of 15 percent when all structures served by the access road are protected by automatic fire sprinkler systems. (Fire)

27. Prior to Final Map approval, the owner or designee shall submit (along with a plan check deposit of 1% of the construction cost of the grading) for review, and shall obtain the approval of the City Engineer or designee for, a grading plan, prepared by a Registered Civil Engineer, which provides improvements of appropriate grading, in compliance with the City Grading Ordinance, Manual and Standards, retaining walls (not to exceed 6’ in exposed height), drainage, trails, and street improvements. (Eng.)

28. Prior to approval of the first Final Map, the owner or designee shall submit (along with a plan check deposit of 1% of the construction cost of the street improvements) for review, and shall obtain the approval of the City Engineer or designee for, street, traffic signage and striping, and street light improvement plans, prepared by a Registered Civil Engineer, for all public and private streets and arterial highway segments as deemed necessary by the City Engineer or designee to generally provide adequate access, including but not limited to the following provisions:

   A. All traffic striping, including centerlines, lane lines and edge lines, on arterial and collector streets shall be installed with alkyd thermoplastic no less than 0.125 millimeters thick. Also, all traffic pavement markings (i.e., legends, turn pockets, limit lines, crosswalks, arrows and letters), when used to control an arterial or collector street intersection shall be installed with alkyd thermoplastic no less than 0.125 millimeters thick. All centerline striping on arterial and collector streets shall include the installation of two-way raised pavement markers (RPM’s). The spacing of RPM’s shall be per City standards.

   B. All traffic striping, including centerlines, lane lines and edge lines, on residential streets shall be installed with 150 VOC solvent based traffic paint. All traffic pavement markings (i.e., legends, turn pockets, limit lines, crosswalks, arrows and
letters), when used to control residential streets and intersections, shall be installed with 150 VOC solvent based traffic paint, unless approved by the City Engineer or his designee and modified on the improvement plans.

C. All public and private streets, sidewalks, curbs, gutters, storm drains and drainage facilities, signage, and street lights shall be designed and constructed in accordance with City standards. Street lights that are to be private may be designed and constructed in accordance with SDG&E standards.

D. Cul-de-sacs and knuckles shall be in compliance with Orange County EMA Standards 1113 and 1112, respectively.

E. Streets shall be the following curb to curb and right-of-way widths:

Street “C” 36’/50’

F. Sidewalks shall be provided in the locations and dimension indicated on the Typical Street Sections of TTM 16547.

G. Sight distance along all streets shall be designed in compliance with Orange County EMA Standard 1117.

H. Curb return radii shall be 35’ at all arterial/arterial/local intersections and 25’ at all local/local intersections.

I. Improvement plans shall indicate existing and proposed improvements, including, but not limited to: all public and private street signage, street name signs and locations; striping; the total proposed public and private street centerline and lane length and maintenance responsibility assignment (i.e., City, County, State, specific lot or maintenance/homeowners association); and location and total number of public and private street lights proposed by size, wattage, type, height, service point and maintenance responsibility assignment. Street lights shall be installed at the middle ordinate of cul-de-sac’s, at each intersection, at the head of “T” intersections, at the middle ordinate and on the outside of knuckles and not exceed 200’ separation.

J. Improvement plans shall include enriched pavement at all major entrances to private development areas, including a plan for signs designating private streets at the corner of these entrances. Enhanced paving is to be an interlocking paver variety predominantly level or non-textured constructed within the private street right of way and maintained by the Association.

K. All sign posts shall be steel tube in compliance with Orange County Environmental Management Agency Standard 1417.
L. The applicant shall submit and obtain approval of preliminary plans for all streets and courts, public or private, from the Fire Chief in consultation with the City Engineer. The plans shall include the plan view, sectional view, and indicate the width of the street or court measured flow line to flow line. All proposed fire apparatus turnarounds shall be approved by the Fire Chief, be clearly marked when a dead-end street exceeds 150 feet or when other conditions require it and comply with the OCFA Guideline requirements for apparatus turnarounds. Street widths in very high fire hazard severity areas shall be a minimum of 28 feet unless width requirement is reduced to 24' for private access drives by OCFA. The applicant shall submit and obtain approval from the Fire Chief for street improvement plans with fire lanes shown. The plans shall indicate the locations of red curbing and signage. A drawing of the proposed signage with the height, stroke and color of lettering and the contrasting background color shall be submitted to and approved by the Fire Chief.

■ (Fire)_____ 

29. Prior to Final Map approval, irrevocable offers of dedication for open space easements shall be prepared for recordation by the property owner on the Final Map, in a manner meeting the approval of the City Attorney, for all land within Tentative Tract Map 16547 which is designated as open space. Title to the land covered by such an open space easement shall remain with the property owner or applicable homeowners association. The purpose of the easement shall be specifically stated in the recording document as being for the purpose of the preservation of said area in permanent open space as defined by the City with no structures allowed. ■ (Eng.)_____ 

30. Prior to Final Map approval, the owner or designee shall submit for review of the City Engineer or designee, utility improvement plans for electrical, gas and cable television to ensure compatibility with other proposed and existing improvements. ■■ (Eng.)_____ 

31. Prior to Final Map approval, the owner or designee shall indicate on the improvement plans that all proposed public storm drain systems are designed to be within City street right-of-way, unless an exception is granted by the City Engineer or designee. The owner shall make full payment of drainage fees as stipulated by the Amended Development Agreement with credit against fees being given only for construction of City Drainage Master Plan facilities, with no credit given for any drainage facilities where credit was given by the County against their fees. ■(Eng.)_____ 

32. Prior to Final Map approval the owner or designee shall submit (along with a plan check deposit of 1% of the construction cost of the storm drain improvements), in accordance with the City-approved Utilities Master Plan, for review, and shall obtain the approval of the City Engineer or designee for, public and private drainage improvement plans prepared by a Registered Civil Engineer that generally include, but are not limited to, the following provisions, unless otherwise approved by the Engineer: (Eng.)_____
A. Storm drain junction structures and catch basins shall be provided with access manholes.

B. Storm drain manholes shall be generally located at 1) 300’ intervals in the public right-of-way, 2) the property boundary for transition from public to private maintenance with the manholes being public, 3) lateral connections, and 4) changes in vertical and horizontal grade that do not allow a collar. Storm drain manholes shall not be located in easements.

C. Drainage facilities not located within streets or parking lots shall be located in a 15’ wide separate lettered lot or a 15’ wide easement within a lettered lot with the capability of mechanized access for inspection and maintenance provided.

D. Pipe size and curve radii shall be reviewed for acceptability in accordance with the City-approved Utilities Master Plan prior to final design. Additional manholes shall be installed in all curves to insure two-way line of sight from each manhole.

E. Pipes shall not be located in slopes. If determined by the City Engineer to be necessary to be in a slope, the pipes shall be pressure pipes.

F. A secondary over-flow shall be provided for storm drain systems designed with sump conditions to preclude flooding of private property.

G. Catch basins shall be located so that there is no driveway within 25’ upstream of the catch basin, or that the basin will function as anticipated.

H. No more than the difference between the twenty-five year storm event flow and the ten-year flow will be allowed to flow by a catch basin and carried over to the next basin.

I. Cross gutters are not to be used as a drainage facility if a storm drain is within 300’.

J. Gutter widths at catch basins on streets with bike lanes and/or travel lanes adjacent to the curb are to be 2’.

K. Catch basins shall be provided every 500’ for street grades greater than 5%, or 1,000’ for street grades less than 5%, in compliance with City Standards with a manhole over the side of the lateral pipe.

L. Runoff from upslopes not a part of and behind separate lots shall be collected along the toe outside the separate lot and directed to the street or storm drain system.
M. Terrace drains shall be placed on the contoured and undulating slope in such a manner to avoid vertical-connecting "V" drains or downdrains where feasible, and placed to minimize their visual impact, as well as any necessary downdrains.

N. Improvement plans shall indicate total proposed public and private storm drain pipe by size, length and maintenance responsibility assignment (i.e., City, County, State, specific lot or maintenance/homeowners association.

O. All manhole covers shall be Alhambra Foundry A1499, 24" clear opening with a stamped "SD" heavy duty traffic covers or equal in compliance with ASTM A-48, Class 25 iron dipped twice in asphalt or coal tar oil, or as approved by the City Engineer or his designee.

33. Prior to Final Map approval, the owner or designee shall submit for review, and shall obtain the approval of the City Engineer or designee for, a 1" = 200' Utilities Master Plan prepared by a Registered Civil Engineer showing all public and private and existing and proposed sewer laterals, mains and manholes; domestic and reclaimed water services, including gate and butterfly valves, pressure reducing stations, reservoirs, lift stations, pressure zones, fire hydrants, and meters; storm drain mains, laterals, manholes, catch basins, inlets, outlets; and pipe sizes, pipe types and any other related appurtenances. The plan shall provide for the following:

   ■ (Eng.)____

A. All public utilities shall be constructed within dedicated public rights of way and/or easements. The storm drain system within the development shall be private with a manhole in the public right of way at the property boundary for the transition from private to public responsibility;

B. All utility mains shall be placed in the streets and are to be directed to Avenida Vista Hermosa, unless otherwise approved by the City Engineer.

C. Utilities shall not be placed in slopes unless otherwise approved by the City Engineer.

34. Prior to Final Map approval, the owner or designee shall submit (along with a plan check deposit of 1% of the construction cost of trenching, backfill and pavement repair for the domestic, reclaimed water, and sewer improvements and construction permit and inspection fees), in accordance with the City-approved Utilities Master Plan, for review, and shall obtain the approval of the City Engineer or designee for, domestic water, reclaimed water, and sewer improvement plans specific to the project, prepared by a Registered Civil Engineer, that reflect consistency with OCFA's and the City's Water Master Plan for domestic and fire flow standards and generally provide, but are not limited to, the following, unless otherwise approved by the City Engineer: ■ (Eng.)____
A. Domestic and reclaimed water mains shall not be located in slopes, unless otherwise determined by the City Engineer to be necessary to be on the slope.

B. All water mains shall be installed 6' off the curb face, unless otherwise indicated, and cover shall be between 36” minimum and 48” maximum from the top of the pipe to the finished surface.

C. Pressure regulators on all domestic service lines.

D. Design features that conserve water, such as low-flush toilets and low-flow faucets; hot water recirculating systems; drinking fountains with self-closing valves, and public flush valve-operated water closets with 1.75 gallon flush.

E. All water meter locations shall be shown on the plans and approved by the City Engineer.

F. A reduced pressure principle backflow device shall be installed as near as possible to the customer side of the water meter and shall be the transition from public to private for all domestic water systems.

G. Water improvement plans and fire flow calculations shall be submitted to and approved by the Fire Marshal and the City Engineer to ensure adequate water system design, location of valves, and the distribution of fire hydrants.

35. Prior to Final Map approval, the subdivider shall submit water improvement plans to the Fire Chief for review and approval to ensure adequate fire protection and financial security is posted for the installation. The water system design, location of valves, and the distribution of the fire hydrants will be evaluated and approved by the fire chief. (Fire)___

36. Prior to approval of the first Final Map, the owner or designee shall provide separate improvement bonds or irrevocable letters of credit in a form and amount acceptable to the City Engineer, for 100% of each estimated improvement cost, as prepared by a Registered Civil Engineer based upon County of Orange unit costs as required and approved by the City Engineer or designee, for each, but not limited to, the following: mass and/or rough grading; precise grading; street improvements; sidewalks; traffic signal, striping and signage; trail and walk improvements; street lights; sewer systems; water systems; storm drain systems; erosion control; landscaping and irrigation in rights of way, private slopes and open space; and off-site street repair. In addition, the owner or designee shall provide separate labor and material bonds or irrevocable letters of credit, as determined by the City Engineer, for 100% of the above estimated improvement costs. (Eng.)___

37. Prior to approval of the first Final Map, the owner or designee shall submit to the City for their review, and obtain their approval of a construction phasing plan for the installation
of the necessary utilities and the construction of the required access roads that are needed to serve the development.

