

CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT

THIS RIGHT OF ENTRY PERMIT ("Permit") is executed by and between the CITY OF SAN DIEGO, a municipal corporation ("City"), and BURKHART ENVIRONMENTAL CONSULTING ("Permittee").

WHEREAS, a three-year Right of Entry Permit was granted to Burkhart Environmental Consulting ("BEC") by City on August 23, 2002, to enable BEC to perform the required work pursuant to its contract award with City for the "San Diego River Supplemental Environmental Project."

WHEREAS, the contract requires BEC to prepare reports and plans and construct two wetlands restoration pilot programs to (i) remove exotic plants from the study area, followed by a five-year maintenance and monitoring program, and (ii) plant native species plant and seed where the exotic plants have been removed.

WHEREAS, BEC requires an additional three years to complete the work required under the contract.

WHEREAS, in consideration of the benefits to be provided to City, City is willing to grant BEC a right of entry permit to complete the work required under the contract.

NOW, THEREFORE, in consideration of the above recitals and the mutual obligations of the parties to this Permit, City and Permittee agree as follows:

1. Right to Enter. City hereby grants permission to Permittee to enter portions of the San Diego River adjacent to the Carlton Oaks Golf Course situated in the City of Santee, County of San Diego, State of California, and as specifically set forth on the attached Exhibit "A" ("Permit Area"), incorporated by this reference. Permission to enter the Permit Area is conditioned upon the terms set forth below.
2. Use of Permit Area. Permittee shall have non-exclusive use of the Permit Area for development of a pilot project for invasive exotic plant species eradication and wetland habitat replacement, cutting and removal of invasive exotic weeds and exotic trees, installation of native planting with temporary irrigation to larger areas, maintenance and monitoring of the project and for no other purpose whatsoever. Initial habitat restoration work to be done September 15 through March 15 during the non-nesting season of the least Bell's vireo. Ongoing maintenance and monitoring activities at the site to be done according to the limitations set by the California Department of Fish and Game and Army Corps of Engineers permits for the project.

3. Permit Fee. Consideration to City for granting this Permit shall be a Six Hundred Dollar (\$600) non-refundable processing fee made by check payable to the City Treasurer.
4. Term. The effective date of this Permit shall be September 6, 2005 ("Effective Date"), and this Permit shall terminate three (3) years from the Effective Date.
5. Insurance. Prior to approval of this Permit by City, Permittee shall deliver to City a certificate of insurance for public liability and property damage in which the "City of San Diego, its elected officials, officers, representatives, agents and employees" are named as additional insured, by separate endorsement, in an amount of not less than Two Million Dollars (\$2,000,000) combined single limit liability with an occurrence claims form. The policy shall be kept in force for the duration of this Permit. The certificate of insurance shall be filed with City's Real Estate Assets Department upon execution of this Permit.
6. Hold Harmless. Permittee agrees to defend, indemnify, protect, 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 employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the grant of this Permit to the Permittee, the development or operation of the Permit Area or the work and operations to be performed under this Permit, and all expenses of investigating and defending against same; 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.
7. 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.
8. Permittee's Risk. All risks in connection with Permittee's use of the Permit Area and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee.
9. Nuisance. Permittee shall not use the Permit Area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
10. Revocable Permit. This Permit is not a lease. It is a license to use City property, revocable at any time by City. It is mutually agreed that City shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of

this Permit, and, further, that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this Permit. City shall have and maintain the right at all times to enter upon the Permit Area in City's sole discretion.

11. Possessory Interest Tax. Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Such tax payment shall not reduce any fee paid City under this Permit. Permittee shall pay any tax or assessment before it becomes delinquent.
12. Compliance with Laws. Permittee shall at its sole cost and expense comply with all 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.
13. Deposit. None required for this activity.
14. No Assignment. Permittee shall not assign any rights granted by this Permit nor any interest therein without the prior written approval of the City Manager. Approval of any such proposed assignment may be withheld in the sole and absolute discretion of the City Manager. Any assignment by operation of law shall automatically terminate this Permit.
15. Signs. No signs shall be displayed on the Permit Area without the prior written consent of the City Manager.
16. Encumbrances. Permittee shall keep the Permit Area free from all encumbrances and liens of any nature during the term of this Permit. Permittee shall defend, hold harmless and indemnify City from and against any and all such encumbrances and/or liens and from and against any claim, liability, cost or expense (including all costs and attorneys' fees), which may be filed or instituted 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.
17. Maintenance of the Permit Area. Permittee shall be solely responsible for maintaining the Permit Area in a decent, safe, healthy and sanitary condition at all times during the entire term of this Permit to the satisfaction of the City Manager or designee.
18. Waiver. The failure of City to insist upon strict performance by Permittee of any condition of this Permit, in one or more instances, shall not be construed as a waiver of any such condition, and the same shall remain in full force and effect.
19. Oral Representations. This Permit contains the complete expression of the agreement between the parties, and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as set forth herein. The conditions

hereof cannot be changed in any respect except by written agreement between the parties.

