

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is entered into as of the last date set forth on the Signature Page hereto, by and among, THE CITY OF CHULA VISTA, a municipal corporation having charter powers (“Chula Vista”), THE CITY OF SAN DIEGO, a municipal corporation having charter powers (“San Diego”), and M&A GABAE, a California limited partnership (“Gabaee”) (Chula Vista, San Diego, and Gabaee are hereinafter individually referred to as a “Party” and collectively referred to as the “Parties”) with reference to the Recitals set forth below which are incorporated herein by this reference.

RECITALS

A. Gabaee owns the property shown on Exhibit A hereto (the “Property”) which is located in San Diego and Chula Vista west of Interstate 5 between Palomar Street on the north and Main Street on the south.

B. The Property is approximately 44.61 acres, of which 37.04 acres are located within San Diego and 7.75 acres are located within Chula Vista, as shown on Exhibit A hereto.

C. Gabaee desires to develop the entire Property as one project, commonly referred to as the Salt Bay Project (herein, the “Project”). Gabaee has submitted the preliminary land use plan at Exhibit B hereto for development of the Property in San Diego and Chula Vista. Exhibit A and Exhibit B are incorporated herein by this reference.

D. San Diego, Chula Vista and Gabaee desire to cooperate in the planning and development of the Project. San Diego and Chula Vista each have the power to adopt and enforce land use regulations, approve land use entitlements, and administer and apply building and other development codes. San Diego, Chula Vista and Gabaee desire to cooperate with each other in the processing and review of the Project.

E. The Parties hereto wish to cooperate with one another to ensure that the processing of the Project is orderly and coordinated, including without limitation the provision of public services, the application of design, landscaping, and building standards, the study of environmental effects under the California Environmental Quality Act (“CEQA”) and mitigation of impacts, an efficient schedule for processing CEQA review and Project approvals, and the imposition and collection of fees for development impacts.

F. Under CEQA Guidelines section 15050, where a project is to be carried out or approved by more than one public agency, one public agency shall serve as the lead agency and be responsible for preparing an Environmental Impact Report (“EIR”) or Negative Declaration for the project. The other public agency serves as a responsible agency that must consider the lead agency’s CEQA document before acting on the project. The lead agency’s determination on whether to prepare an EIR or Negative Declaration is generally conclusive.

G. Under CEQA Guidelines section 15051(d), in cases where two public agencies have a substantial claim to be the lead agency, the public agencies may by agreement, contract or

other means designate one public agency to be the lead agency and provide for cooperative efforts. Both San Diego and Chula Vista have a substantial claim to be the lead agency, but have entered into this cooperative MOU designating (1) San Diego as the lead agency since the majority of the property is in San Diego, and (2) Chula Vista as a responsible agency with expanded rights to review the Project as identified herein.

H. The Parties wish to cooperate with one another to ensure that:

1. Each jurisdiction is fully informed about the portion of the Project to be constructed in the adjacent jurisdiction and the potential impact of the Project on each jurisdiction's public facilities;

2. One environmental document is completed and available for certification for the Project in which San Diego acts as the lead agency and Chula Vista is a Responsible Agency;

3. Site planning of the Project is coordinated between San Diego and Chula Vista to ensure appropriate internal traffic circulation and ingress to and egress from the public street system; and

4. The timing of public hearings and discretionary actions are coordinated between the Parties, so that public hearings and discretionary actions are calendared in a coordinated and complimentary fashion between San Diego and Chula Vista.

AGREEMENT

NOW THEREFORE, in consideration of the above Recitals and for good and valuable consideration the receipt and sufficiency of which the Parties hereby acknowledge, San Diego, Chula Vista, and Gabae hereby agree as follows:

1. **Parties Agree to Meet and Confer.**

1.1 Authorization by Chula Vista. The City Council of Chula Vista hereby authorizes and directs the Director of Development Services, his or her designee to meet, confer and exchange information with the other Parties to this MOU regarding the Project.

1.2 Authorization by San Diego. The City Council of San Diego hereby authorizes and directs the Director of Development Services, to meet, confer, and exchange information with the other Parties to this MOU regarding the Project.

1.3 Authorization by Gabae. Gabae hereby authorizes and directs the persons from time to time authorized by Gabae to meet, confer and exchange information with the other Parties to this MOU regarding the Project.

