

**STAFF REPORT**

**50**

A 76

04/29/20

S 36

W 26644

R. Collins

**GENERAL LEASE – PUBLIC AGENCY USE**

**APPLICANT:**

North County Transit District

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

2.92 acres, more or less, of sovereign land in Batiquitos Lagoon,  
Carlsbad, San Diego County.

*AUTHORIZED USE:*

The construction, use, and maintenance of a buried armored revetment.

*LEASE TERM:*

49 years, beginning April 29, 2020.

*CONSIDERATION:*

The public use and benefit, with the State reserving the right to set a monetary rent if the Commission finds such action to be in the State's best interests.

*SPECIFIC LEASE PROVISIONS:*

1. Lessee acknowledges it must obtain authorization from the California Department of Fish and Wildlife for all entry onto the Batiquitos Lagoon Ecological Reserve.
2. Within 60 days of completing the construction of authorized improvements, Lessee shall provide Lessor a written notice of the date when construction was completed, photographs, and a set of "as-built" plans that will show where the improvements have been placed.
3. If Lessee elects to submit an application for a new lease to continue use of the authorized improvements after the expiration of this lease, Lessee shall include a summary report that details past and current physical and environmental conditions in the Lease Premises.

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### **STAFF ANALYSIS AND RECOMMENDATION:**

#### **Authority:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, and 6503; California; Code of Regulations, title 2, sections 2000 and 2003.

#### **Public Trust and State's Best Interests Analysis:**

The North County Transit District (NCTD) is responsible for operating public transit service systems including bus, hybrid rail, commuter train, demand response transit, and paratransit services in North San Diego County. NCTD is the owner of the former Atchison, Topeka, and Santa Fe Railway Company right-of-way in San Diego County and applied for a General Lease – Public Agency Use to facilitate its Batiquitos Lagoon Double Track Project, described below.

The San Diego Association of Governments (SANDAG) includes representatives from each of San Diego County's 19 local governments. SANDAG is the metropolitan planning organization for the County and is responsible for planning, programming, development, and construction of transit services and improvements. SANDAG adopted San Diego Forward: The Regional Plan (Plan) in 2015. The Plan is a combination and update of the Regional Comprehensive Plan for the San Diego Region and the Regional Transportation Plan/Sustainable Communities Strategy.

The Batiquitos Lagoon Double Track Project (Project) is a joint effort by NCTD and SANDAG and is located along the existing Los Angeles – San Diego – San Luis Obispo (LOSSAN) rail corridor. The Project's purpose is to increase the reliability, operational flexibility, and capacity of the LOSSAN rail corridor to add passenger and freight rail service to meet future transportation demands consistent with the Plan.

The Project proposes adding 1 mile of a second mainline track and replacing the single-track wooden trestle rail bridge over Batiquitos Lagoon with a new double-track bridge. The Project's proposed improvements would be located almost entirely within the NCTD's existing 200-foot-wide railroad right-of-way and outside of the Commission's jurisdiction. However, the Project proposes construction of a buried armored revetment that would extend outside the railroad right-of-way and onto lands under the Commission's jurisdiction.

The existing bridge is protected with a combination of armored slope protection surrounding the abutments and embankment and a rock channel lining protecting the wooden trestle piles. The proposed revetment would protect the bridge abutments and embankment from

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channel scour and tidal energy. The revetment would require installation of 1/4-ton and 1-ton rock around both bridge abutments. The rock would be placed on top of an aggregate base and would be covered with native sediments up to the upper limit of the intertidal zone.

The proposed improvements would not create any new or more severe impacts to Public Trust uses at the location. Public access is prohibited within the rail right-of-way for health and safety reasons. The Project would benefit the nearby Batiquitos Lagoon Ecological Reserve by widening the channel to aid the natural tidal flushing of the lagoon, potentially enhancing Public Trust resources.

The Project proposes to dredge an estimated 33,660 cubic yards of lagoon sediments and stockpile them on-site before lining the bed of the lagoon around the bridge abutments and embankment with filter fabric and placing the rock revetment over the filter fabric. Dredging will occur outside the Commission's jurisdiction and the dredged material will be returned to the revetment and embankment resulting in no net change in the lagoon's material volume.

