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File No. 21317.00046



September 21, 2012

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United States Fish and Wildlife Service
Ben Franklin Station
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Hans Van Ligten
Rutan & Tucker LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626-1931

Lori Stone, Executive Director
March Joint Powers Authority
23555 Meyer Drive
Riverside, CA 92518

Re: *Center for Biological Diversity, et al. v. Bartel, et al.*
S.D. Cal No. 09-cv-1864-JAH-POR – Settlement Agreement

Dear Ladies and Gentlemen:

Enclosed please find a fully executed original of the Settlement Agreement in the above-referenced case.

Sincerely yours,

Michelle Ouellette
of BEST BEST & KRIEGER LLP

MO/WHS:lcp
Enclosure

cc: Drew Feldmann, San Bernardino
Valley Audubon Society (w/ enc.)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) dated and made effective as of September 12, 2012, is entered into by, between, and among the following, sometimes referred to as Parties: Plaintiffs Center for Biological Diversity and San Bernardino Valley Audubon Society (together, “Plaintiffs”); and Defendant-Intervenors March Joint Powers Authority and LNR Riverside LLC (together, “Defendant-Intervenors”). It is the intent of the Parties that this Agreement shall establish the terms of a full and complete settlement of all claims and actions raised in *Center for Biological Diversity v. Jim Bartel, et. al.* (S.D. Cal. No. 09-cv-1864-JAH-POR) (“Lawsuit”). The terms of this Agreement are intended to be the limit of the Parties’ obligations.

RECITALS

A. WHEREAS, Center for Biological Diversity (“CBD”) and San Bernardino Valley Audubon Society (“Audubon”) are non-profit organizations established, in part, for purposes of pursuing compliance with environmental laws and advocating for wildlife protection and education;

B. WHEREAS, Jim Bartel is the Field Supervisor for the Carlsbad Office of the United States Fish and Wildlife Service, and is the federal official charged with implementation of the Endangered Species Act (“ESA”) within the Carlsbad Office’s area of responsibility, including the former March Stephens’ Kangaroo Rat Management Area on the west campus of the former March Air Force Base (“March SKR Management Area/March Air Force Base west campus”);

C. WHEREAS, the United States Fish and Wildlife Service (“Service”) is an agency within the Department of Interior that has been delegated responsibility for implementing the ESA, including proposed and final listing and critical habitat decisions, the handling of petitions for such listings, and consultations with federal action agencies related to impacts to threatened and endangered species;

D. WHEREAS, Ken Salazar is the Secretary of the Interior (“Secretary”), and is the federal official charged with listing species as endangered or threatened and supervising the consultation requirements under the ESA;

E. WHEREAS, the March Joint Powers Authority (“March JPA”) is a Joint Powers Authority created pursuant to Article 1, Chapter 5, Division 7, Title 1 commencing with Section 6500 of the California Government Code, created for the purpose of addressing the use, reuse, and joint use of realigned March Air Force Base;

F. WHEREAS, LNR Riverside LLC (“LNR Riverside”) is a real estate and land development company that is the master developer for portions of the realigned March Air Force Base;

G. WHEREAS, a March Stephens' Kangaroo Rat reserve was first established in June of 1990 as preserved habitat for the Stephens' kangaroo rat ("SKR") in a Biological Opinion ("BiOp") regarding proposed improvements to State Route 15 between Van Buren Boulevard and State Route 60;

H. WHEREAS, in October 1990, an interim Stephens' kangaroo rat Habitat Conservation Plan was adopted that identified portions of the March SKR reserve as one of the Study Areas for potential protection under the longer term SKR HCP established later in 1996;

I. WHEREAS, the February 1996 Disposal of Portions of March Air Force Base Environmental Impact Statement ("EIS") addressed the disposal and reuse of March Air Force Base lands;

J. WHEREAS, The Long-Term SKR HCP was adopted in 1996 that designated areas on the March Air Force Base as the Sycamore Canyon-March Core Reserve to be managed for the conservation and recovery of the species, and also contemplated the release of some of those lands for development under certain conditions;

K. WHEREAS, a BiOp completed in 1999 states that the Service will consider suitable trade criteria for development that affects the function and value of the March SKR Management Area/March Air Force Base west campus, that the area known as Potrero Valley—located on the eastern edge of the San Jacinto Valley and containing some of the largest known contiguous population of SKR ("Potrero Preserve")—was identified as potentially suitable land for the trade-out, and that if more than 105 acres of occupied SKR habitat was impacted then the Air Force would reinitiate consultation;

L. WHEREAS, on December 29, 2003 and May 22, 2006, Defendants and the California Department of Fish and Game ("CDFG") determined that the trade out criteria identified in the BiOp had been satisfied, authorized the trade-out of the March SKR Management Area for the Potrero Preserve, and authorized incidental take of SKR on March Air Force Base;

M. WHEREAS, on August 27, 2009, Plaintiffs initiated the Lawsuit against Defendants Bartel, the Service, and the Secretary (collectively, the "Federal Defendants"), alleging a failure to reinitiate consultation by preparing a new biological opinion under the ESA, 16 U.S.C. § 1536, a failure to conduct environmental analysis under the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. ("NEPA"), and a failure to properly amend the SKR HCP, prior to authorizing the release of the March SKR Management Area/ March Air Force Base west campus for development;

N. WHEREAS, Defendant-Intervenors successfully intervened in the Lawsuit to defend their significant, protectable interest in the outcome of the Lawsuit; and

M. WHEREAS, the Parties, based upon extensive settlement negotiations, have agreed to a settlement that would allow conservation of portions of the March SKR Management Area/March Air Force Base west campus while also allowing development of other portions of the site;

N. WHEREAS, the Parties have agreed to use this Agreement to achieve a full and complete resolution of all claims asserted by Plaintiffs in the Lawsuit and to eliminate, to the fullest extent possible, any further impediments to both the conservation of habitat and the development of portions of the March SKR Management Area/March Air Force Base west campus; and

O. WHEREAS, Plaintiffs and Federal Defendants Jim Bartel, the Service, and Ken Salazar have agreed, subject to Plaintiffs and Defendant-Intervenors reaching agreement on the terms of this Agreement, to a consent decree to reach a full and complete resolution of all claims asserted by Plaintiffs against the Federal Defendants in the Lawsuit.

TERMS

NOW THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. **Plaintiffs' Obligations.** Plaintiffs, and their current and future members, representatives, employees, officers, agents, attorneys, experts and designees both individually and/or collectively hereby agree to the following:

1. Plaintiffs shall dismiss all counts of Plaintiffs' complaint with prejudice via stipulation of the Parties within three business days of the execution of this Agreement.

2. Plaintiffs agree not to fund, sponsor, initiate, participate in, or file any petition, complaint, motion, proceeding or action, whether legal or administrative, of any kind that: (i) asserts any claims, rights or causes of action that were alleged in *Center for Biological Diversity v. Jim Bartel, et. al.* (S.D. Cal. No. 09-cv-1864-JAH-POR); (ii) asserts, in any way, that any further take authorization is required for take of SKR on the March SKR Management Area/March Air Force Base west campus within the footprint depicted in the map attached hereto as Exhibit A ("the Project" or "Developable Area"); and/or (iii) challenges, opposes or tries to prevent in any way the issuance of any other discretionary, ministerial, or other approvals or processes of any kind for the development of the March SKR Management Area/March Air Force Base west campus within the Project or Developable Area, specifically including any further public meetings, public hearings, actions, revisions, phases, environmental review, and/or approvals issued by March JPA. Plaintiffs will not submit or provide verbal or written comments to any decision-making body or public agency that are critical of the Project or that object to, oppose, delay, impede, or disrupt the process for the approval of the Project, subject to the terms and conditions of this Agreement. Notwithstanding the provisions of this paragraph, the Parties retain the right to enforce the terms of the Agreement in legal and administrative proceedings.