CONDITIONS TO BE SATISFIED PRIOR TO RECORDATION

38. Prior to recordation of the final tract map, the owner or designee shall submit for review, and shall obtain the approval of the County Surveyor for, a digitized tract/parcel map pursuant to Orange County Ordinance No. 3809 of January 28, 1991. The owner or designee shall pay for all costs of said digital submittals, including supplying digital copies to the City of the final, County Surveyor-approved digital map in DXF format.

(Fire)

39. Prior to the recordation of any subdivision map or the issuance of any building permits, whichever occurs first, the applicant shall submit to the Fire Chief evidence of the on-site fire hydrant system and indicate whether it is public or private. If the system is private, the system shall be reviewed and approved by the Fire Chief prior to issuance of building permits. Provisions shall be made by the applicant for the repair and maintenance of the system, in a manner meeting the approval of the Fire Chief. Hydrants shall not be located at the end of cul-de-sacs.

(Fire)

40. Prior to the recordation of a subdivision map, a note shall be placed on the map stating that all structures shall be protected by an automatic fire sprinkler system, in a manner meeting the approval of the Fire Chief.

(Fire)

CONDITIONS TO BE SATISFIED PRIOR TO GRADING PERMITS

41. Prior to issuance of any permit, the owner or designee shall demonstrate to the satisfaction of the City Engineer or designee that all existing survey monuments are located in the field in compliance with AB 1414 for restoration by the Registered Civil Engineer or Land Surveyor in accordance with Section 8771 of the Business and Professions Code.

(Eng.)

42. Prior to issuance of any grading permits, the City Engineer shall determine that development of the site shall conform to general recommendations presented in the geotechnical studies, including specifications for site preparation, landslide treatment, treatment of cut and fill, slope stability, soils engineering, and surface and subsurface drainage, and recommendations for further study.

(Eng.)

43. Prior to issuance of grading permits, the limits of grading shown on the tentative map must be verified by the soils engineer. The owner or designee shall not be allowed to go beyond the limits as shown on the tentative map, unless approved by the Director of Community Development.

(Eng.) (Plng.)

44. Prior to issuance of rough grading permits, the owner or designee shall submit (along with a plan check deposit of 1% of the construction cost of the grading and erosion
control) for review, and obtain the approval of the City Engineer or designee for, a rough grading plan prepared by a Registered Civil Engineer that provides improvements of appropriate grading. In compliance with the City Grading Ordinance, Manual and Standards, retaining walls shall not exceed exposed 6' in height. Said plan shall include provisions for: 1) stockpiling of topsoil for placement on finished slopes, unless otherwise determined to be not required by City Planner, City Engineer or designee; 2) erosion and siltation control; 3) dust control; 4) provisions for planting of vegetation on all exposed slopes within ninety (90) days of certification and/or prior to October 15 as required by the Grading Ordinance; 5) temporary sedimentation basins and sandbagging if necessary; and 6) a water conservation program; 7) runoff from upslopes not a part of and behind residential lots shall be collected along the toe outside the residential lot and directed to the street or storm drain system; 8) terrace drains shall be placed on the contoured and undulating slope in such a manner to avoid vertical-connecting "V" drains or downdrains where feasible, and placed to minimize their visual impact, as well as any necessary downdrains.

45. Prior to the issuance of rough grading permits, a description of the phasing of proposed grading shall be included showing no more than 200 acres of grading for development purposes in any proposed grading phase. Grading associated with remedial grading, geologic stabilization, golf course or park construction borrow sites, disposal sites and arterial highways shall be exempt from the 200-acre limit. The grading plan shall show proposed areas of cut and fill, topography, steepness of slope, locations and extent of buttresses and bench drains, a description of haul routes, access points to the site, and watering and sweeping program designed to minimize impacts of haul operations.

46. Prior to issuance of rough grading permits, an artifact and/or fossil preservation plan shall be approved by the City Planner. A qualified archaeologist and paleontologist identified in the plan shall attend any pre-grade meetings and monitor grading operations. If artifacts or fossils are discovered, the archaeologist or paleontologist shall be empowered to divert or redirect grading in the vicinity of the remains in order to evaluate and salvage exposed prehistoric artifacts and/or fossils.

47. Prior to issuance of precise grading permits, the owner or designee shall submit (along with a plan check deposit of 1% of the construction cost of the grading) for review, and obtain the approval of the City Engineer or designee, a precise grading plan as required by the City Grading Manual and Ordinance. All on-site drainage shall be conveyed onto public or private streets through on-site yard drains, routed under sidewalks and through the curb, unless otherwise authorized by the City Engineer or designee. These facilities shall be constructed in accordance with City standards and privately maintained.

48. Unless otherwise approved, the following landscape standards shall apply for streets:

(Plng.) (Eng.)
A. Minimum parkway tree size shall be 15-gallon for canopy trees and ten-foot (10') brown trunk height (BTH) for palms.

B. Landscaping shall not conflict with sight distances and shall comply with Orange County EMA Standard 1117.

C. Trees shall be planted at an average of twenty-five foot intervals in residential parkway areas. Two trees per lot are desired subject to distance requirements stated in Item D below. Provide a minimum of 1 parkway tree per lot throughout subdivision unless waived by City Planner and Engineer or designee. In no case shall less than 90% of all lots have a street tree. Residential corner lots shall include a minimum of two trees along the side yard parkway.

D. All parkway trees shall maintain the following distances from improvements:
   a) 10'0" from water, sewer and storm drain lines.
   b) 5'0" from street lights, utility boxes, fire hydrants, post indicator valve, fire detector checks, etc., unless an approved species is planted in a tree well with 24" deep, continuous circle, root control barriers that are securely fastened at the joint with ribs inward;
   c) 15'0" from drive approaches; and
   d) 25'0" from curb return at street intersections.

49. All landscape irrigation systems shall be designed using the Santa Margarita Water District’s reclaimed water standards. In the event reclaimed water is not available at the time the system is put into operation, the system may be connected to the potable water system. When reclaimed water is available, the system shall be converted to reclaimed service. The owner or designee shall install reclaimed water service lines to the meter locations for future connection when reclaimed water is available.

50. Prior to issuance of grading permits, the owner or designee shall be responsible for updating the City’s mylar Precise Zoning Map by integrating the recorded map into the appropriate sheet(s) of the Zoning Map in a manner satisfactory to the City Planner or designee.

51. Prior to issuance of precise grading permits, the owner or designee shall submit for review, and obtain the approval of the City Building Official or designee for, a final sound attenuation plan. All residential lots and dwellings shall be sound attenuated against present and projected noise, which shall be the sum of all noise impacting the projects, so as not to exceed an exterior standard of 65 dB CNEL (Community Noise Equivalent Level) in outdoor living areas and an indoor standard of 45 dB CNEL in all habitable rooms. Evidence prepared by a County-certified acoustical consultant that these
standards will be satisfied in a manner consistent with applicable City Ordinances shall be submitted as follows: (Eng.)_____ (Bldg.)_____

A. An acoustical analysis report shall be submitted to the Building Division for approval. The report shall describe, in detail, the exterior noise environment and preliminary mitigation measures. Acoustical design features to achieve interior noise standards may be included in the report in which case it may also satisfy the following requirements:

a) Prior to the issuance of any grading permits, the owner shall provide evidence acceptable to the City Engineer that:

i) All construction vehicles or equipment, fixed or mobile, operated with 1,000 feet of a dwelling shall be equipped with operating and maintained mufflers.

ii) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).

iii) Stockpiling and/or vehicle-storage areas shall be located as far as practicable and out of view from dwellings.

B. The City of San Clemente Noise Ordinance, limiting the hours of construction to between 7:30 a.m. and 5:30 p.m., shall be enforced. (Eng.)_____

52. Prior to issuance of grading and building permits, the owner or designee shall submit evidence from Santa Margarita Water District to the City Engineer or designee that the water supply is adequate to accommodate the anticipated water demands of this project. If an adequate water supply is not available, grading and building permits shall not be issued. Approval of this project does not guarantee that potable water will be available for the project at the time of permit application. (Fire)_____ (Eng.)_____  

CONDITIONS TO BE SATISFIED PRIOR TO BUILDING PERMITS

53. Prior to the issuance of building permits, the owner or designee shall include within the first four pages of the working drawings a list of all conditions of approval imposed by the final approval for the project. (Plng.)_____  

54. Prior to issuance of any building permits, an acoustical analysis report describing the acoustical design features of the structures required to satisfy the exterior and interior noise standards shall be submitted to the Building Division for approval along with satisfactory evidence which indicates that sound attenuation measures specified in the approved acoustical report have been incorporated into the project. (Bldg.)_____.
55. Building permits shall not be issued unless the project complies with all applicable codes, ordinances, and statutes including, but not limited to, the Zoning Ordinance, the Uniform Fire Code, Security Ordinance, Transportation Demand Ordinance, Water Quality Ordinance, Title 24 of the California Administrative Code, and the Uniform Codes as adopted by the City.

(Bldg.)_____

56. Prior to the issuance of building permits, the owner or designee shall pay all applicable development fees in effect at the time, which may include, but are not limited to, RCFPP, park acquisition and development, water and sewer connection, drainage, public safety, transportation corridor and school fees, etc.

(Bldg.)_____

57. Prior to issuance of building permits, the owner or designee shall submit a copy of the City Engineer approved soils and geologic report, prepared by a registered geologist and/or soil engineer, which conforms to City standards and all other applicable codes, ordinances, statutes and regulations. The soils report shall accompany the building plans, engineering calculations, and reports.

(Bldg.)_____

58. Prior to the Building Division's approval to pour foundations, the owner or designee shall submit evidence to the satisfaction of the City Building Official or designee that a registered civil engineer, land surveyor, or architect has certified that the forms for the building foundations conform to the front, side and rear setbacks are in conformance to the approved plans.

(Bldg.)_____

59. Prior to the Building Division's approval of the framing inspection, the owner or designee shall submit evidence to the satisfaction of the City Building Official or designee that a registered civil engineer, land surveyor, or architect has certified that the height of all structures are in conformance to the approved plans.

(Bldg.)_____

60. This project shall be subject to all provisions of the City Regional Circulation Funding and Phasing Program (RCFPP). Building permits shall not be issued until the City Engineer or designee has certified that the arterial street network intended to serve this project can accommodate the anticipated trip generation of the project within the acceptable level of service standards. Approval of this project does not guarantee that traffic capacity will be available for the project at the time of permit application.

(Eng.)_____

61. Prior to issuance of building permits, or as otherwise authorized by the City Engineer or designee, the owner or designee shall demonstrate to the satisfaction of the City Engineer or designee that all street, traffic signal, water, sewer and storm drain facility improvements necessary to serve the Development Phase in compliance with the City-approved Construction Phasing and Mitigation Program have been completed in accordance with the approved plans, and that as-built plans for that phase, prepared by a Registered Civil Engineer, have been submitted and approved by the City Engineer or designee.

(Eng.)_____
62. Prior to issuance of building permits, the owner or designee shall submit for review, and shall obtain the approval of the Fire Chief, Chief of Police Services, and the City Planner or their designees for all street names and addresses.