20. Floodplain Restrictions. Due to the location of the Permit Area in a floodplain, grading, filling, dumping or fencing is prohibited unless first approved in writing by the City Manager. Permittee shall not change the surface grade or construct any barriers on the Permit Area. Any such violations will be corrected by Permittee, at its sole expense, to the satisfaction of the City Manager and are grounds, at City's option, for immediate termination of this Permit.
21. Inspection. City may enter and inspect the operations permitted under this Permit at any time.
22. Legal Proceedings. Should it become necessary for City to commence legal proceedings to collect any payments due hereunder or to enforce any other condition of this Permit, Permittee agrees to pay all legal costs in connection therewith, including reasonable attorneys' fees.
23. Notices.

Notices to City shall be mailed to:

City of San Diego
Real Estate Assets Department
Attention: Deputy Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101

Notices to Permittee shall be mailed to:

Brad Burkhart
Burkhart Environmental Consulting
4709 Biona Drive
San Diego, CA 92116

or notices may be delivered to Permittee.

24. Governmental Approvals. By the granting of this Permit, neither City nor the Council of City is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Permit Area. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Permit Area.

IN WITNESS WHEREOF, this Right of Entry Permit is executed by City, acting by and through its City Manager, and by Permittee, acting by and through its lawfully authorized officer.

CITY OF SAN DIEGO

Date: 6/14/05

By: [Signature]
Jack D. Farris, Deputy Director
Real Estate Assets Department

BURKHART ENVIRONMENTAL CONSULTING

Date: 6/9/05

By: [Signature]
Brad Burkhardt, Principal

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Article 19, Section 15304.