The dredging and placement of the rock revetment was analyzed in a Biological Technical Report (BTR) for the Batiquitos Lagoon Double Track Project, prepared by HELIX Environmental Planning, Inc., for SANDAG in December 2016. The BTR indicated that there could be indirect impacts having to do with decreased water quality, impacts to eelgrass, noise impacts, and below-water construction impacts.

A portion of sparse eelgrass on the west side of the northern abutment and a portion of intertidal mudflat on the east side of the northern abutment could be directly impacted by the proposed revetment extension, outside of the railroad right-of-way, and within Public Trust lands. Although no nesting sites should be impacted on Public Trust lands, construction activities may temporarily disturb several bird species (western snowy plover, California gnatcatcher, light-footed Ridgway's rail, or California least tern).

The BTR recommends measures to reduce indirect and direct impacts to biological resources. The final measures required for the proposed Project would be determined during permit processing. Any future permit conditions will likely be similar to the measures recommended in the BTR.

The BTR's recommended measures include oversight and monitoring by a qualified biologist, a training/awareness education program, requirements

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for fuel and hazardous materials storage, shielded lighting, and pre-construction surveys/mitigation requirements for eelgrass (conducted in accordance with National Oceanic and Atmospheric Administration Fisheries Southern California Eelgrass Mitigation Policy). In addition, a Stormwater Pollution Prevention Plan would be prepared prior to the initiation of construction.

Below-water construction impacts would be reduced by the implementation of methods to minimize acoustical impacts to aquatic species developed in coordination with the Public Works Plan/Transportation and Resource Enhancement Program's Resource Enhancement and Mitigation Program Working Group. Also, best management practices would be applied to limit the spread of resuspended sediment and contain debris. The practices could include silt curtains, turbidity curtains, or other barriers. Fish movement through the project would be maintained by ensuring passage through the bridge construction area by appropriate phasing of construction activities.

A cultural resources report was prepared for the Project in 2014 that included an intensive-level pedestrian survey of the Project area. The area was heavily disturbed due to the construction of the railroad. Cultural materials were identified on-site, but the location is outside the Commission's jurisdiction.

Extended Phase I investigations conducted by Cogstone (an archaeological consultant) in June 2016 consisted of the excavation of six shovel test pits within the area of P-37-011026 that intersects the Project Area. Results of the subsurface testing found no evidence of buried prehistoric archaeological deposits. The report concluded that based on the current and previous fieldwork and background research conducted, the portion of site P-37-011026 that intersects with the Project Area does not appear to be eligible for inclusion in the National Register of Historic Places.

In addition, on May 24, 2017, in a notice to SANDAG, the U.S. Army Corps of Engineers concluded that there would be "no adverse effect or effect on historic properties." The notice also included the following summary of Native American consultation correspondence:

The Native American Heritage Commission (NAHC) was contacted and responded that a search of the Sacred Lands File was negative for Native American cultural resources in the immediate project vicinity. The Corps sent letters to the

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Native American contacts provided by the NAHC on March 07, 2017, and another letter on April 20, 2017 to inform tribes of a finding of no adverse effect. One response was received from the San Pasqual Economic Development Agency stating that the project is within their ancestral territory, but they do not have any additional information.

Commission staff consulted with California Coastal Commission (CCC) staff regarding the proposed Project. CCC staff had concerns over rock that had previously been laid within the channel and had discussed this issue with SANDAG and NCTD staffs. The Project was revised to include removal of the channel rock.

The Project is necessary to meet the State's future mass transportation needs. The California State Rail Plan (Rail Plan) identifies the programs and policies needed for the state's rail program to meet current and future intercity travel demand. Capacity improvements in the San Diego portion of the corridor are an important component of the Rail Plan. The existing single-track bridge in the project area creates a bottleneck for trains traveling along the LOSSAN corridor, limiting transportation capacity. Additionally, the LOSSAN corridor is the only viable freight rail link between San Diego and the rest of the nation. Double tracking this segment of rail, together with other double track projects planned as part of the Rail Plan, are essential elements needed to meet the demand for bulk goods and passenger movement from the Port of San Diego and the region to the rest of the state and country. For the reasons listed above, staff recommends the Commission authorize a 49-year lease term.

### **Climate Change:**

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area is located at a tidally influenced site vulnerable to flooding at current sea levels that will be at a higher risk of flood exposure given future projection scenarios of sea-level rise.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the "high emissions," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. Projected sea-level rise scenarios for the lease area (La Jolla tide gauge) are listed in Table 1.