3. If any person purporting to act as a representative of, or otherwise on behalf of, Plaintiffs takes any action that if taken by such Plaintiffs would constitute a breach of the obligations under this Agreement, including without limitation their obligation that they will not object to, oppose, delay, impede, or disrupt the process for the Project approvals, including without limitation Plaintiffs' obligation that they will not provide verbal or written comments that are critical of the Project or intended to delay or oppose the approval of the Project,

Defendants and/or Defendant-Intervenors may request a sworn statement of repudiation from the Plaintiff alleged to be in breach of this Agreement as a result of any action purported to be taken on its behalf. Within fifteen (15) days of receipt of such request, the Plaintiff alleged to be in breach of this Agreement shall provide Defendants and/or Defendant-Intervenors with a sworn statement, duly authorized and executed on its letterhead, providing that (a) such person has not been authorized by the Plaintiff to take such action; (b) such action does not represent the position of Plaintiff; and (c) that the Plaintiff alleged to be in breach determined that the Agreement was in its best interest and is committed to carrying out the purpose and intent of the Agreement.

B. Defendant-Intervenors' Obligations.

1. Defendant-Intervenors agree to place into conservation those portions of the March SKR Management Area/March Air Force Base west campus depicted as "Conservation Easement" or "Water Quality Open Space Area" on the map attached hereto as Exhibit A. The latter areas are referred to in this Agreement as SKR Conservation Area, least Bell's vireo Conservation Area ("LBV Conservation Area"), or collectively "Conservation Areas." These areas will be managed for their wildlife habitat value for sensitive species. A conservation easement, with wildlife trustee agencies as third party beneficiaries, shall be established for areas identified as the Conservation Areas. The Parties agree that the following entities have the necessary professional standards and criteria to hold the conservation easement for the Conservation Areas: the Western Riverside County Regional Conservation Authority, the Center for Natural Lands Management, the Riverside Land Conservancy, the Riverside-Corona Resource Conservation District, and the CDFG. The terms and standards of that conservation easement shall be agreed to by the Service, the CDFG, and Defendant-Intervenors. The Parties agree that the conservation easement holder/grantee will be chosen by the Defendant-Intervenors.

a. The Parties acknowledge that there are many existing service roads within the Conservation Areas. The Parties agree that any currently existing service roads within the Conservation Areas, as depicted by the red lines in Exhibit A, can continue to be utilized by the public for passive recreation. Passive recreation means recreational uses where very minimum alteration of vegetation, topography or other native features are necessary for the enjoyment of the site amenities, such as hiking, nature observation, picnicking, non-motorized recreation, and archaeological or historic preservation.

b. Vehicular access on the existing service roads shall not be open to the general public. Vehicular access on existing service roads will be limited to the necessary maintenance and operations of the area by authorized personnel of the Defendant-Intervenors, the land management entity for the Conservation Areas, regulatory authorities, or individuals authorized by these groups to access existing service roads. The March JPA, at its sole discretion, is authorized to decommission existing service roads or trails and eliminate public access to those service roads in order to benefit the conservation value or public safety in the Conservation Area, so long as they do not interfere with the value of the easements held by LNR Riverside or its successor.

c. Public Access shall be limited to reduce the impacts to sensitive species and habitat in the Conservation Areas. Mechanisms to reduce the impacts of passive recreation and public access in the Conservation Area include, but are not limited to, fencing, signage to prevent off-road or off-trail use and night access, and leash requirements for any dogs allowed in the Conservation Area. The Parties acknowledge that all currently existing service roads also function as fire breaks for the purpose of fighting wild fires in the area.

2. Portions of the March SKR Management Area/March Air Force Base west campus can be developed by the Defendant-Intervenors, as depicted in the Developable Area in Exhibit A. The Developable Area includes the roadways depicted on Exhibit A. Any temporary impact to areas adjacent to the Developable Area shall be restored by LNR Riverside to provide habitat for sensitive species.

3. Portions of the March SKR Management Area/March Air Force Base west campus will be dedicated as parkland or open space for active recreational use, as depicted in Exhibit A ("Proposed Park Area"). These areas are not set aside as part of this Agreement to be managed as wildlife habitat; any wildlife habitat value will be secondary to human recreational use.

a. Within the Conservation Areas located within the Proposed Park Area located west of Barton Street, and as depicted on Exhibit A, March JPA may move these service roads and/or trails as it deems necessary.

4. Defendant-Intervenors shall, at their sole discretion, select an appropriate land management entity or entities to manage the SKR Conservation Area ("Management Entity"), with input from the Plaintiffs. The Defendant-Intervenors will work with the Management Entity, the Service and the CDFG to develop appropriate management requirements and guidelines. All activities undertaken by the Management Entity related to the Conservation Area, as approved by March JPA, shall be funded from the Endowment described in Section B. 7 below.

a. Notwithstanding the above, the Management Entity shall meet the following criteria to assure minimum professional standards and criteria are achieved in managing the Conservation Area:

(i) The Management Entity has qualifications and experience to work with listed species including appropriate permits for employees and subcontractors under federal and state Endangered Species Acts;

(ii) The Management Entity has a demonstrated background in active wildlife management;

(iii) The Management Entity has the necessary organizational and fiscal capacity to manage the area in perpetuity;

(iv) The Parties agree that the following management entities have the necessary professional standards and criteria to manage the Conservation Area: the Western Riverside County Regional Conservation Authority, the Center for Natural Lands

Management, the Riverside Land Conservancy, the Riverside-Corona Resource Conservation District, and the CDFG.

(v) Should the Riverside County Habitat Conservation Authority be chosen as the management entity the Parties agree that the conservation easement for the Conservation Areas shall be held by the Service, the CDFG, the Center for Natural Lands Management, the Riverside Land Conservancy, the Western Riverside County Regional Conservation Authority, or the Riverside-Corona Resource Conservation District. Any other party that would hold the conservation easement, other than those listed in the previous sentence if the Riverside County Habitat Conservation Authority is the management entity, would require the agreement of the Parties.

5. The Parties acknowledge there are certain "blanket" easements across the Conservation Areas for items such as utilities that were retained or granted by the United States government which are not affected by this Agreement. The Defendant-Intervenors will work cooperatively with the easement holder and management entity to minimize any long-term habitat disturbance in the Conservation Areas resulting from construction or maintenance related to those easements, including using reasonable efforts to cause easement holders to restore the surface area.

6. March JPA agrees that all mitigation measures attached as Exhibit B shall be required for any development in the Developable Area.

7. LNR Riverside agrees to make an initial contribution by December 31, 2012, of \$500,000 toward a total non-wasting endowment of \$2 million to be used for management and monitoring activities undertaken by the Management Entity in the Conservation Areas ("Endowment"). The Endowment may be composed of more than one endowment account in the discretion of Defendant Intervenors, so long as each endowment account complies with the terms of this Agreement. The Defendant-Intervenors anticipate that the remaining \$1.5 million of the Endowment will be obtained from the existing endowment for the management of the March SKR Management Area. However, in the event the \$1,500,000 is not obtained from the existing endowment, prior to any grading LNR Riverside shall contribute to the Endowment the amount of \$4,717.00 per acre to be graded (the "Endowment Fee"). The \$500,000 shall be deemed the first Endowment Fee and shall be credited against payment of future Endowment Fees until fully exhausted. Upon payment of the initial \$500,000 Endowment contribution, LNR Riverside may proceed with the mitigation and enhancement required under its Section 404 Permit (No. SPL-2006-1995) and 1602 Agreement (No. 6-2009-291). Amounts deposited into the Endowment pursuant to either of the foregoing permits shall be credited against the total amount of \$2,000,000. Each subsequent Endowment Fee payment shall be deposited before the time of commencement of grading of the acre(s) associated with that payment. Notwithstanding the foregoing, LNR Riverside agrees that the non-wasting Endowment will be fully funded at a level of \$2 million before the last grading permit for the Development Area is issued or April 1, 2027, whichever is earlier.

a. The Endowment will be used to generate revenue for management and monitoring activities on the Conservation Area, including but not limited to the species management for the least Bell's vireo and SKR. March JPA shall at its sole discretion select an

entity to manage the Endowment for the benefit of wildlife within the Conservation Area and will agree on standards for management of the Endowment. The entity managing the Endowment shall use prudent financial management practices for the purpose of maintaining the Endowment and maximizing funds for habitat management in the Conservation Areas in perpetuity. The entity managing the Endowment shall not be the Riverside County Habitat Conservation Authority.

b. The Parties may modify this Agreement, after consultation and agreement with the CDFG, to permit the Endowment referenced in this section to be used for SKR management at the Potrero reserve managed by the CDFG for the benefit of SKR and other wildlife species so long as an adequate non-wasting endowment remains for the management in perpetuity of the Conservation Area discussed in this Agreement. Such modification will be in writing and signed by the Parties to this Agreement.

c. Upon agreement of the Parties, a portion of any proceeds generated from the Endowment may be used for other purposes related to the conservation of the SKR or other native species associated with SKR habitat.

