



DEPARTMENT OF THE NAVY
SOUTHWEST DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
1220 PACIFIC HIGHWAY
SAN DIEGO, CA 92132-5190

11 (20050-00) 084

11011
Ser 533.LH/084
25 SEP 1996

Mr. Cal Bankuthy
Right-of-Way Coordinator
Irvine Ranch Water District
15600 Sand Canyon
P. O. Box 57000
Irvine, CA 92619

Dear Mr. Bankuthy:

We are writing on behalf of Marine Corps Air Station (MCAS), El Toro, in regard to Irvine Ranch Water District property located in the City of El Toro, County of Orange, Assessors Parcel Number (APN) 591-073-04, adjacent to MCAS El Toro.

MCAS El Toro has just completed its remedial investigation under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) process for the Magazine Road Landfill, known as Installation Restoration (IR) Site 2. As you may know, the landfill extends beyond the MCAS El Toro property boundaries and onto adjacent properties, including APN 591-073-04. Landfill debris has been identified on the above-referenced County of Orange property. In order to continue routine sampling activities associated with the restoration of the landfill site, we request rights of entry to the subject property.

Enclosure (1) authorizes entry to your agency's property for the purpose of investigating a potential release of hazardous substances and undertaking removal of landfill materials and debris and any other necessary response actions to address any hazardous substances identified. The proposed term of the permit will be five years from the date of commencement.

The Marine Corps is currently preparing a feasibility study to evaluate potential alternatives for the remediation of the landfill site and is proceeding with interim actions to remove landfill debris and mitigate erosion of landfill materials along the banks of the Borrego Canyon Wash area. The United States Environmental Protection Agency and the California Environmental Protection Agency are providing regulatory oversight for all field activities associated with the remediation at the Magazine Road landfill.

A copy of the Draft Final Remedial Investigation report for IR Site 2 will be forwarded for your information and review.

11011
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Please sign all copies of proposed Government Right of Entry Permit N6871196RP06A34 and return two originals to this office. If you have any questions, please contact Mr. Joseph Joyce, the Base Realignment and Closure Environmental Coordinator at (714) 726-3470 or (619) 532-3873, Ms. Rosemary Fraunces, Navy Real Estate representative, at (619) 532-3759 or Ms. Lori Henderson, Navy Real Estate representative at (619) 532-3007.

Sincerely,



M. R. JOHNSON
Captain, CEC, U. S. Navy
Commander

Encl:

(1) Proposed Government Right of Entry Permit N6871196RP06A34 (3 copies)

Copy to:

AC/S Installations

Attn: 1JB

MCAS El Toro

P.O. Box 94003

Santa Ana, CA 92709-4003

ENTRY PERMIT

THIS ENTRY PERMIT ("Entry Permit") is made this _____ day of _____, 1996, by and between the IRVINE RANCH WATER DISTRICT, hereinafter referred to as Permittor, and THE UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter referred to as Government with reference to the facts set forth below.

RECITALS

A. Permittor is the owner of certain real property situated in the City of El Toro, County of Orange, State of California, more particularly described on Exhibit "A" attached hereto and incorporated herein ("Property").

B. In connection with a soil and groundwater investigation of Volatile Organic Carbon (VOC) beneath and adjacent to Marine Corps Air Station, El Toro, Government desires to enter onto the Property for the purpose of investigation and removal action to investigate and respond to the actual or threatened release of hazardous substances pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9601, et seq., as more particularly described herein.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant, declare and agree as set forth below.