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**Table 1. Projected Sea-Level Rise for La Jolla<sup>1</sup>**

Year	Projection (feet)
2030	0.9
2040	1.3
2050	2.0
2100	7.1

Source: Table 31, State of California Sea-Level Rise  
Guidance: 2018 Update

Note: <sup>1</sup> Projections are with respect to a baseline of the year 2000.

The new Batiquitos Lagoon rail bridge design would require the placement of rock revetment outside the existing railroad right-of-way to protect the bridge abutments and embankment from channel scour and tidal energy. Construction activities within the proposed lease area would be limited to removal of existing bridge embankment/rock slope protection (RSP) in the channel bottom, and replacement of the RSP to protect the new rail bridge and embankment, while meeting current design standards for erosion and sea-level rise. Overall, the project is expected to enhance resiliency of the project area to sea-level rise impacts. To provide sufficient protection over the bridge design life and enough vertical clearance for maintenance access under the bridge, a top rock slope elevation of +12 feet was selected. Both the rock protection and bridge elevations are sufficient to accommodate the effects of sea-level rise so that no additional adaptation strategies are anticipated.

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to effects of climate change, including sea-level rise.

**Conclusion:**

For all the reasons above, staff believes the issuance of this will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

1. The Project is one element of the North Coast Corridor Public Works Plan (PWP)/Transportation and Resource Enhancement Program (TREP), a Public Works Plan approved by the CCC on August 13, 2014 ([CCC, Item 19a](#)). The CCC amended the North Coast Corridor PWP/TREP on March 9, 2016 ([CCC, Item 11a](#)) and December 7, 2016 ([CCC, Item 15a](#)). The North Coast Corridor PWP/TREP plans for a series of rail, highway, transit, bicycle, pedestrian, and community enhancement projects to

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improve and maintain mobility and access to coastal recreational resources in San Diego County.

2. On June 12, 2019, California Coastal Commission voted to concur with SANDAG's consistency certification (CC-0002-19) that the Batiquitos Lagoon double-track project, as described in the PWP/TREP, complies with the California Coastal Management Program.
3. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
4. The lease provision requiring the lessee to provide a summary report prior to applying for a new lease will allow Commission staff to determine if the Project's widening of the lagoon mouth enhanced wetland habitats, water quality in the lagoon, and wildlife movement as expected. The summary report will enable the Commission and the lessee to assess the improvement design's effectiveness in maintaining and enhancing the resiliency of Public Trust resources.
5. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a statutorily exempt project. The project is exempt because it involves the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.

Authority: Public Resources Code section 21080, subdivision (b)(10) and California Code of Regulations, title 14, section 15275, subdivision (a).

6. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant will not be allowed to construct, use, and maintain the portion of a buried armored revetment on State land. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.

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**APPROVALS OBTAINED:**

U.S. Coast Guard  
State Historic Preservation Office  
California Coastal Commission

**FURTHER APPROVALS REQUIRED:**

California Department of Fish and Wildlife  
San Diego Regional Water Quality Control Board  
U.S. Army Corps of Engineers  
U.S. Fish and Wildlife Service  
National Marine Fisheries Service

**EXHIBITS:**

- A. Land Description
- B. Site and Location Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(10) and California Code of Regulations, title 14, section 15275, subdivision (a), a project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the issuance of this lease will not substantially interfere with the Public Trust needs and values at this location, at this time and for the foreseeable term of the proposed lease; and is in the best interests of the State.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Public Agency Use to North County Transit District beginning April 29, 2020, for a term of 49 years, for the construction, use, and maintenance of a buried armored revetment, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration being the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.



