CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT
[NOBEL DRIVE; APNS 345-021-02, 345-021-03, AND 348-021-03]

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 CAPITAL POWER OPERATIONS (USA), INC., a Delaware corporation ("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 certain real property consisting of approximately 66 acres located east of the intersection of Nobel Drive and Interstate 805 in San Diego County, California, and comprised of Assessor's Parcel Numbers 345-021-02, 345-021-03, and 348-021-03; collectively referred to herein as the "Permit Area", and as shown in **EXHIBIT A: Permit Area**, attached hereto.

B. Under the terms and conditions of this Permit, CITY will allow PERMITTEE to use the Permit Area for the sole purpose of conducting a survey of sensitive biological, archeological, or cultural resources within the Permit Area, and such other studies and investigations as are pre-approved by CITY.

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 for the purposes of conducting a survey of sensitive biological, archeological, or cultural resources, conducting such other studies and investigations as may be requested in writing by PERMITTEE and pre-approved by CITY, and restoring the Permit Area as required by this Permit (collectively, the "Permit Use"), and for no other purpose whatsoever.

2. Use of Permit Area. PERMITTEE shall obtain all other required permits and comply with all applicable environmental laws, rules, and regulations related to the Permit Use.

3. Permit Fee. Upon PERMITTEE'S execution and delivery of this Permit, PERMITTEE shall pay to CITY a one-time, non-refundable permit processing fee of Six Hundred Dollars ($600).

4. Term. The term of this Permit ("Term") shall commence on the Effective Date, and shall expire on January 1, 2012.

5. Revocable License. This Permit is not a lease. It is a non-exclusive license to use CITY-owned property, 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. Restoration. Immediately upon the expiration or earlier termination of this Permit, PERMITTEE shall promptly remove any and all of its personal property and improvements it installed in, on, under, or above the Permit Area. If PERMITTEE'S use of the Permit Area damages or results in any change to the Permit Area, PERMITTEE shall restore the Permit Area to CITY'S reasonable satisfaction, all at PERMITTE'S sole cost and expense.

7. Information. Within thirty (30) days after CITY'S request, PERMITTEE shall deliver to CITY, at no expense to CITY, copies of all biological, archeological, or cultural resource surveys, or other reports or information collected, obtained, or prepared as a result of PERMITTEE having been granted access to the Permit Area.

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, department 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, lease agreements, sales agreements, option to lease or purchase agreements, exclusive negotiating agreements, or any other governmental agency approvals or agreements 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. PERMITTEE and PERMITTEE'S agents and contractors 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, leeching, 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 Lease.

    a. Remediation. If PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.

    b. Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area, 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.

c. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area, PERMITTEE shall immediately notify CITY. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area as a result of PERMITTEE'S use of the Permit Area, PERMITTEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area as a result of PERMITTEE'S use of the Permit Area and such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY of any notice of violation received or initiation of environmental actions or private suits related to PERMITTEE'S use of the Permit Area.

d. Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area ("PERMITTEE'S Operations"), resulted in any hazardous substance being released on or beneath the Permit Area, CITY may cause an environmental assessment of the suspect 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 on, in, or under the Permit Area, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, 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.

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 promptly pay for all damage to CITY'S personal property and the personal property of third parties resulting from PERMITTEE'S use of the Permit Area.

13. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property,

including injury to PERMITTEE'S officers, employees, agents, contractor's, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification.

14. Taxes. PERMITTEE, alone, 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 recognizes that CITY may need the Permit Area for essential public infrastructure such as a water or sewer treatment plant, and that 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, or in the vicinity of the Permit Area resulting directly or indirectly thereby.

18. Insurance. PERMITTEE shall deliver to CITY'S Real Estate Assets Department a current certificate of insurance for:

    (1) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars ($1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars ($2,000,000);

    (2) 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 in performing any and all work pursuant to this Permit.

Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and

(3) Workers' Compensation Insurance, as required by the laws of the State of California for all of PERMITTEE'S employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least One Million Dollars ($1,000,000). Required Endorsements: The following endorsements to the policies of insurance are required to be provided to the CITY before any work is initiated under this Permit:

a. 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.

b. 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.

c. 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.

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

e. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, 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. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and obtain replacement insurance as soon as possible.

f. Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use or the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE 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 the Permit Use or the Permit Area.

g. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the Permit Use or 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.

h. Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE'S insurable property related to this Permit or the Permit Use in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE 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 Operations on the Permit Area.

20. Signs. No signs may be displayed on the Permit Area without CITY'S prior written consent.

21. 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.

22. Grading. PERMITTEE represents and warrants that any grading and compaction operations shall be done in such a manner that will not disrupt the existing surface drainage pattern and the final grades will not interfere with the existing flow pattern.

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

24. 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.

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

26. 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.

27. Legal Proceedings. In the event of any controversy, claim, or dispute relating to this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation attorney fees and costs.