1.4 Working Group. The Parties shall establish a Working Group, with each Party designating its key contacts who will be members of the Working Group. The members of

this Working Group will make best efforts to attend the meetings set by the Parties. The meetings will be attended by those in the Working Group when agenda issues related to their areas are identified. Smaller meetings of select members of the Working Group to address discrete issues may be scheduled by the Working Group. Designated representatives of San Diego, Chula Vista, and Gabae shall meet at the conclusion of each project review cycle to review and summarize the status of processing the approvals for the Project, coordinating dates and times, and communicating issues or questions that arise for either San Diego or Chula Vista with regard to the coordinated processing of the Project.

1.4.1 Chula Vista's key contacts include one or more representatives each from the following departments:

(a) Chula Vista's Development Services Department (including one or more representatives each from the Planning Division, Land Development Engineering Division, and Building Division);

(b) Chula Vista Fire Department; and,

(c) Chula Vista City Attorney's office.

1.4.2 San Diego's key contacts include one or more representatives each from the following departments:

(a) San Diego Development Services Department;

(b) San Diego Planning Department;

(c) City of San Diego City Attorney.

1.4.3 Gabae's key contacts include:

(a) One or more representatives designated by Gabae

1.5 Notice Prior to Discretionary Actions. Each Party agrees that prior to any Party holding a public hearing or taking any discretionary action relating to the Project, the Party holding the hearing or considering taking action shall provide the other Parties with (a) ten (10) business days, or greater if in accordance with applicable law, written notice of such pending hearing or action; (b) a copy of any and all written material including but not limited to staff reports and environmental documents which will be provided to decision makers; and, (c) make a good faith effort to meet, or at a minimum discuss, with other Parties to this MOU at least one (1) week prior to any hearing or discretionary action to discuss matters of mutual concern.

2. Goals of Meet and Confer Process.

2.1 Provide an open exchange of information and concerns pertaining to the Project;

2.2 Attempt to reach mutual agreement on all items of mutual concern relating to the Project including but not limited to the issues set forth in Section 3 below; and

2.3 Determine whether more formal cooperation, or other agreement is necessary to implement the Project, and if so, to agree on the proposed terms of such implementing agreement and make recommendations regarding any proposed agreement to their respective governing bodies.

3. **Issues for Discussion.** The following issues will be the subject of on-going discussions amongst the Parties, but will not preclude the Parties from discussing other relevant issues:

3.1 **Coordination.** Coordination of the environmental document between the Parties;

3.2 **Design.** Design of the Project including but not limited to mutually agreeable design criteria and opportunities for Parties to review architectural design, site plan, signage and landscape plan of the Project;

3.3 **Impact on Public Facilities.** Impact of the Project on public facilities, including but not limited to:

3.3.1 An integrated plan for internal traffic circulation within the Project;

3.3.2 An integrated plan for vehicular ingress to and egress from the Project;

3.3.3 Mutual agreement as to the specific improvements to the public rights of way including streets, traffic signals, utilities and other public facilities required to accommodate the Project across the San Diego and Chula Vista jurisdictions.

4. **Commitments of the Parties Regarding the Environmental Review Process.** The Parties agree to the following roles and obligations regarding the preparation of processing the Project through the CEQA (California Public Resources Code section 21000, *et seq.*):

4.1 **Lead Agency.** San Diego and Chula Vista agree that San Diego shall be the “lead agency,” as the term is defined in Public Resources Code section 21067, and as used throughout CEQA, and Title 14 of the California Code Regulations, sections 15000, *et seq.* (“CEQA Guidelines”), for the environmental review of the Project. San Diego shall have all discretion to fulfill the obligations of a CEQA lead agency with respect to the Project.

4.2 **Responsible Agency.** Chula Vista shall be a “responsible agency” for the Project as that term is defined in Public Resources Code section 21069, and as used throughout CEQA and the CEQA Guidelines.

4.3 Environmental Document. San Diego, as lead agency, shall be responsible for preparing the environmental document for the Project. As a responsible agency, Chula Vista shall use San Diego's environmental document when acting on or approving the Project.