1. Permit to Enter Upon Property. Permittor hereby grants Government permission to enter upon the Property pursuant to 42 U.S.C. Section 9604(e) for the purpose of performing: (1) installation and maintenance of groundwater monitoring wells ("Wells"); (2) collection of groundwater samples; (3) investigation and removal of surface debris; (4) subsurface soil sampling; (5) removal of debris incidentally encountered in the course of rip-rap construction and future site investigation

activities (e.g., sample collection); and (6) construction and maintenance of rip-rap in areas of severe erosion to mitigate further erosion activity. The Wells shall be installed and maintained for a maximum period of five years. They shall be closed pursuant to a closure plan approved by the Permitter. The rip-rap shall be maintained until a CERCLA remedial action is selected, this license is replaced by an easement, or the license expires, whichever first occurs. In no event shall anything contained in this Entry Permit give to Government the right to construct any improvements other than the Wells and rip-rap or to place any monuments on the Property, and such activities shall not be permitted unless the prior written consent of Permitter has been obtained, which consent may be withheld in Permitter's sole and absolute discretion. Government's use of the Property pursuant to such permission shall be strictly governed by the terms of this Entry Permit. This permission to enter upon the Property is granted only to Government and Government shall not permit any other party, except Government's employees, agents and contractors ("Government's Agents"), to enter the Property during the term of this Entry Permit.

2. Commencement of Obligations. The term of this Entry Permit and all of Government's rights and obligations hereunder shall commence as of the execution and delivery of this Entry Permit to Government. Prior to the commencement of any activities on the Property, Government shall give prior written notice thereof to Permitter.

3. Regulations and Other Obligations of Government.

3.1 Permits. Pursuant to 42 U.S.C. Section 9621(e), no federal, state or local permits are required for CERCLA response actions. However, while on the Property, Government will comply, and will cause all of Government's Agents to comply, with all substantive federal and state laws and regulations as provided by 42 U.S.C. Section 9621(d).

3.2 Restrictions on Individuals. All persons who enter upon the Property pursuant to this Entry Permit do so at their own risk. Government shall cause such persons to observe strict fire and smoking precautions. Government shall further ensure that no fires are lighted on the Property and that no firearms or intoxicating liquor shall be carried onto the Property by any

persons entering said Property pursuant hereto. All persons entering the Property pursuant hereto shall comply with any and all instructions and directions of the authorized agents of Government and Permittor.

3.3 Information. Pursuant to 42 U.S.C. Section 9604(e)(4)(B), a receipt for any sample collected shall be provided by Government to Permittor and a copy of the results of any analysis of the sample collected will be promptly provided by the Government to Permittor within forty-five (45) days of the public availability of such information. Pursuant to 42 U.S.C. Section 9604(e)(4)(B), the Permittor has the right to request a portion of any sample collected (a "split" sample) for its independent analysis, Permittor:

_____ Requests Split Samples

_____ Does Not Request and waives its right to request split samples.

If Permittor requests split samples, the cost of handling and analysis of the samples shall be borne by the Permittor.

3.4 Location and Construction of Wells. The location and construction of the Wells shall be subject to the prior approval of Permittor, which approval will not be unreasonably withheld. The Government must have submitted to Permittor drawings showing the precise location and construction specifications of the Wells and plans for closure of the Wells at the end of their use in a manner consistent with federal and state requirements. The Government shall have received Permittor's written consent of the location prior to entry upon the property for purposes of commencement of construction of the Wells.

3.5 Confidential Business Information

3.5.1 As provided by 42 U.S.C. Section 9604(e)(7)(F), any information obtained from any person pursuant to 42 U.S.C. Section 9604(e) shall be available to the public except when any person demonstrates that such information is entitled to the protection under Title 18 U.S.C. Section 1905. As provided by 42 U.S.C. Section 9604(e)(7)(F), the following information with respect to any hazardous substance at the facility is not entitled to such protection:

- a. The trade name, common name, or generic class or category of the hazardous substance.
- b. The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius.
- c. The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.
- d. The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.
- e. The location of disposal of any waste stream.
- f. Any monitoring data or analysis of monitoring data pertaining to disposal activities.
- g. Any hydrogeologic or geologic data.
- h. Any groundwater monitoring data.

