

FIRST AMENDMENT TO
CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT

This FIRST AMENDMENT TO CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT [FIRST AMENDMENT] is entered into between THE CITY OF SAN DIEGO, a municipal corporation [CITY], and the UNITED STATES OF AMERICA, acting through the Army Corps of Engineers [PERMITTEE], collectively the "PARTIES," to be effective as of the date of execution by CITY [Effective Date], when signed by the PARTIES and approved by the San Diego City Attorney, as follows:

RECITALS

WHEREAS, on May 15, 2008, the PARTIES entered into that certain CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT [PERMIT] for the purpose of making improvements to an access road located on CITY-owned property (APN 650-160-01 and 650-200-02) in the area known as Marron Valley in the County of San Diego; and

WHEREAS, the PARTIES wish to amend the PERMIT for the following purposes:

- a. to expand the Permit Area to include APN 650-160-02, 650-170-01, and 650-170-02;
- b. to allow PERMITTEE to repair and maintain additional portions of Monument 250 Road;
- c. to allow PERMITTEE to repair, widen (as needed), and maintain additional access roads known as Marron Valley Road and Ridge Road;
- d. to allow PERMITTEE to install a staging area, a ground water well, and a temporary pond; and
- e. to require PERMITTEE to meter and pay for all water pumped from underground;

NOW, THEREFORE, for valuable consideration, the sufficiency of which is hereby acknowledged, the PARTIES agree to amend the PERMIT as follows:

I. Delete Paragraph A of the PERMIT and replace with the following:

- A. CITY is the owner of that certain real property (APN 650-160- 01, 650-160-02, 650-170-01, 650-170-02, and 650-200-02, collectively the "Permit Area") in the County of San Diego, State of California, as shown in Exhibit A-Revised.

II. Delete Paragraph 1 of the PERMIT and replace with the following:

1. Right to Enter. Subject to the terms and conditions of this PERMIT and FIRST AMENDMENT, CITY hereby grants permission to PERMITTEE, its employees, agents,

and contractors to enter upon the Permit Area solely for the following purposes [Permit Use], and for no other purpose whatsoever:

- a. to repair and maintain the entire length of the unpaved access road known as Monument 250 Road in the Permit Area (as shown in Exhibit A-Revised and Exhibit B), which was previously damaged by erosion and/or illegal traffic;
- b. to repair, widen (as needed), and maintain the entire length of the two unpaved access roads known as Marron Valley Road and Ridge Road on APN 650-170-01 and 650-170-02 (as shown in Exhibit A-Revised and Exhibit B), which were previously damaged by erosion and/or illegal traffic;
- c. to install and use a staging area measuring approximately 500 feet by 1000 feet in Yard "H" on APN 650-160-02 (as shown in Exhibit B);
- d. to install and use a ground water well in the staging area (described above) on APN 650-160-02 (as shown in Exhibit B); and
- e. to construct and use a temporary pond, measuring approximately 208 feet by 208 feet on APN 650-160-02 (as shown in Exhibit C), to retain water necessary for construction of the project.

III. Add the following provisions:

27. Access Roads. PERMITTEE shall ensure that Marron Valley Road will be used for daily service vehicles and that Ridge Road will be used for heavy equipment. PERMITTEE shall also ensure that soil and rock from any necessary road widening shall be used on the existing access roads, and not be pushed over the downhill slope.
28. Staging Area. PERMITTEE shall restore the staging area (measuring approximately 500 feet by 1000 feet in Yard "H") to the condition it was prior to the start of this project.
29. Water Well. The water well, pump, piping, valves, electrical service, and all other well infrastructure shall be constructed and installed solely at PERMITTEE'S expense. At the completion of the project, PERMITTEE shall securely cap the well casing by methods approved by CITY, but otherwise leave the well (bore hole, annular seal, casings, and screens) intact. Within thirty calendar days of the expiration of the PERMIT (as defined in Paragraph 4 of the PERMIT), PERMITTEE shall provide to CITY all records of well construction and well operation.
30. Water Meter. All groundwater extracted from Water Department lands in Marron Valley for use by PERMITTEE shall be metered. The PARTIES will work cooperatively on the installation of the water meter at a mutually agreeable location near the wellhead. PERMITTEE shall be responsible for the security of the meter; should the meter be damaged by accident or malice, PERMITTEE shall pay CITY'S cost of replacing the meter. PERMITTEE shall read the meter monthly and report the readings to CITY within two business days of each reading. CITY reserves the right to verify the accuracy of each monthly reading and will monitor the water meter at its expense.