8. Defendant-Intervenors agree not to develop, grade, de-vegetate, or destroy a riparian area of approximately 2-3 acres located on the Conservation Areas or Proposed Park Area as depicted in Exhibit A ("Riparian Area"). The Parties agree, however, that the Riparian Area may be physically contained within the boundaries of a park to be developed as long as the Riparian Area retains its primary function as natural habitat for wildlife while supporting passive recreation. It is understood by the Parties that this area is the historic drainage channel for this area and it will continue to accommodate the storm water flows from surrounding undeveloped and developed areas.

9. Defendant-Intervenors agree to abide by the Urban/Wildland Interface requirements, as set forth in Section 6.1.4 of the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP") and agree that the Conservation Areas referenced in this agreement will be treated as if they are a MSHCP Conservation Area for purposes of application of the Urban/Wildland Interface requirements. In particular the Parties agree to implement the requirements of Section 6.1.4 including, but not limited to, noise, drainage, barriers and the following:

a. Night lighting shall be directed away from the Conservation Areas to protect species within the Conservation Areas from direct night lighting. Shielding shall be incorporated in project designs to ensure ambient lighting in the Conservation Areas is not increased beyond .5 candle/foot adjacent to developed lots. It is recognized that public street lighting, where adjacent to the Conservation Area, shall meet the applicable lighting standards established by County Engineering Design Standard 1001, inclusive of full cut off fixtures and shall be Mount Palomar compliant. In addition, to the extent permissible under local, state and federal law, the locations of fixtures would be selected based on desired angles of light and proximity to the Conservation Areas. Along roadways adjacent to the Conservation Areas, the light would have a defined optical system to project lumens downward to minimize light trespass into the Conservation Areas including sharp cut off with no uplight component. Devices that may be employed to directionally control light may include lenses, louvers, barn doors, and

snoots. Beam patterns would be asymmetric with the light aimed at the road surface area. The proposed lighting for the Developable Area would be consistent with guidelines (See Darkskysociety.org) established by the Dark Sky Society, whose international mission is to “preserve and protect the nighttime environment and our heritage of the dark skies through quality outdoor lighting.”

10. LNR Riverside agrees to pay Plaintiffs \$65,000.00 for fees and costs incurred by Plaintiffs relative to the Lawsuit within thirty (30) days of dismissal of this case.

11. Defendant-Intervenors agree that when current planning is begun for the Meridian West Campus or Developable Area, they will discuss with Plaintiffs the alignment of Brown Street. Plaintiffs may provide input with regard to SKR conservation, however the Defendant-Intervenors are under no obligation to alter the planned alignment based upon this input.

a. Defendant-Intervenors agree that Brown Street, and in particular the intersection of Brown Street and Alessandro Boulevard, will be designed to minimize impacts to wildlife movement from the neighboring Sycamore Canyon Wilderness Park. Such mitigation measures will include, but are not limited to, the following: reductions in night lighting within and adjacent to the Conservation Areas while still complying with County minimum street light requirements; fencing to reduce public access and allow wildlife movement; and signs to reduce trespass and inform the public of the sensitive nature of the areas.

12. Defendant-Intervenors agree that the existing Cactus Avenue, as depicted on Exhibit A, will be the only road bisecting the Conservation Areas in the March SKR Management Area/March Air Force Base west campus to connect the existing and future Meridian development in the vicinity of Plummer Street with the future Meridian West Campus. Other anticipated infrastructure that has the potential to impact the Conservation Areas described in this Agreement is listed on Exhibit A.

13. Defendant-Intervenors agree that soft-bottomed culverts will be installed beneath any future modifications to Cactus Avenue to allow for animal passage underneath Cactus Avenue. The dimensions of such culverts shall be approximately 6 feet in height by 20 feet in width to allow for adequate passage of animals north-south through the Conservation Areas. The culverts shall be located to maximize potential animal movement in combination with the feasibility of their installation and located in the locations generally outlined on Exhibit A as “Clear Span Crossings.”

C. General Provisions.

1. This Agreement has no precedential value and may not be used as evidence in any judicial or administrative proceeding against the Federal Defendants and/or Defendant-Intervenors, except to enforce the terms of the Agreement and terms agreed by the Parties herein. In any other judicial or administrative proceeding, this Agreement may not be used to present or imply any position of the Federal Defendants and/or Defendant-Intervenors with regard to the SKR Management Area.

2. No Party shall use this Agreement or the terms herein as evidence that any Party is required to initiate consultation under the ESA or perform environmental analysis in any other proceeding involving the trade-out and/or development of the March SKR Management Area/ March Air Force Base west campus.

D. **Notices.** All notices called for pursuant to this Agreement shall be given in writing by personal delivery, or recognized overnight delivery service which obtains the signature of the addressee or its agent as evidence of delivery, or confirmed electronic transmission or telecopy/facsimile to the addresses listed below. All such notices or communications shall be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees listed below; or (ii) the date of delivery by recognized overnight delivery services; and/or (iii) upon receipt by the sender of electronic confirmation of delivery of such notices or communications sent by telecopy/facsimile. A Party may change its address by giving written notice thereof to the others in accordance with the provisions of this section.

Center for Biological Diversity	Jonathan Evans Center for Biological Diversity 351 California Street, Suite 600 San Francisco, CA 94104
San Bernardino Valley Audubon Society	Drew Feldmann San Bernardino Valley Audubon Society PO Box 10973 San Bernardino, CA 92423-0973
Jim Bartel, Field Supervisor for the Carlsbad Office of the United States Fish and Wildlife Service; the United States Fish and Wildlife Service; and Ken Salazar, Secretary of the Interior.	Bradley H. Oliphant, Trial Attorney Joanna K. Brinkman, Trial Attorney Ben Franklin Station, P.O. Box 7611 Washington, DC 20044-7611
March Joint Powers Authority	Michelle Ouellette Best Best & Krieger LLP 3390 University Avenue, 5th Floor Riverside, CA 92501
LNR Riverside LLC	Hans Van Ligten Rutan & Tucker LLP 611 Anton Blvd. Costa Mesa, CA 92626-1931

E. **Further Assurances: Covenant to Sign Documents.** Each Party shall take all actions and do all things, and execute, with acknowledgement or affidavit, if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

F. **Statement of Compliance.** Within thirty (30) days following any written request by a Party, the other Parties shall execute and deliver a statement certifying that this Agreement is unmodified and in full force and effect or if there have been modifications hereto, that this Agreement is in full force and effect as modified, that there are no current uncured defaults under this Agreement, and any other information reasonably requested.

G. **Verification of Compliance.** Any Party may request in writing that the other Parties provide verification of compliance with the terms of this Agreement, including attached Exhibits. The other Parties shall provide the requesting Party with such verification within ninety (90) days of receipt of the request. Such verification shall be in writing and shall include a signed statement from a representative of the Parties, or their respective successors, as the case may be, that the Parties have fully complied with their obligations in this Agreement.

H. **No Agency.** It is expressly agreed that, in carrying out this Agreement, no relationship of principal and agent shall ever exist between the Parties hereto.

