

[ms-0398.021.003.001]



County of San Diego

DAVID E. JANSSEN

CHIEF ADMINISTRATIVE OFFICER

1600 Pacific Highway, Rm. 209
San Diego, California 92101-2472
(619) 531-6226
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THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

RECEIVED
JUN 24 1992
Ans'd.....

OFFICE OF THE
CITY MANAGER

June 18, 1992

David Janssen
Chief Administrative Officer
County of San Diego
1600 Pacific Highway
San Diego, CA 92101

Dear Mr. Janssen:

I read your recent correspondence regarding your proposal to charge the City of San Diego for booking fees with a great deal of interest and dismay.

This letter will clarify any misunderstandings you may have regarding the City's interpretation of the intent, purpose and language of the two Memoranda of Understanding approved by the City Council and the Board of Supervisors regarding criminal justice facilities.

As you know, the City of San Diego and San Diego County have worked in an extremely cooperative manner over the past several years in coordinating our criminal justice needs.

The two Memoranda of Understanding that we have entered into in good faith, are very clear. The first Memorandum of Understanding provides the following:

1. The City of San Diego will lease to the County approximately 25-40 acres of land for a pretrial detention facility at a nominal value.
2. The County agreed to pay to the City the fair market value of this land if it prevailed in the Proposition A litigation or from any new revenue source in the event Proposition A fails.
3. The County committed \$33,000,000 in the State Prison Bond Funds to begin the immediate construction of a 500 bed pretrial detention facility.
4. The City agreed to pay to the County \$3,000,000 to assist in the rehabilitation or construction of nine additional Superior Courtrooms in the downtown area.

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The critical paragraph in the Memorandum of Understanding, in addition to these provisions, is a statement that reads "if the County fails to prevail in the Proposition A litigation, and is unsuccessful in approving a new and comparable revenue source, the City agrees that if a new revenue source is approved by the City or a new revenue source is substantially increased, the City will assist the County in financing the construction and operating of jails and courtrooms in the City. Contingent upon this commitment, the County agreed not to charge the City for bookings."

This critical paragraph is very clear. It states that if the County is unsuccessful in obtaining a new revenue source in the event the Proposition A litigation failed, the City agrees to help the County if a new revenue source is approved by the City. The pre-condition on the City assisting the County is that the County is unsuccessful in approving a new revenue source. We have not reached that point. The County is actively lobbying the State Legislature to obtain legislative authority to seek the enactment of a new tax for jails and courts. Our commitment remains intact.

Furthermore, the second Memorandum of Understanding incorporates the provisions of the first Memorandum of Understanding; and further binds the relationship between the City and County in all of the terms and conditions of this Memorandum of Understanding. In fact, it was the Board of supervisors who insisted on this incorporation.

It was never intended by either the City or County that we could pick and choose those provisions of the Memoranda of Understanding which we intend to uphold or violate. This is a totally unreasonable and unjustified interpretation of these Memoranda of Understanding and certainly does nothing to enhance the cooperative relationship which we have established in this important area.

I also want to point out that we have been very fair in our interpretation of both of these Memoranda of Understanding to the County. For example, the second Memorandum of Understanding provides that we would divide the growth in the fines and forfeitures revenues with the County. After this provision was put into place, the State enacted legislation which took 1/2 of all fine and forfeiture revenues. This would have reduced the share of fines and forfeitures revenue to the County by 50%. We did not think this was fair to the County and agreed to provide you with your full share despite the fact that this had significant financial impact on the City. In fact, we forwarded a check for \$187,000 as an advance payment to offset your costs when we opened the jail even though this was not required in the Memorandum of Understanding.

Your letter also states that we have not as yet provided you with title to the Sander site. While that is technically accurate, the Memorandum of Understanding requires only that we offer a lease of that site to the County. Attached is a Quitclaim Deed from the Navy as verification that the City does have title to the Sander

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site. We will prepare a lease of this site for the County as soon as you indicate that this is the preferred site for the pretrial detention facility.

Your letter states that there may be technical problems with respect to preparing this site. Attached is a memo from our Waste Management Department which indicates that we are fully prepared to work with you to ensure that all issues regarding the old landfill are mitigated. This will not delay your ability to use this site for a pretrial detention facility.

I feel strongly that the City of San Diego has done its utmost to uphold the integrity of these two Memoranda of Understanding.

1. We have contributed \$3,000,000 toward the renovation of courtrooms.
2. Made an advance payment of \$180,000 from fines and forfeitures revenue.
3. Agreed to pay \$25,000,000 for construction of new courtrooms in the downtown area.
4. Offered the use of the Sander site for a pretrial detention facility.

We have met all of the obligations of the two Memoranda of Understanding. There has been fair consideration for these agreements and we expect that the County will also uphold the integrity of these agreements and our relationship.

In summary, we do not intend to pay booking fees.

Sincerely,



Jack McGrory
City Manager

cc: Honorable Mayor and City Council
City Attorney (Attn: C.M. Fitzpatrick)
Assistant Police Chief Ken Fortier

Recording Requested by, and
When Recorded Mail to
City of San Diego
1200 Third Avenue, Suite 1700
San Diego, California 92101

Attn: Property Dept.