31. Payment for Water. PERMITTEE shall pay CITY for all groundwater extracted from Water Department lands in Marron Valley. The cost for water shall be the San Diego County Water Authority's [CWA] current raw water rate, minus PERMITTEE'S cost to pump the water to ground level at a useful pressure of 40 psi. The formula shall be:

$\text{PERMITTEE water rate} = \text{CWA raw water rate} - \text{PERMITTEE'S pumping costs.}$

The current CWA raw water rate (through December 31, 2008) is \$515 per acre foot [AF], which equals \$1.18 per hundred cubic feet [HCF]. CWA rates adjust each year on January 1, and PERMITTEE'S rate will adjust in step with the CWA rate. In 2009, the CWA raw water rate is projected to be \$559 per AF (\$1.28 per HCF). PERMITTEE'S pumping costs shall be documented in writing and shall be based on electrical meter readings or, if powered by an engine-driven generator, by records of fuel usage and costs.

Meter readings and pumping costs shall be reported monthly. Payments for water shall be made quarterly.

32. Temporary Pond. PERMITTEE shall construct a temporary pond to retain groundwater used for construction of the project. The pond shall be contained entirely within the staging area (in Yard "H"), adjacent to the well. PERMITTEE shall use a temporary liner for the pond and conduct a complete reclamation of the area (including compaction and re-seeding) upon completion of the project.
33. Compliance with Water Department Requirements. At all times, PERMITTEE shall comply with each of the requirements set forth in the MSCP Subarea Plan and Implementing Agreement Obligations (Exhibit D).
34. Required Submittals. Within five business days of the execution of this FIRST AMENDMENT by the PARTIES, PERMITTEE shall submit to CITY each of the following:
- a. a copy of PERMITTEE'S (or its subcontractor's) SWPPP/BMPs for the access roads and staging area;
 - b. copies of all environmental permits and/or environmental clearances for project impacts to Water Department lands (e.g., CDFG 1601, RWQCB 401, etc.); and
 - c. copies of all environmental assessment reports.
35. Permit Fee. PERMITTEE shall pay CITY the sum of \$600.00 as consideration for this FIRST AMENDMENT.

IV. Replace Exhibit A of the PERMIT with Exhibit A-Revised (attached to this FIRST AMENDMENT).

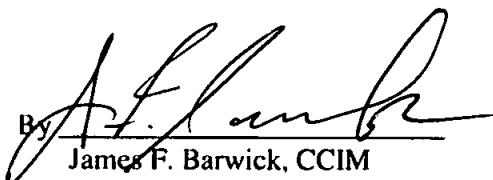
V. All references to the Permit Area, Permit Use, and Exhibit A in the PERMIT shall refer to the Permit Area (as defined in this FIRST AMENDMENT), the Permit Use (as defined in this FIRST AMENDMENT), and Exhibit A-Revised, respectively.

VI. All other terms and conditions of the PERMIT shall remain in full force and effect.

IN WITNESS WHEREOF, this FIRST AMENDMENT is executed by CITY and PERMITTEE, to be effective as of the Effective Date.

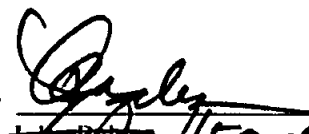
Dated this 27th day of OCT., 2008

THE CITY OF SAN DIEGO

By 
James F. Barwick, CCIM
Director, Real Estate Assets Department

Dated this 14th day of October, 2008

UNITED STATES OF AMERICA, acting
through the Army Corps of Engineers

By 
~~John Baker~~ **HECTOR ANGELES**
~~Chief~~ Real Estate Division
Albuquerque District
United States Army Corps of Engineers

Dated this 3 day of Nov, 2008

Water Department

By 
Alex Ruiz
Assistant Director

Environmental Clearance:

This activity is categorically exempt from CEQA, pursuant to State CEQA Guidelines section 15304.