I. **No Third Party Beneficiaries.** It is expressly agreed that this Agreement is not for the benefit of any person or entity not a Party hereto or described as a related entity and representative herein. No person or entity who or which is not a signatory to this Agreement shall be deemed to be benefited or intended to be benefited by any provision hereof, and no such person or entity shall acquire any rights or causes of action against either the CBD, Audubon, the Service, the Secretary, March JPA or LNR Riverside hereunder as a result of the Parties' performance or non-performance of their respective obligations under this Agreement. Each of the Parties hereby acknowledges and agrees to the provisions of this Paragraph.

J. **Entire Agreement.** The Parties acknowledge that this Agreement is signed and executed without reliance upon any actual or implied promises, warranties or representations made by any of the Parties or by any representative of any of the Parties, other than those which are expressly contained within this Agreement. This Agreement, including the true and correct Recitals above, inclusive of all definitions contained therein, that are incorporated by reference herein as operative covenants and specifically relied upon by the Parties in executing this Agreement, constitutes the entire agreement and understanding among and between the Parties and supersedes any and all other agreements whether oral or written between the Parties.

K. **Incorporation of Recitals.** The recitals to this Agreement, above, are hereby incorporated herein and made a part hereof.

L. **Amendments and Modifications.** The Order entering this Agreement may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, by (i) written stipulation between the Parties filed with and approved by the Court, or (ii) upon written motion filed by one of the Parties and granted by the Court if the Court determines that such amendment is necessary to prevent a gross miscarriage of justice.

M. **Enforcement of Agreement.** At least 30 days prior to filing any motion to enforce this Agreement, the Party contemplating the motion must bring its claimed breach to the attention of the other Party, in writing, and make a good faith effort to resolve the dispute informally within 30 days thereafter. The Parties agree that they will meet and confer (either

telephonically or in-person) at the earliest possible time in a good-faith effort to resolve the claim before seeking relief from the Court. If the Parties are unable to resolve the claim themselves, either Party may seek relief from the Court. The Parties agree not to seek to invoke the contempt powers of the district court for any alleged breach of this Agreement without fully following the dispute resolution conditions above. Notwithstanding the dismissal of this action the Parties hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with this Agreement and to resolve any motions to modify such terms. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

N. **Construction of Agreement.** This Agreement is the product of arms-length negotiations between the Parties and their respective attorneys. Each of the Parties hereto expressly acknowledges and agrees that this Agreement shall be deemed to have been mutually prepared so that the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement. The paragraph and section headings used in this Agreement are for reference only and shall not affect the construction of this Agreement.

O. **Representations as to Negotiation Process.** The Parties hereto represent to each other that each Party has been represented by counsel with respect to this Agreement and all matters covered by and relating to it, that they have been fully advised by such counsel with respect to their rights and with respect to the execution of this Agreement. The Parties further represent that each Party has entered into this Agreement of his, her, or its free will and independent action without undue pressure, coercion or influence of any sort.

P. **Settlement, No Admissions by Parties.** Each of the Parties acknowledges that this Agreement relates to the avoidance of litigation and the preclusion of actions described above. The Parties, therefore, agree that this Agreement is not to be treated or construed, at any time or in any manner whatsoever, as an admission by either Party regarding the merits of the allegations in *Center for Biological Diversity v. Jim Bartel, et. al.* (S.D. Cal. No. 09-cv-1864-JAH-POR). All Parties recognize, acknowledge and agree that entering into this Agreement by any Party receiving any money is not a concession of its respective damages or the costs in the Lawsuit. This Agreement effectuates settlement of claims in the Lawsuits between the settling Parties that are disputed, contested or denied, and other related matters. Neither this Agreement nor any Party's performance under it is intended to be or shall be asserted by any other Party to be an admission of any kind or character whatsoever except as to the admitted fact that a full, fair and equitable settlement has been reached by each of the Parties. This Agreement is in compromise of the disputed claims between the Parties and shall never be treated as an admission of liability by any Party, court, arbitrator(s), mediator(s), or dispute resolution panel.

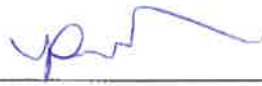
Q. **Choice of Law and Choice of Forum.** This Agreement shall be deemed to have been executed and delivered within the State of California; the rights and obligations of the Parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation shall be the U.S. District Court for the Southern District of California.

R. **Authorized Signatory.** Each Party represents and warrants to each other Party that its signature to this Agreement has the authority to bind the Party and this Agreement does in fact bind the Party, and that they have the authority to agree to the Court's entry of the terms and conditions of this Agreement and do hereby agree to the terms herein.

S. **Effective Date.** This Agreement is effective upon its execution by all Parties and the entry of an order by the Court ratifying the Agreement.

T. **Counterparts.** This Agreement may be executed in counterparts and when so executed by the Parties, shall become binding upon them and each such counterpart will be an original document.


9/5/12
Date


Center for Biological Diversity
by PETER GALVIN

Approved as to Form by JONATHAN EVANS



9/5/12
Date


San Bernardino Valley Audubon Society
by DREW FELDMANN

Approved as to Form by JONATHAN EVANS



Date

March Joint Powers Authority
by _____

Approved as to Form by _____

Date

LNR Riverside LLC
by _____

Approved as to Form by _____

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Date

Center for Biological Diversity
by _____

Approved as to Form by _____

Date

San Bernardino Valley Audubon Society
by _____

Approved as to Form by _____

9/6/12
Date

Lori M Stone
March Joint Powers Authority
by Lori Stone, Executive Director

Approved as to Form by _____

Melinda Ann

Date

LNR Riverside LLC
by _____

Approved as to Form by _____

R. **Authorized Signatory.** Each Party represents and warrants to each other Party that its signature to this Agreement has the authority to bind the Party and this Agreement does in fact bind the Party, and that they have the authority to agree to the Court's entry of the terms and conditions of this Agreement and do hereby agree to the terms herein.

S. **Effective Date.** This Agreement is effective upon its execution by all Parties and the entry of an order by the Court ratifying the Agreement.

T. **Counterparts.** This Agreement may be executed in counterparts and when so executed by the Parties, shall become binding upon them and each such counterpart will be an original document.

Date

Center for Biological Diversity
by _____

Approved as to Form by _____

Date

San Bernardino Valley Audubon Society
by _____

Approved as to Form by _____

Date

March Joint Powers Authority
by _____

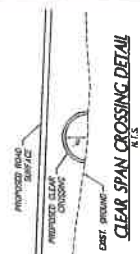
Approved as to Form by _____

9-10-12
Date

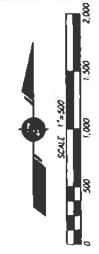
LNR Riverside LLC
by LNR RIVERSIDE HOLDINGS, LLC
by: Lang Cottrell Vice President
Approved as to Form by 