(Plng.) (Sheriff) (Fire)

63. Prior to the issuance of any building permits for combustible construction, the developer shall submit and obtain the Fire Chief's approval of a letter and plan stating that water for fire fighting purposes and an all weather fire access road shall be in place and operational as required by the Uniform Fire Code before any combustible materials are placed on the site.

(Fire)

64. Prior to the issuance of any building permits, an Orange County Fire Authority Water Availability Form shall be submitted to and approved by the Plan Review Section of the Orange County Fire Authority.

(Fire)

65. Prior to the issuance of building permits, plans for the automatic fire sprinkler system shall be submitted to and approved by the Fire Chief prior to installation. These systems shall be operational prior to the issuance of a certificate of use and occupancy.

(Fire)

66. Prior to the issuance of building permits, the applicant shall submit architectural plans for the review and approval of the Fire Chief. The applicant shall include information on the plans required by the Fire Chief. Contact the Orange County Fire Authority Plans Review Section at (714) 744-0403 for the Fire Safety Site/Architectural Notes to be placed on the plans.

(Fire)

CONDITIONS TO BE SATISFIED PRIOR TO CERTIFICATES OF OCCUPANCY

67. Prior to certificates of occupancy for the first buildings, the owner or designee shall submit for review, and shall obtain the approval of the City Attorney or designee for, a buyer's notification disclosure form, to be given to all potential buyers of the lots/units, which indicates the existence, operations, characteristics, and potential exposure to nuisance/objectionable odors/risk of upset/hazards of the following:

(Plng.)

A. TRW
B. United States Marine Corps, Camp Pendleton
C. Ford Aerospace
D. Fire hazard due to wildland exposure
E. Owens-Illinois Sand and Gravel Operation

68. Prior to certificates of occupancy, the owner or designee shall submit for review to the Community Development Department, and shall obtain the approval of the City Attorney or designee for, Covenants, Conditions and Restrictions (CC&R's), or equivalent, that are prepared by an authorized professional and provide for the following:
A. Creation of a Master Association and/or a Sub-association for the purpose of providing for control over the uniformity of boundary fencing, and the perpetual maintenance responsibility of areas including, but not limited to, all common areas, open space, slopes, private medians and greenbelts, irrigation systems, landscaped areas, walls, driveways, parking areas, trash areas, structures, private streets, street lights, and drainage. All streets, drainage, street lights, street signage and striping improvements within the interior of the subdivision designated as private shall remain private and shall be maintained by the Master Association and/or Sub-association, or such other provision for maintenance which may be subsequently approved by the City Council. In addition, the CC&R's shall indicate all other areas to be owned and maintained by the Master Association and/or Sub-association and that maintenance of all private drainage facilities shall be in conformance with NPDES requirements. 

B. A statement that all streets, sidewalks, curbs and gutters, storm drain lines, catch basins, slope drains and appurtenances that collect and transport runoff from private property, sewer laterals, landscaping, street lights, street signage and striping improvements within the interior of this subdivision, except those facilities accepted by public agencies, are private and shall be maintained by the Master Association or sub-association. 

C. Within 15 days of the establishment of the homeowners association and/or the commercial property owners association, the owner or designee is required to furnish the Board or Officers of each association a copy of each approved tract map, a copy of the approved site and fencing plan, copies of all approved landscaping plans, a complete set of construction plans for the various residential model types, and approved plans indicating the locations and characteristics of all major project components, utilities, and related data. 

D. Following recordation of each final tract map, each Master Association of this tract shall submit to the Community Development Department, for distribution to the Fire and Beaches, Parks and Recreation Departments, and shall re-submit annually, a list of all current Property Owner Association officers of the Association. 

E. The establishment of setback and height requirements for additions and accessory structures conforming with the development standards as set forth in Talega Specific Plan and City Zoning Ordinance. 

F. A statement indicating that open space lots shall be retained by deed restriction as designated open space in perpetuity and maintained by a Master Association and/or the Sub-association, and that no development or encroachment shall be permitted within the designated open space.
G. A statement indicating that proposed amendments to any of the CC&R's shall be submitted for review to the Community Development Director or designee, and shall be approved by the City Attorney and the City Council prior to the amendments being valid. 

II. A statement indicating that the City has the right, but not the obligation, to enforce any of the provisions of the CC&R's.

I. Agreement by and between the owner or designee and Association, that storm drain facilities shall be inspected regularly as follows:

   a) Open channels and catch basins inspected annually before storm season and removal of debris as necessary.

   b) Underground drainage facilities 39" and larger in diameter shall be inspected every two years.

   c) All facilities shall have debris and sediment removed either manually or by mechanical methods. Flushing shall be used in emergency situations only.

J. A statement indicating that in accordance with the City Discharge Permit, from time to time granted by the San Diego Regional Water Quality Control Board, the Association shall designate a contact person on behalf of the Association to address reclaimed water issues. The name and telephone number of the contact person shall be filed with the City.

K. Agreement by the owner or designee and Association that on an annual basis in the month of June, reports will be furnished to the City in compliance with the reporting requirements of codes and ordinances adopted by the City with respect to the NPDES program.

L. A statement that reciprocal parking, access and utility easements are for the preservation of access, parking and utility availability over adjacent lots and private streets within the development in accordance with City Ordinances and the State Subdivision Map Act.

M. The CC&R's shall contain fire prevention and defense provisions including: a) a fire lane map; b) provisions which prohibit parking in fire lanes and a method of enforcement. Also, a method for keeping fire protection access easements unobstructed shall be included. The approval of the Chief of Fire Protection Services shall be required for any modifications such as speed bumps, control gates, or parking changes.
N. A statement indicating that trees, installed as part of the development approval, shall not be removed or altered beyond that which is required or necessary for normal maintenance. (Plng.)

69. Prior to certificates of occupancy, the owner or designee shall provide documentation for verification that this property has been annexed into the Master Association of the Talega Project. (Eng.)

70. Prior to issuance of certificates of occupancy, the owner or designee shall demonstrate to the satisfaction of the City Building Official or designee that the project complies with all applicable provisions of Section 770 of the City's Security Ordinance. (Bldg.)

71. Prior to issuance of certificates of occupancy, the owner or designee shall demonstrate to the satisfaction of the City Building Official or designee that the project has been constructed in conformance with the approved sets of plans and all applicable, codes, ordinances, and standards. (Bldg.)

72. Prior to issuance of certificates of occupancy and acceptance of improvements by the City Engineer, or designee, for each Development Phase in compliance with the City-approved Construction Phasing and Mitigation Program, the owner or designee shall submit as-built plans for that phase prepared by a Registered Civil Engineer, depicting all street, street light, traffic signal, sewer, water and storm drain improvements, street signage and signage placements, traffic markings, painted curbing and all other required improvements completed to the satisfaction of the City Engineer for that Development Phase. (Eng.)

73. Prior to issuance of certificates of occupancy, the owner or designee shall install all underground traffic signal conduit, including, but not limited to, signal, phone, power and loop detector; and other appurtenances, including, but not limited to, pull boxes; needed for future traffic signal construction at the intersections listed below, and as needed for future interconnection with adjacent intersections per the City Engineer's direction, in accordance with the submitted and approved street improvement plans. (Eng.)

74. Prior to issuance of certificates of occupancy, the owner or designee shall demonstrate to the satisfaction of the City Engineer or designee that the following have been installed per the approved improvement plans: public and/or private street name signs, regulatory signs constructed of high intensity sheeting and .080 aluminum, traffic pavement markings controlling arterial, collector and residential street intersections, centerline and lane line striping, and curb painting. (Fire) (Eng.) (Maint.)

75. Prior to issuance of certificates of occupancy, the owner or designee shall demonstrate to the satisfaction of the City Engineer and City Maintenance Manager or their designees that all street improvements damaged during construction have been repaired/replaced. (Eng.) (Maint.)
76. Prior to issuance of certificates of occupancy, the owner or designee shall demonstrate to the satisfaction of the Beaches, Parks and Recreation Director or designee that parkway trees have been planted and staked according to the submitted and approved landscape plans.

77. Prior to issuance of certificates of occupancy, the owner or designee shall submit a letter, signed by a registered landscape architect, to the Community Development Director or designee, stating that all materials for all landscaped areas have been installed in accordance with the approved plans, and shall demonstrate to the satisfaction of the Community Development Director or designee, in consultation with the Beaches, Parks and Recreation Director or designee, that all landscaped areas have been landscaped per the approved landscape plans.

78. Prior to issuance of certificates of use and occupancy, all fire hydrants shall have a "Blue Reflective Pavement Marker" indicating its location on the street or drive per the Orange County Fire Authority Standard and approved by the Fire Chief. On private property these markers are to be maintained in good condition.

79. Prior to the issuance of the certificate of use and occupancy of the approved fire lane marking plan shall be installed. The CC&R’s shall contain a fire lane map and provisions which prohibit parking in the fire lanes. A method of enforcement shall be included.

80. Prior to installation, plans for any fire alarm system shall be submitted to and approved by the Fire Chief. This system shall be operational prior to the issuance of the Certificate of Use and Occupancy.

CONDITIONS TO BE SATISFIED PRIOR TO RELEASE OF FINANCIAL SECURITY

81. Prior to release of financial security, the owner or designee shall have completed the stenciling of all catch basins and/or storm drain inlets with labels 3” high in black letters, on either the top of the curb or the curb face adjacent to the inlet "NO DUMPING - DRAINS TO OCEAN". These markers shall be maintained in good condition by the Property Owners Association.

82. Prior to the release of financial security, the owner or designee shall submit for review, and shall obtain the approval of the City Engineer or designee for, a videotape, filmed in the presence of a SMWD representative, of all drainage improvements. The videotape shall become the property of the City.

83. Prior to the acceptance of improvements and release of financial security, the owner or designee shall submit the following "as-built" items, certified by a registered civil engineer, to the Engineering Division. All construction improvement "as-built" plans
submitted to the City for review and approval shall be in digitized format (DXF file format) as requested by the City:

A. Duplicate mylars of the recorded final tract map.

B. A 1" = 200' scale topographic mylar showing finished contours of the tract at a contour interval of five (5) ft.

C. Mylar sheets at a scale of 1"=40', or at an appropriate scale to be determined by the City Engineer or designee, showing water, sewer, storm drain facilities, final grading and street improvements;

D. A 1" = 200' mylar showing all "as-built" water, sewer and storm drain facilities for utility maintenance purposes.

E. 1" = 20' sewer manholes and water valve location tie plats.

84. Prior to the release of financial security, all domestic and reclaimed water and sewer systems, e.g. pump stations, generators, reservoirs, PRV's, etc. shall be fully tested, in the presence of a City Staff representative, to verify system performance in accordance with design specifications.

85. Prior to release of financial security, the owner or designee shall demonstrate to the satisfaction of the City Engineer and the City Planner that the appropriate Association has been formed and the CC&R's have been recorded.

86. Prior to release of financial security, the owner or designee shall demonstrate to the satisfaction of the City Engineer or designee that all survey monuments damaged or destroyed are restored. "Corner Records" shall be prepared for submission to the City Engineering Division and for filing with the County Surveyor's Office in compliance with AB 1414. All restorations of survey monuments shall be certified by the Registered Civil Engineer or Land Surveyor in accordance with Section 8771 of the Business and Professions Code.

87. Prior to release of financial security, the owner or designee shall submit as-built plans prepared by a Registered Civil Engineer, depicting all street, traffic signal, sewer, water, and storm drain improvements and street signage and signage placements, traffic markings and painted curbing and all required improvements shall be completed to the satisfaction of the City Engineer, or designee.