Dated this 20th day of October, 2008

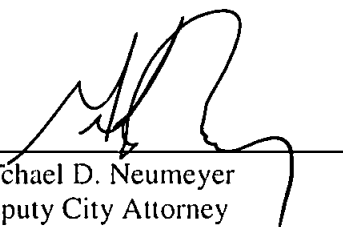
Environmental Analysis Section

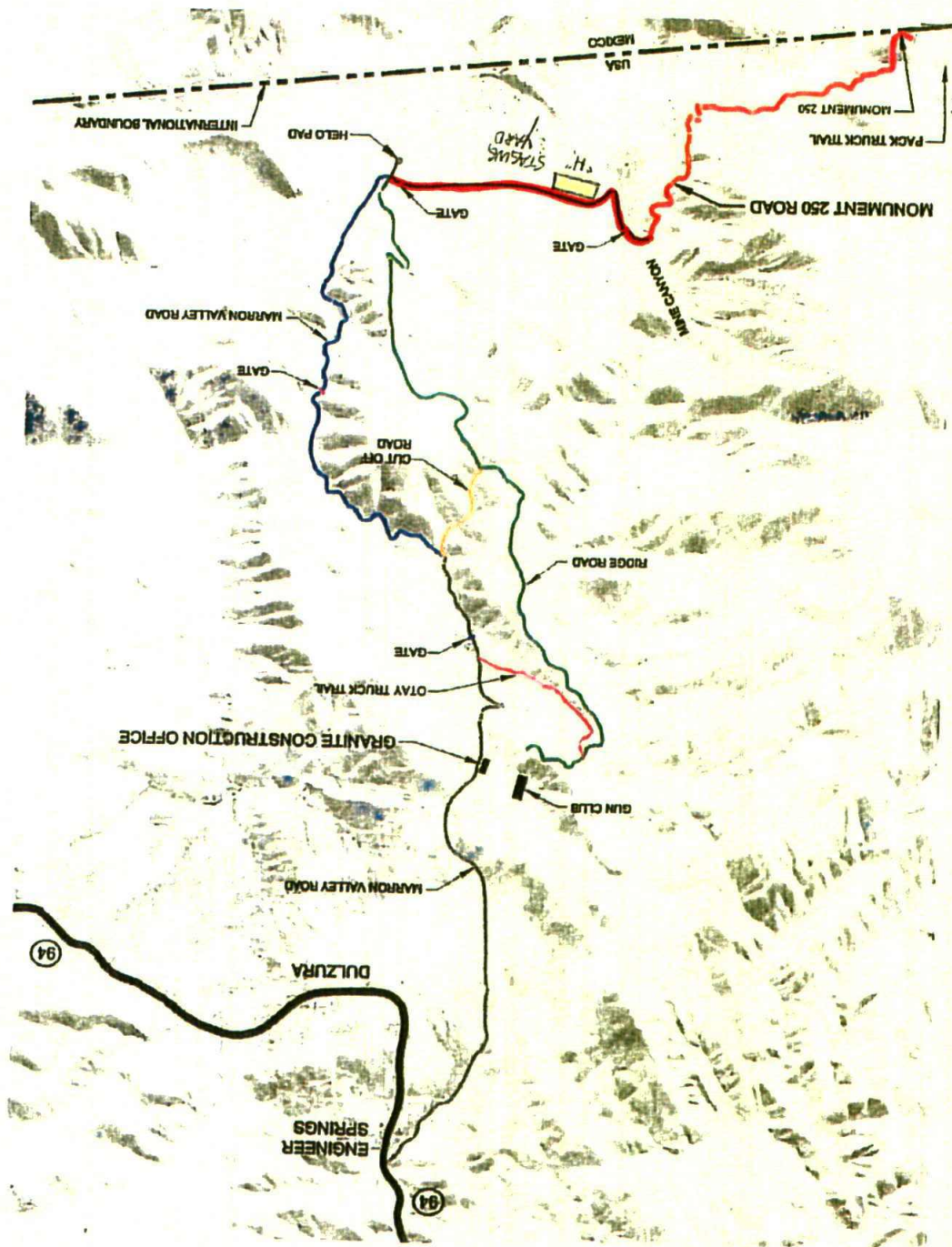
By 
Nicole A. McGinnis
Senior Planner

Approved as to Form and Legality

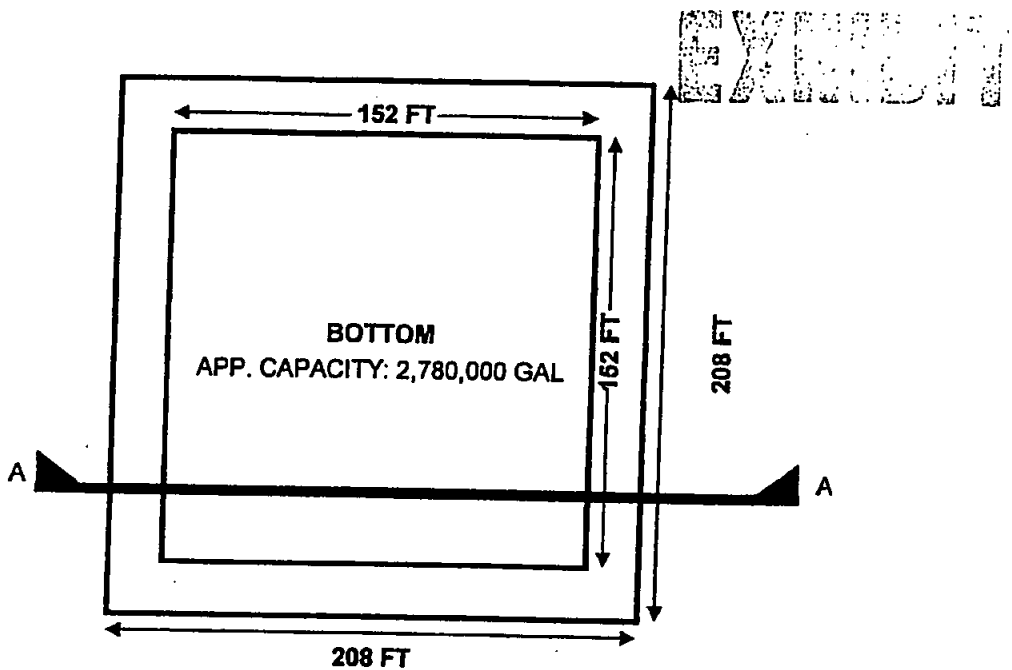
Dated this 5th day of November, 2008

MICHAEL J. AGUIRRE
City Attorney

By 
Michael D. Neumeyer
Deputy City Attorney

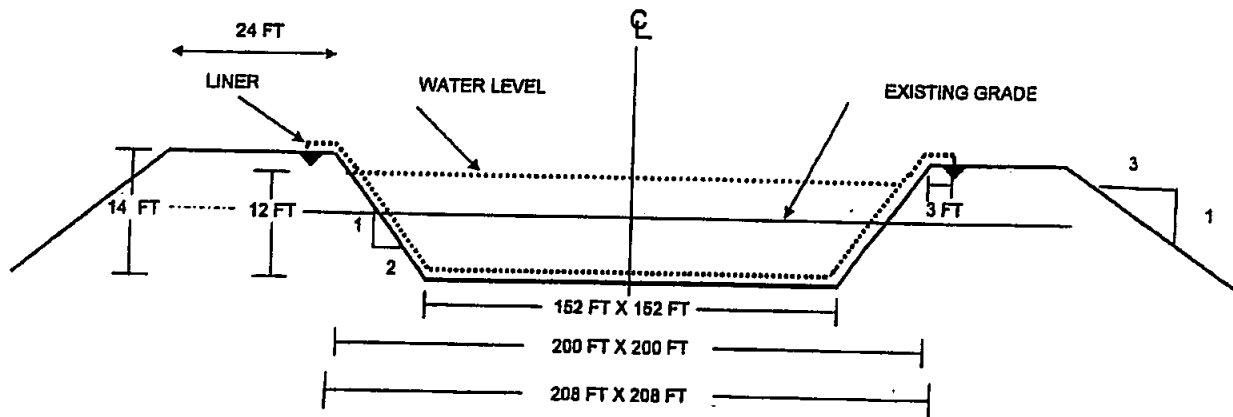


Project Location Map
(NTS)



POND PLAN VIEW

NTS



A-A CROSS SECTION VIEW

NTS

**City of San Diego Water Department
MSCP Subarea Plan and Implementing Agreement Obligations**

MSCP SUBAREA PLAN

Cornerstone Lands Obligations

1.4.2 General Planning Policies and Design Guidelines

The following general planning policies and design guidelines should be applied in the review and approval of development projects within or adjacent to the MHPA.