Mail Tax
Statements to
Address Above

Above Space for Recorder's Use Only

QUITCLAIM DEED

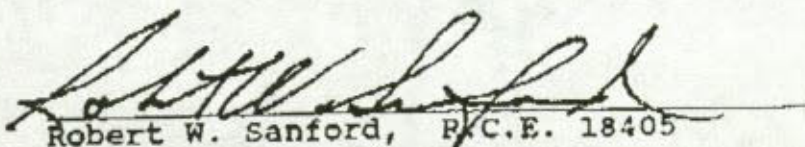
IN CONSIDERATION of the transfer to it of certain real property situate in San Diego County, California, pursuant to an agreement for exchange dated December 8, 1986, and January 16, 1987, entered into under the authority of Public Laws 98-115 and 98-407, the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, represented by the Southwest Division, Naval Facilities Engineering Command, hereinafter called GOVERNMENT, hereby remises, releases, and forever quitclaims to the CITY OF SAN DIEGO, a political subdivision of the State of California, hereinafter called the CITY, all of the GOVERNMENT's right, title, and interest in and to the real property situate in the City of San Diego, County of San Diego, California, described on Exhibit "A" attached hereto, and made a part hereof, with the understanding and agreement that, by acceptance of this Quitclaim Deed, CITY agrees with GOVERNMENT, as additional consideration for the conveyance set forth herein, that it will fully implement the mitigation measures set forth in the Biological Opinion of the United States Fish and Wildlife Service dated February 10, 1988, a copy of which is attached hereto as Exhibit "B" and made a part hereof. CITY further agrees that it will complete the said mitigation measures to the satisfaction of the United States Fish and Wildlife Service by no later than January 1, 1994, and that it will not cause or permit the real property described in Exhibit "A" to be graded or otherwise disturbed or altered before the said mitigation measures are so completed. The foregoing agreements regarding mitigation measures are intended as a memorialization of a contractual agreement between the GOVERNMENT and CITY, and not as a condition of the conveyance set forth herein or as a limitation upon any interest in real property conveyed herein.

SANDER PARCEL

All that portion of Lot 78 of RANCHO MISSION OF SAN DIEGO, in the City of San Diego, County of San Diego, State of California, according to partition Map thereof on file in the Office of the County Clerk of said County in an action entitled "Juan M. Luco, et al. vs. Commercial Bank of San Diego, et al", recorded as Map 330, described as follows:

BEGINNING at the Northeast boundary corner of KEARNY INDUSTRIAL PARK UNIT NO. 5, according to Map thereof No. 6964, filed in the Office of the County Recorder of said County; thence along the Northerly boundary line of said Map No. 6964 and the Northerly boundary line of KEARNY INDUSTRIAL PARK UNIT NO. 2, according to Map thereof No. 6241, filed in the Office of the County Recorder of said County, South $89^{\circ} 23' 39''$ West, 967.88 feet to the Easterly right of way line of Convoy Street; thence along said Easterly right of way line, North $06^{\circ} 51' 59''$ East, 414.08 feet to the Southerly right of way line of California State Highway Route 52 as shown on Miscellaneous Survey No. 988; thence along said Southerly right of way line, North $55^{\circ} 18' 00''$ East, 60.58 feet; thence North $76^{\circ} 17' 41''$ East, 417.43 feet; thence North $64^{\circ} 59' 34''$ East, 98.66 feet; thence North $49^{\circ} 22' 45''$ East, 101.26 feet; thence North $60^{\circ} 43' 41''$ East, 198.37 feet; thence North $77^{\circ} 12' 20''$ East, 295.66 feet; thence North $76^{\circ} 16' 19''$ East, 1000.19 feet; thence North $77^{\circ} 05' 40''$ East, 700.21 feet; thence leaving said Southerly right of way line, South $10^{\circ} 04' 44''$ West, 1032.66 feet; thence South $48^{\circ} 11' 03''$ West, 152.73 feet to the Northerly boundary line of PARCEL MAP NO. 15207; thence along the Northerly boundary line of said PARCEL MAP NO. 15207, the Northerly boundary line of PARCEL MAP NO. 12740 and the Northerly boundary line of PARCEL MAP NO. 1318, all filed in the Office of the County Recorder of said County, North $79^{\circ} 55' 58''$ West, 1552.49 feet to the Northwest corner of said PARCEL MAP NO. 1318; thence along the Westerly boundary line of said PARCEL MAP NO. 1318, South $00^{\circ} 42' 22''$ East, 350.96 feet to the POINT OF BEGINNING.

Contains 42.79 Acres (more or less)


Robert W. Sanford, P.C.E. 18405





United States Department of the Interior

FISH AND WILDLIFE SERVICE
LAGUNA NIGUEL FIELD OFFICE

24000 Avila Road
Laguna Niguel, California 92656

February 10, 1988

Mr. Michael C. Stroud
Manager, Natural Resources Management Branch
Real Estate Division
Department of the Navy, Western Division
Naval Facilities Engineering Command
P.O. Box 727
San Bruno, California 94066

Re: Formal Section 7 Consultation, Land Transfer from the U.S.
Navy to the City of San Diego, San Diego County, California
(#1-1-83-F-29R)

Dear Mr. Stroud:

This responds to your request, dated January 7, 1988, for re-initiation of formal consultation with the Fish and Wildlife Service (Service), pursuant to Section 7 of the Endangered Species Act (Act) on the proposal to excess a 35.13 acre parcel of land located at the north end of Convoy Street on the southern portion of Naval Air Station Miramar. The parcel will be transferred from the U.S. Navy to the City of San Diego. No project is proposed for the site at this time. This land transfer may affect the San Diego mesa mint (*Popovya abramsii*), a listed endangered species, and its essential vernal pool habitat.