28. 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

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: James F. Barwick, Director,
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

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: Attn: Peter Sawicki
Capital Power Operations (USA) Inc.
8835 Balboa Avenue
San Diego, CA 92123

COPY: Associate General Council (USA)
Capital Power Operation (USA) Inc
3250 Lacey Road Ste. 500
Downers Grove, IL 60515

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

29. Authority. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are 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 represents and warrants 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: _____

CAPITAL POWER OPERATIONS (USA) INC.

BY: _____

Name: Patricio Fuenzalida

Title: Director BD - US West

Date: 3/4/11

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____

Name: J. F. BARWICK

Title: DIRECTOR REAL ESTATE ASSETS

ENVIRONMENTAL CLEARANCE:

This activity (Right of Entry) is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15304(e). The activity for which this Right of Entry Permit is to be used is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section §15306.

Date: 3/3/11

City of San Diego Development Services Department
Environmental Analysis Section

BY: _____

Name: Myra Herrmann

Title: Senior Planner

Approved as to Form and Legality:

JAN I. GOLDSMITH, City Attorney

BY: _____

Name: Brock Ladewig

Title: Deputy City Attorney

EXHIBIT A: Permit Area

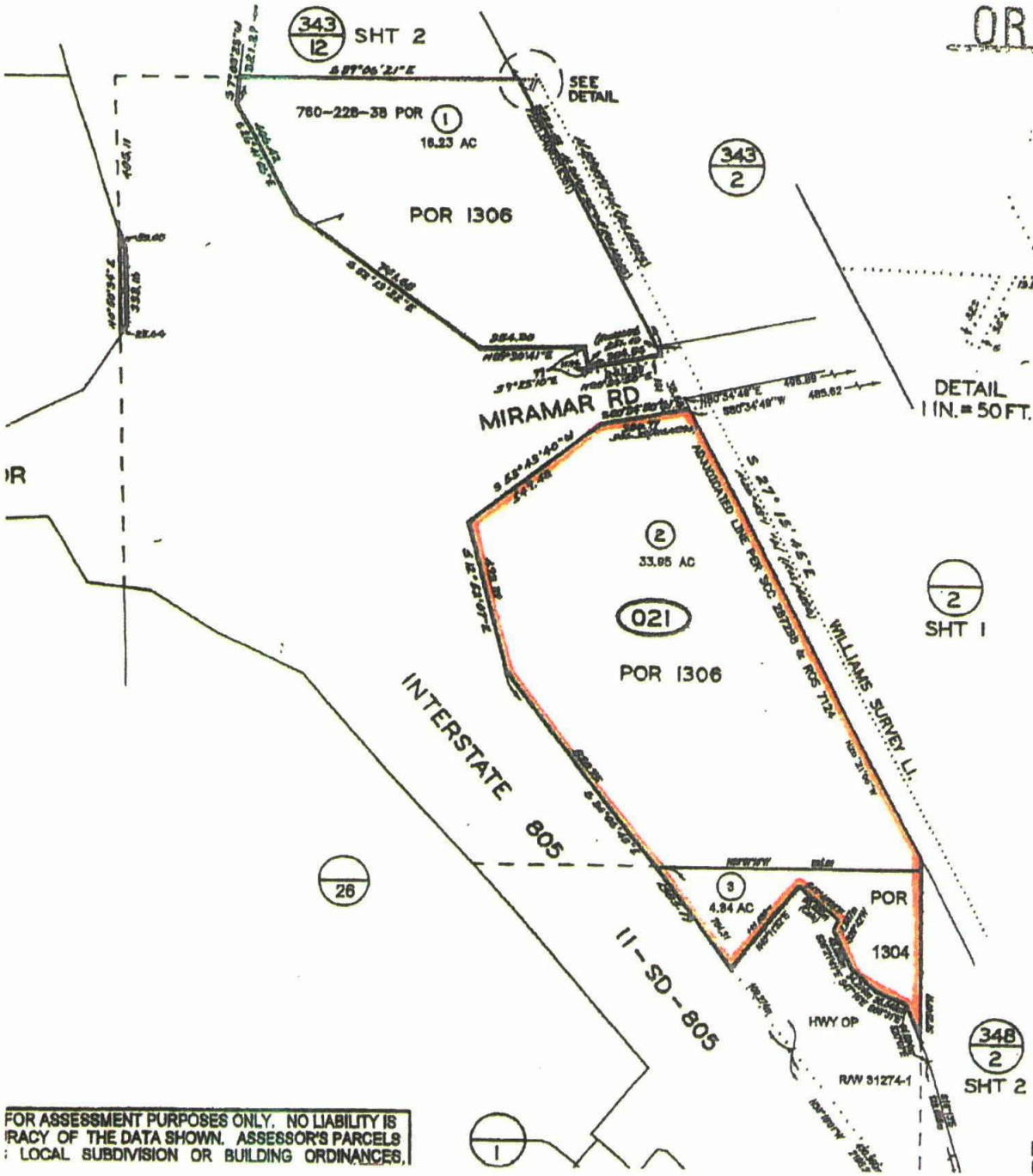
ORIGINAL

345-02
SHT 2 OF 2

1"=400'

