

CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and the SAN DIEGO COUNTY Department of Environmental Health, Community Health Division, Vector Control Program (CHD-VCP) ("PERMITTEE"), to be effective as of the date of execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY is the owner of that certain real property San Pasqual Water Reclamation Plant located at 14103 Highland Valley Road, Escondido, CA 92025 (Assessor Parcel Numbers 272-140-01 and 276-071-01; collectively, the "Permit Area") in the County of San Diego, California, as shown on **Exhibit A: Permit Area**, attached hereto.
- B. PERMITTEE intends to rent one water tank/pond number 23 and its water contents and has requested the right to enter upon the Permit Area to gain access on its property to breed and raise large volumes of mosquito fish (*Gambusia affinis*) to prevent and control mosquito larvae in breeding sites throughout the County and the City of San Diego.
- C. Under the terms and conditions of this Permit, CITY will allow PERMITTEE to use the Permit Area to access its property, water tank/pond number 23 and breed mosquito fish.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. **Right to Enter.** Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its employees, agents, and contractors to enter upon the Permit Area solely for the following purposes (the "Permit Use"), and for no other purpose whatsoever: (a) to access PERMITTEE'S property; and (b) to raise and breed mosquito fish to prevent mosquito larvae breeding in the County and City of San Diego (c) to maintain and restore the Permit Area as required by this Permit.
- 2. **Use of Permit Area.** PERMITTEE may use the Permit Area on a non-exclusive basis solely for the purposes of the Permit Use. PERMITTEE shall obtain all related permits and comply with all applicable environmental laws, rules, and regulations related to the Permit Use.
- 3. **Permit Fee.** Consideration to CITY for granting this Permit shall be PERMITTEE'S raising and breeding of mosquito fish in the Permit Area, which is expected to benefit the public health, safety, or general welfare of the County and City of San Diego.
- 4. **Term.** The Term shall commence on the Effective Date. If the Effective Date is not the first day of a calendar month, the first, partial month shall be counted as a full month for purposes of determining the expiration date of this Permit, so that the Term shall expire on the last day of a calendar month, and not to exceed three (3) years.

5. Revocable License. This Permit is not a lease. It is a non-exclusive license to use the Permit Area, and may be revoked at will by CITY; in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit. CITY may at all times enter upon the Permit Area.
6. Termination. Either Party may terminate this Permit for any reason upon thirty (30) days prior written notice.
7. Restoration. Immediately upon the expiration or earlier termination of this Permit, PERMITTEE shall promptly restore any part of the Permit Area damaged or disturbed by the Permit Use, all at PERMITTEE'S sole cost and expense, and to CITY'S reasonable satisfaction.
8. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
9. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Area or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the PERMITTEE'S use of the Permit Area.
10. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area by PERMITTEE, its officers, employees, invitees, guests, agents, or contractors ("PERMITTEE Parties"). PERMITTEE Parties shall not store, utilize, or sell any hazardous substance on the Permit Area without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.
 - 10.1 Remediation. If any release of a hazardous substance occurs as a result of PERMITTEE'S use, development, or maintenance of the Permit Area ("PERMITTEE'S Operations"), PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
 - 10.2 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless

from and against any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S Operations, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

- 10.3 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that any hazardous substance has been released on or within the Permit Area, PERMITTEE shall give written notice to CITY within three (3) business days after receipt of such knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall notify CITY by the most immediate means available and immediately upon receipt of such knowledge or belief and shall take all actions necessary to minimize the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private lawsuits related to the Permit Area.
- 10.4 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S Operations resulted in a hazardous substance being released on or from the Permit Area, CITY may cause an environmental assessment of the Permit Area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE'S Operations and in what quantities. If any such hazardous substances exist in quantities greater than allowed by municipal, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor. If the environmental assessment conclusively establishes that PERMITTEE'S Operations did not result in a hazardous substance being released on or from the Permit Area, CITY shall reimburse PERMITTEE for the cost of the assessment.
11. Noninterference. PERMITTEE shall not materially interfere with CITY'S use, operations, and activities on the Permit Area, and PERMITTEE shall use such routes and follow such procedures on the Permit Area as shall result in the least damage and inconvenience to CITY and other users of the Permit Area.
12. Property Damage. PERMITTEE shall pay for all damage to the Permit Area, CITY'S personal property on the Permit Area, and the personal property of third parties on the Permit Area resulting from PERMITTEE'S exercise of the rights granted by this Permit. PERMITTEE shall promptly repair and restore to its original condition all such property.
13. Mutual Hold Harmless. PERMITTEE shall protect, indemnify, defend and hold CITY

harmless for damages caused by the acts or omissions of PERMITTEE'S officers, employees, and agents occurring in the performance of this Permit. CITY shall protect, indemnify, defend and hold PERMITTEE harmless for damages caused by the acts or omissions of CITY'S officers, employees, and agents occurring in the performance of this Permit. It is the intention of PERMITTEE and CITY that the provisions of this paragraph be interpreted to impose on each party responsibility for the acts of their respective officers, employees and agents. It is also the intention of PERMITTEE and CITY that where comparative negligence is determined to have been contributory, principles of comparative negligence will be followed and each party will bear the proportionate cost of any damage attributable to the negligence of that party, its officers, employees and agents.