4.4 Environmental Review. As lead agency for the Project, San Diego shall use CEQA, the CEQA Guidelines, and San Diego rules, regulations, and policies pertaining to CEQA processing, as well as all applicable state law, in its CEQA processing, including but not limited to, the selection of consultants. In assessing whether impacts of the Project are significant under CEQA, San Diego, as the lead agency, shall use the same thresholds of significance ordinarily used by San Diego for projects occurring entirely within the boundaries of San Diego. San Diego and Chula Vista may have differing significance thresholds for impacts. The Parties agree that San Diego will determine the thresholds to be used because it is the lead agency, and the Project is predominantly in San Diego, and will predominantly impact San Diego.

4.5 Meet and Confer. San Diego, as lead agency, shall reasonably consider any competing standard of significance proposed by Chula Vista, and shall, in its sole discretion, use such standards of significance as it believes are warranted. San Diego and Chula Vista shall meet and confer in good faith to resolve any discrepancies between the standards of significance in San Diego and Chula Vista. Nothing in this section shall be interpreted to modify or limit San Diego's discretion as a lead agency in fulfilling its obligations under CEQA.

4.6 Right to Review Drafts. Chula Vista desires to review the environmental document prior to a draft document being released for public comment. As part of this cooperative effort between San Diego and Chula Vista, San Diego will provide Chula Vista with a copy of all rough drafts of the environmental document, including supporting technical studies, prior to the final draft document being prepared for release for public comment. Chula Vista will have the opportunity to provide comments on these rough drafts or portions thereof, which are also commonly known as screen checks. Chula Vista agrees to provide San Diego comments, if any, within ten (10) working days of receipt of the rough drafts. San Diego will reasonably consider each of Chula Vista's suggestions and comments and make any such changes or revisions as it believes, in its sole discretion, are warranted. Nothing in this section shall be interpreted to modify or limit San Diego's discretion as a lead agency in fulfilling its obligations under CEQA.

4.7 Approval Schedule. San Diego and Chula Vista agree to use their best efforts to comply with the review cycle turn-around times set forth in Exhibit C ("CEQA Approval Schedule"). San Diego, and Chula Vista agree to use their "best efforts" to pursue the processing and preparation of the processing of CEQA in accordance with those "target dates" by taking the requisite action or actions for each target date specified in the CEQA Approval Schedule, provided that the other Parties have substantially complied with their obligations specified in the CEQA Approval Schedule which are a prerequisite to such action(s). If San Diego or any other Party believes that it will miss any "target date" in the CEQA Approval Schedule, it shall immediately provide written notice by electronic mail to the other Parties, accompanied by an explanation of why the "target date" was missed and an estimation of a "new

target date” for the action and for any other actions that will be delayed as a result of missing the “target date.” The other Parties and Working Group participants set forth in Section 1.3 of this MOU may request a meeting of the Working Group upon receiving the written notice that a “target date” has or likely will be missed.

5. Project Review.

5.1 Uniform Standard for Completion of Application. Chula Vista and San Diego may have different “application deemed complete” dates. Notwithstanding the potential for these different “application deemed complete” dates, the Working Group shall use their best efforts to coordinate a uniform “application deemed complete” date for Chula Vista and San Diego.

5.2 Processing/Review Schedule. Once applications are deemed complete, San Diego, and Chula Vista will use their best efforts to comply with the review cycle turn-around times set forth in the CEQA Approval Schedule (Exhibit C) in reviewing the requested approvals for the Project. San Diego and Chula Vista agree to use their “best efforts” to pursue the processing and preparation of the processing of approvals in accordance with the subject “target dates” by taking the requisite action or actions for each target date specified in the CEQA Approval Schedule, provided that the other Parties have substantially complied with their obligations specified in the CEQA Approval Schedule which are a prerequisite to such action(s). If San Diego or any other Party believes that it will miss any “target date” in the CEQA Approval Schedule, it shall provide written notice by electronic mail to the other Parties, accompanied by an explanation of why the “target date” was missed and an estimation of a “new target date” for the action and for any other actions that will be delayed as a result of missing the “target date.” The other Parties and Working Group participants set forth in section 1.3 of this MOU may request a meeting of the Working Group upon receiving the written notice that a “target date” has or likely will be missed.

5.3 Cooperation in Processing. The Parties shall cooperate in good faith to diligently pursue the initiation and processing of the applications for the Project, including, without limitation, executing all further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the intent and provisions of this MOU. The Parties shall use their “best efforts” to cooperate with each other to comply with the CEQA Approval Schedule and to pursue the processing and preparation of the processing of CEQA in accordance with the “target dates” established in Exhibit C by taking the requisite action or actions for each target date specified in the CEQA Approval Schedule, provided that the other Parties have substantially complied with their obligations specified in the CEQA Approval Schedule which are a prerequisite to such action(s).