This Biological Opinion is based on information provided in the Biological Assessment of the San Diego Energy Recovery Project (Recon, August 27, 1985), the draft Recovery Plan for the San Diego Mesa Mint (Fish and Wildlife Service, 1984), the "Vernal Pool Compensation Program for the City of San Diego Acquisition of Navy Land South of State Route 52" (City of San Diego, June 19, 1986), information in our files which includes pertinent reports and published literature, field investigations, and conversations with biologists familiar with this species and the project environs.

The proposal to transfer this 35.13 acres of land has a lengthy chronology beginning in June, 1983. The Section 7 Consultation process included 3 time extensions to coordinate with related projects and to accumulate sufficient data for impact analysis. In addition, responsibility for completion of the consultation, which was originally being conducted by the Sacramento Endangered Species Office of the Service, was transferred to the Laguna Niguel Field Office in March 1986. A complete chronology of this consultation is provided in Appendix A.

Biological Opinion

It is our Biological Opinion that the proposed transfer of 35.13 acres of land located at the north end of Convoy Street on the southern portion of Naval Air Station Miramar adjacent to Kearny Mesa from the U.S. Navy to the City of San Diego, together with the proposed compensation as detailed in this opinion, is not likely to jeopardize the continued existence of Pogogyne abramsii.

Project Description

The U.S. Navy proposes to transfer a 35.13 acre parcel of land known as the "SANDER Parcel" to the City of San Diego. This parcel contains habitat for the federally listed endangered plant species, the San Diego mesa mint. By the transfer of vernal pool habitat supporting the mesa mint out of federal ownership, there will be a loss of direct protection under the Act for the plant on this property.

Twenty vernal pools are located on the land parcel to be transferred, two of which contain the endangered mesa mint. According to a letter from the City of San Diego to the Service dated May 23, 1986, to compensate for impacts incurred by the transfer of vernal pool habitat supporting the San Diego mesa mint out of federal ownership, the City proposed the following measures which are quoted from that letter:

A. LAND ACQUISITION

The City of San Diego will acquire a total of 5.6 acres of land including a portion of the BaB series of pools on what is known as the "Brown Parcel." Of this total, 2.3 acres will contain existing vernal pools and their drainages, 0.4 acre will be reserved for the creation of new vernal pools (under Section II below), and 2.9 acres will include adjacent chaparral vegetation, providing continuity with nearby mesa-top chaparral and canyon habitat systems.

The preserve to be acquired is defined as congruent with the Brown parcel boundary on the north, east, and west. The west boundary terminates 415 feet from the northwest corner, and the east boundary terminates at the intersection with the right-of-way of Calle Cristobal. The south boundary is parallel with the north boundary from the southwest corner to its intersection with Calle Cristobal, then follows the right-of-way to the southeast corner. The south boundary is also defined as including the entire surface drainage area of pool #15. The triangle defined by the E-W portion of the south boundary and a point 95 feet north from the southwest corner is the 0.4 acre additional area

required for the implementation of Section II below. The preserve area is graphically illustrated in Figures 1 and 2.

Within this area, sufficient land will be provided to allow a minimum buffer of 100 feet of natural vegetation around the drainage areas of all existing or new pools, with the exception of the southeast boundary adjacent to future Calle Cristobal. At this location, the boundary will be constructed in a manner to avoid disturbing the drainage area of nearby pools. It has been determined that the road-way cannot be designed further to the south to provide a full 100 foot buffer at this location without an unacceptable increase in the height and extent of manufactured fill slopes adjacent to Lopez Canyon. City standards regarding sight distances and/or curve radii may also be comprised by moving the road further south, reducing safety of the road.

B. RESTORATION AND MAINTENANCE

The City of San Diego proposed to restore, protect, and maintain the area as follows:

1. If the land acquisition is completed before construction of Calle Cristobal, construct temporary fencing to direct off-road vehicle traffic exclusively along the single dirt road crossing the parcel. This temporary fencing will consist of three-strand barbed wire mounted on metal posts. In the event that Calle Cristobal is constructed prior to completion of land acquisition procedures, then permanent fencing will be installed as described below.
2. Remove trash, construction debris, and other foreign material from the property and restore all disturbed areas to a natural condition. Removal of trash and debris shall be done during the dry season (July through October) and overseen by a qualified biologist to insure that there will be no significant damage to vernal pools or their watersheds. Restoration will consist of reshaping rutted and compacted road surfaces and installing native species landscaping under the direction of a qualified biologist. Restoration of the site will be accomplished according to a restoration plan to be approved by the U.S. Fish and Wildlife Service.
3. Install permanent fencing along the eastern, southern, and western boundaries of the parcel. Permanent fencing will consist of six-foot-high chain link, supported by galvanized pipe mounted in concrete.

Along the northern boundary, no fencing will be installed since this area will be preserved either by acquisition by the City with mitigation funds or through the Section 404/Section 7 review process with development of the associated parcel. In either case, pool habitat on the adjacent parcel will be incorporated into the subject preserve. Access to the preserve from the north, prior to the ultimate disposition of the adjacent parcel, will be prevented by installation of fencing along the eastern boundary of the parcel to the north either by (a) acquisition of an easement to install fencing or (b) conditions placed on the subdivision map for development of the parcel to the northeast.

4. Post appropriate signs indicating the preserve boundaries.

5. Inspect the site on a regular basis to monitor the condition of the vernal pools, enforce access restrictions, repair any damage which may occur, and maintain the habitat in a natural condition. While title to the parcel is held by the City of San Diego, funding for the monitoring and maintenance program will be provided at a level consistent with the income on a \$50,000 trust fund. Upon transfer of the land to a permanent conservation trust, \$50,000 will also be transferred for the purpose of establishing a permanent funding source for maintenance of the area.