12/18/2008 JGD

CHANGES				
BLK	OLD	NEW	YR	CUT
021	[illegible]	[illegible]	78	MASB
	2	[illegible]	01	4800
	2	[illegible]	01	5574
	1	[illegible]	02	5532
	1	[illegible]	"	"



FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS
RACY OF THE DATA SHOWN. ASSESSOR'S PARCELS
LOCAL SUBDIVISION OR BUILDING ORDINANCES,

MM 36 - PUEBLO LANDS
ROS 7124 14245 14296 16351 18130 19801

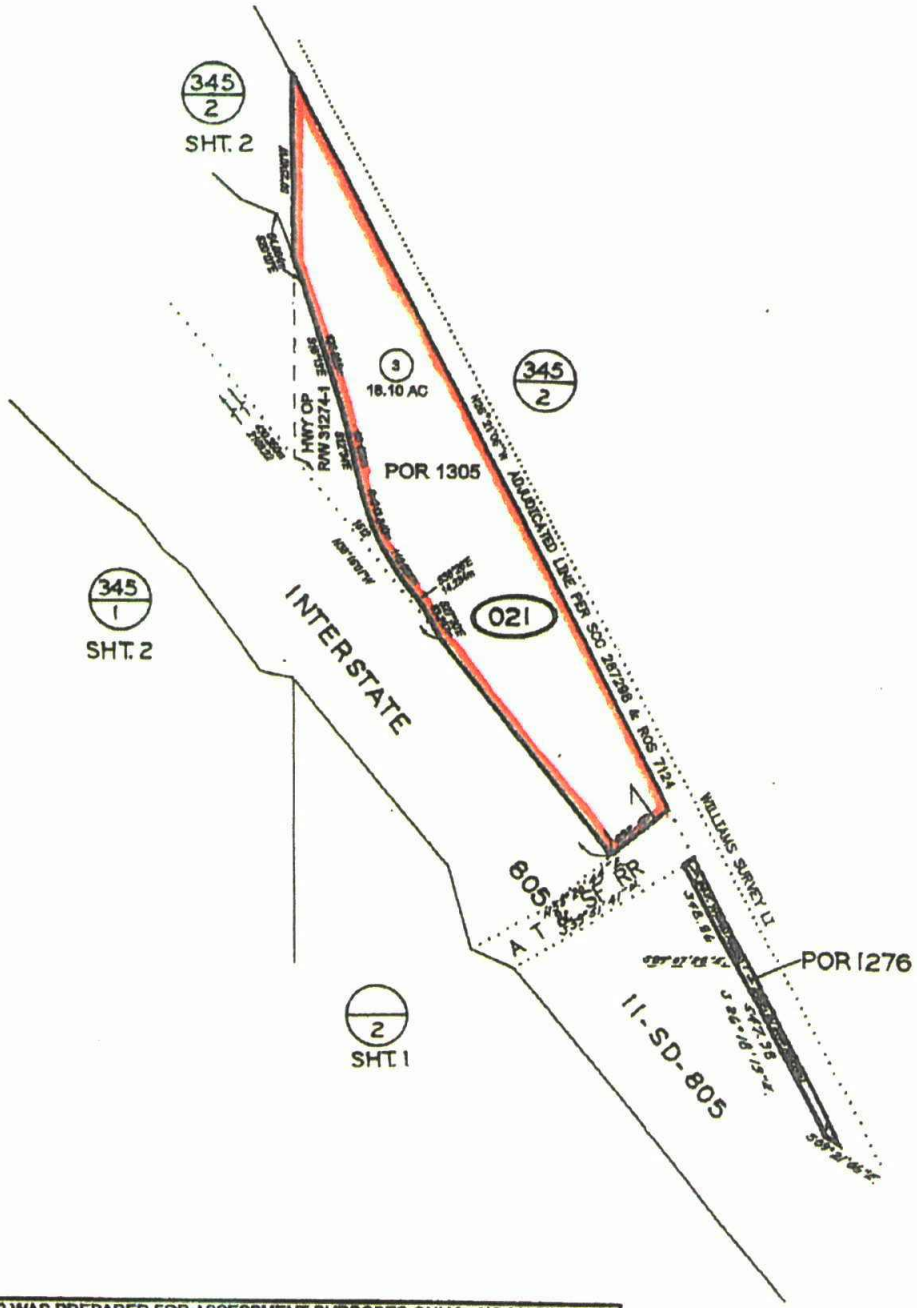
Exhibit A: Permit Area (page 1 of 2)

ORIGINAL

348-02
SHT 2 OF 2

1" = 400'

N



12/16/2008 JGD

CHANGES				
BLK	OLD	NEW	YR	CUT
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	1&2	3	02	1500
	3	[illegible]	[illegible]	[illegible]

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

MM 36 - PUEBLO LANDS
ROS 7124, 14296, 19891

Exhibit A: Permit Area (page 2 of 2)