88. Prior to the release of performance bonds, the owner or designee shall execute an agreement, to the satisfaction of the Community Development Director and the Beaches, Parks and Recreation Director or their designees, with the City which designates responsibility for maintenance and irrigation of parkway trees, shrubs and ground cover within the public right-of-way. The City or designee shall be responsible for maintaining
all medians within the public right-of-way, and shall prune and keep disease-free all parkway trees within the public right-of-way. The owner or designee, or the homeowners' association or designee, shall be responsible for watering all parkway trees, shrubs and ground cover within the public right-of-way, and shall trim and otherwise maintain parkway shrubs and ground cover. (BP&R)
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING ZONING AMENDMENT 15-448, AMENDING TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE, AND APPROVING SPECIFIC PLAN AMENDMENT 15-471, AMENDING THE RANCHO SAN CLEMENTE SPECIFIC PLAN, TALEGA SPECIFIC PLAN, AND WEST PICO CORRIDOR SPECIFIC PLAN, TO PROHIBIT CANNABIS CULTIVATION, CANNABIS MANUFACTURING, CANNABIS TESTING LABORATORIES, CANNABIS DELIVERY, AND CANNABIS DISPENSARIES

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code section 11362.5 et seq. and entitled “The Compassionate Use Act of 1996”); and

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program, codified as Health and Safety Code section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the Penal Code; and

WHEREAS, neither the Compassionate Use Act nor the Medical Marijuana Program obligate a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 59 Cal. 4th 729, holding that cities have the authority to regulate and ban medical-marijuana land uses; and

WHEREAS, under the Federal Controlled Substances Act, codified as 21 U.S.C. section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” into law; and
WHEREAS, the Act becomes effective January 1, 2019, and contains provisions that allow for local governments to regulate licenses and certain activities thereunder, and

WHEREAS, the Act establishes the State as the sole authority for regulation under certain parts of the Act, unless local governments have "land use regulations or ordinances regulating or prohibiting the cultivation of marijuana." (Health & Saf. Code § 11362.777(c)(4)); and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing, and distribution uses, including offensive odors, illegal sales, and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests, and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, detectable far beyond property boundaries if grown outdoors, and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery, or armed robbery; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; the increased moisture necessary to grow indoors can create excessive mold growth and structural damage, and the equipment utilized to grow indoors can pose a risk of fire and electrical hazards due to dangerous electrical alterations and use; and

WHEREAS, the Attorney General’s August 2003 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognize that the cultivation or other concentration of marijuana at any location without adequate security increases the risk that nearby homes or businesses will be negatively impacted by nuisance activity such as littering or crime; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing, testing, and distribution uses; and

WHEREAS, the City’s Municipal Code does not address the cultivation, manufacturing, testing, delivery, and distribution of medical cannabis, and

WHEREAS, based on the findings above, the potential establishment of cannabis cultivation, manufacturing, testing, delivery, and dispensary uses in the City without local regulation poses a current and immediate threat to the public
health, safety, and welfare in the City due to the negative impacts of such uses as described above, and

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for cannabis cultivation, manufacturing, testing laboratories, delivery, or dispensaries will result in the realization of these threats to public health, safety, or welfare.

WHEREAS, on December 16, 2015, the Planning Commission held a duly noticed public hearing on Zoning Amendments 14-469, considered evidence presented by City staff, and heard other interested parties and made a recommendation to the City Council; and

WHEREAS, on January 5, 2016, the City Council held a duly noticed public hearing on Zoning Amendments 14-469, considered evidence presented by City staff, and heard other interested parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals

The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

Section 2. CEQA

The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") because this activity is not a project, as defined by section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 (14 Cal. Code Regs. § 15060(c)(3)), and because it can be seen with certainty that it will not have a significant effect on physical change to the environment (14 Cal. Code Regs. § 15061(b)(3)).

Section 3. Zoning Amendment Findings.

The following findings are made regarding the amendments to the Zoning Ordinance:

A. The proposed amendments are consistent with the General Plan since they implement General Plan objectives and policies that promote the establishment and operation of land uses that maintain or enhance quality
B. The proposed amendments will not adversely impact the public health, safety, and welfare, since they prohibit land uses that protect the public health, safety, and welfare from potentially negative impacts of cannabis cultivation, manufacturing, testing laboratories, delivery, and dispensaries. Several California cities have reported negative impacts of such land uses, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests.

Section 4. Specific Plan Amendment Findings.

The following findings are made regarding the amendments to the Rancho San Clemente Specific Plan, Talega Specific Plan, and West Pico Corridor Specific Plan:

A. The proposed specific plan amendments are consistent with the goals, objectives, policies, and programs of the General Plan and are necessary and desirable to implement the provisions of the General Plan. The proposed amendments implement General Plan objectives and policies that promote the establishment and operation of land uses that maintain or enhance quality of life; that are compatible with surrounding uses; and that protect and maintain public health, safety, and welfare. The proposed amendments prohibit land uses that are contrary to such objectives and policies; and

B. The uses proposed in the specific plan amendments are compatible with adjacent uses and properties, since they prohibit land uses to protect the public health, safety, and welfare from potentially negative impacts of cannabis cultivation, manufacturing, testing laboratories, delivery, and dispensaries.

C. The proposed specific plan amendments will not adversely affect the public health, safety or welfare, since they prohibit land uses to protect the public health, safety, and welfare from potentially negative impacts of cannabis cultivation, manufacturing, testing laboratories, delivery, and dispensaries. Several California cities have reported negative impacts of such land uses, including offensive odors, illegal sales, and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests.
D. The proposed specific plan amendments will not create internal inconsistencies within the specific plan, since the proposed amendments do not conflict with existing procedures, regulations, land use standards, and land use designations of each specific plan.

Section 5. Title 17 (Zoning) Amendments. San Clemente Municipal Code Title 17 is amended as set forth in the attached Exhibit A.

Section 6. Rancho San Clemente Specific Plan is amended as set forth in the attached Exhibit B.

Section 7. Talega Specific Plan is amended as set forth in the attached Exhibit B.

Section 8. West Pico Corridor Specific Plan is amended as set forth in the attached Exhibit B.

Section 9. Severability

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision has no effect on the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 10. Publication

The City Clerk shall certify as to the adoption of this Ordinance and shall cause it to be published within 15 days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 38833.
APPROVED AND ADOPTED this 19th day of January, 2016.

ATTEST:

[Signatures]

City Clerk of the City of San Clemente, California

[Signatures]

Mayor of the City of San Clemente, California

STATE OF CALIFORNIA  
COUNTY OF ORANGE  
CITY OF SAN CLEMENTE

I, JOANNE BAAD, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1613 having been regularly introduced at the meeting of January 5, 2016, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 19th day of January, 2016, and said ordinance was adopted by the following vote:

AYES:  BROWN, DONCHAK, HAMM, WARD, MAYOR BAKER

NOES:  NONE

ABSENT:  NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 19th day of January, 2016.

[Signature]

CITY CLERK of the City of San Clemente, California

APPROVED AS TO FORM:

[Signature]

CITY ATTORNEY
Title 17 (Zoning) Amendments

Section 1. Section 17.28.035 is added to Chapter 17.28 as follows.

17.28.035 Cannabis Cultivation, Cannabis Manufacturing, Cannabis Testing Laboratory, Cannabis Delivery, and Cannabis Dispensary Uses.

A. Purpose and Intent. The purpose of this section is to enact and enforce a ban on all cannabis cultivation, manufacturing, testing laboratories, delivery, and dispensaries. Nothing in this section preempts or makes inapplicable any provision of state or federal law.

B. Prohibited Uses. Cannabis Cultivation, Cannabis Manufacturing, Cannabis Testing Laboratory, Cannabis Delivery, and Cannabis Dispensary uses, as defined herein, are prohibited in all zoning districts of the City, including specific plans. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, may be approved or issued for the establishment or operation of any of these uses in any zoning district, and no person may otherwise establish such businesses or operations in any zoning district.

C. Penalty for Violation. No person, whether as principal, agent, employee, or otherwise, may violate, cause the violation of, or otherwise fail to comply with any of the requirements of this section. Every act prohibited or declared unlawful and every failure to perform an act made mandatory by this section, is a misdemeanor or an infraction, at the discretion of the City Attorney or the District Attorney. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this section is declared a public nuisance and may be abated as authorized by law.

Section 2. Section 17.32.030, subsection B, is amended to read as follows.

B. Prohibited Uses. The following uses are prohibited:

1. Uses that are listed in Table 17.32.030 but that are not identified as either permitted — "P" — or conditionally permitted — "MC" or "C", and

2. Uses that are excluded from Table 17.32.030, unless they are found by the City to be similar to permitted or conditionally-permitted uses.

3. Uses where a blank cell appears in Table 17.32.030

4. As indicated in Table 17.32.030, the following uses are not permitted in any residential zone.

a. Cannabis Cultivation.
Title 17 (Zoning) Amendments

b. Cannabis Manufacturing.
c. Cannabis Testing Laboratory.
d. Cannabis Delivery.
e. Cannabis Dispensary.

Section 3. Cannabis Cultivation, Cannabis Manufacturing, Cannabis Testing Laboratory, Cannabis Delivery, and Cannabis Dispensary uses are added to Table 17.32.030 "Residential Zone Uses" in the San Clemente Municipal Code, as follows:

<table>
<thead>
<tr>
<th>Use</th>
<th>RVL</th>
<th>RL</th>
<th>RML</th>
<th>RM</th>
<th>RH</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Agricultural</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Cannabis Cultivation</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>5. Unclassified Uses</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Cannabis Delivery</td>
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<tr>
<td>Cannabis Dispensary</td>
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<td></td>
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<tr>
<td>Cannabis Manufacturer</td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Cannabis Testing Laboratory</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

Section 4. Section 17.36.020, subsection B, is amended to read as follows:

B. Prohibited Uses. The following uses are prohibited:

1. Uses that are listed in Table 17.36.020 but that are not identified as either permitted — "P" — or conditionally-permitted — "MC" or "C"; and

2. Uses that are excluded from Table 17.36.020, unless they are found by the City to be similar to permitted or conditionally-permitted uses.

3. Uses where a blank cell appears in Table 17.36.020

4. As indicated in Table 17.36.020, the following uses are not permitted in any commercial zone:
   a. Cannabis Cultivation.
   b. Cannabis Manufacturing.
   c. Cannabis Testing Laboratory
   d. Cannabis Delivery
   e. Cannabis Dispensary.
Title 17 (Zoning) Amendments

Section 5. Cannabis Cultivation, Cannabis Manufacturing, Cannabis Testing Laboratory, Cannabis Delivery, and Cannabis Dispensary uses are added to Table 17.00.020 “Commercial Zone Uses” in the San Clemente Municipal Code, as follows:

<table>
<thead>
<tr>
<th>Use</th>
<th>Zones</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Commercial</td>
<td></td>
</tr>
<tr>
<td>Cannabis Cultivation</td>
<td>NC 1.1</td>
</tr>
<tr>
<td>Cannabis Delivery</td>
<td>NC 1.2</td>
</tr>
<tr>
<td>Cannabis Dispensary</td>
<td>NC 1.3</td>
</tr>
<tr>
<td>Cannabis Manufacturer</td>
<td>NC 2</td>
</tr>
<tr>
<td>Cannabis Testing Laboratory</td>
<td>NC 3</td>
</tr>
<tr>
<td>CC 1</td>
<td></td>
</tr>
<tr>
<td>CC 2</td>
<td></td>
</tr>
<tr>
<td>CC 3</td>
<td></td>
</tr>
<tr>
<td>NOTE</td>
<td></td>
</tr>
</tbody>
</table>

Section 6. Section 17.40.030, subsection B, is hereby amended to read as follows:

B. Prohibited Uses. The following uses are prohibited:

1. Uses that are listed in Table 17.40.030 but that are not identified as either permitted — “P” — or conditionally-permitted — “MC,” “C,” or “O”; and

2. Uses that are excluded from Table 17.40.030, unless they are found by the City to be similar to permitted or conditionally-permitted uses.