RUTAN & TUCKER, LLP

EXHIBIT A

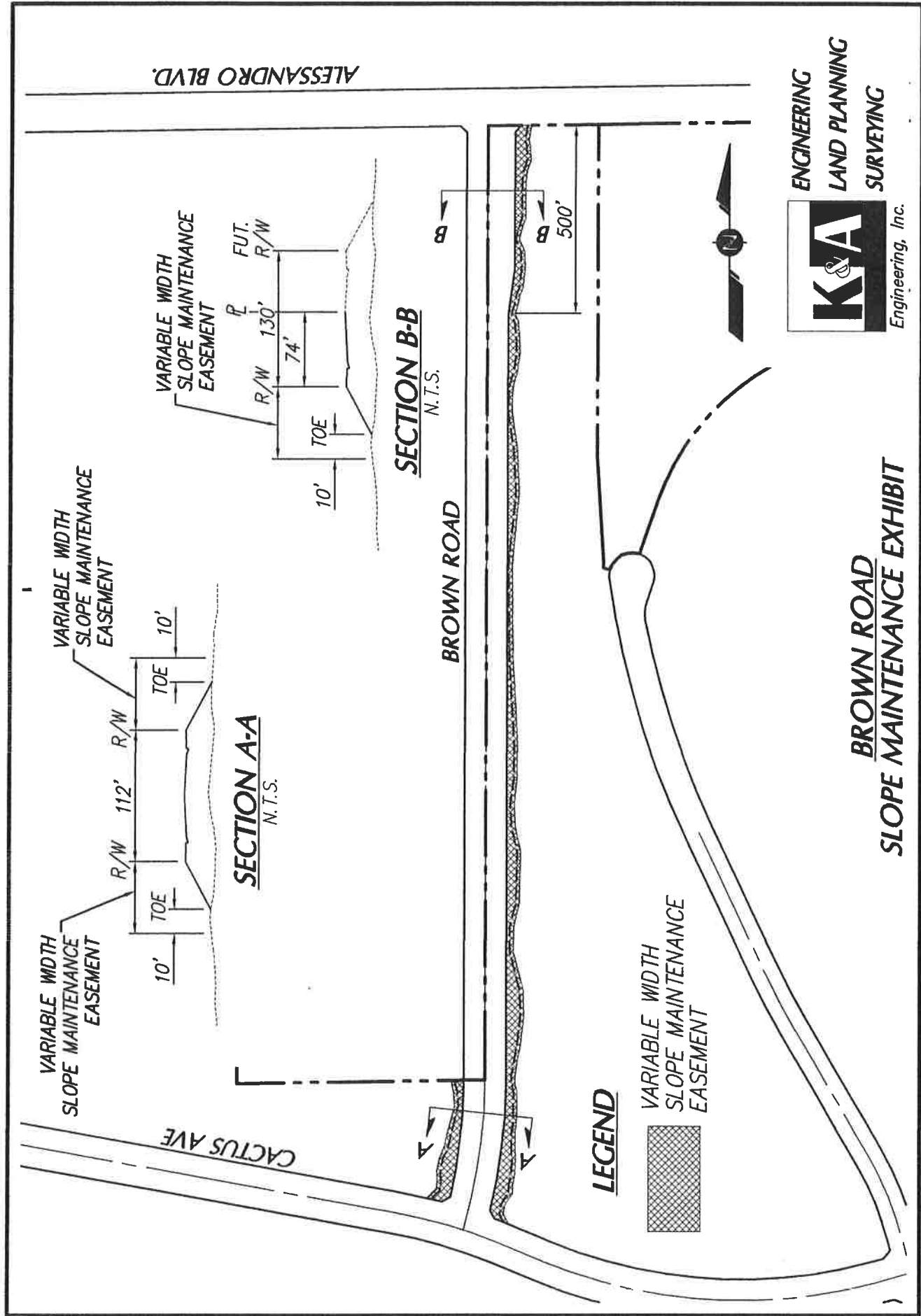


- EXISTING ROADS, RECREATION TRAILS
- CONSERVATION EASEMENT
- DEVELOPABLE AREA
- PROPOSED PARK AREA
- WATER QUALITY
- OPEN SPACE AREA



ENGINEERING: LNA
 LAND PLANNING: LNA
 SURVEYING: LNA
 GROUNDWATER: LNA
 TRAFFIC: LNA
 ENVIRONMENTAL: LNA

**LNR - MERIDIAN
 WEST CAMPUS
 LAND USE
 STUDY "B2"**



ALESSANDRO BLVD.

VARIABLE WIDTH
SLOPE MAINTENANCE
EASEMENT

VARIABLE WIDTH
SLOPE MAINTENANCE
EASEMENT

SECTION A-A
N.T.S.

SECTION B-B
N.T.S.