Roads and Utilities - Construction and Maintenance Policies:

3. Temporary construction areas and roads, staging areas, or permanent access roads must not disturb existing habitat unless determined to be unavoidable. All such activities must occur on existing agricultural lands or in other disturbed areas rather than in habitat. If temporary habitat disturbance is unavoidable, then restoration of, and/or mitigation for, the disturbed area after project completion will be required.
4. Construction and maintenance activities in wildlife corridors must avoid significant disruption of corridor usage. Environmental documents and mitigation monitoring and reporting programs covering such development must clearly specify how this will be achieved, and construction plans must contain all the pertinent information and be readily available to crews in the field. Training of construction crews and field workers must be conducted to ensure that all conditions are met. A responsible party must be specified.

Materials Storage

Prohibit storage of materials (e.g., hazardous or toxic, chemicals, equipment, etc.) within the MHPA and ensure appropriate storage per applicable regulations in any areas that may impact the MHPA, especially due to potential leakage.

Flood Control

2. No berming, channelization, or man-made constraints or barriers to creek, tributary, or river flows should be allowed in any floodplain within the MHPA unless reviewed by all appropriate agencies, and adequately mitigated. Review must include impacts to upstream and downstream habitats, flood flow volumes, velocities and configurations, water availability, and changes to the water table level.
3. No riprap, concrete, or other unnatural material shall be used to stabilize river, creek, tributary, and channel banks within the MHPA. River, stream, and channel banks shall be natural, and stabilized where necessary with willows and other appropriate native plantings. Rock gabions may be used where necessary to dissipate flows and should incorporate design features to ensure wildlife movement.

Invasives

6. No invasive non-native plant species shall be introduced into areas adjacent to the MHPA.

IMPLEMENTING AGREEMENT OBLIGATIONS

3.1 The MSCP Plan, in conjunction with THE CITY OF SAN DIEGO's Subarea Plan which implements it, qualified as an NCCP Plan under the NCCP Act. The MSCP proposes a program of conservation for the Covered Species and protection of their habitat in perpetuity through land use regulation, acquisition, and management.

9.3 Conservation of Covered Species.

Implementation of the MSCP through the Subarea Plan in accordance with this Agreement will adequately provide for the conservation and protection of the Covered Species Subject to Incidental Take and their habitat in the Subarea in perpetuity.

9.15 Habitat Conservation Measures.

Habitat conservation measures provided for in the Subarea Plan, including habitat management within the MHPA, shall be consistent with the MSCP and shall be implemented through the policies and local regulations established by THE CITY OF SAN DIEGO...

9.19 Duty to Enforce.

THE CITY OF SAN DIEGO agrees to take appropriate actions to enforce the terms of the Take Authorizations, the Subarea Plan, and this Agreement as to itself and to all persons or entities subject to the requirements established by this Agreement, specifically including the land development permitting and approval requirements set forth in Section 10 of this Agreement. Furthermore, consistent with Section 9.3 of this Agreement THE CITY OF SAN DIEGO shall exercise the full extent of its legal authority to ensure that its local share of lands identified for preservation under the Subarea Plan are conserved in perpetuity.

10.2.A. Lands to be Preserved.

In order to obtain and maintain its Take Authorizations, THE CITY OF SAN DIEGO agrees to comply with and implement the MSCP Plan, Subarea Plan, and this Agreement.

10.8.H. City Compliance with Subarea Plan Provisions.

The City Manager of THE CITY OF SAN DIEGO will take all actions within his authority to ensure that all CITY OF SAN DIEGO departments comply with the policies, regulations and management obligations established as a result of the MSCP Plan and Subarea Plan on all CITY OF SAN DIEGO projects and day-to-day operations.