3. Uses where a blank cell appears in Table 17.40.030.

4. As indicated in Table 17.40.030, the following uses are not permitted in any mixed-use zone:
   a. Cannabis Cultivation.
   b. Cannabis Manufacturing
   c. Cannabis Testing Laboratory
   d. Cannabis Delivery
Title 17 (Zoning) Amendments

e. Cannabis Dispensary

Section 7. Cannabis Cultivation, Cannabis Manufacturing, Cannabis Testing Laboratory, Cannabis Delivery, and Cannabis Dispensary uses are added to Table 17.40.030 "Mixed-Use Zone Uses" in the San Clemente Municipal Code, as follows:

<table>
<thead>
<tr>
<th>USE</th>
<th>ZONES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Commercial Uses</td>
<td>MU 1</td>
</tr>
<tr>
<td>Cannabis Cultivation</td>
<td>MU 2</td>
</tr>
<tr>
<td>Cannabis Delivery</td>
<td>MU 3.0</td>
</tr>
<tr>
<td>Cannabis Dispensary</td>
<td>MU 3.1</td>
</tr>
<tr>
<td>Cannabis Manufacturer</td>
<td>MU 3.2</td>
</tr>
<tr>
<td>Cannabis Testing Laboratory</td>
<td>MU 3.3</td>
</tr>
<tr>
<td></td>
<td>MU 5</td>
</tr>
<tr>
<td>NOTE</td>
<td></td>
</tr>
</tbody>
</table>

Section 8. Section 17.44.020, subsection B, is here by amended to read as follows:

B. Prohibited Uses. The following uses are prohibited:

1. Uses that are listed in Table 17.40.030 but that are not identified as either permitted — "P" — or conditionally-permitted — "MC," "C," or "O"; and

2. Uses that are excluded from Table 17.40.030, unless they are found by the City to be similar to permitted or conditionally-permitted uses.

3. Uses where a blank cell appears in Table 17.40.030.

4. The following uses are not permitted in any mixed-use zone:
   a. Cannabis Cultivation.
   b. Cannabis Manufacturing.
   c. Cannabis Testing Laboratory.
   d. Cannabis Delivery.
Title 17 (Zoning) Amendments

e. Cannabis Dispensary.

Section 9. Cannabis Cultivation, Cannabis Manufacturing, Cannabis Testing Laboratory, Cannabis Delivery, and Cannabis Dispensary uses are added to Table 17.44.020 “Open-Space Zone Uses” in the San Clemente Municipal Code, as follows:

<table>
<thead>
<tr>
<th>Use</th>
<th>OS/1</th>
<th>OS/ S1</th>
<th>OS 2 / OS 3</th>
<th>OS / S2</th>
<th>OSC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Agricultural Uses</td>
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<tr>
<td>Cannabis Cultivation</td>
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<tr>
<td>2. Commercial Uses</td>
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<td></td>
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<tr>
<td>Cannabis Delivery</td>
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<td></td>
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<tr>
<td>Cannabis Dispensaries</td>
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</tr>
<tr>
<td>Cannabis Manufacturer</td>
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<td></td>
<td></td>
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<tr>
<td>Cannabis Testing Laboratory</td>
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</tbody>
</table>

Section 10. The following sentence is added to the end of section 17.52.040(H) of the San Clemente Municipal Code: “Any use that is not expressly permitted or prohibited in a specific plan is subject to the City’s general zoning ordinance. This includes, among other things, the citywide prohibition on all Cannabis Dispensary, Cannabis Cultivation, Cannabis Manufacturer, Cannabis Delivery, and Cannabis Testing Laboratory uses.”

Section 11. The following definitions are added to section 17.93.030 of the San Clemente Municipal Code:

“Cannabis” means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

“Cannabis Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Cannabis Delivery” means the commercial transfer of cannabis or cannabis products and includes origination or termination within the City as well as a delivery business.
Title 17 (Zoning) Amendments

"Cannabis Dispensary" means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

"Cannabis Manufacturing" means the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.

"Cannabis Testing Laboratory" means a facility, entity, or site that offers or performs tests of medical cannabis or medical cannabis products.
Specific Plan Amendments

**Section 1.** Section 502, Neighborhood Commercial Standards, subsection I.C of the Rancho San Clemente Specific Plan is replaced as follows:

C. **Standards and Uses Not Listed.** A proposed standard or use that is not expressly addressed in this Specific Plan is subject to the general zoning code. If it is not expressly addressed in the general zoning code, section 17.04.040 governs.

**Section 2.** Section 502, Neighborhood Commercial Standards, subsection I.D of the Rancho San Clemente Specific Plan is deleted and following subsections are relettered to reflect the deletion.

**Section 3.** Section 503, Mixed Use Standards, subsection I.C of the Rancho San Clemente Specific Plan is replaced as follows:

C. **Standards and Uses Not Listed.** A proposed standard or use that is not expressly addressed in this Specific Plan is subject to the general zoning code. If it is not expressly addressed in the general zoning code, section 17.04.040 governs.

**Section 4.** Section 503, Mixed Use Standards, subsection I.D of the Rancho San Clemente Specific Plan is deleted and following subsections are relettered to reflect the deletion.

**Section 5.** Section 504, Industrial Development Standards, subsection I.C of the Rancho San Clemente Specific Plan is replaced as follows:

C. **Standards and Uses Not Listed.** A proposed standard or use that is not expressly addressed in this Specific Plan is subject to the general zoning code. If it is not expressly addressed in the general zoning code, section 17.04.040 governs.

**Section 6.** Section 504, Industrial Development Standards, subsection I.D of the Rancho San Clemente Specific Plan is deleted and following subsections are relettered to reflect the deletion.

**Section 7.** Section 503, Business Park Land Use Standards, subsection A.3 of the Talega Specific Plan is replaced as follows:

3. **Standards and Uses Not Listed.** A proposed standard or use that is not expressly addressed in this Specific Plan is subject to the general zoning code. If it is not expressly addressed in the general zoning code, section 17.04.040 governs.
Specific Plan Amendments

Section 8. Section 503, Business Park Land Use Standards, subsection A.4 of the Talega Specific Plan is deleted and following subsections are renumbered to reflect the deletion.

Section 9. Section 504, Commercial Land Use Standards, subsection A.3 of the Talega Specific Plan is replaced as follows:

3 Standards and Uses Not Listed - A proposed standard or use that is not expressly addressed in this Specific Plan is subject to the general zoning code. If it is not expressly addressed in the general zoning code, section 17.04.040 governs.

Section 10. Section 504, Commercial Land Use Standards, subsection A.4 of the Talega Specific Plan is deleted and following subsections are renumbered to reflect the deletion.

Section 11. Section 501, Pico Community Commercial Area, subsection V.A of the West Pico Corridor Specific Plan is replaced as follows:

A. Standards and Uses Not Listed - A proposed standard or use that is not expressly addressed in this Specific Plan is subject to the general zoning code. If it is not expressly addressed in the general zoning code, section 17.04.040 governs.

Section 12. Section 501, Pico Community Commercial Area, subsection V.B of the West Pico Corridor Specific Plan is deleted and following subsections are renumbered to reflect the deletion.

Section 13. Section 502, Los Molinos Industrial Area, subsection V.A of the West Pico Corridor Specific Plan is replaced as follows:

A. Standards and Uses Not Listed - A proposed standard or use that is not expressly addressed in this Specific Plan is subject to the general zoning code. If it is not expressly addressed in the general zoning code, section 17.04.040 governs.

Section 14. Section 502, Los Molinos Industrial Area, subsection V.B of the West Pico Corridor Specific Plan is deleted and following subsections are renumbered to reflect the deletion.
ORDINANCE NO. 1616


WHEREAS, on October 21, 2015, the City Council initiated Zoning Amendment (ZA) 15-428, and Specific Plan Amendments (SPA) 15-449 through 15-452 ("the project") to encourage the maintenance of the property at 654 Camino De Los Mares for a hospital use. The project includes the following amendments: 1) provide use and development standards for two new zones, RMF 1 and CC 4, and revise the development and use standards for CC 2; 2) rezone the property located at 654 Camino De Los Mares as RMF 1; 3) rezone the Community Commercial area along Camino De Los Mares to CC 4, with the exception of 654 Camino De Los Mares; 4) create a new use category for group counseling and identify permitted zones for the use; and 5) add and revise definitions related to medical and counseling uses and facilities, in the applicable definitions and development standards sections, contained in the Zoning Ordinance, Forster Ranch Specific Plan, Rancho San Clemente Specific Plan, Talega Specific Plan, and West Pico Corridor Specific Plan; and

WHEREAS, on December 16, 2015, the Planning Commission reviewed the proposed amendments and recommends the City Council approve the project; and

WHEREAS, the Planning Division conducted an environmental review in conformance with CEQA and the State CEQA Guidelines, and determined that the Zoning, and Specific Plan Amendments are exempt from further CEQA review beyond the Final Environmental Impact Report (EIR), State Clearinghouse No. 2013041021, certified for the Centennial General Plan on February 13, 2014 pursuant to California Code §21083.3 because the proposed amendments are consistent with the community plan, defined as, "a part of the general plan of a city... which (1) applies to a defined geographic portion of the total area included in the general plan, (2) complies with Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government
Code by including or referencing each of the mandatory elements specified in Section 65302 of the Government Code, and (3) contains specific development policies adopted for the area included in the community plan and identifies measures to implement those policies, so that the policies which will apply to each parcel can be determined." CEQA Guidelines Section 15183 stipulate that, "projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review." Additionally, this project does not require an EIR addendum pursuant to CEQA Guidelines Section 15162 and 15164 because any significant effects of the proposed amendments were previously examined and there is no potential for the project to substantially increase any environmental effects since the change to the permitted uses and development densities do not increase the intensity or the potential for additional negative environmental effects beyond what is currently allowed and exists in the zone; and

WHEREAS, on January 19, 2018 the City Council of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, and other interested parties.

NOW, THEREFORE, The City Council of the City of San Clemente does hereby resolve as follows:

Section 1: The proposed Zoning, and Specific Plan Amendments are exempt from further CEQA review beyond the Final Environmental Impact Report (EIR), State Clearinghouse No. 2013041021, certified for the Centennial General Plan on February 13, 2014 pursuant to California Code §21083.b because the proposed amendments are consistent with the community plan, defined as, "a part of the general plan of a city... which (1) applies to a defined geographic portion of the total area included in the general plan, (2) complies with Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code by including or referencing each of the mandatory elements specified in Section 65302 of the Government Code, and (3) contains specific development policies adopted for the area included in the community plan and identifies measures to implement those policies, so that the policies which will apply to each parcel can be determined." CEQA Guidelines Section 15183 stipulate that, "projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review." Additionally, this project does not require an EIR addendum pursuant to CEQA Guidelines Section 15162 and 15164 because any significant effects of the proposed amendments were previously examined and there is no potential for the project to substantially increase any environmental effects since the change to the permitted uses and development densities do not increase the intensity or the potential for additional negative environmental effects beyond what is currently allowed and exists in the zone.
Section 2: With respect to ZA 15-428, the City Council finds as follows:

1. The proposed Zoning Amendments are consistent with the General Plan because the proposed zoning amendments provide for the fulfillment of the Centennial General Plan's intent and policies, including:
   a. Land Use Element Primary Goal #2. "Achieve the City's Vision by establishing and maintaining balance of uses that provides... distinct and vibrant commercial and industrial areas offering a range of retail, service and employment uses that complement rather than compete with one another." The proposed zones in the Camino De Los Mares Focus Area create a vibrant, hospital-focused commercial area that provides for the collaboration of neighboring properties that encourages the success of the Focus Area. The size of the proposed RMF 1 zone, approximately 6.6 acres, ensures that the new zone is large enough to adequately provide the amenities necessary for the success of the zone.
   b. Land Use Element Policy LU-2.04. Maintenance. We require proper maintenance of commercial areas to ensure they reflect community expectations for a quality environment and remain competitive with commercial facilities located outside of the City. The proposed amendments position the Camino De Los Mares Focus Area as a regionally accessible hospital and medical office-focused area that will provide necessary medical and emergency services expected by residents for a quality environment.
   c. Camino De Los Mares Focus Area Goal "Maintain and improve the Area as a community hub that provides... high quality medical services and related employment opportunities for San Clemente and surrounding communities." The proposed zoning amendments ensure the continued focus of the Camino De Los Mares Focus Area as an attractive medical hub for regional-supporting medical facilities.
   d. Land Use Element Policy LU-7.02. Medical Office Uses. "We support the expansion of health care facilities and related medical offices that are consistent with the Land Use Plan and Zoning Code and are compatible with surrounding neighborhoods." The proposed zoning amendments provide for expanded medical office uses and additional medical-related services in the Community Commercial 4 zone, bolstered by the maintenance of the hospital use in the Regional Medical Facilities 1 zone.