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

Date: 6/15/05

By: [Signature]
Anne E. Lowry

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

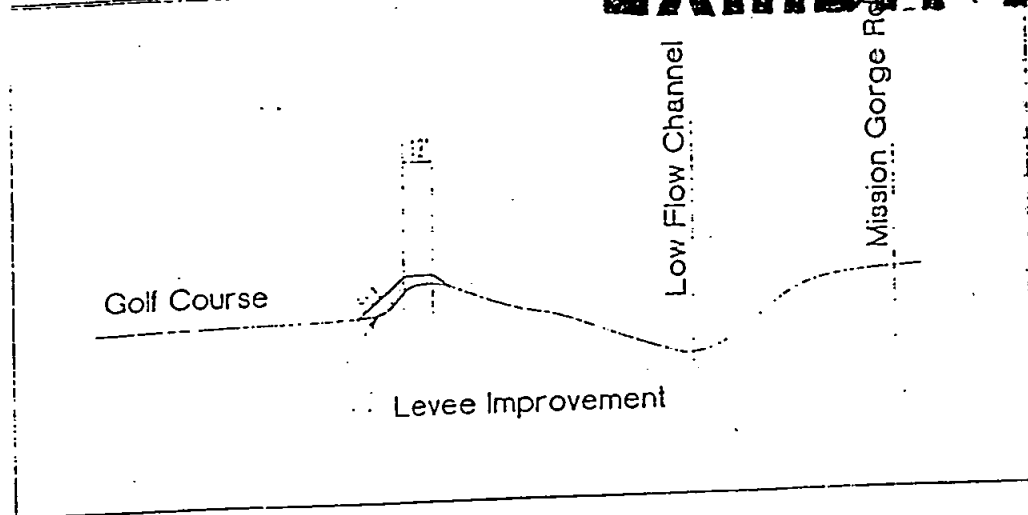
Date: 6/28/05

By: [Signature]
Deputy City Attorney

Site No. M801
APN 383-080-02

I:\Young\ROE-Burkhart-1
6/7/05

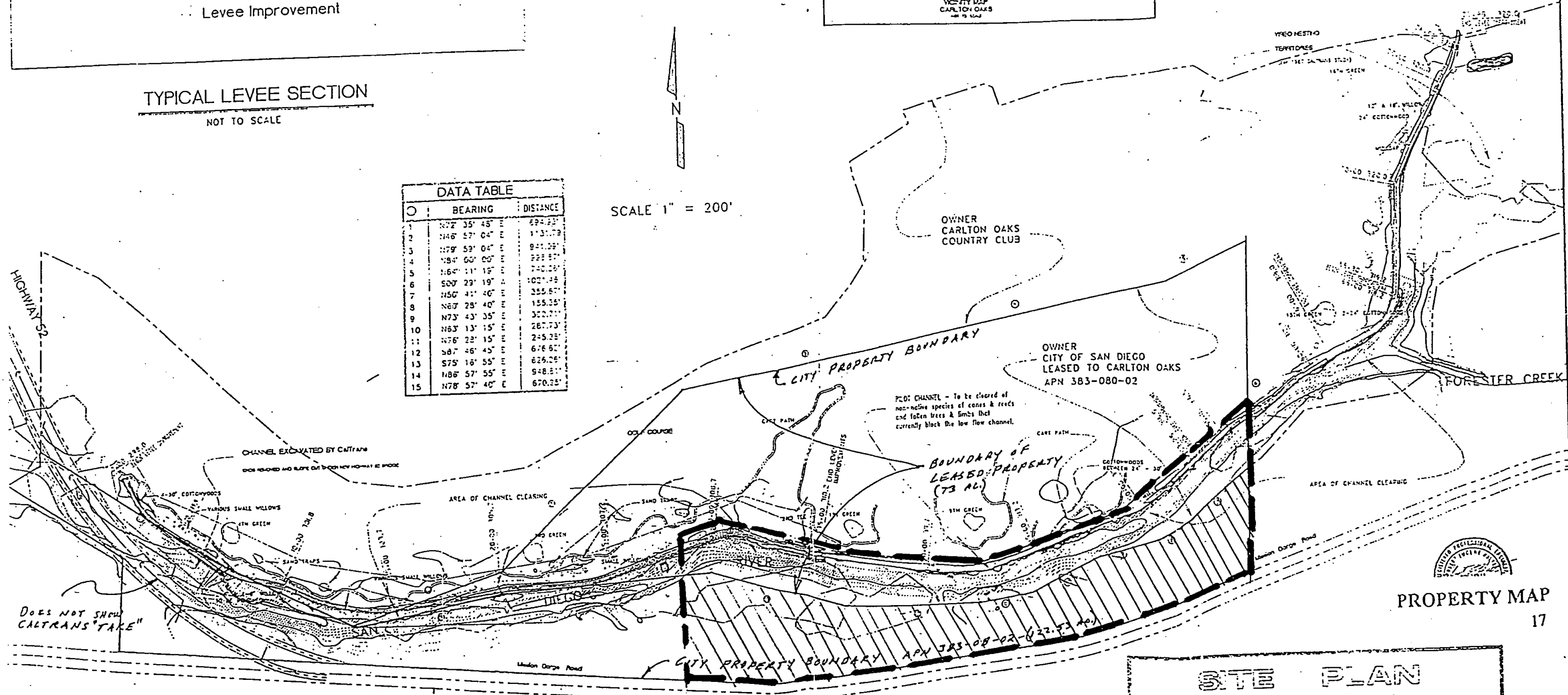
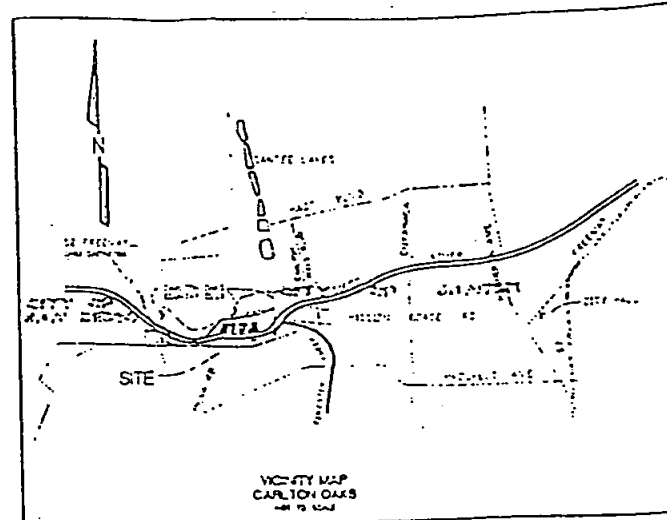
EXHIBIT A



TYPICAL LEVEE SECTION
NOT TO SCALE

DATA TABLE		
STATION	BEARING	DISTANCE
1	N72° 35' 45" E	694.23'
2	N46° 57' 04" E	1131.03'
3	N79° 53' 04" E	941.29'
4	N84° 00' 00" E	922.87'
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8	N67° 28' 40" E	155.25'
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10	N63° 13' 15" E	287.73'
11	N76° 22' 15" E	245.28'
12	S87° 46' 45" E	616.60'
13	S75° 16' 55" E	626.26'
14	N86° 57' 55" E	948.51'
15	N78° 57' 40" E	670.25'

SCALE 1" = 200'



PROPERTY MAP
17

GRADING INFORMATION

TOTAL GRADING: 1.5 AC (2% OF TOTAL)
25% SLOPES & OVER: 0.0 AC
HILLSIDE REVIEW: 0.0 AC
CUT: 0 CY
FILL: 4500 CY
HEIGHT OF FILL: 5.0' SLOPE: 3:1
IMPORT: 4500 CY