5.4 Submittal Requirements. Submittal requirements, including but not limited to, forms, documents, and plans for all applications for development permits and approvals necessary for the Project, shall be those required by San Diego and Chula Vista, unless otherwise provided herein.

5.5 Design, Landscaping, Public Infrastructure, Building Standards, Specifications, and Guidelines. San Diego and Chula Vista agree that uniform design, landscaping, public infrastructure and building standards, specifications, and guidelines shall be used for the Project. San Diego and Chula Vista have both adopted the Uniform Building Code and therefore do not anticipate any material differences between their building standards. The Parties agree that the San Diego Design Guidelines, the San Diego Guidelines for On-Site Landscaping, and other guidelines as set out in the San Diego Municipal Code should be the design guidelines applicable to the Project and any off-site public improvements required to be constructed by the Project, with respect to the design review undertaken by each Party. The San Diego standards, specifications, regulations, and guidelines will apply to CEQA analysis, signage, stormwater and storm drain systems, fire systems, water systems, grease interceptors, landscaping, hardscaping, and public infrastructure, among others. Chula Vista staff will facilitate application of the San Diego standards, specifications, regulations and guidelines via processing and review of Gabae's application for discretionary entitlements. Chula Vista City Council shall exercise its independent discretion regarding the application, and, if approved, the discretionary entitlements approved by the Chula Vista City Council shall govern development of that portion of the Project within Chula Vista's jurisdiction. All building plans shall be submitted for review and approval to the jurisdiction where the proposed building is to be constructed. In the event a building is located in both jurisdictions, the jurisdiction with the majority of the building shall process the building permit.

6. Dispute Resolution.

6.1 Meet and Negotiate. In the event a Party, acting in good faith, believes another Party has violated the terms of this MOU, or in the event a Party identifies an unforeseen circumstance outside the control of the Parties that the Party in good faith believes directly and adversely affects the terms and conditions in this MOU, the Parties shall meet at a mutually convenient time to negotiate in good faith to resolve the dispute.

6.2 Possible Mediation. In the event that the Parties are unable to negotiate to a mutually acceptable resolution of the dispute, the Parties may meet and agree to a formal dispute resolution process, which may include, but is not necessarily limited to, mediation by the San Diego County Supervisor representing District 1 (currently, Supervisor Greg Cox), mediation by some other third party, or binding arbitration. No Party, however, shall be required to enter into, or accept, binding arbitration. Where the Parties have agreed to submit a dispute to binding arbitration, the arbitrator's decision in such arbitration shall be final and binding on both Parties. The Parties will mutually select the potential mediators or arbitrators.

6.3 Limitations on Remedies. In the event that the Parties are unable to negotiate a mutually acceptable resolution of a dispute pursuant to section's 6.1 and 6.2 herein, the Parties acknowledge and agree that no Party to this Agreement shall incur any financial liability to any other Party as a result of being unable to negotiate a mutually acceptable resolution of a dispute nor will any Party be entitled to receive monetary damages as a result of the failure of any Party to negotiate a mutually acceptable resolution of a dispute or to perform its obligations under this MOU. The Parties further acknowledge and agree that the sole remedy under this MOU for being unable to negotiate a mutually acceptable resolution of a dispute or for

a Party not performing its obligations under this MOU shall be termination of this MOU by written notice from any to all other Parties to this MOU. Should this MOU be terminated pursuant to this section 6.3, no Party shall have any further rights, remedies or obligations to any other Party under this MOU and all Parties shall be relieved and discharged from all further responsibility or liability under this MOU. The Parties acknowledge and agree that the Parties would not have entered into this MOU if any Party could become liable for damages for any failure of any Party to negotiate a mutually acceptable resolution of a dispute or to perform its obligations under this MOU.

7. **Independent CEQA Review.** Nothing in this MOU is intended or shall be deemed to affect the independent judgment and analysis by San Diego, or Chula Vista, as required by CEQA.