2. The proposed Zoning Amendments will not adversely affect the public health, safety and welfare, in that the proposed amendments achieve the goals of the General Plan as they relate to zones within the Camino De Los Mares Focus Area, including:
   a. Land Use Element Goal No. 1. "Retain and enhance established residential neighborhoods, commercial and industrial districts, recreational resources, community-activity areas and amenities,
and open spaces that improve the community's quality of life, enhance the appeal of our many attractions, maintain our small-town character, and ensure long-term environmental and fiscal health." The proposed zoning amendments retain and enhance established residential neighborhoods, and the existing commercial areas, in that the proposed zones for the Camino De Los Mares Focus Area maintain development compatible with the existing scale of development and do not increase the intensity of the area in terms of scale and massing of new development, or incompatible uses being allowed.

b. Land Use Element Land Use Plan Primary Goal #8. "Provide a diversity of land use areas that complement one another and are characterized by differing functional activities and intensities of use." The proposed zones reduce the competition of similar uses on neighboring properties and provide complementary, yet differing, functions to work synergistically to help the Focus Area flourish. By allowing Hospital uses only in the Regional Medical Facilities 1 zone, competition for hospital uses is diminished providing for the long-term maintenance of the property for that use.

c. Safety Element Policy S-7.01. Staffing, Facilities and Supplies. "We ensure adequate staffing, facilities and supplies for our police, fire, marine safety and emergency medical services, and emergency planning to provide appropriate and timely response to emergency needs. The proposed amendments represent a complete approach to ensure that the goals and policies of the General Plan are reflected in the Zoning Ordinance and Specific Plans. The project maintains the City's multiple regulatory documents as current and relevant.

Section 3: With respect to SPA 15-449 through 15-452, the City Council finds as follows:

1. The proposed Specific Plan Amendments are consistent with the goals, objectives, policies, and programs of the General Plan, and are necessary and desirable to implement the provisions of the General Plan because the proposed Specific Plan amendments provide for the fulfillment of the Centennial General Plan's intent and policies, including:

a. Land Use Element Primary Goal #2. "Achieve the City's Vision by establishing and maintaining balance of uses that provides... distinct and vibrant commercial and industrial areas offering a range of retail, service and employment uses that complement rather than compete with one another." The proposed Specific Plan amendments help to clarify specific uses which contribute to the success of the Camino De Los Mares Focus Area as a vibrant, hospital-focused commercial area that provides for the collaboration of neighboring properties that encourages the success of the Focus Area.
b. Camino De Los Mares Focus Area Goal "Maintain and improve the Area as a community hub that provides... high quality medical services and related employment opportunities for San Clemente and surrounding communities." The proposed zoning amendments ensure the continued focus of the Camino De Los Mares Focus Area as an attractive medical hub for regional-supporting medical facilities by specifically providing for and encouraging medical uses to locate in the Camino De Los Mares Focus Area.

c. Land Use Element Policy LU-7.02. Medical Office Uses. "We support the expansion of health care facilities and related medical offices that are consistent with the Land Use Plan and Zoning Code and are compatible with surrounding neighborhoods." The proposed Specific Plan amendments provide for expanded medical office uses and additional medical-related services in the Community Commercial 4 zone, bolstered by the maintenance of the hospital use in the Regional Medical Facilities 1 zone.

2. The uses proposed in the specific plan amendments are compatible with adjacent uses and properties, in that the amendments do not alter the general nature of uses permitted within the Specific Plans, and encourage medical-related uses to locate when they are most compatible with adjacent development. The modifications to certain medical-related definitions provide for the consistency of terms among the City's multiple regulatory documents.

3. The proposed Specific Plan Amendments will not adversely affect the public health, safety and welfare, in that the proposed amendments do not alter the uses permitted within, or development potential of, the Specific Plans' areas. The modifications to certain medical-related definitions provide for the consistency of terms among the City's multiple regulatory documents. This is consistent with General Plan Governance Element Policy G-1.11, Keeping the General Plan and Specific Plans Current which states, "The City amends the General Plan to reflect new information, changing conditions, needs and community preferences. This may require updating one or more specific plans and other regulatory documents to maintain consistency." The proposed amendments represent a complete approach to ensure that the goals and policies of the General Plan are reflected in the Specific Plans. The project maintains the City's multiple regulatory documents as current and relevant.

4. The proposed specific plan amendments will not create internal inconsistencies within the specific plan, in that the modifications proposed to the specific plans only relate to the revision of existing definitions to provide for the consistency of terms among the City's multiple regulatory documents, and do not provide for any additional uses what is currently permitted. This is consistent with General Plan Governance Element Policy G-1.11, Keeping the General Plan and Specific Plans Current which states, "The City amends the General Plan to reflect new information, changing conditions, needs and community preferences. This may require updating
one or more specific plans and other regulatory documents to maintain consistency." The proposed amendments represent a complete approach to ensure that the goals and policies of the General Plan are reflected in the Specific Plans. The project maintains the City's multiple regulatory documents as current and relevant.

Section 4: Section 17.36.010 of the San Clemente Municipal Code is hereby amended to read as follows:

17.36.010 Purpose and intent.

The General Plan details the goals, objectives and policies for the City's commercial zones, including provisions for a range of retail and office uses necessary to support the daily needs of residents of and visitors to San Clemente. It is the purpose of this chapter to implement the General Plan's vision for the commercial zones through development regulations that allow for a variety of retail and office uses, while creating distinct commercial areas that are compatible with their surrounding environment.

A. Neighborhood Commercial (NC) Zones. Neighborhood Commercial Zones are intended to be less intense than community or regionally oriented commercial zones in San Clemente. There are five neighborhood commercial zones: NC 1.1, NC 1.2, NC 1.3, NC 2, and NC 3. The General Plan restricts the intensity of the Neighborhood Commercial Zones primarily through the floor area ratio limit for the zones. The maximum floor area ratio limits for these districts range from 0.35 to 0.75. The uses prescribed by the General Plan for the Neighborhood Commercial Zones are essentially the same as those prescribed by the General Plan for the Community Commercial Zones, which are described below.

B. Community Commercial (CC) Zones. Community Commercial Zones are more intense than Neighborhood Commercial Zones. The General Plan allows for this additional intensity by allowing higher floor area ratio limits in the Community Commercial Zones. There are four Community Commercial Zones: CC 1, CC 2, CC 3, and CC 4. The maximum floor area ratio limits for these districts range from 0.5 to 0.7. The General Plan allows the same uses in the Community Commercial Zones as it allows in the Neighborhood Commercial Zones, with the exception of additional medical related uses.

C. Regional Medical Facilities (RMF) Zones. Regional Medical Facilities Zones are designed to allow regional general hospital uses. The sites in San Clemente receiving this designation are large and can accommodate an intensity of development required for a region-oriented use. There is one Regional Medical Facilities Zone regulated by the Zoning Ordinance: RMF 1. The General Plan primarily distinguishes this site by the uses allowed. The RMF 1 zone provides for the continued use and development of the existing general hospital facilities at 654 Camino De Los Mares.
Section 5: Table 17.36.020 of the San Clemente Municipal Code is hereby amended to read as follows:

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### Ordinance No. 1618

#### Use

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<p>| 5. Public/Quasi Public and Institutional Uses | NC | NC | NC | NC | 2 | 3 | 1 | 2 | 3 | 4 | 1 |
| Churches | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  |
| Clams/Social Organizations | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  |
| Congregate Care Facilities | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  | 4 |
| Convalescent Homes | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  | 5 |
| Day Care Centers | O  | O  | O  | O  | O  | O  | O  | O  | O  | O  | 6 |
| a. Small Day Care Homes | O  | O  | O  | O  | O  | O  | O  | O  | O  | O  | 6 |
| b. Large Day Care Homes | O  | O  | O  | O  | O  | O  | O  | O  | O  | O  | 6 |
| c. Day Care Centers | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  | 7 |
| Group Instruction | MC | MC | MC | MC | MC | MC | MC | MC | MC | MC | MC |
| Group Counseling | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  | 8 |
| Libraries | P  | P  | P  | P  | P  | P  | P  | P  | P  | P  | 9 |
| Parking Lots | MC | MC | MC | MC | MC | MC | MC | MC | MC | MC | 10 |
| Parking Structures | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  | 11 |
| Parks | O  | O  | O  | O  | O  | O  | O  | O  | O  | O  | 12 |
| b. Projects Initiated by Outside Agencies: | O  | O  | O  | O  | O  | O  | O  | O  | O  | O  | 14 |
| i. Major Utilities | C  | C  | C  | C  | C  | C  | C  | C  | C  | C  | 15 |
| ii. Minor Utilities | P  | P  | P  | P  | P  | P  | P  | P  | P  | P  | 16 |
| Schools, Public and | C  | C  | C  | C  | C  | C  | 17 | C  | C  | 18 | 19 |
| 5. Public/Quasi Public and Institutional Uses | NC | NC | NC | NC | NC | CC | CC | CC | CC | RMF | NOTE |
| Private Transportation Facilities | C | C | C | C | C | C | C | C | C | |
| 6. Residential Uses | NC | NC | NC | NC | NC | CC | CC | CC | CC | RMF | NOTE |
| Affordable Housing Projects | 1.1 | 1.2 | 1.3 | 2 | 3 | 1 | 2 | 3 | 4 | 1 | 11 |
| Senior Housing Projects | C | C | C | C | C | C | C | C | C | |
| 7. Restaurants and bars | NC | NC | NC | NC | NC | CC | CC | CC | CC | RMF | NOTE |
| Bars, cocktail lounges (with or without dancing and/or entertainment) | C | C | C | C | C | C | C | C | C | |
| Restaurants | | | | | | | | | | |
| a. With drive-through | | | | | | | | | | |
| b. With no on-site consumption of liquor, no dancing, no entertainment | P | P | C | C | P | P | C | C | C | 13 |
| c. With on-site sale of beer and wine: | | | | | | | | | | |
| i. Indoors | MC | MC | MC | MC | MC | MC | MC | MC | MC | |
| ii. Outdoors with up to 16 outdoor seats or four tables | MC | MC | MC | MC | MC | MC | MC | MC | MC | |
| iii. Outdoors with more than 16 outdoor seats and/or four tables | MC | MC | MC | MC | MC | MC | MC | MC | MC | |
| d. With on-site sale of hard alcohol: | | | | | | | | | | |
| i. Indoors | C | C | C | C | C | C | C | C | C | |
| ii. Outdoors with up to 16 outdoor seats or four tables | MC/C | MC/C | MC/C | MC/C | MC/C | MC/C | MC/C | MC/C | MC/C | 14,15 |
| iii. Outdoors with more than outdoor 16 seats and/or four tables | C | C | C | C | C | C | C | C | C | 14,15 |
| e. With dancing and/or entertainment that has: | | | | | | | | | | |
| i. No amplified sound | MC | MC | MC | MC | MC | MC | MC | MC | MC | |
| ii. Amplified sound | C | C | C | C | C | C | C | C | C | |</p>
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<td><strong>Alcohol Beverage Sales</strong></td>
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<td><strong>Concurrent with Motor Vehicle Fuel-Convenience Store Sales</strong></td>
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<td><strong>Amusement Centers</strong></td>
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<td><strong>Animal Grooming Shops</strong></td>
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<tr>
<td><strong>Bowling Alleys</strong></td>
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<td><strong>Drive-Thru Facilities, When in Conjunction with a Use Permitted or Conditionally Permitted in this Zone</strong></td>
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<td><strong>Grading, Not Accompanying a Development Request</strong></td>
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<tr>
<td><strong>a. Emergency</strong></td>
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<tr>
<td><strong>b. Major</strong></td>
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<td><strong>c. Minor</strong></td>
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<td><strong>Health/Fitness/Sports Clubs and Facilities</strong></td>
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<td><strong>Accessory Massage</strong></td>
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<td><strong>Mortuaries</strong></td>
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<td><strong>Pool Halls</strong></td>
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<td><strong>a. Reverse Vending Machines</strong></td>
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<td><strong>b. Small Collection</strong></td>
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<td><strong>Urban Private Storage</strong></td>
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<td><strong>Wine Tasting (Only as an Accessory Use to establishments selling wine or wine related products as a primary use)</strong></td>
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<td>9. Vehicle-Related</td>
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<td>Parts/Accessories</td>
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<td>Sales</td>
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<td>Vehicle Dealerships</td>
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<td>(Sales, Leasing, Rental, New and Used):</td>
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<td>a. Auto Dealerships with fewer than 10 cars</td>
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<td>b. All Other Vehicle Dealerships</td>
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</table>