## EXHIBIT A

W 26644

### LAND DESCRIPTION

Three parcels of tide and submerged land situate in Batiquitos Lagoon in the City of Carlsband, County of San Diego, State of California, more particularly described as follows:

#### PARCEL 1

COMMENCING at a point on the center line of N.C.T.D. Right of Way at Sta. 2045+72.6 as shown on Record of Survey Map No. 20825 filed in the Office of the County Recorder of San Diego County on October 15, 2010 as File No. 2010-0555956; thence South 74° 58' 20" West 100.00 feet to a point on the westerly line of said right of way and being the POINT OF BEGINNING; thence along said westerly right of way line South 15° 01' 22" East 125.26 feet; thence leaving said line South 46° 47' 43" West 130.47 feet; thence North 15° 01' 22" West 186.87 feet to the beginning of a non-tangent 11244.20 foot radius curve concave southwesterly, a radial line bears North 74° 58' 20" East; thence northwesterly along said curve through a central angle of 0° 35' 42" a distance of 116.77 feet; thence North 10° 37' 08" East 167.38 feet to the beginning of a non-tangent 11319.20 foot radius curve concave southwesterly, a radial line bears North 73° 37' 02" East; thence northwesterly along said curve through a central angle of 01° 34' 37" a distance of 311.54 feet; thence North 72° 02' 25" East 40.00 feet to a point on a non-tangent 11359.20 foot radius curve concave southwesterly, a radial line bears North 72° 02' 25" East; thence southeasterly along said curve through a central angle of 02° 55' 55" a distance of 581.27 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of Batiquitos Lagoon.

ALSO EXCEPTING THEREFROM any validly portion(s) of Swamp & Overflowed Lands Location No. 2203, patented January 14, 1887 and Swamp & Overflowed Lands Location No. 2429, patented August 5, 1887.

## **PARCEL 2**

COMMENCING at a point on the center line of N.C.T.D. Right of Way at Sta. 2045+72.6 as shown on Record of Survey Map No. 20825 filed in the Office of the County Recorder of San Diego County on October 15, 2010 as File No. 2010-0555956; thence South  $74^{\circ} 58' 20''$  West 100.00 feet to a point on the westerly line of said right of way; thence along said westerly line South  $15^{\circ} 01' 22''$  East 125.26 feet to the POINT OF BEGINNING; thence continue South  $15^{\circ} 01' 22''$  East 602.84 feet; thence leaving said line South  $74^{\circ} 58' 38''$  West 40 feet; thence North  $15^{\circ} 01' 22''$  West 287.23 feet; thence North  $42^{\circ} 01' 27''$  West 165.20 feet; thence North  $15^{\circ} 01' 22''$  West 106.80 feet; thence North  $46^{\circ} 47' 43''$  East 130.47 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of Batiquitos Lagoon.

ALSO EXCEPTING THEREFROM any validly portion(s) of Swamp & Overflowed Lands Location No. 2203, patented January 14, 1887 and Swamp & Overflowed Lands Location No. 2429, patented August 5, 1887.

## **PARCEL 3**

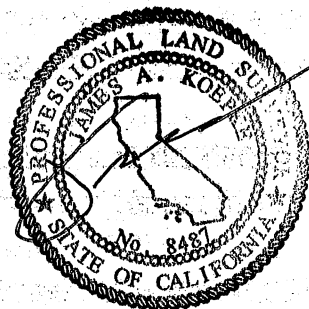
COMMENCING at a point on the center line of N.C.T.D. Right of Way at Sta. 2045+72.6 as shown on Record of Survey Map No. 20825 filed in the Office of the County Recorder of San Diego County on October 15, 2010 as File No. 2010-0555956; thence North  $74^{\circ} 58' 20''$  East 100.00 feet to a point on the easterly line of said right of way and also being the POINT OF BEGINNING; thence along said easterly right of way line South  $15^{\circ} 01' 22''$  East 344.55 feet; thence leaving said line North  $29^{\circ} 58' 38''$  East 106.07 feet; thence North  $15^{\circ} 01' 22''$  West 269.55 feet to the beginning of a non-tangent 11634.20 foot radius curve concave southwesterly, a radial line bears North  $74^{\circ} 58' 20''$  East; thence northwesterly along said curve through a central angle of  $0^{\circ} 28' 17''$  a distance of 95.72 feet; thence North  $60^{\circ} 51' 22''$  West 105.75 feet to a point on a non-tangent 11559.20 foot radius curve concave southwesterly, a radial line bears North  $74^{\circ} 08' 08''$  East; thence southeasterly along said curve through a central angle of  $0^{\circ} 50' 23''$  a distance of 169.41 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of Batiquitos Lagoon.

ALSO EXCEPTING THEREFROM any validly portion(s) of Swamp & Overflowed Lands  
Location No. 2203, patented January 14, 1887 and Swamp & Overflowed Lands  
Location No. 2429, patented August 5, 1887.