14. Taxes. PERMITTEE shall pay any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any of the Permit Area as a result of PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area.
15. Encumbrances. PERMITTEE shall keep the Permit Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
16. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
17. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S use of the Permit Area and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
18. INSURANCE.
 - 18.1 Self-Insurance. PERMITTEE represents and warrants to CITY that it is self insured in accordance with applicable law, and shall pay all claims related to this Permit, the Permit Project, or PERMITTEE'S use of the Permit Area that would be covered by a third-party insurance company in the usual course of business, including without limitation General Public Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) per occurrence of Bodily Injury, and Two Million Dollars (\$2,000,000) per occurrence of Property Damage, together with Fire, Extended Coverage and Vandalism Insurance covering one hundred percent (100%) of the replacement cost. Upon request, PERMITTEE shall provide CITY evidence of

insurance or its ability to self-insure.

18.2 Contractor Insurance. Prior to entry onto the Permit Area, PERMITTEE shall require each of its authorized contractors to deliver to CITY a current certificate of insurance for: (a) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000); (b) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the Permit Area. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage; and (c) Workers' Compensation Insurance, as required by the laws of the State of California for all of PERMITTEE'S contractor's employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least than One Million Dollars (\$1,000,000).

18.02.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

18.02.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the duration of this Permit and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department.

18.02.3 Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

18.02.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy shall be the sole responsibility of PERMITTEE'S contractor and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.

18.02.5 Continuity of Coverage. All policies shall be in effect on or before entry to the Permit Area, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE'S contractor shall furnish a

certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.

- 18.02.6 Modification. To assure protection from and against the kind and extent of risk existing on the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time by giving PERMITTEE'S contractor thirty (30) days prior written notice. PERMITTEE'S contractor shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to PERMITTEE'S contractor's use of the Permit Area.
- 18.02.7 Accident Reports. PERMITTEE shall require each of its contractors to immediately report to CITY any accident causing property damage or injury to persons on the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 18.02.8 Failure to Comply. CITY intends to terminate this Permit if any contractor fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance as required by this Permit.
- 18.02.9 Causes of Loss - Special Form Property Insurance. PERMITTEE shall require each of its contractors to obtain and maintain, at their sole cost, Causes of Loss - Special Form Property Insurance on all insurable property on the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE'S contractor shall deliver to CITY a certificate of such insurance.
19. Compliance with Law. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area and PERMITTEE'S use of the Permit Area.
20. Signs. No signs may be displayed on the Permit Area without CITY'S prior written consent.
21. Utilities. PERMITTEE shall order, obtain, and pay for all utilities and service and installation charges in connection with its use of the Permit Area. Water will be charged at \$2.91 per hundred cubic feet and be managed and billed by the MWWD Department.
22. Improvements/Alterations. PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of the CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.
23. Maintenance of the Permit Area. PERMITTEE shall maintain the Permit Area, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, in a decent, safe, healthy

and sanitary condition.

24. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.

25. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is publicly-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.

26. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.

27. Entire Permit. This Permit contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by the party to be charged.

28. Legal Proceedings. If any party brings an action or proceeding against another party under this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment. If, as a result of an action brought by or against PERMITTEE in connection with this Permit, CITY intervenes therein, becomes a party, or is made a party thereto, PERMITTEE shall pay all of CITY'S costs and expenses thereof, including without limitation reasonable attorney fees and costs.

29. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight service, or delivery by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

CITY: THE CITY OF SAN DIEGO
Director, Real Estate Assets Department
Civic Center Plaza Building
1200 Third Avenue, Suite 1700 – MS 51A
San Diego, CA 92101-4155

With a copy by First-Class mail to: SAN DIEGO CITY ATTORNEY
Attention: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

PERMITTEE: SAN DIEGO COUNTY DEPARTMENT OF ENVIRONMENTAL
HEALTH, COMMUNITY HEALTH DIVISION, VECTOR CONTROL
PROGRAM (CHD-VCP)
Mike Dorsey, Chief CHD
9325 Hazard Way
San Diego, CA 92123

30. Authority. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: _____

SAN DIEGO COUNTY DEPARTMENT OF
ENVIRONMENTAL HEALTH COMMUNITY
HEALTH DIVISION, VECTOR CONTROL
PROGRAM (CHD-VCP)

BY: _____
April F. Heinze, Director General Services

Date: _____

BY: _____
Rodney Lorang, County Counsel

Date: _____

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: _____
Name: _____
Title: _____

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

Date: July 17, 2009

BY: Martha Blake
Name: Martha Blake
Title: Senior Planner

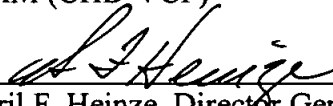
PERMITTEE: SAN DIEGO COUNTY DEPARTMENT OF ENVIRONMENTAL
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Mike Dorsey, Chief CHD
9325 Hazard Way
San Diego, CA 92123