C. TRANSFER OF TITLE

The City of San Diego proposes to transfer title of the property and maintenance fund to the Service or other trustee agency acceptable to the Service for permanent management.

II. DISTURBANCE OF POOLS

To compensate for the loss of wetland habitat (represented by the vernal pools on the parcel to be transferred from the Navy to the City of San Diego) resulting from future development, the City proposes the following:

A. ADDITIONAL ACQUISITION

The City of San Diego proposes to include 0.4 acre of extra land within the property to be acquired and preserved (as described above) for the purpose of establishing new vernal pools. The new pools will be at a location which will not affect drainage areas of existing pools and will provide for the maintenance of a minimum 100 foot buffer of

native vegetation between vernal pool and preserve boundary.

B. CREATION OF NEW POOLS

The City of San Diego proposes to create at least 0.04 acre of new vernal pool surface area in suitable areas within the parcel to be acquired and preserved as described above. The techniques in creating new pools will be those developed by Scheidlinger and Patterson (1985), using applicable knowledge developed in the course of currently planned similar efforts recently undertaken by San Diego State University and Caltrans on Del Mar Mesa. The new pools will be designed to mimic natural pools and will be seeded with material collected on-site or from nearby pools which will be destroyed by approved development projects. This effort will insure that there is no net loss in the overall population of Pogogyne abramsii due to development of the parcel to be transferred from the Navy to the City. Preliminary studies to collect data to guide the location and construction of the pools in the compensation area will be conducted. The plan for these studies will be approved by the Service. A biologist with experience in vernal pool rehabilitation or creation efforts will oversee the preliminary studies. The pool creation and revegetation program will be approved by the Service prior to implementation and will be conducted with the assistance of a biologist with experience in this area.

C. MAINTENANCE AND MONITORING

The City of San Diego proposes to monitor the new habitat according to the monitoring program defined by the pool creation program to ensure successful establishment.

D. TRANSFER OF TITLE

The City of San Diego proposes to include the area of new pools and their surrounding buffer within the permanent preserve area to be deeded to an appropriate trustee agency, as described above.

Species Account

The genus Pogogyne, a part of the mint family (Lamiaceae), consists of small, aromatic, annual herbs which have an ephemeral life cycle (Munz, 1974). Four of the five extant species of Pogogyne are restricted to vernal pools within the California Floristic Province as defined by Raven and Axelrod (1978). Two of these species, P. abramsii and P. nudiuscula, are confined to vernal pools in San Diego County. The San Diego mesa mint is scattered over an approximately 20 square mile area in pools located on Kearny Mesa, Mira Mesa, and Del Mar Mesa in the

western portion of the county.

The San Diego mesa mint is a diminutive (1-3 dm. tall) plant with spreading branches and small opposite leaves. John Thomas Howell, in his monograph on the genus Pogogyne, described a key character of this species as floral bracts and calyx lobes which are "conspicuously hirsute and bristly-ciliate" (Howell, 1931). The flowers are strikingly patterned with a rich rosy-purple limb and throat and white tube; the middle lobe of the lower lip has a yellow central area spotted with deep purple.

The San Diego mesa mint was determined, along with four other plant taxa, to be an endangered species on September 28, 1978. The destruction and alteration of vernal pool habitat by off-road vehicles, highway construction, housing, agricultural development, and illegal dumping were specifically cited in the endangered species determination of the mesa mint (43-FR-44811) as threats to the continued existence of the species. Today, roughly less than 440 acres of vernal pool habitat remain that harbor most of the mesa mint. Of this average, approximately 85% of the remaining pools occur on public lands. In addition, the California Department of Fish and Game listed P. abramsii as endangered on May 25, 1979.

The San Diego mesa mint occurs only in vernal pools, and the life cycle of this species is completely integrated with the vernal pool cycle. San Diego vernal pools are shallow, usually small, seasonal bodies of water located on mesas in a level or sloping landscape which may occur in groups or complexes rather than singly. Winter rains fill the pools and are retained by them for varying periods of time because they are underlain by an impervious substrate which allows formation of a perched water table (Zedler, 1987). Mesa mint seeds germinate with the first significant fall and winter rains. As the season progresses, temperatures increase and rainfall declines, resulting in evaporation of water. As the pools begin to dry out, a more rapid growth of young plants is generated. Flowering commences in May and continues in June or July, but by early to mid-summer the pools are dry.

Pertinent to the conservation of the mesa mint and the creation of new vernal pool habitat are the following physical parameters: 1) soil, including some characteristics unrelated to the water-retaining properties, and 2) hydrology, including the length of time water remains in the pools. These factors highlight the importance of protecting a pool's entire watershed when developing a plan for the preservation of vernal pools. Although vernal pools and their associated plants appear to be able to tolerate a certain degree of disturbance, disruption of the pool hydrology may prevent or hinder maintenance of the indigenous flora and fauna.

Analysis of Impacts

The City of San Diego, in the compensation program outlined with a letter to the Service from the Navy dated July 17, 1986, indicated that 20 vernal pools with a total pool surface area of 0.214 acres and contributing drainage area of 2.16 acres will be lost as a result of the construction on the property. Two of these pools, with a surface area of 0.04 acres, contain the mesa mint. Current Federal ownership of these pools affords greater protection that would otherwise be available for similar habitat on private lands. The loss of these protected pools on Naval Air Station Miramar is significant because of the biological values associated with pools containing Pogogyne abramsii and the greater level of protection afforded pools on Federal lands.