LEGEND

BOUNDARY LINE
STATION/ELEVATION OF CHANNEL
TOPO CONTOURS

LEGAL DESCRIPTION
PORTION OF LOT #1
RESUBDIVISION OF RANCH FANITA
MAP 1703

Area of Request
for
Right-of-Entry Permit

SITE PLAN
SAN DIEGO RIVER - LOW FLOW CHANNEL
CARLTON OAKS COUNTRY CLUB
SANTEE, CALIFORNIA



THE CITY OF SAN DIEGO

August 23, 2002

Files: Property File - M-801
Permit File - Burkhart Environmental
Consulting

Job: 220585-018
Land Designation/Zone: Flood Control San Diego
River, APN 383-080-02

Burkhart Environmental Consulting
P.O. Box 420358
San Diego, CA 92142-0358

Attention: Brad Burkhart

Reference: Right of Entry Permit - City owned portion of the San Diego River adjacent to the
Carlton Oaks Golf Course, APN 383-080-02.

The City of San Diego ("City") hereby grants permission to Burkhart Environmental Consulting ("Permittee") to enter upon the above-referenced City-owned property ("Permit Area"), as delineated on the attached Exhibit "A," upon the following terms and conditions:

1. Use and Permit Area. Permittee shall have non-exclusive use of the Permit Area for development of a pilot project for invasive exotic plant species eradication and wetland habitat replacement on City owned portions of the San Diego River adjacent to the Carlton Oaks Golf Course, cutting and removal of invasive exotic weeds and exotic trees, installation of native planting with temporary irrigation to larger areas, maintenance and monitoring of the project and for no other purpose whatsoever. Initial habitat restoration work to be done, September 15 through March 15 during the non-nesting season of the least Bell's vireo. On going maintenance and monitoring activities at the site to be done according to the limitations set by the California Department of Fish and Game and Army Corps of Engineers permits for the project.
2. Permit Fee. Consideration to City for granting this Permit shall be a \$360 non-refundable processing fee made payable to the City Treasurer.
3. Effective Date. This Permit shall be in effect upon execution by City and Permittee and approval by the City Attorney ("Effective Date") and shall expire three (3) years from the Effective Date.



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706



4. Insurance. Prior to entry onto the Permit Area, Permittee shall deliver to City a policy of public liability and property damage insurance, in which "the City of San Diego" is named as an additional insured, has been secured in an amount of not less than one million (\$1,000,000) combined single limit liability with an occurrence claims form and that the policy shall be kept in force for the duration of this Permit. A certificate of the insurance shall be filed with the City Real Estate Assets Department upon execution of this Permit.
5. Hold Harmless. Permittee agrees to defend, indemnify, protect, and hold the City, its agents, officers, 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 employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the grant of this Permit to the Permittee, the development or operation of the Permit Area or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; 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 the City, its agents, officers, or employees.
6. 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.
7. Permittee's Risk. All risks in connection with Permittee's use of the Permit Area and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee.
8. Nuisance. Permittee shall not use the Permit Area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
9. Revocable Permit. This Permit is not a lease. It is a license to use City property, revocable at any time by the City of San Diego. It is mutually agreed that the City of San Diego shall not be obligated for any loss, financial or otherwise, which may be

as a result of termination of this Permit. City shall have and maintain the right at all times to enter upon the Permit Area in the City's sole discretion.

10. Possessory Interest Tax. Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Permittee shall pay any tax or assessment before it becomes delinquent.
11. Compliance with Laws. Permittee shall at its sole cost and expense comply with all 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.
12. Deposit. None required for this activity.
13. No Assignment. Permittee shall not assign any rights granted by this Permit nor any interest therein without the prior written approval of the City Manager. Approval of any such proposed assignment may be withheld in the sole and absolute discretion of the City Manager. Any assignment by operation of law shall automatically terminate this Permit.
14. Signs. No signs shall be displayed on the Permit Area without the prior written consent of the City Manager.
15. Encumbrances. Permittee shall keep the Permit Area free from all encumbrances and liens of any nature during the term of the Permit. Permittee shall defend, hold harmless and indemnify the City from and against any and all such encumbrances and/or liens and from and against any claim, liability, cost or expense (including all costs and attorneys fees), which may be filed or instituted against the Permit Area (including without limitation the 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.
16. Maintenance of the Permit Area. Permittee shall be responsible for maintaining the Permit Area in a decent, safe, healthy and sanitary condition at all times during the entire term of this Permit.
17. Governmental Approvals. By the granting of this permit, neither City nor the Council of City is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to

Page 4
Burkhart
August 23, 2002

rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Permit Area.

Please acknowledge your agreement to the foregoing terms and conditions on the enclosed copy of this permit and return it to the City Real Estate Assets Department, together with your insurance certificate and check for \$360. made payable to the "City Treasurer," within 10 days from receipt hereof.

If you should require additional information or have any questions, please call Dave Martens, Property Agent, at (619) 236-6066.

Very truly yours,



Tim C. Rothans, Deputy Director
Real Estate Assets Department

TCM/DCM/cdj-p

Attachments

cc: County Assessor
Kent Floro, Deputy Director, Water Department

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Page 5
Burkhart
August 23, 2002

THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS 23 DAY OF
August, 2002.