8. **Entire Agreement.** This MOU contains all representations and the entire understanding among the Parties with respect to the subject matter of this MOU. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda or agreements are in conflict with this MOU, and whether written or oral, are intended to be replaced in total by this MOU. Each Party warrants and represents that no representative of any other Party has made any oral representations or oral agreements not contained in this MOU. Each Party further warrants and represents that it has not relied upon any oral statements or promises made by any representative of any other Party to this MOU in executing this MOU.

9. **Severability.** The terms, conditions, and covenants of this MOU shall be construed whenever possible as consistent with all applicable laws and regulations. To the extent that any provision of this MOU, as so interpreted, is held to violate any applicable law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and remain enforceable, unless the deletion of such provision or provisions would result in such a material change to this MOU so as to cause the continuation of performance contemplated herein to be unreasonable.

10. **Counterparts.** This MOU may be executed in counterparts.

11. **Warranty of Authority.** Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this MOU on behalf of the Party for whom he or she purports to sign.

12. **Section Headings.** The captions, subject, section and paragraph headings in this MOU are included for convenience and reference only. They do not form a part hereof, and do not in any way codify, interpret, or reflect the intent of the Parties. Said headings shall not be used to construe or interpret any provision of this MOU.

13. **Third Party Beneficiaries.** No third party is intended to be a beneficiary of this MOU.

14. **Assignment.** Gabae shall have the right to assign this MOU in connection with a change in ownership of the Project, upon written notice to San Diego and Chula Vista.

15. **Joint Preparation.** This MOU and the provisions contained herein shall not be construed or interpreted for or against any Party hereto because said Party drafted or caused the Party's legal representative to draft any of its provisions. This MOU shall be construed without reference to the identity of the Party or Parties preparing the same, it being expressly understood and agreed that the Parties hereto participated equally or had equal opportunity to participate in the drafting thereof.

16. **Parties Retain Discretionary Approval Rights.** The Parties understand and acknowledge that each Party hereto reserves the right to exercise its full discretion as to all matters which it is, by law, entitled or required to exercise its discretion relative to the Project individually and collectively. Nothing in this MOU is to be construed as precommitting any Party to a decision which requires a separate discretionary process. Each Party agrees and understands that by entering into this MOU no Party waives its right to review, object to, or challenge any action taken by any other Party to the MOU relative to the Project or any portion thereof.

17. **Term.** The Term of this MOU shall be one (1) year from the date of execution of this MOU by all Parties. This MOU may be extended for two additional one-year terms, upon written agreement by the Parties.

18. **Notice.** All notices required or provided for by this MOU shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of San Diego, Chula Vista, and Gabae as follows:

To Chula Vista: The City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attention: Kelly Broughton, Development Services Director
E-Mail Address: kbroughton@chulavistaca.gov
Telephone Number: (619) 691-5233

w/ copy to: The Chula Vista City Attorney's Office
276 Fourth Avenue
Chula Vista, CA 91910
Attention: Michael J. Shirey, Deputy City Attorney III
E-Mail Address: mshirey@chulavistaca.gov
Telephone Number: (619) 691-5037

To San Diego: The City of San Diego
1222 First Avenue, MS 301
San Diego, CA 92101
Attention: Robert Vacchi, Director , Development Services
Department
E-Mail Address: RAVacchi@sandiego.gov
Telephone Number: (619) 446-5423

To Gabae: M&A Gabae, a California limited partnership
9034 W. Sunset Boulevard
West Hollywood, CA 90069
Attention: Arman Gabay and Mark Gabay
E-Mail Addresses: arman@charles-company.com; mark@charles-company.com
(310) 247-0900

w/ copy to: The Law Office of Cynthia L. Eldred, APC
2481 Congress Street
San Diego, CA 92110
Attention: Cynthia L. Eldred, Esq.
E-Mail Address: cindy@eldredlaw.com
Telephone Number: (619) 23307366

San Diego, Chula Vista, and Gabae may change their addresses by giving notice in writing to the other Parties. Thereafter, notices, demands and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery or, if mailed, two (2) business days following deposit in the United States mail. Any notice under this MOU may also be given by facsimile or other telecommunication device capable of transmitting and creating a written record, effective on receipt, or on the following business day if received after normal business hours. Such notices shall be addressed to the addresses of the entities set forth above.

[Remainder of page intentionally left blank]

SIGNATURE PAGE FOR MEMORANDUM OF UNDERSTANDING

IN WITNESS WHEREOF, this Memorandum of Understanding has been executed by the Parties as of the last date set forth below.