BROWN ROAD

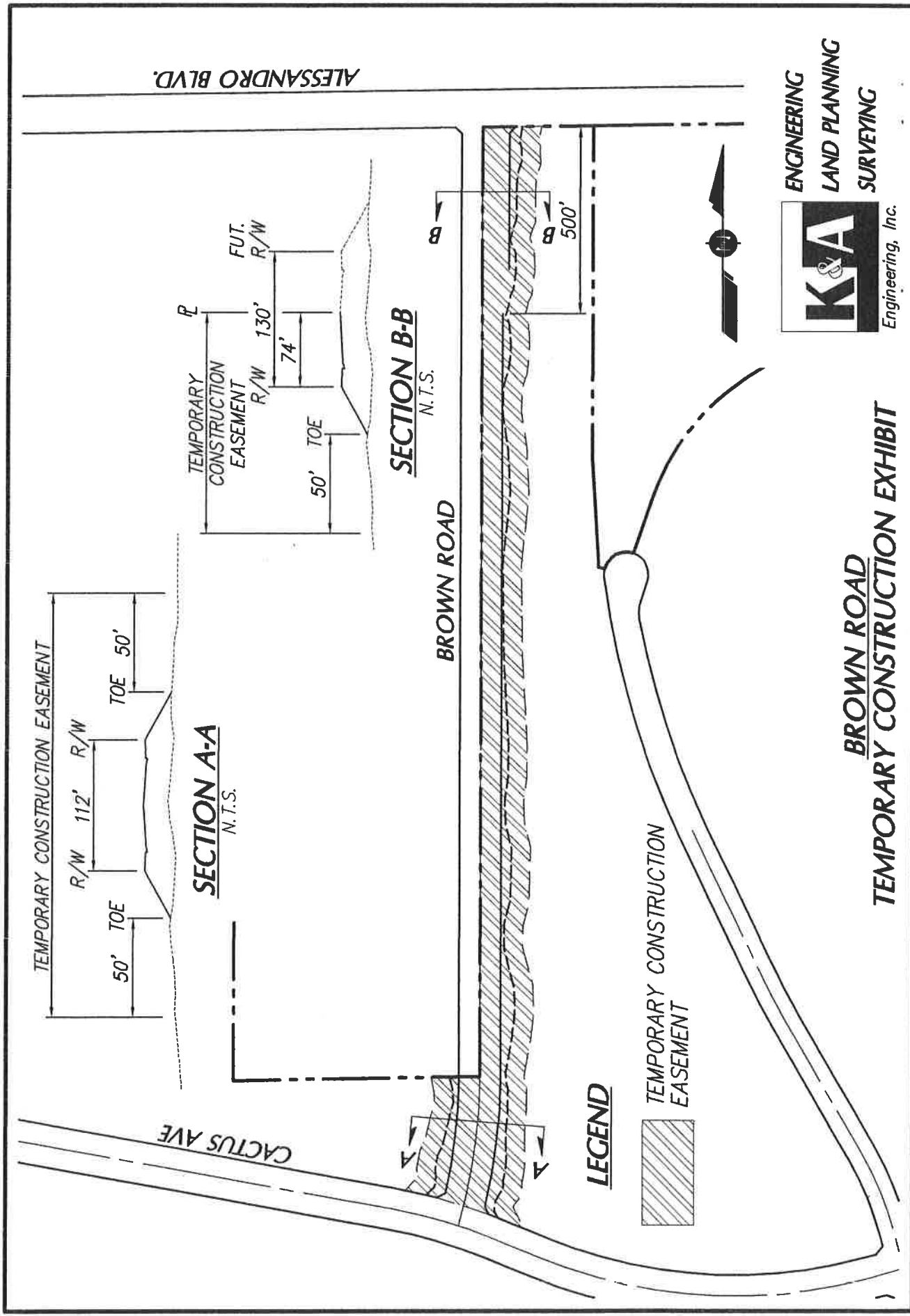
LEGEND

VARIABLE WIDTH
SLOPE MAINTENANCE
EASEMENT



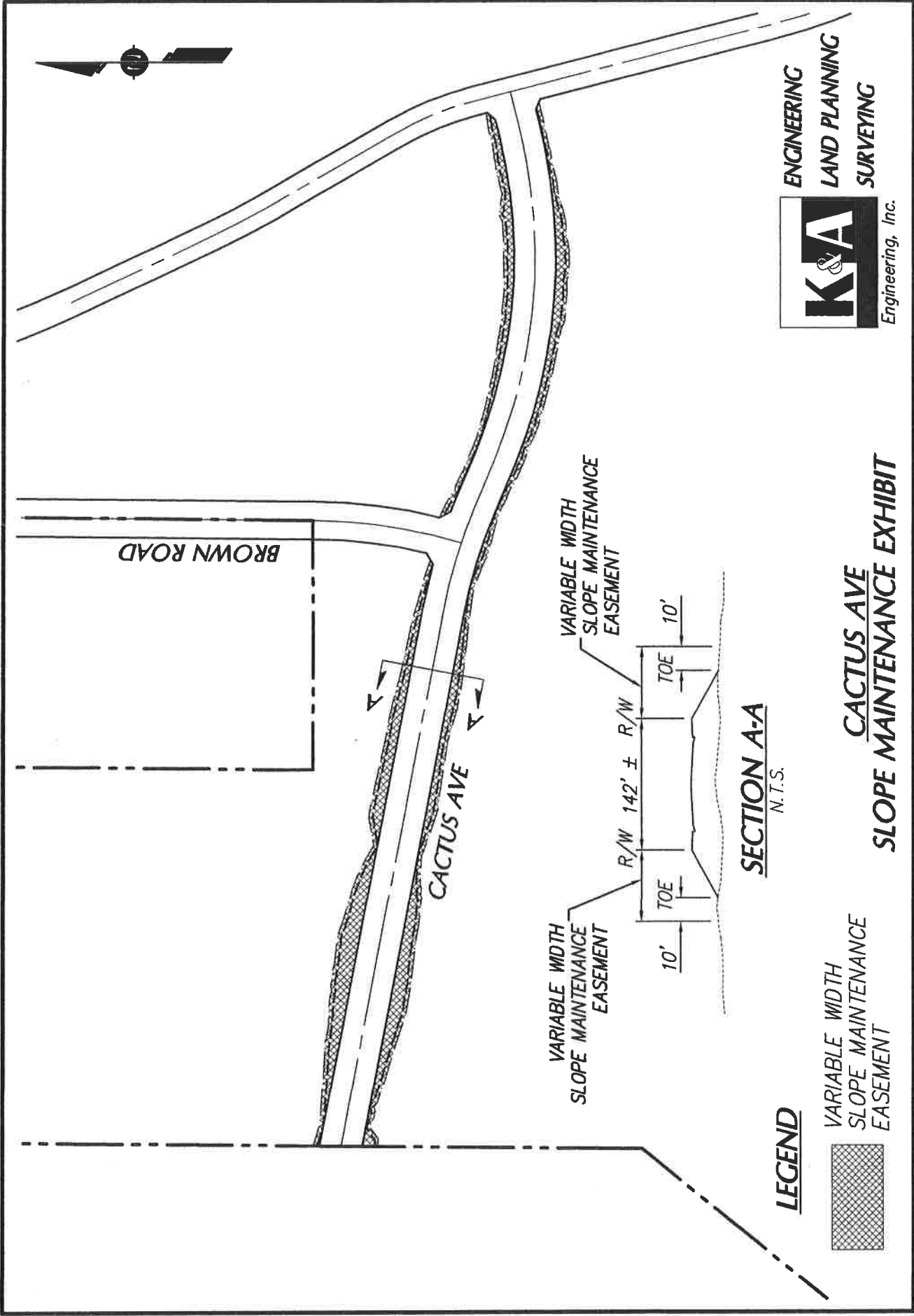
ENGINEERING
LAND PLANNING
SURVEYING

**BROWN ROAD
SLOPE MAINTENANCE EXHIBIT**



**ENGINEERING
LAND PLANNING
SURVEYING**

**BROWN ROAD
TEMPORARY CONSTRUCTION EXHIBIT**

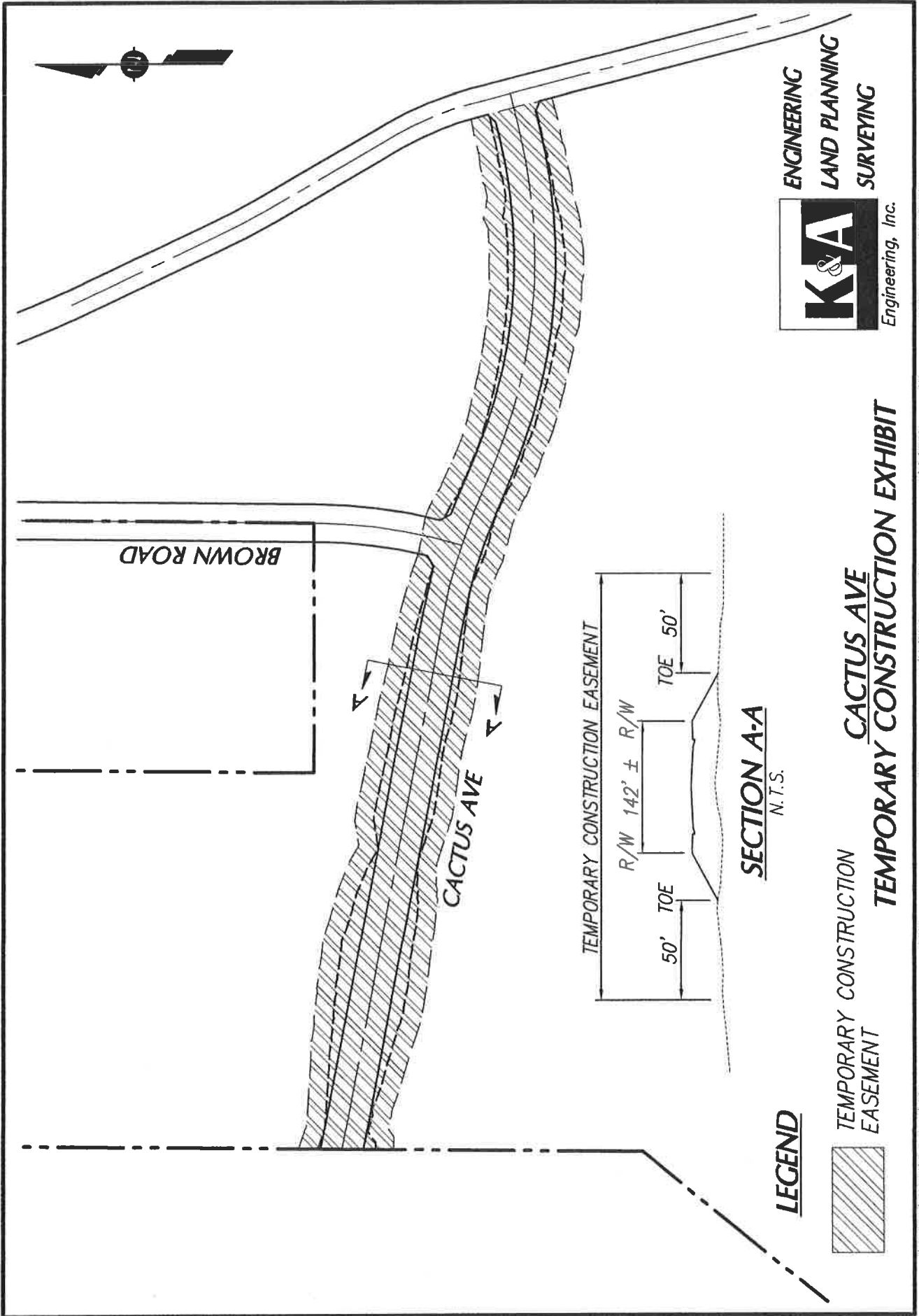


K&A
Engineering, Inc.
ENGINEERING
LAND PLANNING
SURVEYING

CACTUS AVE
SLOPE MAINTENANCE EXHIBIT

LEGEND

 VARIABLE WIDTH SLOPE MAINTENANCE EASEMENT



LEGEND

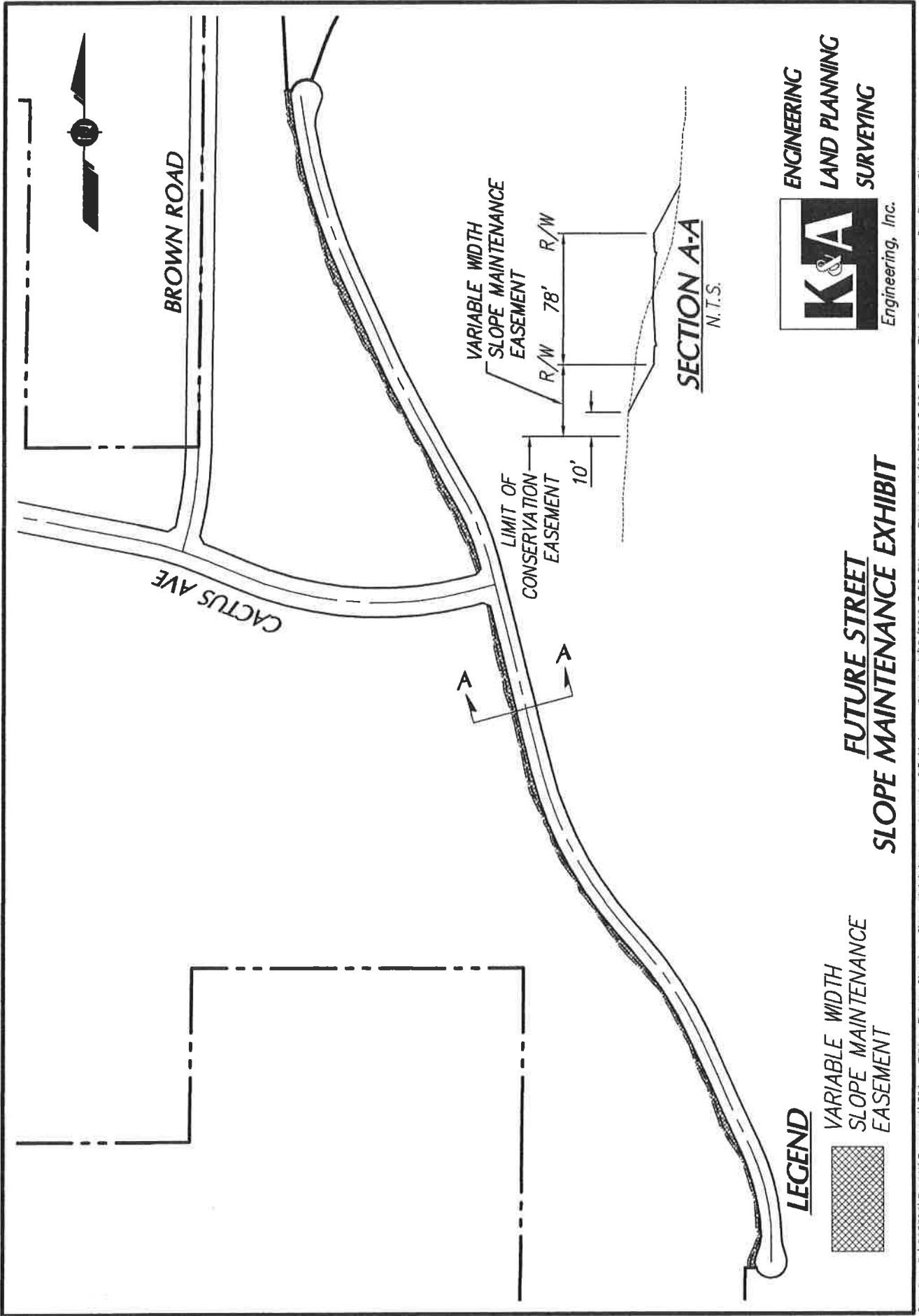


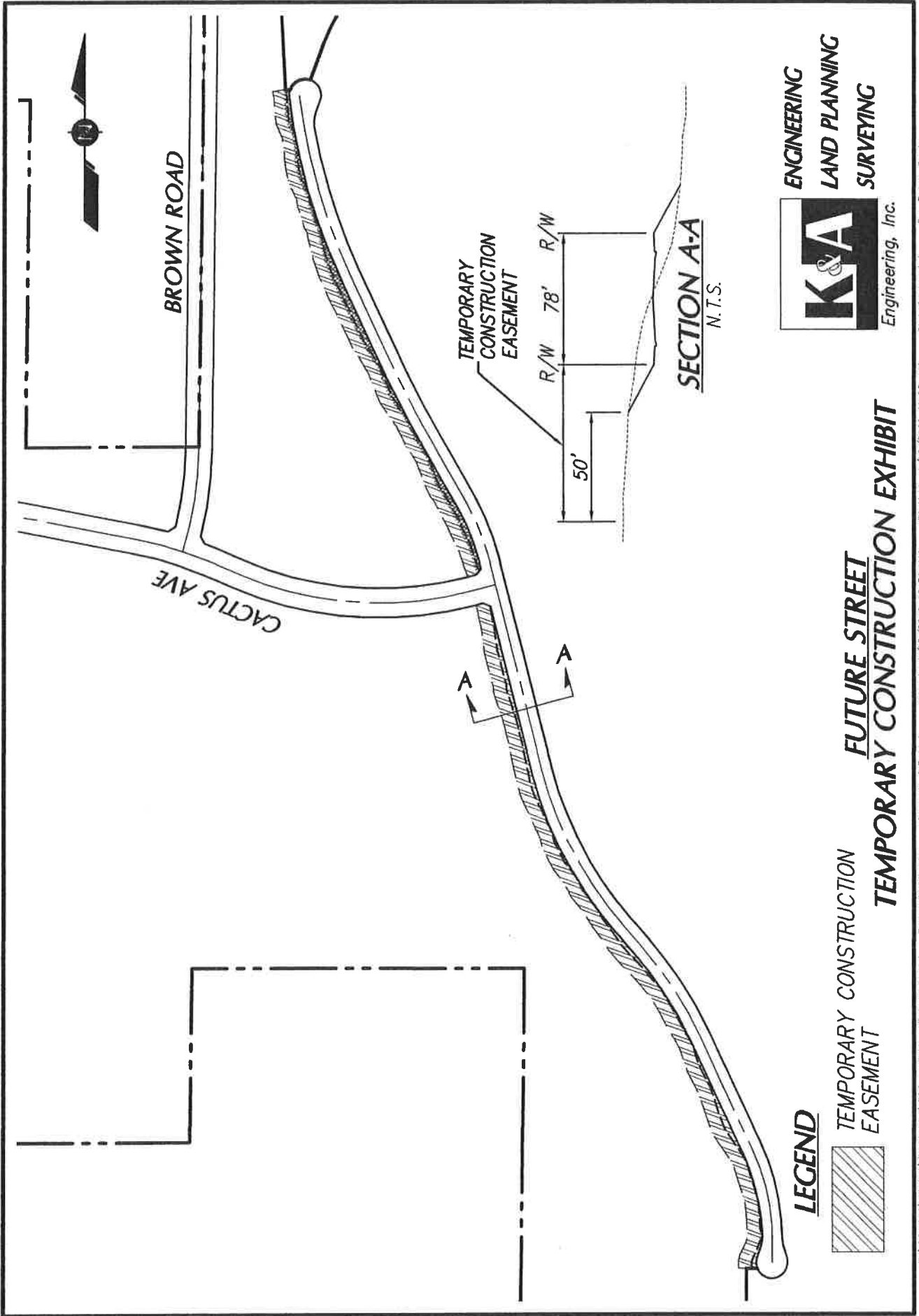
TEMPORARY CONSTRUCTION EASEMENT

CACTUS AVE
TEMPORARY CONSTRUCTION EXHIBIT



ENGINEERING
LAND PLANNING
SURVEYING





**ENGINEERING
LAND PLANNING
SURVEYING**



K&A
Engineering, Inc.

**FUTURE STREET
TEMPORARY CONSTRUCTION EXHIBIT**

EXHIBIT B

Exhibit B

*(Center for Biological Diversity, et al. v. Jim Bartel, et al.,
S.D. Cal. No. 09-cv-1864-JAH-POR)*

Mitigation Measures for Any Development in the Developable Area

- All exterior on-site light fixtures shall be fully shielded with no light emitted above the horizon.
- Exterior on-site lighting shall not exceed .5 candle/foot at the property line confirmed through point-by-point photometric study.
- All exterior lighting shall be low-pressure sodium or high-pressure sodium. Metal Halide is prohibited.
- Maximum on-site lighting wattage is 750.
- Maximum height of on-site exterior lighting is 25'.
- Preferential parking spaces shall be offered to car pools and van pools.
- Employers with 250 employees or more shall develop a trip reduction plan to increase vehicle occupancy.
- Buildings shall be designed to reduce energy usage by utilizing solar or low emissions water heaters, double paned glass windows, using light colored roofing materials, using skylights in warehouses, orienting buildings north to the extent practical, and increasing wall and attic insulation above Title 24 requirements.
- A construction relations officer should be appointed to act as a community liaison to oversee on-site construction activity and all emissions and congestion related matters.
- Restrict idling emission from trucks by using auxiliary power units and electrification at the industrial warehouse facilities.
- Landscape with appropriate drought-tolerant species to reduce water consumption.
- Project shall provide plentiful short- and long- term bicycle parking facilities to meet peak season maximum demand (e.g., one bike rack space per 20 vehicle/employee parking spaces).
- Project shall provide "end-of-trip" facilities including showers, lockers, and changing space (e.g., four clothes lockers and one shower provided for every 80 employee parking spaces, separate facilities for each gender for projects with 160 or more employee parking spaces).
- Project design shall include a designated bicycle route connecting all units, on-site bicycle parking facilities, offsite bicycle facilities, site entrances, and primary building entrances to

existing Class I or Class II bike lane(s) within one-half mile. Bicycle route connects to all streets contiguous with project site. Bicycle route has minimum conflicts with automobile parking and circulation facilities. All streets internal to the project wider than 75 feet have Class II bicycle lanes on both sides.

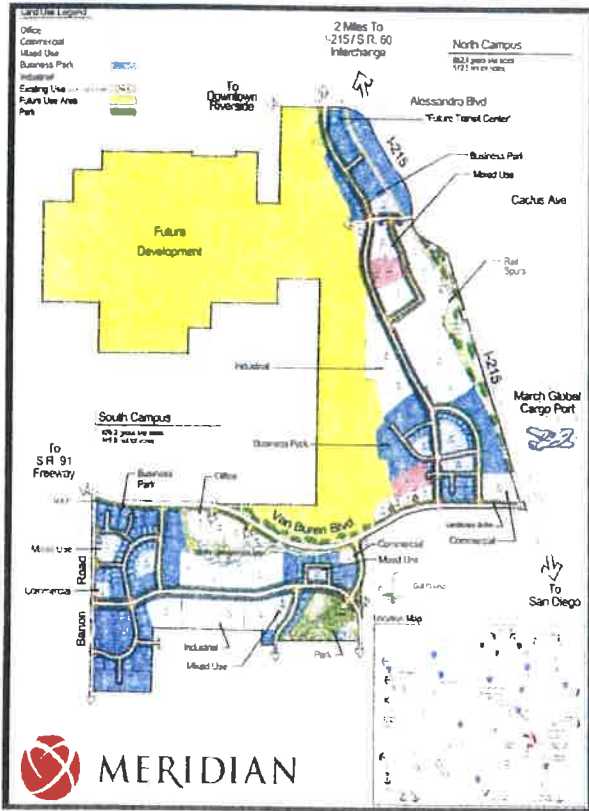
- The project shall provide a pedestrian access network that internally links all uses and connects to all existing/planned external streets and pedestrian facilities contiguous with the project site. Project design shall include a designated pedestrian route interconnecting all internal uses, site entrances, primary building entrances, public facilities, and adjacent uses to existing external pedestrian facilities and streets. Route has minimal conflict with parking and automobile circulation facilities. Streets within the project have sidewalks on both sides. All sidewalks are a minimum of five feet wide and feature vertical curbs. Pedestrian facilities and improvements such as grade separation, wider sidewalks, and traffic calming are implemented wherever feasible to minimize pedestrian barriers. All site entrances provide pedestrian access.
- Project shall provide a parking lot design that includes clearly marked and shaded pedestrian pathways between transit facilities and building entrances.
- Project shall be oriented towards existing transit, bicycle, or pedestrian corridor. Setback distance between project and existing or planned adjacent uses shall be minimized. Setbacks between project buildings and planned or existing sidewalks shall be minimized. Buildings shall be oriented towards existing or planned street frontage. Primary entrances to buildings shall be located along planned or existing public street frontage. Project shall provide bicycle access to any planned bicycle corridor(s). Project shall provide pedestrian access to any planned pedestrian corridor(s).
- Employers with over 250 employees shall provide on-site food vending machines, fridge, microwave and mail facilities and use reasonable effort to provide an ATM, onsite computer, internet connection, and other service to reduce the need for employees to leave for services during business hours.
- Project site shall be on a vacant infill site, redevelopment area, or brownfield or greyfield lot that is highly accessible to regional destinations, through public transit.
- Project shall install Energy Star labeled roof materials.
- Project shall use CARB-certified diesel construction equipment.
- Project sponsor shall encourage the recycling/reuse of demolished construction material.
- Provide parking lot areas will include 40% tree coverage (approximately 1 tree for every 14 stalls) for office uses and 30% tree coverage (approximately 1 tree for every 20 stalls) for industrial or business park uses within 10 to 15 years of construction. Project will use trees that mature over a longer time frame with lower low water demand. Shade requirements will exclude truck courts and drive isles.

- Provide one preferential parking space for EVs/CNG vehicles for single user parking lots and shared retail parking per hundred required spaces not to exceed 4 preferential parking spaces per development. 1 charging facility will be provided for every 2 EV stalls.
- Provide energy efficient appliances (e.g., Energy Star) and energy-reducing programmable thermostats that automatically adjust temperature settings.
- Provide low flow and waterless fixtures for restroom facilities.
- All lots within the Meridian development adjacent to the Conservation Easement Areas shall be landscaped with native and non-invasive plant materials to protect biological resources, such as habitat supporting LBV.
- The proposed non-potable water system will meet “Purple” pipe standards for reclaimed water systems.
- The LEED checklist shall be provided for evaluation prior to approval of the design plans and also prior to approval of the construction plans verifying that a minimum score consistent with LEED certification is achieved. Submittal of the LEED checklist shall be from a registered architect or LEED accredited professional (AP).



MERIDIAN

The Green Alternative



- Meridian is a 1,290-acre mixed-use development with projected employment of approximately 15,000 jobs.
- The Meridian Design Guidelines were awarded the 2008 Association of Defense Communities (ADC) Most Innovative Community Project.
- Meridian includes over 14 miles of bike lanes, 18 miles of sidewalks, and bus pullouts to encourage the use of alternate transportation.
- Meridian is home to the future Moreno Valley/March Field Metrolink Station, with approximately 350,000 square feet of office development currently surrounding the Metrolink site.
- All employment uses include bike racks, preferential parking for car pools, solar or low emission water heaters, and high efficiency high-pressure sodium exterior lighting.
- Reclaimed water purple pipe is plumbed for all landscaped areas in the 1,290-acre Meridian development.

- MJPA enforces the WRCOG Good Neighbor Guidelines for the siting of warehouse and distribution uses near residential communities.
- All Meridian developments are required to provide an on-site recycling area and designated truck routes.
- The 3-story Intellicenter development is a LEED Gold certified office building adjacent to the future Metrolink station.
- The Fresh and Easy food production and warehouse facility operates a 2 Megawatt photo-voltaic solar roof system producing approximately 25% of their energy demand.
- Fresh and Easy utilizes electric hybrid trailer refrigeration units which minimizes the use of energy and diesel fuel at their facility.
- In lieu of hauling materials to local landfills, LNR recycled 70,000 tons of concrete and asphalt, as well as slabs from former military structures for street base course in Meridian. They mulched and recycled trees, shrubs and vegetation for reuse; and transplanted and re-used many of the palm trees.