BURKHART ENVIRONMENTAL CONSULTING

By Brad Burkhart

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Article 19, Section 15304 and Article 18, Section 15262.

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

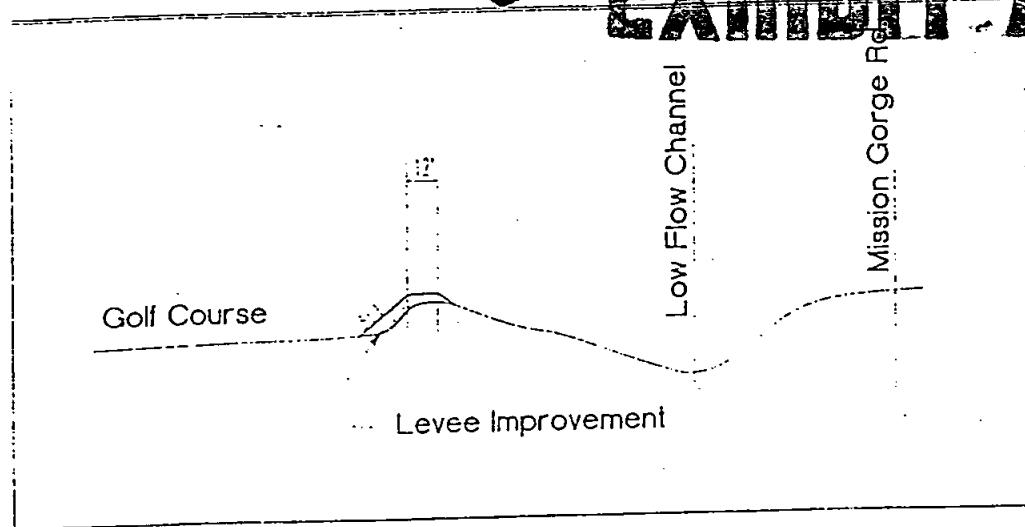
By Paul Lundy

APPROVED AS TO FORM AND LEGALITY

CASEY GWINN, City Attorney

By Deputy B
Deputy City Attorney

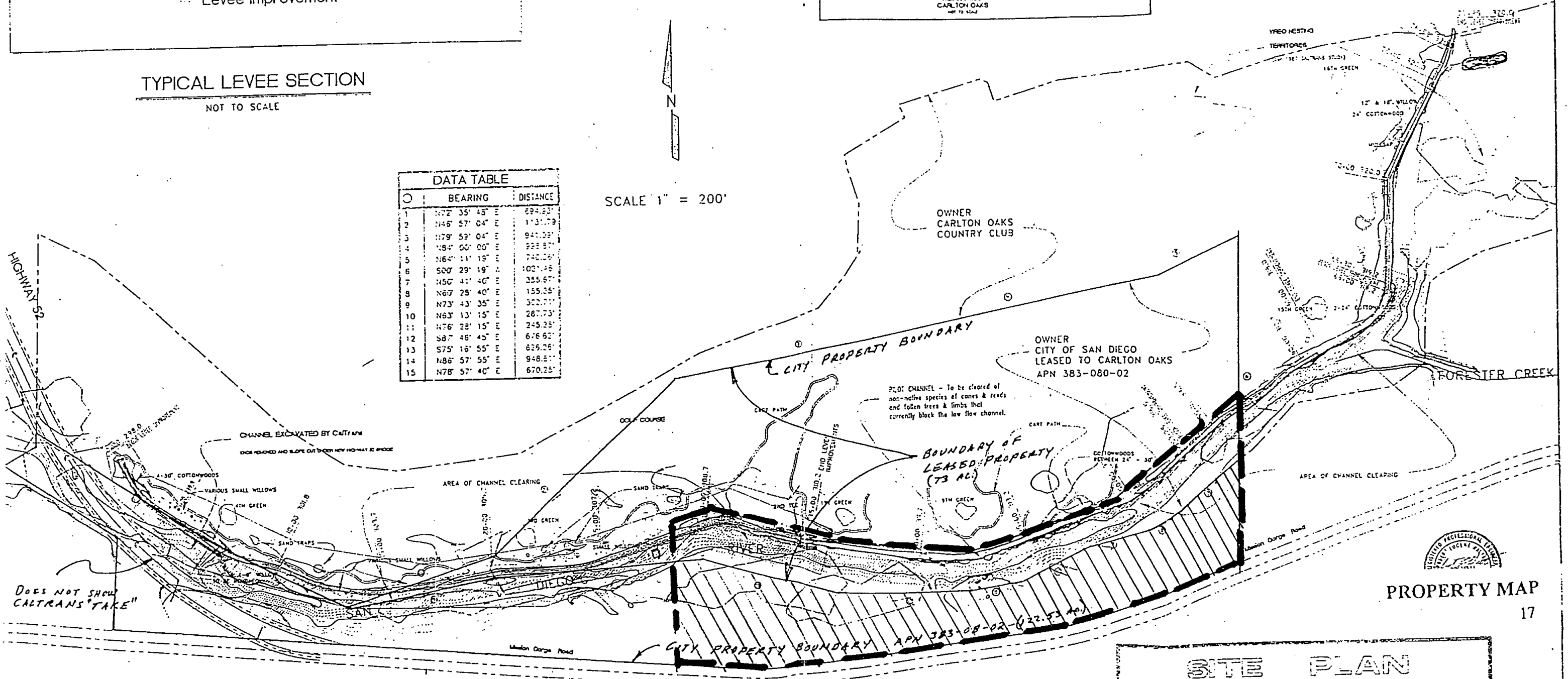
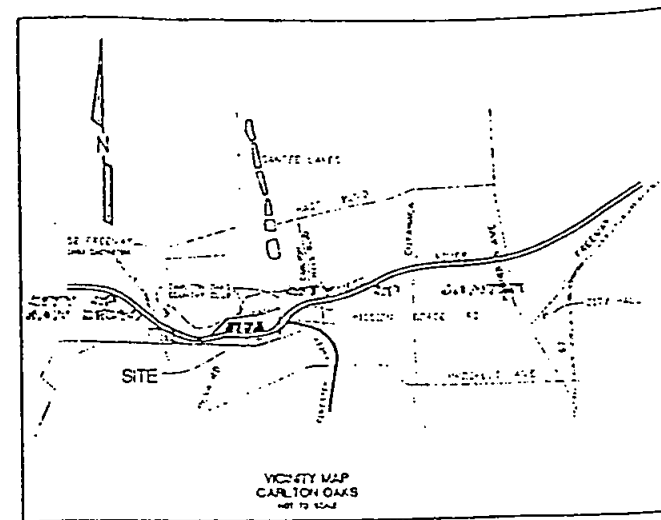
EXHIBIT A