Dated: _____

CITY OF CHULA VISTA

By: _____
Mary Casillas Salas, Mayor

Attest:

By: _____
Donna Norris, City Clerk

Approved as to Form:

By: _____
Glen R. Googins, City Attorney

Dated: _____

CITY OF SAN DIEGO

By: _____
_____, _____

Attest:

By: _____
_____, City Clerk

Approved as to Form:

By: _____
_____, City Attorney

Dated: _____

M&A Gabae, a California limited partnership

By: _____

Its: _____

Exhibit A - Description of Property

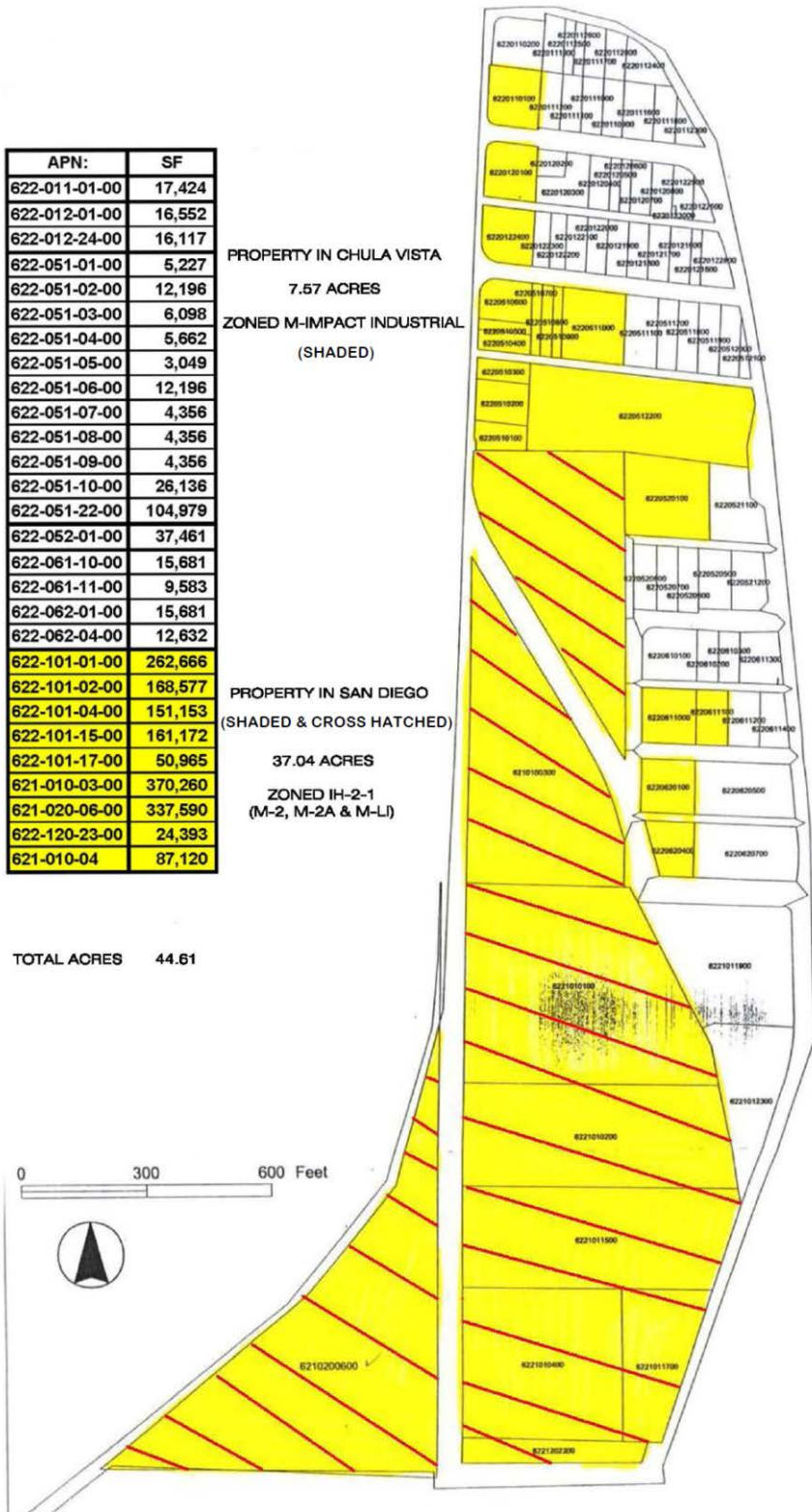
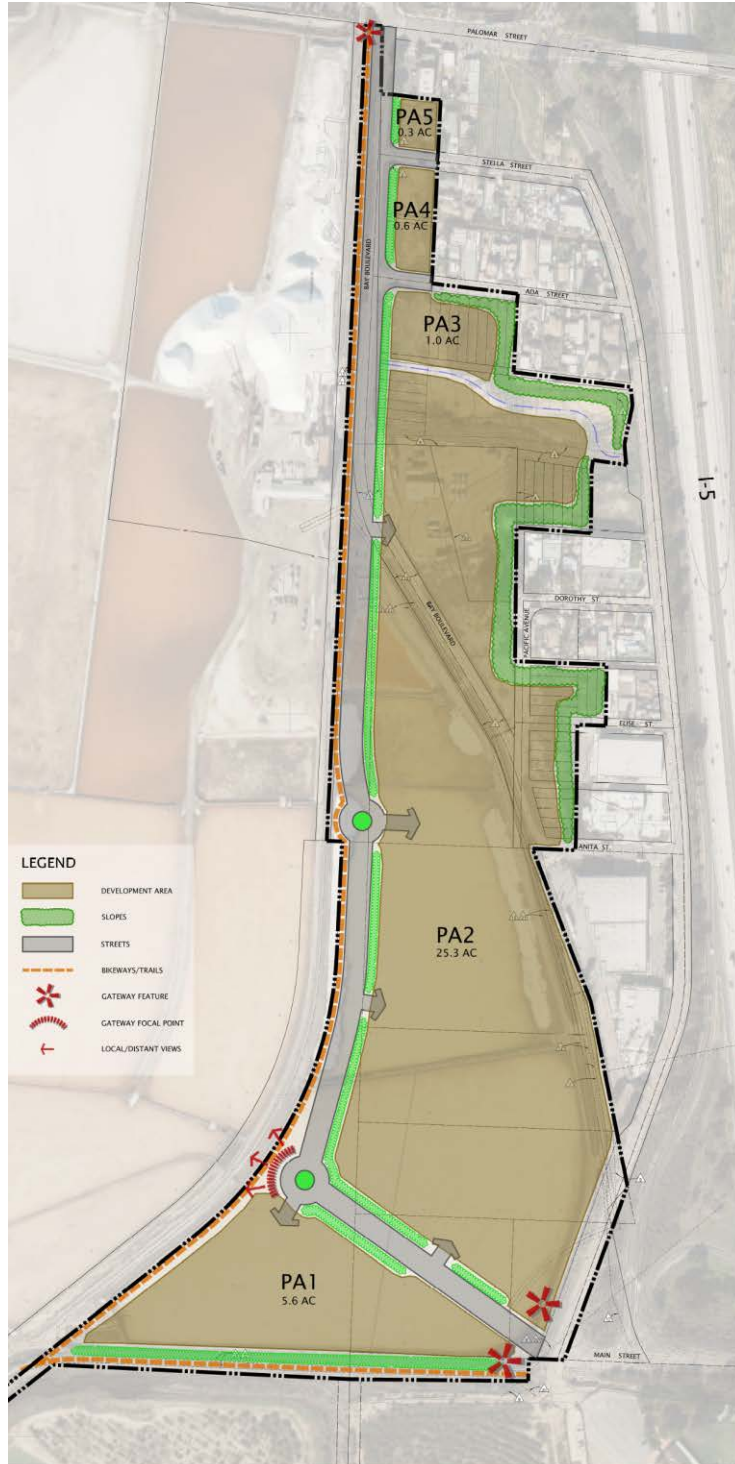


Exhibit B – Preliminary Site Plan



CONCEPTUAL LANDUSE PLAN
SALT BAY DISTRICT
 CITY OF SAN DIEGO/CHULA VISTA

Exhibit C – CEQA Approval Schedule

<u>Submittal</u>	<u>Target Date</u>
Full Submittal of Initial Review Package	30 Working Days
Subsequent Submittals	20 Working Days
First Screencheck Draft EIR	30 Working Days
Subsequent Screencheck Drafts	20 Working Days