3.5.2. Permittor hereby:

a. _____ Waives any rights the Permittor may have to claim that information collected, gathered or generated pursuant to this permit is entitled to protection under 18 U.S.C. Section 9604(e)(7).

b. _____ Claims that all or a portion of the information collected pursuant to this permit is entitled to protection under 18 U.S.C. Section 1905 and 42 U.S.C. Section 9604(e)(7); more specifically, the claim of protection includes the following information:

4. Access to Property.

4.1 Notice. Not later than forty-eight (48) hours prior to entry upon the Property, Government shall provide Permittor written notice of the time, duration and purpose of entry. Government will make its best efforts to schedule any such entry on the Property to minimize the potential for disruption to business activities on the Property.

4.2 No Alteration. Any activities hereunder which physically alter or change the condition of the Property shall be subject to Permitter's prior written approval. During the term of this Entry Permit and Government's activities, Government shall take any steps reasonably necessary to avoid damage to the Property. Government shall not store testing materials on the Property and in no event shall Government bring any hazardous, toxic or contaminated materials or substances on the Property, including, without limitation, any hazardous materials, waste or substances as defined by federal, state or local laws or regulations, except that this restriction shall not apply to any gasoline or oil used in connection with any machine brought by Government onto the Property so long as Government remains liable for any damage or leakage of such gasoline or oil onto the Property. Government will be responsible for any damage done to the Property during the term of this Entry Permit arising from or out of the acts of Government or Government's Agents and Government will pay the costs of repairing and restoring the remaining Property to a condition substantially similar to or better than the condition of the Property as of the execution date of this Entry Permit. If Government drills, digs any holes or ditches in the Property except for the Wells, Government shall promptly fill the hole and surrounding areas in accordance with reasonable standards approved by Permitter.

5. Liens. Government shall not suffer or permit to be enforced against the Property, or any part thereof, any mechanic's, materialmen's, contractors' or subcontractors' liens arising from or any claim for damage growing out of the Activities, but Government shall pay or cause to be paid all of said liens, claims or demands before any action is brought to enforce the same against the Property. Permitter reserves the right at any time and from time to time to post and maintain on the Property such notices as may be necessary to protect Permitter against liability for all such liens and claims.

6. Permitter Not Liable. Permitter shall not be liable for any loss, damage or injury of any kind or character to any person or the Property arising from any use of the Property or any act or omission by Government under this Entry Permit or any of

Government's Agents or licensees or invitees, or by or from any accident on the Property or any fire or other casualty thereon, or occasioned by the failure of Government to maintain the Property in a safe condition, except to the extent caused by the negligence of Permittor.

7. Insurance.

7.1 Form of Policies Required. Government's contractors shall, at all times after commencement of the term of this Entry Permit, maintain at their expense, in companies acceptable to Permittor, commercial general liability insurance with limits of not less than One Million Dollars (\$1,000,000) combined single limit bodily injury, death and property damage per occurrence. Government or Government's Agents shall provide Worker's Compensation Insurance as required by law and employer's liability insurance. Such policies of insurance shall name Permittor as an additional insured and shall state that such policy is primary, excess and non-contributing with any other insurance carried by Permittor. Such policy shall contain a provision that the naming of an additional insured shall not negate any right the additional insured would have had as claimant under the policy if not so named, and severability of interest and cross liability clauses.

7.2 General Insurance Provisions.

7.2.1 Any policies or certificates of insurance required under the provisions of this Section must contain an endorsement or provision that not less than thirty (30) days prior written notice be given to Permittor prior to cancellation or reduction of coverage or amount of such policy.

7.2.2 A certificate issued by the insurance carrier of each policy of insurance required to be maintained by Government or Government's Agents above shall be delivered to Permittor prior to Government being given the right to enter upon the Property for any purpose. Each such certificate of insurance shall contain provisions stating the limits, coverage and other provisions required in this Section. A renewal certificate for each of the policies required in this Section shall be delivered to Permittor not less than thirty (30) days prior to the expiration date of the term of such policy.

7.2.3 Any policies required by provisions of this Section may be made a part of a blanket policy of insurance so long as such blanket policy contains all of the provisions required herein and does not reduce the coverage, impair the rights of the other party to this Entry Permit or negate the requirements of this Entry Permit.