TYPICAL LEVEE SECTION
NOT TO SCALE

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SCALE 1" = 200'



PROPERTY MAP
17

GRADING INFORMATION
TOTAL GRADING: 1.5 AC (2% OF TOTAL)
25% SLOPES & OVER: 0.9 AC
HILLSIDE REVIEW: 0.6 AC
CUT: 0 CY
FILL: 4500 CY
HEIGHT OF FILL: 5.0' SLOPE: 3:1
IMPORT: 4500 CY
RETAINING WALLS: NONE

LEGEND
BOUNDARY LINE
STATION/ELEVATION OF CHANNEL
TCPO CONTOURS

LEGAL DESCRIPTION
PORTION OF LOT #1
RESUBDIVISION OF RANCH FANITA
MAP 1703

**Area of Request
for
Right-of-Entry Permit**

SITE PLAN
SAN DIEGO RIVER - LOW FLOW CHANNEL
CARLTON OAKS COUNTRY CLUB
SANTEE, CALIFORNIA

CALIFORNIA HISTORICAL RESOURCES INFORMATION SYSTEM SITE FILES RECORD SEARCH

Source of Request: Burkhardt Environmental Consulting (Lynne E. Christenson, total of 2 persons)
Date of Request: April 24, 2002
Date Request Received: April 24, 2002
Project Identification: San Diego River SEP Pilot Project Wetland Restoration Sites
Search Radius: 1/2 mile

- () The South Coastal Information Center historical files DO NOT show recorded - prehistoric or historic site location(s) within the project boundaries, nor prehistoric site location(s) within the specified radius of the project area.
- (X) The South Coastal Information Center historical files DO show recorded prehistoric or historic site location(s) within the project boundaries and/or prehistoric site location(s) within the specified radius of the project area.

Historical Site Location(s) check: self Date: April 24, 2002

Archaeological (CA-SDI) and Primary (P-37) site maps have been reviewed. All sites within the project boundaries and the specified radius of the project area have been plotted. Copies of the site record forms have been included for all recorded sites.

Bibliographic Materials check: self Date: April 24, 2002

Project boundary maps have been reviewed. The bibliographic materials for reports within the project boundaries and within the specified radius of the project area have been included.

Historic Map(s) check: self Date: April 24, 2002

The historic maps on file at the South Coastal Information Center have been reviewed, and copies have been included.

Historic Resources check: self Date: April 24, 2002

If there are historic resources within your project boundaries, information from the National Register of Historic Properties, California Register, California State Landmarks, California Points of Historic Interest, and other historic property lists, has been included. A map generated from Geofinder, a historic database and mapping program, has been included.