Footnotes:

1 Refer to Section 17.28.120, Convenience Stores/Retail Establishments Selling Convenience items, of this title, for special provisions for convenience stores.

2 Refer to Section 17.28.220, Parking Lots, of this title, for special provisions for single-use parking lots.

3 Refer to Section 17.28.090, Bed and Breakfast Inns, of this title, for special provisions for bed and breakfast inns.

4 Refer to Section 17.28.110 Congregate Care Facilities of this title for special provisions for congregate care facilities.

5 Refer to Section 17.28.100, Child Day Care Facilities, this title, for special provisions for day care facilities.

6 Small-family day care homes are permitted in single-family homes. A Minor Conditional Use Permit is required to allow small-family day care homes in other residential dwellings. Small-family day care homes only shall operate in buildings that were lawfully constructed.

7 A group-counseling use is conditionally permitted in an RMF 1 zone only if it is integrated into, and secondary in nature to, a Hospital facility. The group-counseling use must serve the primary use of the site as a general Hospital that serves the broader community.

8 Refer to Section 17.28.220, Parking Lots, of this title, for special provisions for parking lots.

9 Refer to Section 17.28.230, Public Park Facilities, of this title for review requirements for parks.

10 Refer to Section 17.28.240, Public Utilities, of this title, for special provisions for public utilities.
11 Refer to Section 17.56.090, Affordable Housing Overlay Zone, for projects in Commercial and Mixed-Use Zones, of this title, for special provisions for Affordable Housing Projects.

12 Refer to Section 17.28.280, Senior Housing Projects, of this title, for special provisions for senior housing projects.

13 Refer to Section 17.28.260, Restaurants, Drive-In, Drive-Through, of this title, for special provisions for drive-in/drive-thru restaurants.

14 When a restaurant has an approved CUP for the service of alcohol indoors and a CUP is required for the service of alcohol outdoors, then the applicant may request an amendment to the existing CUP to extend service outdoors. When a restaurant has an approved CUP for the service of alcohol indoors and an MCUP is required for the service of alcohol outdoors, an MCUP is the only application necessary (an amendment to the existing CUP shall not be necessary).

15 If a CUP has been previously approved for service of hard alcohol indoors, then that service may be extended outdoors for outdoor facilities with no more than 16 seats or four tables with the approval of an MCUP. If no CUP has been approved for service of hard alcohol indoors, then any service of hard alcohol outdoors requires a CUP.

16 Refer to Section 17.28.040, Alcoholic beverages and motor vehicle fuel, concurrent sale of, of this title, for special provisions for concurrent sales of motor fuel and alcoholic beverages.

17 Refer to Section 17.28.050, Amusement Centers, of this title, for special provisions for arcades/amusement centers.

18 Refer to Section 17.28.130, Grading, of this title, for special provisions for grading requests that are not accompanying development requests.

19 Massage is subject to Section 5.28 of the City of San Clemente Municipal Code. Refer to Section 17.28.185, Massage Establishments, of this title, for special provisions for massage establishments and accessory massage establishments.

20 The provisions for amusement centers shall apply to pool halls. Please refer to Section 17.28.050, Amusement Centers, for special provisions for amusement centers.

21 Refer to Section 17.28.250, Recycling Facilities, of this title, for special provisions for recycling facilities.

22 Refer to Section 17.28.330, Vehicle Service and Repair-Related Facilities, for provisions for all vehicle service and repair-related facilities.

23 Refer to Section 17.28.290, Service Stations, of this title, for special provisions for service/gas stations.

24 Refer to Section 17.28.310, Vehicle Dealerships, of this title, for special provisions for vehicle dealerships. The sales, leasing, and/or rental of new and/or used vehicles which meet any of the following criteria shall be prohibited within the commercial zones described in this chapter:

25 Refer to Section 17.28.320, Vehicle Repair Facilities, of this title, for special provisions for vehicle repair facilities.
**Section 6:** Table 17.36.037 of the San Clemente Municipal Code is hereby amended to read as follows:

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<th>CC 2 Development Standards</th>
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<td>Lot Width, Minimum</td>
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<td>Front Setback, Minimum</td>
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<tr>
<td>Interior Side Setback, Minimum</td>
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<td>Street Side Setback, Minimum</td>
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<tr>
<td>Rear Setback Minimum</td>
<td>0'-0&quot;</td>
</tr>
<tr>
<td>Lot Coverage, Maximum</td>
<td>60 percent of lot area</td>
</tr>
<tr>
<td>Floor Area Ratio</td>
<td>0.50</td>
</tr>
<tr>
<td>Height Limitation</td>
<td>45'-0&quot; Top of Roof; 37'-0&quot; Plate; 3 Stories.</td>
</tr>
</tbody>
</table>

**Section 7:** Table 17.36.038, RC 2 Development Standards, of the San Clemente Municipal Code is hereby deleted, and a new Table 17.36.039, CC 4 Development Standards, is added to read as follows:

<table>
<thead>
<tr>
<th>CC 4 Development Standards</th>
<th>CC 4 Zone Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Area, Minimum</td>
<td>6,000 Square Feet</td>
</tr>
<tr>
<td>Lot Width, Minimum</td>
<td>60'-0&quot;</td>
</tr>
<tr>
<td>Front Setback, Minimum</td>
<td>0'-0&quot;</td>
</tr>
<tr>
<td>Interior Side Setback, Minimum</td>
<td>0'-0&quot;</td>
</tr>
<tr>
<td>Street Side Setback, Minimum</td>
<td>0'-0&quot;</td>
</tr>
<tr>
<td>Rear Setback Minimum</td>
<td>0'-0&quot;</td>
</tr>
<tr>
<td>Lot Coverage, Maximum</td>
<td>60 percent of lot area</td>
</tr>
<tr>
<td>Floor Area Ratio</td>
<td>0.50</td>
</tr>
<tr>
<td>Height Limitation</td>
<td>45'-0&quot; Top of Roof; 37'-0&quot; Plate; 3 Stories.</td>
</tr>
</tbody>
</table>
Section 8: Table 17.30.040, RMF 1 Development Standards, of the San Clemente Municipal Code is hereby added as follows:

Table 17.30.040
RMF 1 Development Standards

<table>
<thead>
<tr>
<th>RMF 1 Development Standards</th>
<th>RMF 1 Zone Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Area, Minimum</td>
<td>6,000 Square Feet</td>
</tr>
<tr>
<td>Lot Width, Minimum</td>
<td>60'-0&quot;</td>
</tr>
<tr>
<td>Front Setback, Minimum</td>
<td>0'-0&quot;</td>
</tr>
<tr>
<td>Interior Side Setback,</td>
<td>0'-0&quot;</td>
</tr>
<tr>
<td>Minimum</td>
<td></td>
</tr>
<tr>
<td>Street Side Setback,</td>
<td>0'-0&quot;</td>
</tr>
<tr>
<td>Minimum</td>
<td></td>
</tr>
<tr>
<td>Rear Setback Minimum</td>
<td>0'-0&quot;</td>
</tr>
<tr>
<td>Lot Coverage, Maximum</td>
<td>80 percent of lot area</td>
</tr>
<tr>
<td>Floor Area Ratio</td>
<td>2.0</td>
</tr>
<tr>
<td>Height Limitation</td>
<td>54'-0&quot; Top of Roof; 45'-0&quot; Plate; 4 Stories.</td>
</tr>
</tbody>
</table>

Section 9: Table 17.40.030, Part 4, of the San Clemente Municipal Code is hereby amended to read as follows:

Table 17.40.030
Mixed-Use Zone Uses

<table>
<thead>
<tr>
<th>USE</th>
<th>ZONES</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Public/Quasi Public and Institutional Uses</td>
<td>MU</td>
</tr>
<tr>
<td>Churches</td>
<td>C</td>
</tr>
<tr>
<td>Clubs/Social Organizations</td>
<td>C</td>
</tr>
<tr>
<td>Congregate Care Facilities</td>
<td>C</td>
</tr>
<tr>
<td>Convalescent Homes</td>
<td>C</td>
</tr>
<tr>
<td>Day Care Facilities:</td>
<td></td>
</tr>
<tr>
<td>a. Small Day Care Homes</td>
<td>O</td>
</tr>
<tr>
<td>b. Large Day Care Homes</td>
<td>MC</td>
</tr>
<tr>
<td>c. Day Care Centers</td>
<td>C</td>
</tr>
<tr>
<td>Group Instruction</td>
<td>MC</td>
</tr>
<tr>
<td>Group Counseling</td>
<td></td>
</tr>
<tr>
<td>Libraries</td>
<td>P</td>
</tr>
<tr>
<td>Parking Lots</td>
<td>MC</td>
</tr>
<tr>
<td>Parking Structures</td>
<td>C</td>
</tr>
<tr>
<td>Parks</td>
<td>O</td>
</tr>
<tr>
<td>Public Utilities</td>
<td></td>
</tr>
<tr>
<td>a. City-Initiated Projects</td>
<td>O</td>
</tr>
</tbody>
</table>
### 4. Public/Quasi Public and Institutional Uses

<table>
<thead>
<tr>
<th>b. Projects Initiated by Outside Agencies:</th>
<th>MU 1</th>
<th>MU 2</th>
<th>MU 3.0</th>
<th>MU 3.1</th>
<th>MU 3.2</th>
<th>MU 3.3</th>
<th>MU 5</th>
<th>NOTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. Major Utilities</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>ii. Minor Utilities</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Schools, Public and Private 1–12 Individuals</td>
<td>MC</td>
<td>MC</td>
<td>MC</td>
<td>MC</td>
<td>MC</td>
<td>MC</td>
<td>MC</td>
<td></td>
</tr>
<tr>
<td>Greater than 12 Individuals</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Transportation Facilities</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
</tbody>
</table>

**Section 10:** Section 17.88.030 of the San Clemente Municipal Code is hereby amended to add or modify certain definitions as follows:

"Clinical Service Uses" shall mean establishments which provide physical and mental health services on an out-patient basis. The services may be of preventative, diagnostic, treatment, therapeutic, rehabilitative or counseling nature, but do not include group counseling uses. Typical uses would include, but not be limited to, medical and health clinics, chiropractic/physical therapy clinics, individual counseling services and emergency care centers.