8. Term.

8.1 The right of entry granted by this Entry Permit shall terminate five (5) years after commencement. In addition, if Government shall be in breach of any of its obligations under this Entry Permit, and should Government fail (i) to cure such breach within ten (10) days of a written notice from Permittor specifying the nature of such breach, or (ii) if such breach is not curable within ten (10) days, to have commenced action to diligently cure such breach, Permittor shall have the right to terminate this Entry Permit by written notice to Government. In the event that the right of entry granted Government hereunder is terminated for any reason, Government shall promptly vacate the Property.

8.2 Government acknowledges and agrees that this Entry Permit constitutes a license which may be revoked by Permittor in the event of a default under this Entry Permit. Government further acknowledges and understands that Government has no rights of occupancy or possession of the Property by virtue of this Entry Permit.

9. General Provisions.

9.1 Notice. All notices hereunder shall be given by first-class mail or by facsimile. The time of any notices to Permittor shall be determined upon actual receipt of such notice by Permittor. All notices given by mail shall be deemed received three (3) business days following the mailing.

Notice to Permittor shall be to:

Irvine Ranch Water District
15600 Sand Canyon
P.O. Box 57000
Irvine, CA 92619
FAX Number: (714)453-0228

Notices to the Government shall be to:

Commander
Southwest Division
Naval Facilities Engineering Command
Attn: Rosemary F. Fraunces, Code 241.RF
Building 127, Room 130
1220 Pacific Highway
San Diego, CA 92132-5179
FAX Number: (619)532-1135

9.2 No Responsibility for Loss or Theft. Permittor shall not be responsible for the loss or theft of anything stored by Government or its agents on or about the Property.

9.3 Inspection. Permittor and any agent authorized by Permittor shall be entitled to enter and inspect the Property at any time while this Entry Permit is in effect.

9.4 Assignment. Government cannot assign, voluntarily or by operation of law, this Entry Permit and Government shall not sublet or permit the use of the Property, or any part thereof, and any attempt to do so shall be null and void. Permittor may assign this Entry Permit and any rights or obligations hereunder without consent of the Government.

9.5 Entire Agreement. This Entry Permit constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification or amendment of this Entry Permit shall be binding unless in writing and executed by the parties hereto. No waiver of any other provisions of this Entry Permit shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

9.6 Governing Law. This Entry Permit shall be construed in accordance with, and governed by, the laws of the United States of America and the State of California.

9.7 Captions. The captions of this Entry Permit are for purposes of reference and shall not limit or define the meaning of the provisions of this Entry Permit. This Entry Permit may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

9.8 Cumulative Remedies. All rights, options and remedies of Permittor contained in this Entry Permit shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Permittor shall have the right to pursue any one or all of such remedies or to seek damages or specific performance in the event of any breach of the terms hereof by Government or to pursue any other remedy or relief which may be provided by law or equity, whether or not stated in this Entry Permit.

9.9 No Waiver. No waiver by Permittor of a breach of any of the terms, covenants or conditions of this Entry Permit by Government shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No waiver of any default by Government hereunder shall be implied from any omission by Permittor to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect a default other than as specified in such waiver. The consent or approval by Permittor to or of any act by Government requiring Permittor's consent or approval shall not be deemed to waive or render unnecessary Permittor's consent or approval to or of any subsequent similar acts by Government.

9.10 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null, or void or against public policy, for reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Entry Permit shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

9.11 Government Authority. Each person signing this Entry Permit on behalf of Government represents and warrants that he has full authority to do so and that this Entry Permit binds the Government.

IN WITNESS WHEREOF, the parties have executed this Entry Permit as of the date first above-written.