HOURS: 1 (X 2)

COPIES: 30

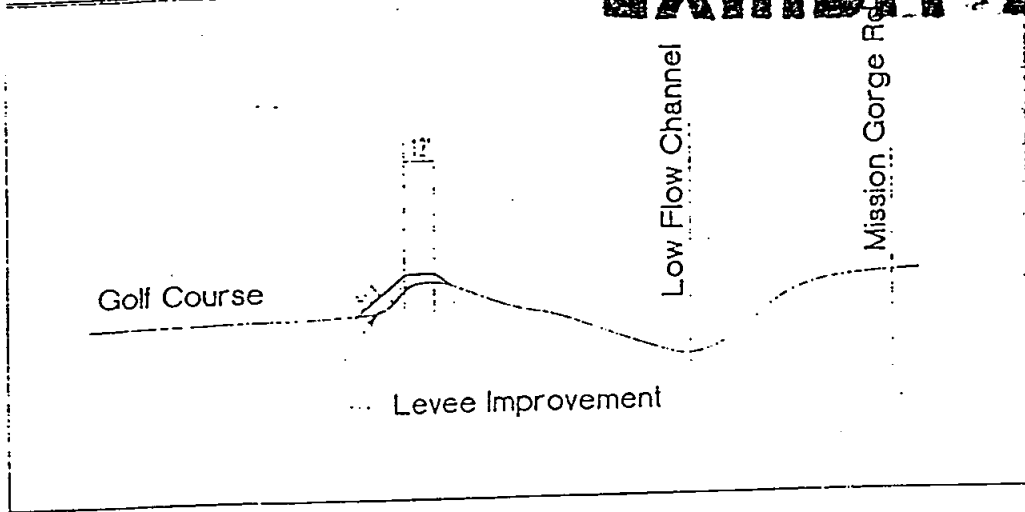
RUSH: No

EC

This is not an invoice. Please pay from the monthly Billing Statement.

JB

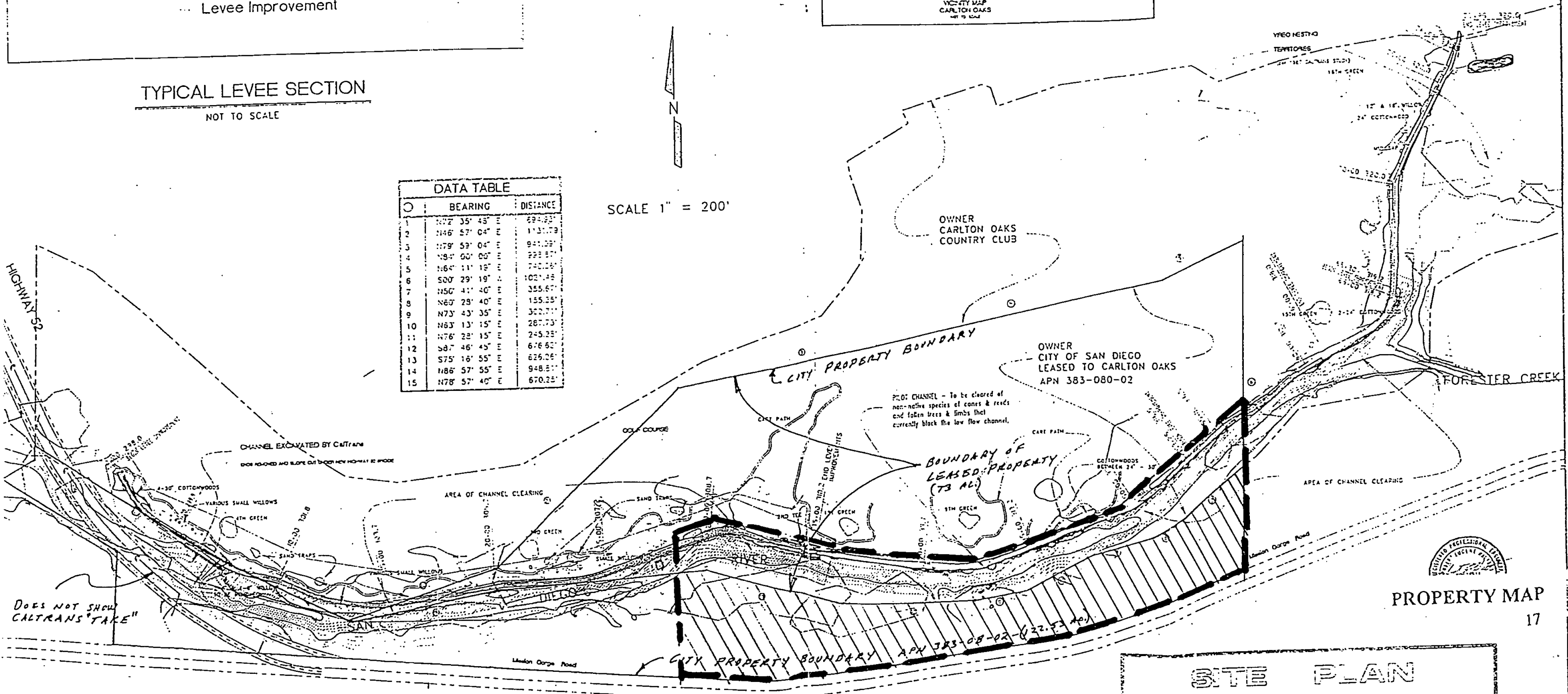
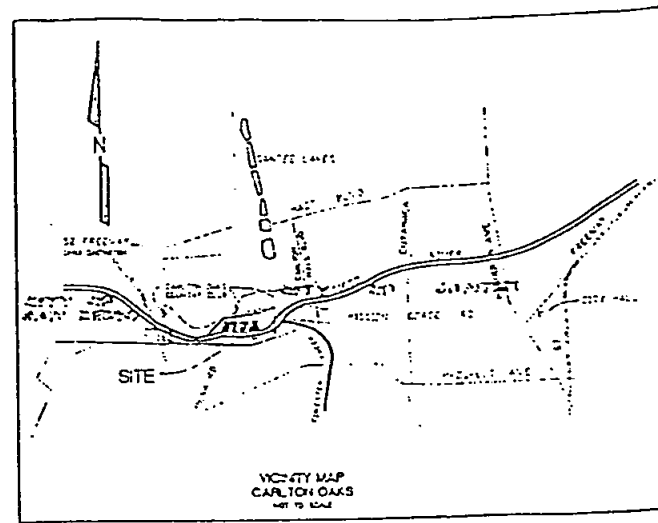
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BOUNDARY LINE
STATION/ELEVATION OF CHANNEL
TOPO CONTOURS