"Group counseling" means counseling or therapy services that are provided to groups of five or more persons at a time. Examples of group-counseling uses include, but are not limited to, nutritional and diet centers; medical, clinical, and other health-related counseling; and career, professional, and life coaching.

"Group instruction" means non-counseling, non-therapy instructional services that are provided to groups of five or more persons at a time. Examples of group-instruction uses include, but are not limited to, classes in photography, fine arts, crafts, or dance or music; driving schools; and yoga or martial-arts studios.

"Hospital" means either a general acute care hospital, as defined by Health and Safety Code section 1250(a), that provides a wide range of emergency, clinical, and temporary medical services to the general public, or, to the extent permitted by law, a "standalone emergency department" as defined in Chapter 17.88, Definitions, of this title. It does not include any other "health facility" identified in Health and Safety Code section 1250; nor does it include any other type of specialty hospital.

(Continued on next page)
"Standalone emergency department" means a medical facility that satisfies each of the following criteria:

1. The emergency department shall operate under the consolidated license of a general acute care hospital and meet all of the requirements imposed under that license, including being within 15 miles of its parent hospital.
2. The emergency department shall be a conversion from a previously existing acute care campus and may not be a newly developed freestanding emergency department.
3. The emergency department shall be open 24 hours a day, 365 days a year.
4. The emergency department shall be staffed by at least one board-certified emergency physician at all times.
5. The emergency department shall be staffed with properly trained emergency room nurses and meet the minimum staffing requirements for emergency departments in this state.
6. The emergency department shall have a complete range of laboratory and diagnostic radiology services, including a complete array of laboratory test, basic X-ray, computerized tomography (CT) scan, and ultrasound capabilities.
7. The emergency department shall meet the specialty call requirements, as defined by the Orange County Emergency Medical Services Agency, under its consolidated license.
8. The emergency department shall have transfer agreements with specialty centers, such as trauma, burn, and pediatric centers, to meet the needs of the injury or patient population served in the community.
9. The emergency department shall have the capabilities to stabilize patients with emergency medical conditions and to transport them to its parent hospital or other higher level of care facilities in a safe and timely manner, consistent with the standards of care in the local communities.
10. The emergency department shall have a fully functioning transport program with a proven track record of safely transporting patients who require admission to its parent hospital or other higher level of care and specialty services facilities, such as trauma, burn, and pediatric facilities.
11. All applicable federal and state regulatory requirements shall be met under the consolidated license of a general acute care hospital, including all applicable regulations of the Centers for Medicare and Medicaid Services and Title 22 of the California Code of Regulations.

(Continued on next page)
Office, Medical. "Medical office" means a facility where medical services, and managerial, administrative, and clerical functions relating to medicine, are conducted. Medical office include: chiropodists, chiropractors, dentists, clinical service uses (defined in this section), optometrists, osteopaths, physicians, psychologists, surgeons, and other uses which the decision-making body determines are of a medical nature and similar. Medical office does not include group-counseling uses (defined in this section).

Section 11: Pages D1 and D2 of the San Clemente Zoning Map is hereby amended to appear as shown in Exhibit 1, attached to this ordinance.

Section 12: Section 17.72.060.F, Nonconforming Group Counseling Uses, is hereby added to the Zoning Ordinance, to read as follows:
1. Any group-counseling use that is legal nonconforming as of March 1, 2016, is subject to an amortization period of three years.
2. The owner or operator of a legal nonconforming group-counseling use may apply for an extension of the amortization period by making a written request to the Community Development Director. Such request shall be made before the amortization period ends unless the Community Development Director determines that good cause is shown for late submission of the request.
3. Upon the conclusion of the amortization period, any legally established nonconforming use shall cease all business operations and all signs, advertising, and displays relating to said business shall be removed within 30 days.

Section 13: Chapter 7, Definitions, of the Forster Ranch Specific Plan is hereby amended to modify the definition of "Clinical services" as follows:

"Clinical Services" means a physical- or mental-health service that is provided on an outpatient basis. The service may be of a preventive, diagnostic, treatment, therapeutic, rehabilitative, or counseling nature, but clinical service does not include group counseling (as defined in the City of San Clemente zoning ordinance). Examples of clinical service uses include, but are not limited to, medical, health, chiropractic, and physical-therapy clinics; veterinary facilities; individual-counseling, and emergency-care centers.

Section 14: Chapter 7, Definitions, of the Rancho San Clemente Specific Plan is hereby amended as follows:

The definition of "Medical and Veterinary Clinic" is deleted and replaced with the following:

"Clinical service" means a physical- or mental-health service that is provided on an out-patient basis. The service may be of a preventative, diagnostic, treatment, therapeutic, rehabilitative, or
counseling nature, but clinical service does not include group counseling (as defined in the City of San Clemente zoning ordinance). Examples of clinical service uses include, but are not limited to, medical, health, chiropractic, and physical-therapy clinics; veterinary facilities; individual-counseling; and emergency-care centers.

The definition of “Research-and-Development Uses” is deleted and replaced with the following:

“Research and development” means the pursuit of knowledge or creation of products in technology-intensive fields. Examples include but are not limited to research and development of computer software, information systems, communications systems, transportation, geographic information systems, multi-media and video technology, drugs, medical technology and genetics. Laboratories may also be included in this use (see also “Laboratory, dry” and “Laboratory, wet”). Development and construction of prototypes may be associated with this use.

New definitions are added to read as follows:

“Laboratory, dry” means a laboratory where dry materials, electronics, or large instruments are tested and analyzed, with limited piped services. Dry laboratories may require controlled temperature and humidity as well as dust control.

“Laboratory, wet” means a laboratory where chemicals, drugs or biological matter is tested and analyzed, and which typically requires water, direct ventilation, specialized piped utilities and protective measures.

Section 15: The table located in Chapter 5, Section 504.II, Permitted Uses in Industrial Zones, on page 5–12 of the Rancho San Clemente Specific Plan, is hereby amended to include the uses of “Laboratory, dry” and “Laboratory, wet.” “Laboratory, dry” is permitted (designated in the table with a “P”) in the Business Commercial, Business Park, and Industrial Park designations. “Laboratory, wet” is conditionally permitted (designated in the table with a “C”) in the Business Commercial, Business Park, and Industrial Park designations. The term “Medical and Veterinary Clinic” shall be replaced with “Clinical Service.”

Section 18: Chapter 7, Definitions, of the Talega Specific Plan is hereby amended to modify the following definitions to read as follows:

“Clinical Services” means a physical- or mental-health service that is provided on an outpatient basis. The service may be of a preventive, diagnostic, treatment, therapeutic, rehabilitative, or counseling nature, but clinical service does not include group counseling (as defined in the City of
San Clemente Zoning Ordinance). Examples of clinical service uses include, but are not limited to, medical, health, chiropractic, and physical-therapy clinics; veterinary facilities; individual-counseling; and emergency-care centers.

The definition of “Research and development” is revised in its entirety to read as follows:

“Research and development” means the pursuit of knowledge or creation of products in technology-intensive fields. Examples include but are not limited to research and development of computer software, information systems, communications systems, transportation, geographic information systems, multi-media and video technology, drugs, medical technology and genetics. Laboratories may also be included in this use (see also “Laboratory, dry” and “Laboratory, wet”). Development and construction of prototypes may be associated with this use.

New definitions are added to read as follows:

“Laboratory, dry” means a laboratory where dry materials, electronics, or large instruments are tested and analyzed, with limited piped services. Dry laboratories may require controlled temperature and humidity as well as dust control.

“Laboratory, wet” means a laboratory where chemicals, drugs or biological matter is tested and analyzed, and which typically requires water, direct ventilation, specialized piped utilities and protective measures.

Section 17: Chapter 5, Section 503, Business Park Land Use Standards, Part B, Principal Uses Permitted, on pages 5-9 and 5-10 of the Talega Specific Plan, is hereby amended to include the use of “Laboratory, dry.” Chapter 5, Section 503, Business Park Land Use Standards, Part C, Conditional Uses Permitted, on pages 5-10 and 5-11 of the Talega Specific Plan, is amended to include the use of “Laboratory, wet.” Chapter 5, Section 503, Business Park Land Use Standards, Part C, Conditional Uses Permitted, on pages 5-10 and 5-11 of the Talega Specific Plan, is amended to remove the use of “Hospitals.”

Section 18: Chapter 7, Definitions, of the West Pico Corridor Specific Plan is hereby amended to modify the definition of “Research and Development Uses” in its entirety to read as follows:

“Research and development” means the pursuit of knowledge or creation of products in technology-intensive fields. Examples include but are not limited to research and development of computer software, information systems, communications systems, transportation, geographic information systems, multi-media and video technology, drugs, medical technology and genetics. Laboratories may also be included in this use (see also
"Laboratory, dry" and "Laboratory, wet"). Development and construction of prototypes may be associated with this use.

New definitions are added to read as follows:

"Laboratory, dry" means a laboratory where dry materials, electronics, or large instruments are tested and analyzed, with limited piped services. Dry laboratories may require controlled temperature and humidity as well as dust control.

"Laboratory, wet" means a laboratory where chemicals, drugs or biological matter is tested and analyzed, and which typically requires water, direct ventilation, specialized piped utilities and protective measures.

Section 19: Chapter 5, Section 502, Los Molinos Industrial Area, Part V, Principal Uses Permitted, Item B, Parcels (or portions of parcels) Designated 12 (Light Industrial), on pages 5-5 and 5-6 of the West Pico Corridor Specific Plan, is hereby amended to revise Number 5 to read, "Research and development, dry laboratories, and testing facilities, conducted entirely within an enclosed building." Chapter 5, Section 502, Los Molinos Industrial Area, Part V, Principal Uses Permitted, Item C, Parcels (or portions of parcels) Designated 13 (Heavy Industrial), on pages 5-6 and 5-7 of the West Pico Corridor Specific Plan, is amended to revise Number 1 to read, "Research and development, wet laboratories, and testing facilities, conducted entirely within an enclosed building."

Section 20: Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of San Clemente hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

Section 21: The City Clerk shall certify to the passage of this ordinance and the same shall take effect as provided by law.
APPROVED AND ADOPTED this 2nd day of February, 2016.

ATTEST:

[Signature]
City Clerk of the City of
San Clemente, California

[Signature]
Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA )
COUNTY OF ORANGE ) ss.
CITY OF SAN CLEMENTE )

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1616 having been regularly introduced at the meeting of January 19, 2016, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 2nd day of February, 2016, and said ordinance was adopted by the following vote:

AYES: BROWN, DONCHAK, HAMM, WARD, MAYOR BAKER

NOES: NONE

ABSENT: NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 2nd day of February, 2016.

[Signature]
CITY CLERK of the City of San Clemente, California

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY