

33595

AGREEMENT NO. 13-01
RIGHT-OF-WAY MAP NOS. 19-RW49, 19-RW50, AND 19-RW51
LOS ANGELES RIVER – PARCELS 6, 8, 9, AND 97

USE AGREEMENT

THIS USE AGREEMENT, made and entered into on this 6th day of June, 2012, by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter referred to as LACFCD), and the CITY OF LONG BEACH, a municipal corporation (hereinafter referred to as CITY).

RECITALS

WHEREAS, LACFCD owns the fee title to certain properties along the east side of the Los Angeles River between Osgood and Del Amo Boulevard in the City of Long Beach, as shown on Exhibit A attached hereto and made a part hereof. These properties, specifically excluding the adjacent County of Los Angeles equestrian trail and the LACFCD'S adjacent flood control channel and appurtenant structures, shall hereinafter be referred to as PREMISES; and

WHEREAS, CITY desires to develop, construct, operate, and maintain open space, parkland, trails, and other recreational amenities in connection with the DeForest Wetlands Project (hereinafter referred to as AMENITIES) on PREMISES; and

WHEREAS, LACFCD and CITY are mutually interested in providing quality public open space, parkland, and other recreational amenities to CITY'S residents; and

WHEREAS, LACFCD, while performing the primary functions of flood control and water conservation, is willing to cooperate where feasible with CITY in CITY'S development, construction, operation, and maintenance of AMENITIES on PREMISES; and

WHEREAS, LACFCD and CITY desire to enter into this USE AGREEMENT to establish the terms and conditions applicable to CITY'S use of PREMISES for the development, construction, operation, and maintenance of AMENITIES.

NOW, THEREFORE, in consideration of the promises and faithful performance by LACFCD and CITY of mutual covenants herein contained for the period of time herein set forth, LACFCD and CITY hereto mutually agree as follows:

1. **AUTHORIZED USE:**

- a. CITY is authorized and permitted to use PREMISES only for the development, construction, operation, maintenance, and use of AMENITIES and only in accordance with the terms and conditions of this

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USE AGREEMENT and any permit obtained from LACFCD as described below. Any other use of PREMISES or any portion thereof by CITY is expressly prohibited.

- b. CITY'S use of PREMISES for open space, parkland, trails, and other recreational amenities for the DeForest Wetlands Project is nonexclusive and shall be subordinate to the primary uses and purposes of PREMISES for flood control, water conservation, watershed management, water quality, and CITY'S use of PREMISES shall at no time interfere with the use of PREMISES or the use of LACFCD'S adjacent property and/or improvements for any such purposes.
- c. LACFCD reserves the right to use or allow others to use PREMISES for any and all lawful purposes in addition to flood control, water conservation, and watershed management including, but without limitation, public transportation, utilities, roads, parks and recreation, parking, public/private development, and/or other related uses together with incidental rights of construction and installation of facilities, ingress and egress, operation, and maintenance. The exercise of the rights reserved herein shall not be inconsistent with CITY'S use or constitute unreasonable interference.
 - (i). Interruption of CITY'S use for a period at LACFCD'S sole discretion to permit construction and installation of other facilities shall not be deemed unreasonable interference.
 - (ii). CITY shall be notified at least ninety (90) days prior to the commencement of any such construction or alteration.
 - (iii). No improvements or structures shall be attached to, built upon, or otherwise unreasonably interfere with CITY'S use without the written approval of CITY.
- d. This USE AGREEMENT is valid only to the extent of LACFCD'S jurisdiction. Acquisition of permits required by other affected agencies and consent of underlying fee owner(s) of LACFCD'S easement are the responsibility of the permittee(s). Nothing contained in this USE AGREEMENT shall be construed as a relinquishment of any rights now held by LACFCD.

2. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS:

- a. CITY understands and acknowledges that it is required to comply with the requirements set forth in the California Environmental Quality Act (CEQA) and CEQA Guidelines prior to implementing AMENITIES and that CITY shall be the lead agency with respect to any and all CEQA compliance related to AMENITIES. In addition to its other indemnification obligations

as specified below, CITY hereby agrees to indemnify, defend, and hold harmless LACFCD, the County of Los Angeles, and their elected and appointed officers, employees, and agents from and against any and all claims and/or actions related to AMENITIES that may be asserted by a third party or public agency alleging violations of CEQA, CEQA Guidelines, or the National Environmental Policy Act.

- b. CITY shall bear all costs in connection with the construction of the AMENITIES, including preparation of plans and specifications and all construction costs and expenses.
- c. Prior to commencing the development or construction of any of AMENITIES, CITY shall obtain a permit from LACFCD, including the approval by LACFCD of the plans and specifications for AMENITIES. Permits shall be obtained by application to the County of Los Angeles Department of Public Works, Construction Division, Permits and Subdivisions Unit. This USE AGREEMENT will be referenced in the permit conditions.
- d. Upon completion of the construction of any of AMENITIES on PREMISES, CITY shall provide LACFCD with approved as-built plans.
- e. CITY shall keep, inspect, and maintain PREMISES and all AMENITIES located thereon in a safe, clean, and orderly condition and shall not permit trash and debris, including, but not limited to rubbish, tin cans, bottles, and garbage, to accumulate at any time, nor shall CITY commit, suffer, or permit any waste on PREMISES or AMENITIES or permit any acts to be done in violation of any laws or ordinances.
- f. CITY shall remove graffiti from PREMISES and all AMENITIES located thereon and any other walks, fences, and signs that are located within PREMISES in accordance with the following time periods:
 - (i). Vulgar graffiti (i.e., profane, obscene, or racist) shall be removed within twenty-four (24) hours, Monday through Friday.
 - (ii). All other graffiti shall be removed within seventy-two (72) hours, Monday through Friday.
- g. CITY shall replace or repair any property of LACFCD that becomes damaged by CITY (including any person entering the PREMISES at CITY'S invitation or with the consent of CITY, either expressed or implied) within a reasonable time to the satisfaction of LACFCD or shall compensate LACFCD for the damage within thirty (30) days of billing.

- h. CITY shall close all gates and take all actions necessary to render PREMISES inaccessible to public access in the event CITY abandons its operation and maintenance of PREMISES and AMENITIES or when notified by LACFCD. LACFCD shall close all gates when the weather forecast predicts significant rainfall within the next twenty-four (24)-hour period.

3. TERM:

- a. The term of this USE AGREEMENT shall be for forty (40) years (Initial Term), subject to LACFCD'S right to terminate CITY'S use as provided for in Section 4 below.
- b. This USE AGREEMENT shall expire at the end of the Initial Term, provided, however, that LACFCD may extend the term of this USE AGREEMENT beyond the Initial Term, subject to such terms and conditions as it deems appropriate, upon receipt of a written request from CITY no earlier than twelve (12) months or later than six (6) months prior to the end of the Initial Term.

4. TERMINATION OF USE:

- a. LACFCD shall have the right to cancel and terminate CITY'S use PREMISES or any portion thereof by giving CITY at least a one hundred eighty (180)-day prior written notice under the following conditions:
 - (i). LACFCD proposes to implement or approve the implementation of a project to carry out any of the objects or purposes of the Los Angeles County Flood Control Act, including flood control, water conservation, and water quality, that will be located on or that will include PREMISES or any portion thereof that is being used by CITY pursuant to this USE AGREEMENT; and
 - (ii). LACFCD determines, in good faith, that CITY'S AMENITIES and/or CITY'S use of PREMISES or portion thereof or any of them will be substantially incompatible with the proposed project; and
 - (iii). LACFCD has notified CITY of the basis for LACFCD'S determination that a substantial incompatibility will exist and has provided CITY with a reasonable opportunity to propose modifications to AMENITIES or to CITY'S use of PREMISES or portion thereof that will eliminate the incompatibility.
- b. LACFCD shall have the right to cancel and terminate CITY'S use of PREMISES or any portion thereof pursuant to this

USE AGREEMENT by giving CITY at least a thirty (30)-day prior written notice if CITY breaches any term or condition of this USE AGREEMENT.

- c. LACFCD shall have the right to immediately cancel and terminate CITY'S use of PREMISES or any portion thereof or, in LACFCD'S sole discretion, to temporarily suspend such use in the event LACFCD determines, in good faith, that it is necessary for LACFCD to enter and take exclusive possession of PREMISES or any portion thereof in order to respond to an emergency as defined in Public Contract Code, Section 1102.
- d. CITY shall have the right to cancel and terminate its use of PREMISES or any portion thereof pursuant to this USE AGREEMENT for any reason by giving LACFCD at least a sixty (60)-day prior written notice.

5. REMOVAL OF IMPROVEMENTS AND RESTORATION OF PREMISES:

- a. Upon the written request by LACFCD or upon the expiration or sooner termination of the applicable permit or this USE AGREEMENT, CITY shall, at its sole expense, obtain a separate permit from LACFCD and remove all AMENITIES constructed or installed by or on behalf of CITY on PREMISES and restore PREMISES to a condition similar to or better than those that existed on the effective date of this USE AGREEMENT, reasonable wear and tear excepted.
- b. If CITY fails to remove AMENITIES and restore PREMISES or portion thereof as provided for in Subsection 5 a., within thirty (30) days of the expiration of this USE AGREEMENT or sooner termination of CITY'S use of PREMISES or portion thereof, LACFCD may remove said AMENITIES.
- c. If LACFCD removes any of AMENITIES pursuant to Subsection 5 b., LACFCD shall submit a billing invoice to CITY indicating the costs and expenses incurred by LACFCD in connection with the removal of any AMENITIES and CITY shall reimburse LACFCD all such costs and expenses within thirty (30) days of the billing invoice.

6. MISCELLANEOUS TERMS AND CONDITIONS:

a. Indemnification

- (i). In accordance with Government Code, Section 895.4, LACFCD and CITY agree to apportion responsibility and indemnification notwithstanding any other provision of the law as follows:

- (1). CITY shall indemnify, defend, and hold LACFCD, County of Los Angeles, and their respective officers, employees, and agents harmless from and against any claims, demands,

liability, damages, costs, and expenses; including, without limitation, involving bodily injury, death, or personal injury of any person or property damage of any nature whatsoever arising from or related to the construction, reconstruction, maintenance, operation, use, or removal of any of AMENITIES.

- (2). LACFCD shall indemnify, defend, and hold CITY and its officers, employees, and agents harmless from and against any claims, demands, liability, damages, costs, and expenses; including, without limitation, involving bodily injury, death, or personal injury of any person or property damage of any nature whatsoever arising from or in connection with the construction, reconstruction, maintenance, operation, use, or removal of any improvements constructed or maintained by LACFCD on, above, or under PREMISES or arising from any and all uses of PREMISES by LACFCD.
- (ii). CITY releases LACFCD and waives all right to damages for any loss, costs, or expenses CITY may sustain as a result of any damage to or destruction of any of AMENITIES on PREMISES or any portion thereof attributable to LACFCD'S watershed management activities, including any flood control, water conservation, or water-quality activities on or adjacent to PREMISES or attributable to any flooding caused by inadequacy or failure of LACFCD'S facilities.
- (iii). Each party to this USE AGREEMENT shall include the other within the protection of any indemnification clause contained in any ancillary contract relating to PREMISES.

b. Without limiting CITY'S indemnification of LACFCD, LACFCD acknowledges that CITY is self-insured for its primary Commercial General and Automobile liabilities as well as Workers' Compensation. CITY shall maintain self-insurance coverage equivalent in coverage scope to the following:

- (i). Commercial General liability equivalent in coverage to ISO form CG 00 01 10 93 in an amount not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) aggregate.
- (ii). Commercial Automobile liability equivalent in coverage to ISO form CA 00 01 06 92 in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) combined single-limit per accident for

bodily injury and property damage covering Auto Symbol 1 (Any Auto).

- (iii). Workers' Compensation and employer's liability in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) per accident or occupational illness as required by the California Labor Code. With respect to this coverage under Section 6 b. (III), CITY agrees to waive its right of subrogation against LACFCD with respect to this USE AGREEMENT.
 - (iv). CITY shall furnish to LACFCD a Certificate of Self-Insurance evidencing CITY'S self-insurance program no later than ten (10) working days after execution of this USE AGREEMENT or before CITY takes possession of PREMISES, whichever occurs first.
- c. CITY and LACFCD shall have no financial obligation to each other under this USE AGREEMENT except as herein expressly provided.
 - d. CITY expressly acknowledges that this USE AGREEMENT is primarily for CITY'S benefit and that LACFCD is not to incur any liability whatsoever for any injury, death, or property damage arising from any use of PREMISES or any portion thereof or any of AMENITIES by persons using AMENITIES.
 - e. LACFCD and its Board, authorized officer, engineer, employee, contractor, and agents or representatives shall have full right and authority to enter in and upon PREMISES or any portion thereof at any and all reasonable times during the term of this USE AGREEMENT, all without interference or hindrance by CITY and its agents, officers, contractors, employees, or representatives for the purpose of inspecting the same and to serve or post any notice required or permitted by law for protection of any right or interest of LACFCD.
 - f. Except as to fuels, lubricants, and products associated with motorized vehicles, equipment, and gardening- or maintenance-related substances, or all of the above, CITY shall not cause or allow the presence, use, storage, or disposal of any hazardous substances on or about PREMISES or any portion thereof without the prior written consent of LACFCD. In the event of spillage, leakage, or escape of any hazardous substance onto PREMISES or any portion thereof, CITY shall immediately notify LACFCD by calling (800) 675-4357. If the spillage, leakage, or escape was caused by CITY, CITY shall promptly remove any such substance from PREMISES or the affected portion thereof to LACFCD'S satisfaction. In addition to removing any of CITY'S hazardous substances, CITY shall be liable for and reimburse LACFCD for any and all cost and expenses that

LACFCD may incur or suffer as a result thereof. Such responsibility shall include cost or expenses as LACFCD may incur by reason of the Federal, State, local, or other authoritative agency's laws and regulations. Notwithstanding the foregoing, CITY shall have no responsibility regarding any spill, leak, or escape associated with any of LACFCD'S tenants, licensees, or easement holders.

- g. Any notice, invoices, reports, correspondence, or other communication concerning this USE AGREEMENT shall be directed to the following, except that either party may change the name or address by giving the other party at least a ten (10)-day written notice of the new name or address:

LACFCD: Mr. Gary Hildebrand, Assistant Deputy Director
County of Los Angeles
Department of Public Works
Watershed Management Division, 11th Floor
P.O. Box 1460
Alhambra, CA 91802-1460

CITY: Mr. George Chapjian, Director
City of Long Beach
Department of Parks, Recreation & Marine
2760 North Studebaker Road
Long Beach, CA 90815-1697

- h. Parties are and shall at all times remain as wholly independent entities to each other. No party to this USE AGREEMENT shall have power to incur any debt or liability on behalf of the other party unless expressly provided to the contrary by this USE AGREEMENT. No employee, agent, or officer of either party shall be deemed for any purpose whatsoever to be an agent, employee, or officer of the other party.

- i. This USE AGREEMENT shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

- j. If any provision of this USE AGREEMENT shall be determined by any court to be invalid, illegal, or unenforceable to any extent, the remainder of this USE AGREEMENT shall not be affected and this USE AGREEMENT shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this USE AGREEMENT.

- k. This USE AGREEMENT may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

n. The effective date of this USE AGREEMENT shall be the date of the last party's signature.

[illegible]

IN WITNESS WHEREOF, the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, and the CITY OF LONG BEACH, a municipal corporation, have executed this USE AGREEMENT as of the dates of their respective signatures.

LOS ANGELES COUNTY FLOOD
CONTROL DISTRICT,
a body corporate and politic

By 

Chief Engineer

6/28/2012

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN
County Counsel

By 

Deputy

CITY OF LONG BEACH,
a municipal corporation

By 

Assistant City Manager

City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

ATTEST:

By _____

City Clerk

APPROVED AS TO FORM:

By 

Deputy City Attorney

GC:sw

P:\wmpub\Secretarial\2012 Documents\Board Letters\DeForrest\DeForest Wellands Use Agmt (to be executed).docx

**ACKNOWLEDGMENT FORM
(FOR COUNTY USE ONLY)**

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On 6/20/12, before me, DEAN C. LOGAN, Registrar-Recorder /County Clerk of
the County of Los Angeles, personally appeared Diego Cadena, its Deputy
Director

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

**I certify under PENALTY OF PERJURY under the Laws of the State of California that the foregoing
paragraph is true and correct.**

WITNESS my hand and official seal.

DEAN C. LOGAN, Registrar-Recorder/
County Clerk of the County of Los Angeles



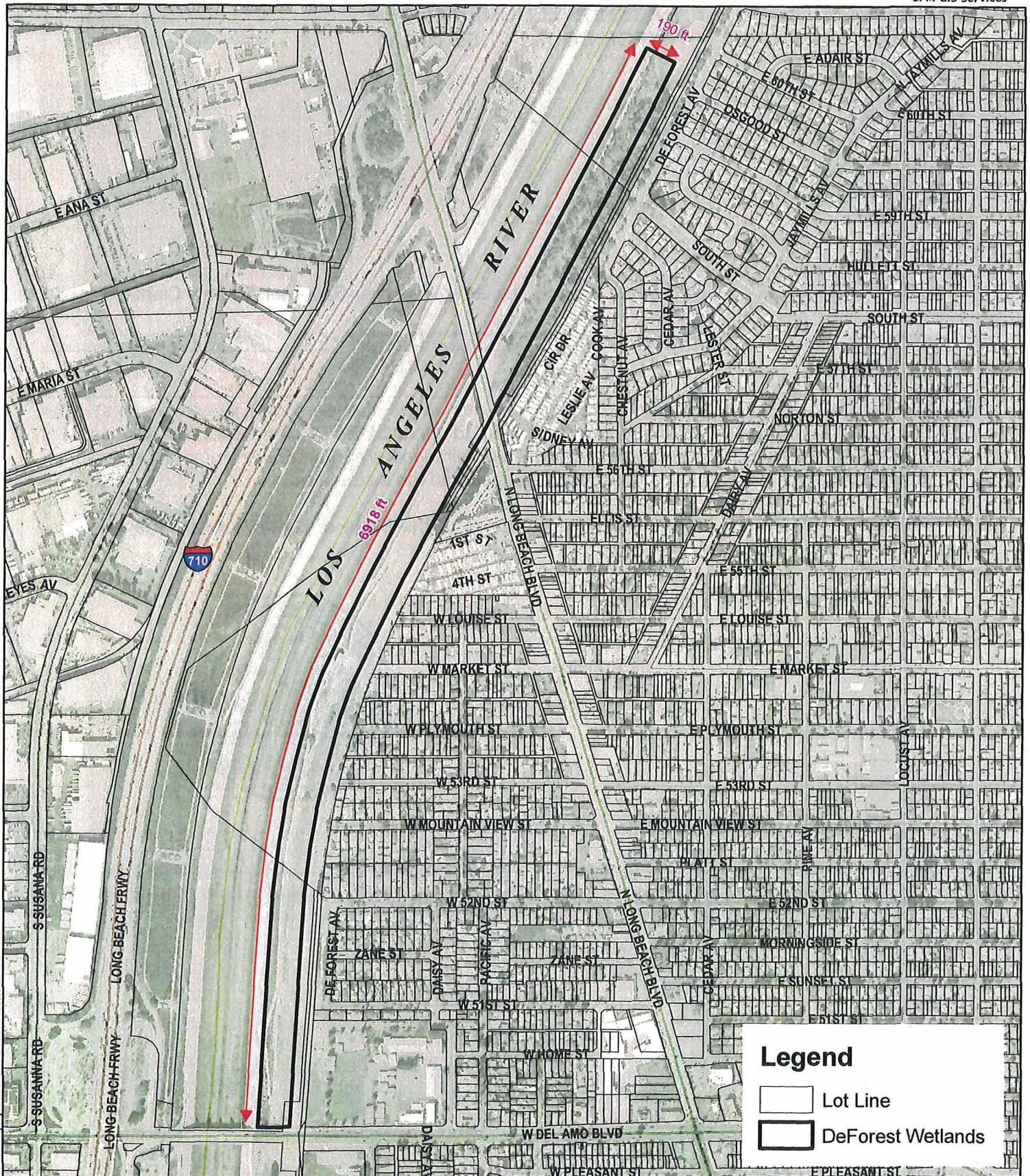
By [Signature]
Deputy County Clerk



Exhibit A



SPM-GIS Services



MPM\GIS\projects\wmd\DeForestWetlands\20101111

Data contained in this map is produced in whole or part from the Los Angeles County Department of Public Works' digital database.

0 380 760 1,140 1,520
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