To compensate for losses to vernal pools containing mesa mint, the City of San Diego will acquire a total of 5.6 acres of land which includes a portion of the BaB series of pools. This land is known as the "Brown Parcel." It contains 18 complete pools and 1 partial pool with a total surface area of 0.393 acre and contributing drainage area of 2.32 acres. Eleven of these pools contain the mesa mint, and all in general are of a higher quality than those on the parcel to be exsessed. The compensation parcel will be restored, protected and maintained as described previously. To insure that there is no net loss in the overall population of mesa mint due to development of the parcel to be transferred, the City proposes to create at least 0.04 acre of new vernal pool surface area on an additional 0.4 acre of land within the compensation parcel. Data is forthcoming from vernal pool creation efforts by Caltrans on Del Mar Mesa and by the U.S. Navy at Naval Air Station Miramar which will be helpful in developing a pool creation program. Therefore, details of the program are not specified in this document. The City's pool creation and revegetation program will be approved by the Service prior to implementation. Details of the entire vernal pool acquisition and creation package were described earlier and are illustrated in Table 1 and Figures 1 and 2.

Cumulative Effects

We know of no State or private actions that are planned or about to occur that would affect habitat conditions in the project area. Hence, there should be no cumulative effects related to the subject project.

Conservation Recommendations

To assist you in exercising your responsibilities under Sections 2(c) and 7(a)(1) of the Act which directs Federal agencies to utilize their authority in furtherance of the conservation of

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endangered and threatened species, we make the following recommendations:

1. We recommend that the Navy, in coordination with the Service, develop a vernal pool preservation and management plan for Naval Air Station Miramar.

2. We further recommend that the Navy identify particularly vulnerable vernal pool areas on Naval Air Station Miramar, fence them at the earliest possible time, followed by cleanup of trash and debris in those areas. Most vulnerable pool areas should be viewed as those subject to impacts by off-road vehicles, trash dumping, and other illegal public uses.

This concludes formal consultation on the proposed transfer of 35.13 acres from the U.S. Navy to the City of San Diego. If the proposed project or compensation is significantly modified in a manner not discussed above, or if new information becomes available on the listed species or if impacts to the listed species change that could alter the conclusion of this consultation, or if new species are added to the list of endangered or threatened fish, wildlife and plants in the project area, then consultation should be reinitiated. All involved agencies should continue to work together as necessary regarding the compensation acquisitions and management protection of the Brown Parcel. We appreciate the cooperation your agency and the City of San Diego has extended the Service in this matter.

Sincerely,

Wayne H. Harper

for Nancy M. Kaufman
Field Supervisor

cc: CDFG, Sacramento, CA (Attn: S. Cochrane)
CDFG, Long Beach, CA (Attn: C. Lal)
CEC, Sacramento, CA (Attn: J. Nelson)
CE, Los Angeles, CA (Attn: P. Beare)
City of San Diego, CA (Attn: C. Conrad)

References

- Howell, J.T.. 1931. The genus Pogogyne. Proc. Calif. Acad. Sci. IV, Ser. XX (3 & 4):105-134.
- Munz, P.A. 1974. A flora of southern California. Univ. of Calif. Press, Berkeley.
- Raven, P.H., and D.I. Axelrod. 1978. Origin and relationship of the California flora. Univ. of Calif. Publ. Bot. 72:9.
- U.S. Fish and Wildlife Service. 1978b. Federal Register 43(189):44810-44812.
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- Villasenor, R. and R.B. Riggan. 1979. Report on vernal pools of the Kearny Mesa region, San Diego County. Recon. San Diego.
- Zedler, P. 1987. The ecology of southern California vernal pools: a community profile. U.S. Fish Wildl. Serv. Biol. Rep. 87(7.11). 136 pp.

TABLE 1
SUMMARY OF BIOLOGICAL RESOURCE DATA

Category	SANDER Parcel	Compensation Parcel
Pools with <u>P. ab</u>		
No. of pools	2	10 (+1 partial)
Pool surface area	0.04 ac.	0.297 ac (+0.067 ac)
Drainage area	0.83 ac*	1.57 ac (+0.75 ac)
Pools with <u>B. or.</u>		
No. of pools	10	4
Pool surface area	0.13 ac	0.284
Pools with Other Indicator Species		
<u>I. or.</u>		
No. of pools	0	1 (+1 partial)
Pool surface area	0	0.028 ac (+0.067 ac)
<u>M. mf.</u>		
No. of pools	0	1
Pool surface area	0	0.015 ac
<u>M. cl.</u>		
No. of pools	0	8 (+1 partial)
Pool surface area	0	0.203 ac (+0.067 ac)
<u>D. cu.</u>		
No. of pools	0	3
Pool surface area	0	0.141 ac
<hr/>		
Total Number of Pools	20	18 (+1 partial)
Total Pool Surface Area	0.214 ac	0.326 ac (+0.067 ac)
Total Contributing Drainage Area	2.16 ac	2.32 ac**

* Wier's estimate of this area was 0.329 acre.

** The total area of the compensation parcel is approximately 5.1 acres, including surrounding chaparral vegetation.

APPENDIX A

Consultation Chronology

Prior to initiation of this consultation, U.S. Navy representatives had been meeting with the Sacramento Endangered Species Office of the Fish and Wildlife Service (Sacramento Office) and others in connection with a prior Section 7 consultation on the impacts of State Route 52 West on the San Diego mesa mint. At that time, the Navy informed the Sacramento Office that they proposed to excess a parcel of land on the southern portion of the Miramar Naval Air Station adjacent to Kearny Mesa. Because the proposed State Route 52 would bisect the southerly portion of the air station, the Navy planned to excess the parcel cut off by the highway and allow State Route 52 to serve as the south boundary of the Naval Air Station. A brief field visit by Navy and Sacramento Office personnel was made to the area under consideration. On June 28, 1983, pursuant to Section 7 of the Act, the Navy requested the Sacramento Office to initiate formal consultation on impacts to the mesa mint of the excessing of this approximately 40 acre parcel.