LEGAL DESCRIPTION
PORTION OF LOT #1
RESUBDIVISION OF RANCH FANITA
MAP 1703

**Area of Request
for
Right-of-Entry Permit**

SITE PLAN
SAN DIEGO RIVER - LOW FLOW CHANNEL
CARLTON OAKS COUNTRY CLUB
SANTEE, CALIFORNIA

DETERMINATION OF: ENVIRONMENTAL EXEMPTION
Pursuant to The California Environmental Quality Act (CEQA) and State CEQA Guidelines

Agency: CITY OF SAN DIEGO

LDR NO.: N/A

DATE: 4/26/02

Action/Permit(s): Award of Contract to Burkhardt Environmental Consulting

Permit No. N/A

Description of Activity: San Diego River Supplemental Environmental Project. Award of contract to prepare reports and plans regarding invasive species existence and removal recommendations along the San Diego River, prepare reports and plans on trail opportunities and constraints, and prepare plans and construct two wetlands restoration pilot programs to 1) remove up to 5 net acres of exotic plants from the study area, followed by a 5-year maintenance and monitoring program and 2) plant native species container plants and seed, under irrigation on up to 2 net acres of the 5 net acres where the exotic plants have been removed.

Location of Activity: The planning area is located within and adjacent to the San Diego River from Interstate 5 on the west to the easterly city limits. The pilot restoration sites are located within and adjacent to the San Diego within and west of the Carlton Oaks Golf Course.

1. ☐ This activity is **EXEMPT FROM CEQA** pursuant to:
- ☐ Section 15061(b)(1) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378).
 - ☐ Section 15061(b)(3) of the State CEQA Guidelines ("General Rule").
2. ☒ This project is **EXEMPT FROM CEQA** pursuant to State CEQA Guidelines Section(s) checked below:

ARTICLE 19 of GUIDELINES
CATEGORICAL EXEMPTIONS
(Incomplete list)

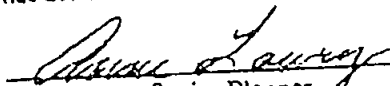
Sec.	Short Name
☐ 15301 1	Existing Facilities
☐ 15302 2	Replacement or Reconstruction
☐ 15303 (e)	New Construction or Conversion of Small Structures
☒ 15304	Minor Alterations to Land
☐ 15305 5	Minor Alterations in Land Use Limitations
☐ 15306 6	Information Collection
☐ 15311 11	Accessory Structures
☐ 15312 12	Surplus Government Property Sales
☐ 15315 15	Minor Land Divisions
☐ 15317 17	Open Space Contracts or Easements
☐ 15319 19	Annexation of Existing Facilities and Lots for Exempt Facilities
☐ 15332 32	In-Fill Development Projects
☐ Other	

ARTICLE 18 of GUIDELINES
STATUTORY EXEMPTIONS
(Incomplete list)

Sec.	Short Name
☐ 15261	Ongoing Project
☒ 15262	Feasibility and Planning Studies
☐ 15265	Adoption of Coastal Plans and Programs
☐ 15268	Ministerial Projects
☐ 15269	Emergency Projects
☐ Other	

It is hereby certified that the City of San Diego has determined the above activity to be exempt:

Distribution: Chris Zirkle, MWWD
EAS File


Anne Lowry, Senior Planner
Environmental Analysis Section