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IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: 8/4/09

SAN DIEGO COUNTY DEPARTMENT OF
ENVIRONMENTAL HEALTH COMMUNITY
HEALTH DIVISION, VECTOR CONTROL
PROGRAM (CHD-VCP)

BY: 
April F. Heinze, Director General Services

Date: _____

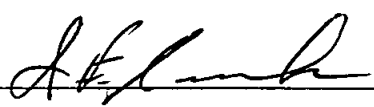
BY: _____

Rodney Dorang, County Counsel

(RFL)

Date: _____

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: 

Name: James F. Barwick, CCIM

Title: Director, Real Estate Assets

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

Date: _____

BY: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: August 12, 2009

JAN I GOLDSMITH, City Attorney

BY:

Andrea Contreras Dixon

Name: Andrea Contreras Dixon

Title: Deputy City Attorney

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY A.L. [Signature] RFL
SENIOR DEPUTY
7-2-09

Exhibit A: Permit Area



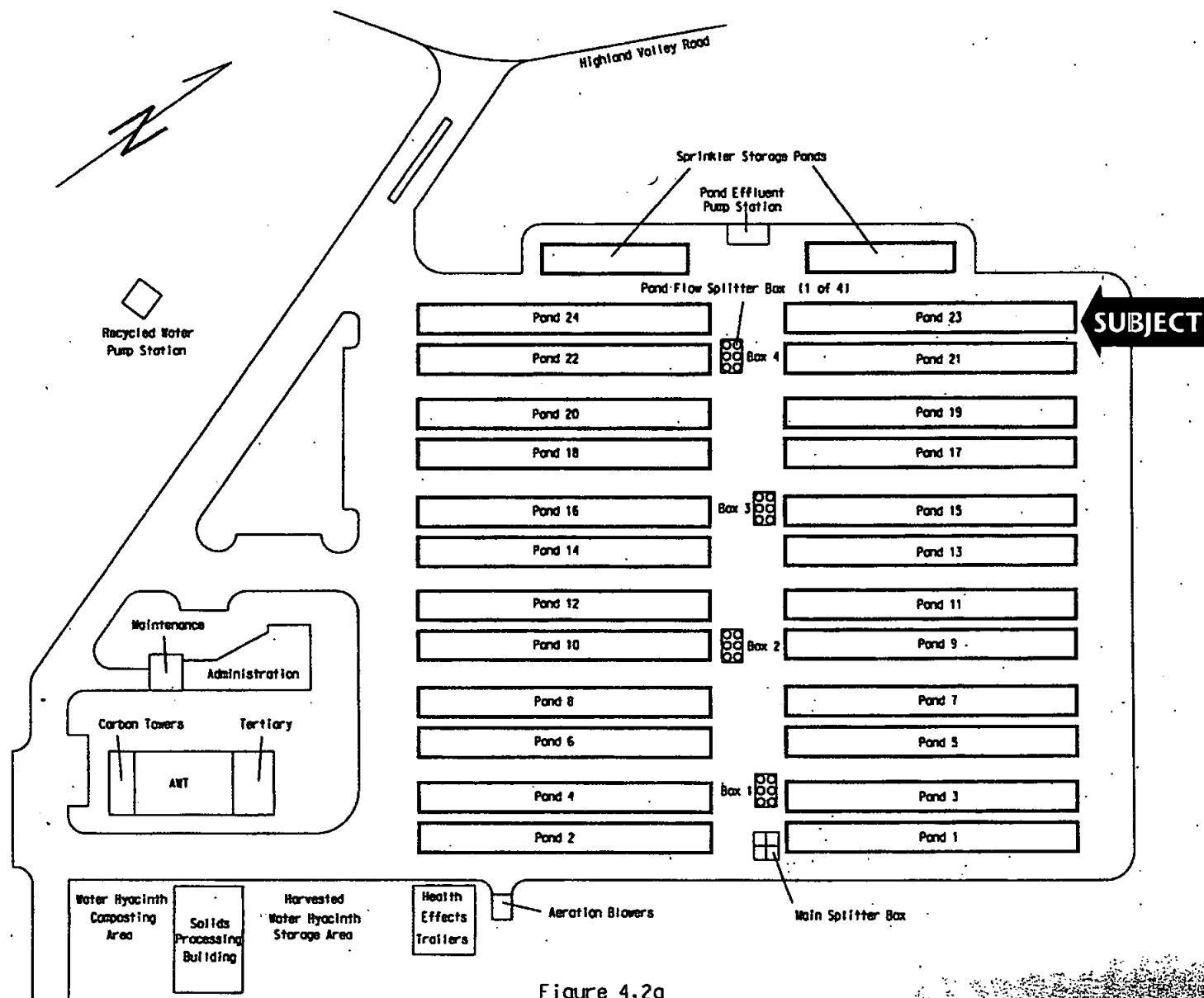


Figure 4.2a
Aqua III Site Plan