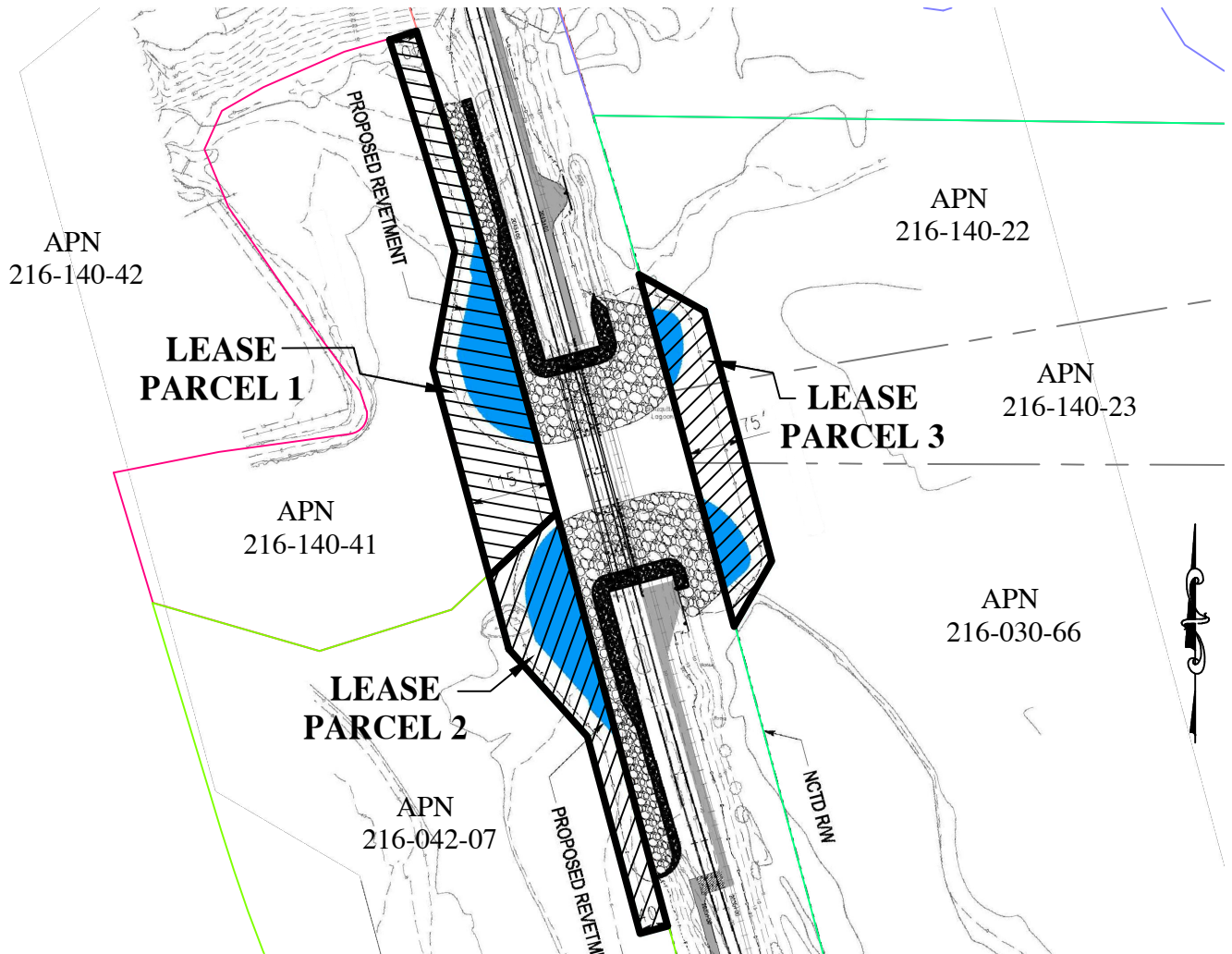
**END OF DESCRIPTION**

Prepared 12/01/17 by the California State Lands Commission Boundary Unit.



NO SCALE

## SITE



## BATIQUITOS LAGOON, CITY OF CARLSBAD

NO SCALE

## LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

## **Exhibit B**

W26644

NORTH COUNTY  
TRANSIT DISTRICT  
GENERAL LEASE -  
PUBLIC AGENCY USE  
SAN DIEGO COUNTY



TS 12/01/17