On August 15, 1983, the San Diego Energy Recovery Project (SANDER) issued a Notice of Intent to prepare a draft Environmental Impact Report/Environmental Assessment for a solid waste-to-energy facility. The proposed location was described as being an area on the southern part of Naval Air Station Miramar with the central portion of the study area located south of the proposed State Route 52, east of Mercury Street and west of Highway 163. Thus, the parcel to be excessed by the Navy was also the location of the SANDER proposal.

On September 14, 1983, the Sacramento Office requested a time extension to complete the Biological Opinion on the excessing of land for the SANDER project because of continuing consultation with the Federal Highway Administration and Caltrans regarding the alignment, impacts, and mitigation for the construction of State Route 52 across the air station. Each of the three alignments proposed for State Route 52 would have affected the SANDER parcel. Thus the consultation was proposed to continue after the consultation on State Route 52 was concluded. The Navy concurred with the extension. On November 23, 1984, the Biological Opinion for State Route 52 was issued. We concluded the proposed highway project would not jeopardize the continued existence of the mesa mint.

The Sacramento Office requested a second time extension from the Navy on December 21, 1984 to complete the Biological Opinion for the excessing of land. Because the SANDER project planned to use the 40-acre excess parcel as the project site, the Sacramento office required additional data regarding facilities siting,

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vernal pool and mesa mint impacts, and proposed compensation to complete the opinion. Upon receipt of this information, the Sacramento Office stated it would complete the consultation in 60 days. The Navy concurred with the extension.

On May 22, 1985, the Biological Assessment for the SANDER project was issued. The assessment described biological resources of the site as well as project impacts and suggested two potential mitigation alternatives: off-site preservation and rehabilitation/preservation on former landfill areas.

The first meeting with the Navy took place at San Bruno on July 11, 1985. Also present were representatives from SANDER, the City of San Diego, the California Energy Commission (Energy Commission), Recon, Signal Environmental Systems (Signal), and representatives of Peterson, Thelant and Price. After reviewing the Biological Assessment, the Sacramento Office requested additional information regarding project impacts, including the effects of stack emissions on vernal pool habitat and the San Diego mesa mint. The Sacramento Office also apprised the Navy of consultation procedures and additional information needed to complete the consultation. Finally, because the original map accompanying the request for consultation included an area outside and easterly of that to be covered by the SANDER project, the Sacramento Office requested that the Navy delete this area from the proposed excessing action.

SANDER responded by issuing a second Biological Assessment on August 2, 1985. This document refined the impacts section and provided additional information on mitigation alternatives. The off-site preservation alternative proposed the BaB series of pools on Lopez Ridge as a general area of acquisition, but stated that the precise habitat to be acquired would be determined during the Section 7 consultation process.

A second meeting was held on August 8, 1985, in San Diego with the Navy, SANDER representatives and consultants, and the City of San Diego. The Biological Assessment was reviewed, and potential mitigation options were discussed. At that time it was tentatively decided that the Brown Parcel on Lopez Ridge, which contained vernal pools of the BaB series, may be the best site for preservation. The Sacramento Office reiterated their request that the area proposed for excessing as shown on the map and in the consultation package be altered to reflect the boundaries of the SANDER project.

On August 27, 1985, a third Biological Assessment was provided to the Sacramento Office. This document narrowed the mitigation proposal to off-site preservation of part of the BaB series on Lopez Ridge. On August 29, 1985, the Navy amended their consultation request by modifying the boundary to be excessed. The new area now reflected the total area that would be utilized by SANDER when excessing was complete.

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A field reconnaissance trip to the project and mitigation sites was held on September 11, 1985. Those attending this meeting were representatives from the Sacramento Office, Recon, and the California Energy Commission. Options regarding potential mitigation site boundaries were discussed.

On September 24, 1985, the Commission held a Data Adequacy Workshop in Sacramento to discuss whether the SANDER Project Application for Certification contained the data required by statute and the Commission's regulations and could therefore be accepted for filing. The Energy Commission found the application to be deficient in its description of the environment, discussion of impacts, and details of the mitigation proposal. The document was later revised and resubmitted. On the same date, the Navy issued a public notice of intent to prepare a draft joint Environmental Impact Statement for the land excess and energy recovery project.

On December 3, 1985, a third joint meeting was held at San Diego attended by representatives of the Service from Laguna Niguel and the Sacramento Office, and personnel from Recon, SANDER, and the City of San Diego. At this time, it was agreed that the Sacramento Office now had adequate information regarding the impacts of the project on biological resources. The Sacramento Office also stated that the Service would rely on the Energy Commission to assess air quality impacts on biological resources. The Sacramento Office identified two areas which remained to be addressed. These were 1) the need to protect pools to the north which were bisected by the Brown Parcel boundary without placing a fence through those pools, and 2) the need for a pool buffer.

The California Department of Fish and Game (Fish and Game) called a meeting on January 14, 1986, which included representatives of the Sacramento Office and the Energy Commission. The meeting was held in the city and at field sites to discuss Fish and Game involvement and input to the process.