THE UNITED STATES OF AMERICA,
acting by and through

IRVINE RANCH WATER DISTRICT

Department of the Navy

By: _____
Name: _____
Title: _____
Date: _____

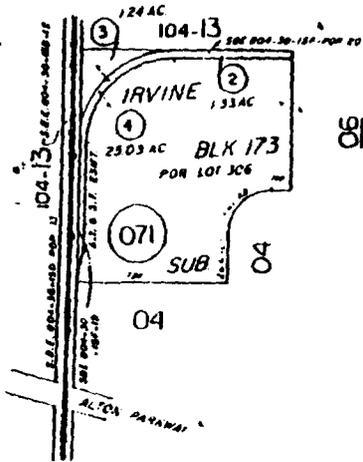
By: 
Name: JAMES H. STROTMAN
Title: Real Estate Contracting Officer

REVIEWED AND APPROVED AS TO FORM.


DARYL DAWSON
COUNSEL

This is not a survey of the land but is compiled for information purposes only from various records. Map is not to scale.

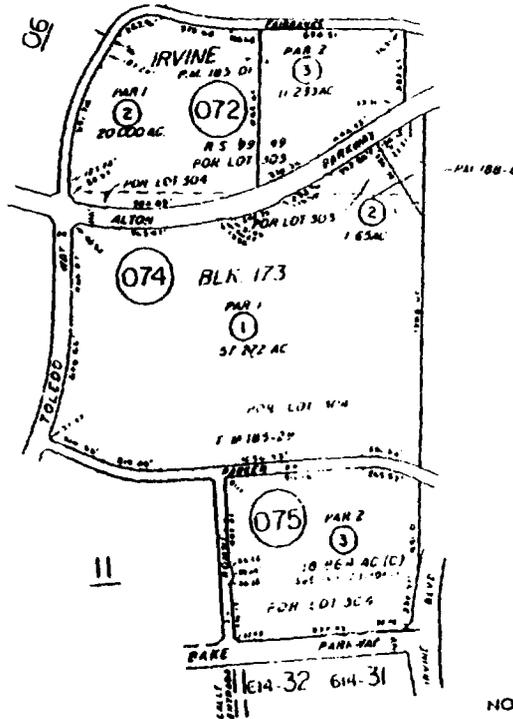
EXHIBIT (A)



MARCH 1980

IRVINE SUB
PARCEL MAP

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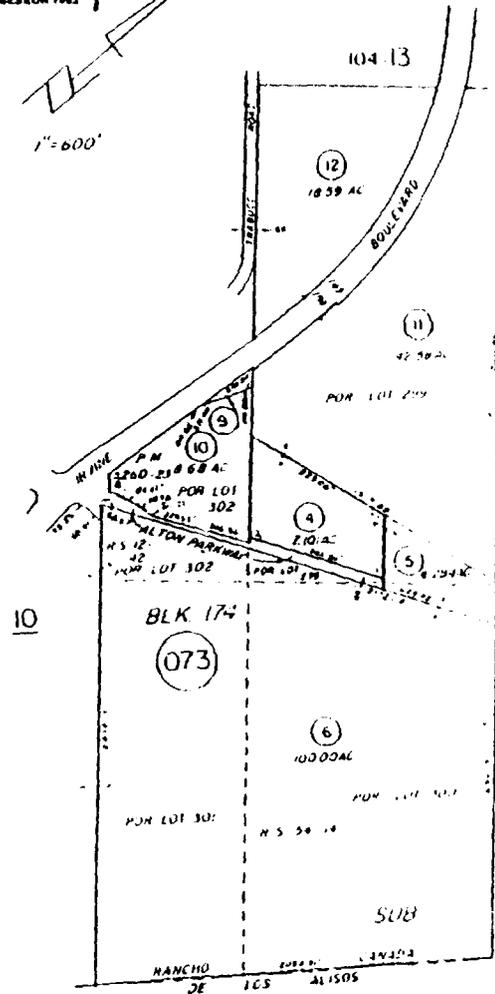


M.M. 1-88
P.M. 185-01, 185-29

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104-13

1" = 600'



NOTE ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

610-31
ASSESSOR'S MAP
BOOK 591 PAGE 07
COUNTY OF ORANGE