The City of San Diego responded to issues raised at the December 3 meeting in a letter to the Sacramento Office dated February 25, 1986. This letter modified and clarified several elements of the compensation proposal, primarily enlarging the size of the parcel to be preserved and adding more detail regarding the restoration and enhancement activities to be accomplished. This letter was provided to the Sacramento Office on March 14, 1986, at a meeting on the City's Vernal Pool Preservation Program held in San Diego. One week later, responsibility for continuing the Section 7 consultation process on the SANDER project was transferred from the Sacramento Office to the Laguna Niguel Field Office of the Service.

On April 16, 1986, a field meeting was held between representatives from Recon and the Service to look over the

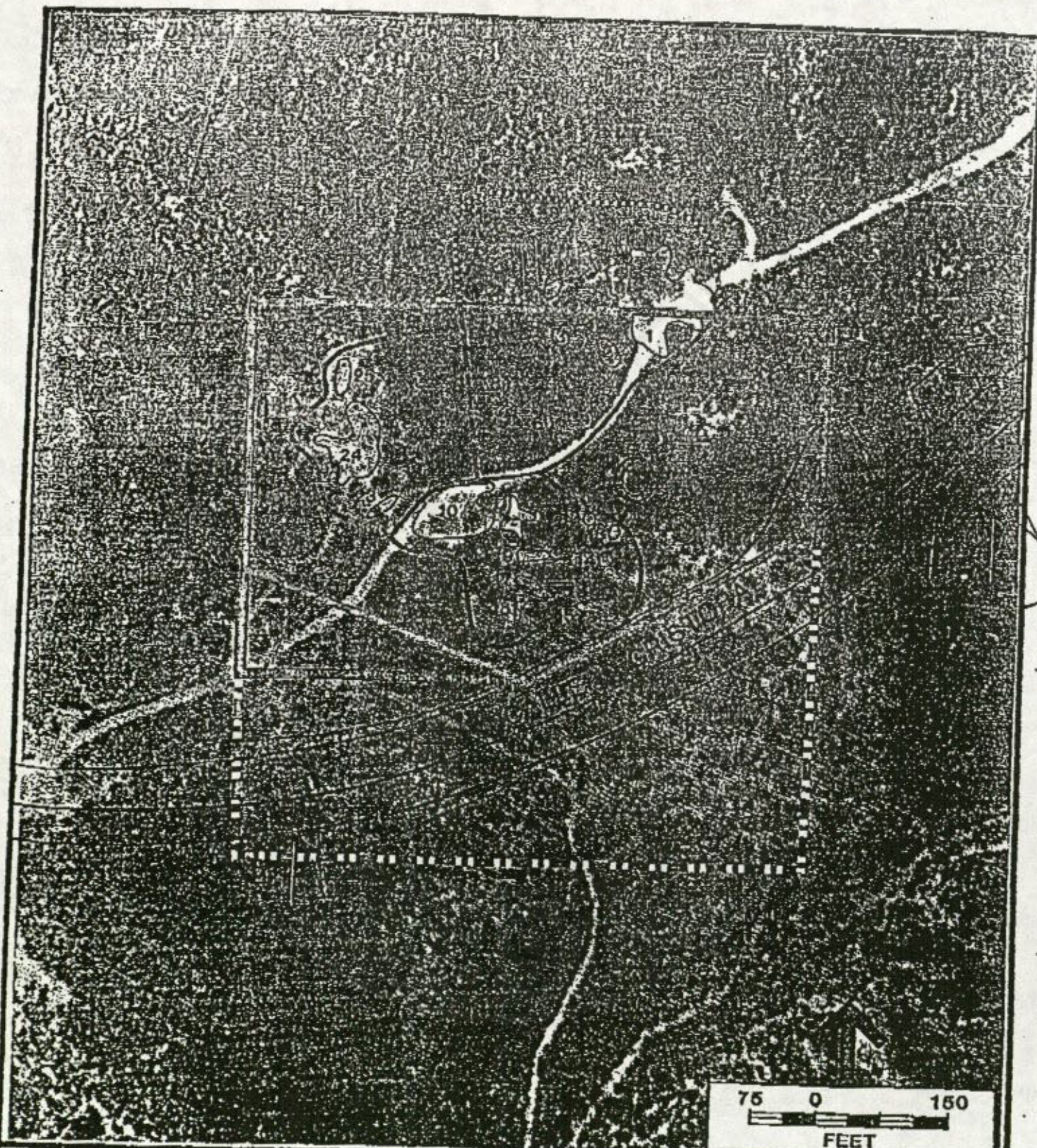
mitigation site. On April 25, 1986, a meeting was held in San Diego involving the Service, Energy Commission, Recon, and the Navy to go over revisions to the February 25, 1986, letter. An agreement was reached at this time regarding full compensation for impacts of the excessing proposal and SANDER project to the San Diego mesa mint and vernal pool habitats.

On July 15, 1986, the Navy requested reinitiation of formal consultation for the project. The Service representative met with the project's biological consultant on July 18, 1986, to check the Calle Cristobal right-of-way which had been staked by highway surveyors. It was determined that the stakes had been placed approximately six feet inside the southerly boundary of the watershed of pool #15. The Service in a letter dated August 11, 1986, requested that the City clarify what the southern boundary of the preserve would be and stated that it must include the entire surface drainage area of pool #15. The Service also requested written assurance that the preserve area will indeed be fenced prior to any work being done on Calle Cristobal and that this fence will enclose the entire surface drainage area of pool #15 within the preserve area to protect it from road construction impacts. It was also requested that the area to be fenced be staked and approved by the Service. Clarification of the southern boundary of the preserve to include the entire surface drainage area of pool #15 and compliance with the other requests was received by the Service on September 29, 1986.

On September 22, 1986, the Service was informed that the Energy Commission was reanalyzing air quality data for the project. The Commission felt that there was not yet sufficient information on emissions impacts to biological resources away from the project site such as the Landmark Pools on Naval Air Station Miramar. In addition, further data analysis was required on cooling tower drift and gaseous pollutants. Until proven otherwise, the Commission considered that there was a potential for significant impacts to vegetation from energy recovery plant emissions. The Commission's analysis was expected to be completed around December 1, 1986. Given this new information, the Service determined that another extension was appropriate. The Navy concurred with the extension on October 8, 1986.

By December 19, 1986, key elements of the Energy Commission's analysis had been received by the Service. Several workshops on the air quality impacts of the project were held by the Commission. However, citizen opposition to waste-to-energy projects in the City had accelerated and a Clean Air Initiative was developed by citizen groups.

On August 12, 1987, Signal Environmental Systems, Inc. (Signal) announced it was withdrawing from the project because it appeared that the project was no longer supported by a majority of the San Diego City Council. The following day Signal submitted a request



③ INDIVIDUAL POOL AND NUMBER

— A DRAINAGE AREA —

— BOUNDARIES OF PARCEL TO BE ACQUIRED WITH THIS ACTION

--- REMAINING BOUNDARY OF PARCEL

--- PORTION OF DRAINAGE AREA OUTSIDE OF AREA TO BE ACQUIRED

FIGURE 1 BaB POOLS TO BE PRESERVED

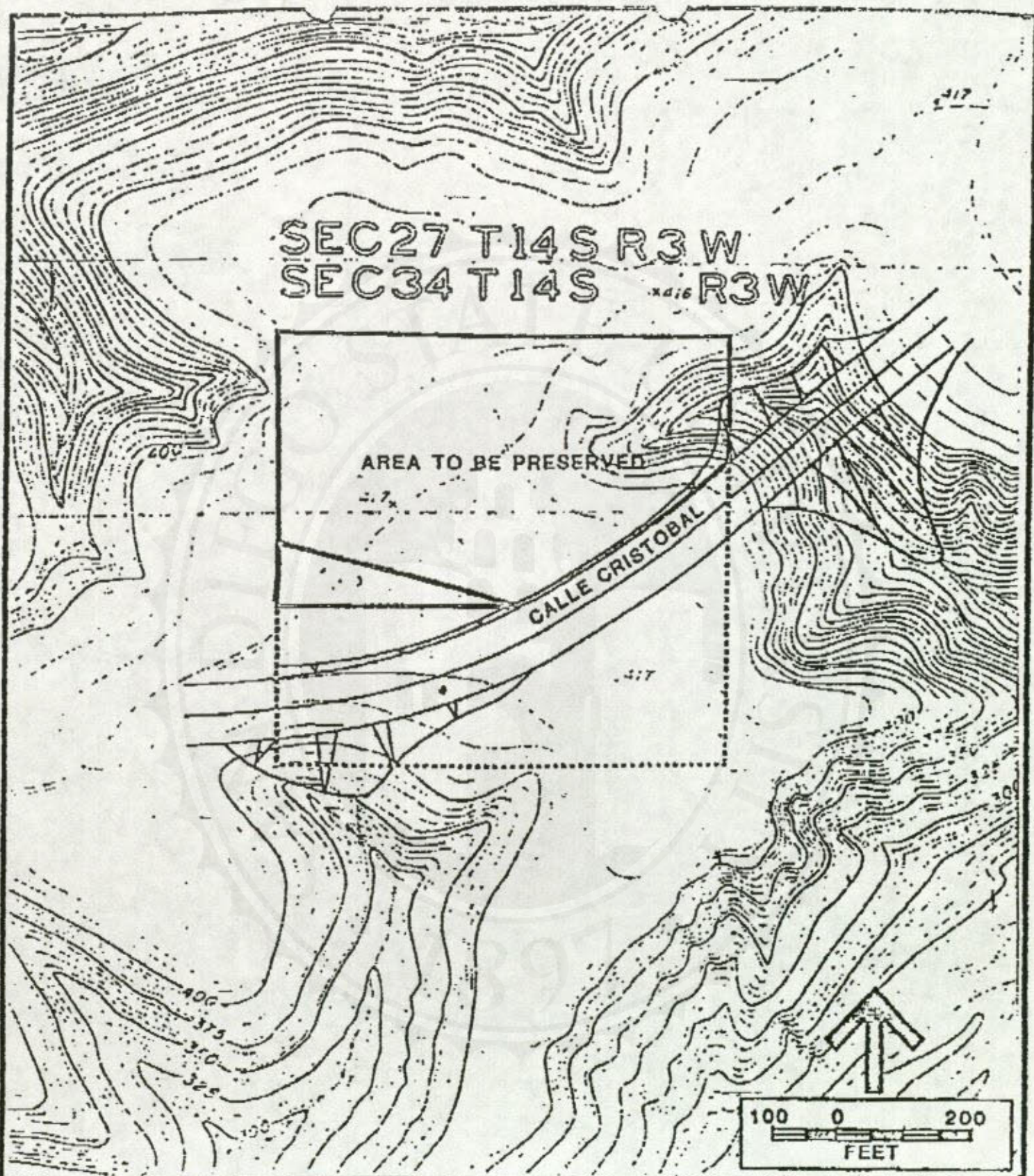


FIGURE 2. TOPOGRAPHIC MAP SHOWING AREA TO BE PRESERVED AND CALLE CRISTOBAL